

CWP-10684-2020(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.10684 of 2020(O&M)

Reserved on : July 30, 2020

Date of decision: August 14, 2020

Nipun Sharma

... Petitioner

Versus

Post Graduate Institute of Medical Education
and Research, Sector 12 Chandigarh
through its Director

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate for the petitioner.

Mr. Amit Jhanji, Advocate for respondent.

Harinder Singh Sidhu, J. :

1. This writ petition has been filed for issuance of writ, order or direction for reading down condition 7(3)(g) as contained in the Prospectus for Session July, 2020 issued by respondent – PGIMER for admission to DM/M.Ch. Courses, wherein it has been provided that no request for change of category applied for shall be entertained after submission of application to the extent that in case no eligible candidate is available under the 'Sponsored Category', then eligible candidate, if available, under 'General Category' be considered and granted admission to the course of Master of Surgery (M.Ch.) (Plastic Surgery) on fulfilling the requisite eligibility conditions.

2. Further prayer has been made for setting aside the action of

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respondent in not considering the candidature of petitioner for said course against vacant seat available under 'Sponsored Category' in view of fact that petitioner had applied for direct category.

3. It is also prayed that the NOC/Sponsorship Certificate (Annexure-P 6) issued in favour of petitioner by Department of Health and Family Welfare, Himachal Pradesh be accepted..

4. The petitioner secured admission in MBBS Course at Indira Gandhi Medical College and Hospital at Shimla (2006-2012) and served in rural area after appointment in 2013 for a total period of 2½ years. He was selected for Post Graduate Course in General Surgery in 2017 as a sponsored candidate (2017 to 2019) in PGIMER, Chandigarh and secured 2nd rank in Post Graduation final examination. After completing his Post Graduation successfully with the respondent-institution he joined back as a Medical Officer in Deendayal Upadhyay Zonal Hospital, Shimla. Thereafter, the petitioner with an aim to study further and super specialize in the field of Plastic Surgery decided to get admission in the Master of Surgery (M.Ch.) (Plastic Surgery).

5. As per the Prospectus for the Session July 2020 in the PGIMER for securing admission in Post Graduation or Super Specialty Course i.e. M.Ch., two categories have been provided i.e. (a) General category and (b) Sponsored Category. In 'General Category', a candidate can apply directly i.e. without seeking permission of any State authority directly whereas in the 'Sponsored Category' only that candidate can apply, who is sponsored by the State Government with which he or she is employed. The sponsorship so made by the State Government is also in the

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nature of a No Objection Certificate whereby a candidate is authorized by the State Government to do a Super Specialty Course with an undertaking to serve the State Government for a specified period.

6. As per the Prospectus for seeking admission to D.M./M.Ch. Courses for its Session July, 2020 it was provided that any candidate who wishes to seek admission in any of D.M./M.Ch. Courses may submit its online application from 23.03.2020 to 22.04.2020 on the official website i.e. www.pgimer.edu.in. Admission was to be granted on the basis of Computer Based Entrance Test, which was to be held on 07.06.2020, followed by counselling, which was to be held on 20.06.2020. A candidate, (a) who is M.S. Surgery or equivalent/M.S. Otorhinolaryngology or equivalent/M.S. Orthopaedics or equivalent (must have completed requisite qualification/degree by 30.06.2020) recognized by MCI, (b) is registered with Central/State Medical Registration Council and (c) is within the prescribed age limit as on/before 31st December for January and 30th June for July Session (for General Category:40 years) is eligible for securing admission in M.Ch. Course in Plastic Surgery. Though in the prospectus the date of examination was mentioned as 07.06.2020 however, the same was re-scheduled for 14.06.2020 and 21.06.2020 due to prevailing pandemic of COVID-19. The other relevant conditions/provisions as contained in the Prospectus are reproduced below:-

***"B. OTHER ELIGIBILITY & REQUIREMENTS FOR
ADMISSION***

1. Sponsored/Deputed Candidates.

A candidate applying for admission DM/M.Ch as a sponsored/deputed candidate is required to take the print out of

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the online application form and furnish the certificates (as per format given in Annexure, Annexure-IV& V] with his/her application through his/her employer/Sponsoring Authority for admission to the course.

- a) *That the candidate concerned shall be an employee of the deputing/sponsoring authority and should have been working for three years (on or before 30th June/31st December for July & January session respectively).*
- b) *That after getting training at PGIMER, Chandigarh, the candidate will be suitably employed by the deputing/sponsoring authority to work for at least five years in the specialty in which training is received by the candidate at the PGIMER.*
- c) *That no financial implications, in the form of emoluments/stipend etc. will devolve upon PGIMER, Chandigarh during the entire period of his/her course and such payment shall be the responsibility of the sponsoring authority.*

Deputation/Sponsorship of any candidate by private hospitals, institutes or nursing homes are not accepted. The sponsoring institute should not nominate more than one candidate for a specialty. Sponsorship/deputation of candidates will be accepted only from the following:-

- a. *Central or State Government Departments/Institutions*
- b. *Autonomous Bodies of the Central or State Government*
- c. *Public sector colleges affiliated to universities and recognized by the MCI. In case candidate deputed/sponsored by the Govt Medical College affiliated to Universities and recognized by Medical Council of India, deputation/sponsorship certificates signed by the Principal of Medical College concerned only shall be accepted.*

Deputed/Sponsored candidates are also required to appear in the Entrance Exam. If selected, for admission, they are required to

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make their own stay arrangement during the period of study."

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4.2 NUMBER OF SEATS

The facilities for post-doctoral courses are available in the following super specialties for July 2020 session:-

	Name of the Department/Course	Seats Advertised for July 2020 Session		
		General	Sponsored	Foreign National
Sr. No.	M.Ch.			
34.	Plastic Surgery	1	2	1

5.1 COMPETITIVE ENTRANCE EXAM

The Entrance Examination shall be conducted through a Computer Based Test (CBT). The examination shall be held on Sunday, the 7th June, 2020. The duration of the examination shall be 90 minutes for DM/M.Ch courses.

The Online (CBT) Entrance Examination will be conducted in one shift. Timing 09.00 AM to 10.30 AM.

Xxxxxxxxxxxxxx

5.6. MERIT LIST

A merit list will be prepared after solving the ties and on the basis of the marks obtained by the candidates in the theory examination. Separate merit list will be prepared for each subject and for each category (i.e. General and Sponsored/Deputed). To qualify for counselling/ interview, a candidate

(general and sponsored/ deputy/foreign national) must obtain at least 35 marks in the Theory examination. The number of candidates to be called for counselling/interview will be THREE times of the total number of seats to be filled in each category.

6. COUNSELLING AND ACADEMIC SESSION

Allocation of various disciplines of DM/M.Ch courses will be done on the basis of a personal counselling, strictly in order of merit in the Entrance Test. The number of candidates to be considered for counselling will be three times the total number of seats to be filled for each category of candidates, provided the candidates fulfill the cut-off percentile mentioned in 'SELECTION PROCEDURE'. The selection will be finalized only after the counselling of the candidates. Any candidate who is absent at the time of counseling will not be considered for admission. However, if any candidate reports for counseling after his/her turn, he/she will be considered for admission only in the disciplines available at that time. All the candidates must bring the original certificates at the time of counselling and joining.

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ADMISSION TO DM/MCH COURSES WILL BE CLOSED

ON 31st JULY, 2020.

xxxxxxx

7. IMPORTANT INSTRUCTIONS

1. INSTRUCTIONS FOR FILLING THE ONLINE APPLICATION FORM

Xxxx

2. CONDITIONS FOR PERSONS WITH BENCHMARK DISABILITY

Xxxx

3. OTHER IMPORTANT INSTRUCTIONS

a) to f) xxxxxxxx

g) No request for a change of category applied for shall be entertained after the submission of the application.

xxxxxx

w) The decision of the Director of the Institute shall be final in the matter of selection of candidates for admission to various courses and no appeal will be entertained in this regard. X x x x x

cc) Any dispute in regard to any matter referred to herein shall

be subject to the jurisdiction of Chandigarh Courts alone.”

7. The petitioner submitted his application for M.Ch.' Course in Plastic Surgery for both the respondent-institution as well as AIIMS, New Delhi under Direct/ General category. He appeared in the written test conducted by AIIMS, New Delhi as well as in the competitive entrance examination conducted by the respondent-institution. AIIMS, New Delhi declared the final result on 30.06.2020, where the petitioner secured first rank in M.Ch. Plastic and Reconstructive Surgery by securing 72 marks. In the test conducted by the respondent-institution, the petitioner secured 2nd rank with 45.3208 marks out of 80 marks under 'General Category' (only 1 seat). In 'Sponsored Category' (2 seats), only one candidate namely Ajay Kumar who has secured 48.0226 marks out of 80 marks was found be eligible. Consequently the second seat remained vacant as no other eligible

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candidate was available for admission in M.Ch. Plastic Surgery course.

8. The petitioner had initially not applied with the State of Himachal Pradesh for sponsorship. After declaration of the result by the respondent-institution, the petitioner approached the Hon'ble High Court of Himachal Pradesh at Shimla vide CWP No.2235 of 2020 titled as 'Dr. Nipun Sharma Vs. State of Himachal Pradesh and others' with the prayer that the respondents therein may be directed to issue NOC and Sponsorship Certificate in favour of the petitioner for pursuing Super Specialty Course in Plastic and Reconstructive Surgery from PGIMER, Chandigarh. The Himachal High Court vide order dated 08.07.2020 directed the State of Himachal Pradesh to relieve the petitioner, if not already relieved, for enabling him to complete the super specialty course (M.Ch), Plastic Surgery and Reconstructive Surgery from PGI, Chandigarh.

9. As directed by the Hon'ble High Court the petitioner submitted an undertaking dated 08.07.2020 to serve the Health Department, Government of Himachal Pradesh, for a minimum period of 7 years as per the bond already executed by him. Thereafter the State of Himachal Pradesh issued NOC-cum-Sponsorship Certificate dated 10.07.2020 in favour of the petitioner to pursue M.Ch. in Plastic and Reconstructive Surgery at the respondent-institution.

10. After receiving the sponsorship certificate the petitioner approached the respondent-institution vide his representation which was received by the respondent- institution on 14.07.2020 with a request that his candidature may be considered against the vacant post lying under the 'Sponsored Category'. The Head of Department, Department of Plastic

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Surgery, PGI, Chandigarh, requested that the candidature of the petitioner be considered for 'Sponsored Category' as the Department was short of residents and induction of the petitioner would be beneficial for the Department of Plastic Surgery, PGI, Chandigarh.

11. Thus the grievance of the petitioner is that despite there being no other eligible candidate available till date, the candidature of the petitioner, who applied under the 'General Category', is not being considered under the 'Sponsored Category'. In case, the respondent-institution accepts the candidature of the petitioner then not only the petitioner would secure admission in the super specialty course of M.Ch. (Plastic Surgery) but the vacant seat will also get utilized and would not be left vacant.

12. It was also pleaded by the petitioner that two candidates Dr. Lucky Kumar and Dr. Ashok Garg, who hail from Himachal Pradesh had applied for admission in M.Ch. in Cardiology and Neonatology respectively with respondent. Those candidates also secured their NOC cum Sponsorship certificate after the declaration of the result. They have been granted admission and their NOC cum Sponsorship certificate has been duly accepted. Thus the petitioner has been discriminated against.

13. In the reply filed on behalf of the respondent Institution, it has been stated that there was only 1 seat under 'General Category' and the petitioner secured 2nd Rank in the said category. The candidate, who secured 1st rank has been granted admission and Petitioner has not been selected for admission under 'General Category'.

14. It has been stated that as per clause 7 (3)(g) of the Prospectus :

“ No request for change of category applied for shall be entertained after the submission of the application”.

Since, Petitioner applied under 'General Category', therefore his request for grant admission on the vacant seat under 'Sponsored Category' cannot be considered.

15. The examination for admission to the M.Ch. Plastic surgery course was held on 21.06.2020. The result was declared on 26.05.2020. On 30.06.2020 the institute vide notice dated 30.06.2020 uploaded a tentative list of selected candidates wherein petitioner was shown at Waiting list No.1. The petitioner was given the NOC/Sponsorship Certificate on 08.07.2020. The said NOC cannot be taken into consideration as Petitioner had applied under 'General Category'.

16. It has further been stated that granting admission to the 'General Category' candidate against the vacant seats of 'Sponsored Category' would set a wrong precedent and may give rise to unnecessary litigation. To emphasize the aforesaid submission, it has been pointed out that in the course of M.Ch. Neurosurgery, the institute advertised 3 posts under 'General Category' and 7 posts under 'Sponsored Category'. However, 9 candidates under 'General Category' cleared the said examination and no candidate under 'Sponsored Category' has been selected. Giving admission to Petitioner will set a wrong precedent and also give a cause of action to the candidates (who are on waiting list under M.ch Neurosurgery) and other

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streams to file Petitions before this Hon'ble Court.

17. The allegations of discrimination that candidature of some others who had given NOC after the declaration of the result has been considered has been denied. It has been stated that the candidates namely Dr. Lucky Kumar and Dr. Ashok Garg had applied under Sponsored category. The Sponsorship Certificate of Dr. Ashok Garg was issued by Sponsoring authority on 18.06.2020 and of Dr. Lucky Kumar on 03.07.2020. Both were provisionally allowed to sit in the examination, subject to the production of their sponsorship certificate from their sponsoring authority. The admission letters to the abovesaid candidates have been issued after receiving sponsorship certificate.

18. It is further stated that M.Ch (Plastic Surgery) has sanctioned strength of 14 seats under General Category and 4 seats under Sponsored Category (i.e. 33% of General Category) and 1 additional seat from foreign national/ sponsored in every alternate year. The duration of the course is 3 years and admission to the said course is conducted twice a year through entrance examination. The academic session commences from 1st January and 1st July each year. The vacancy position has been worked out after taking into consideration the total strength of candidates and also who have completed the course. The vacant/unfilled seat will be advertised / filled up in the next academic session under the respective category. Similarly, in the present case, since one seat under Sponsored Category is vacant and therefore, the same will be advertised in next academic session i.e. January, 2020. It has further been stated that though there is no written policy of the

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respondent Institute for carrying forward of the seats but the same is being done as per the past practice prevalent from more than ten years. It is also submitted that all the vacant seats pertaining to the M.Ch are always carried forward so that the seats are not wasted. The same practice is being continuing from last ten years.

19. Thus, it is clear that the petitioner had applied under the 'General Category' for which there was only one seat. The petitioner secured second position.

20. The examination for admission to the M.Ch. Plastic surgery course was held on 21.06.2020. The result was declared on 26.05.2020. On 30.06.2020 the institute vide notice dated 30.06.2020 uploaded a tentative list of selected candidates wherein petitioner was shown at Waiting list No.1 in the Direct Category. The petitioner was given the NOC/Sponsorship Certificate on 08.07.2020. Clearly as per condition 7(3)(g) of the Prospectus the request for change of category from 'General' to 'Sponsored' could not be entertained at a stage when even the result have been declared in view of Clause 7(3)(g) of the Prospectus.

21. It has been consistently held in different Full Bench decisions of this Court that prospectus has a force of law and is to be strictly followed. Reference can be made to *Amardeep Singh Sahota v. State of Punjab* 1993 (4) S.C.T. 328, *Raj Singh v. Maharishi Dayanand University* 1994 (2) S.C.T. 766, *Sachin Gaur v. Punjabi University* 1996 (1) S.C.T. 837 *Rahul Prabhakar v. Punjab Technical University, Jalandhar* 1997 (3) S.C.T. 526, *Indu Gupta v. Director of Sports, Punjab* 1999 (4) S.C.T. 113 and *Rupinder Singh v. The Punjab State Board of Technical Education &*

Industrial Training, Chandigarh 2001 (2) S.C.T. 726.

22. We quote the observations of one such Full Bench ***Indu Gupta v. Director, Sports Punjab, Chandigarh, AIR 1999 P&H 319*** :

“8. The above terms and conditions contained in the brochure have been issued in furtherance to the notification of the Punjab Government dated 30th January, 1997 and in conformity with the University Calendar. These terms and conditions provide for eligibility, reservation and allocation of seats including issuance of gradation certificate as a public declaration and are binding on the candidates as well as the party issuing the said brochure for the period in question. Alteration or dilution of the conditions of the brochure in a given case would neither be appropriate nor permissible. If such practice is adopted, the candidates at large would never know which of the conditions could be diluted or varied in a given case and more particularly when the brochure gives no such power or competence to any authority to relax or waive the conditions of the brochure.

9. A Full Bench of this Court in the case of Raj Singh v. Maharshi Dayanand University, (1994) 4 Recent Services Judgments, 289 disapproved the liberal construction of the terms and conditions of the brochure and specified the need for their strict adherence to avoid unnecessary prejudice to the candidate or the authority during the course of admission. The bench approved that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance test examination and that the admission has to be made on the basis of the instructions given in the prospectus having the force of law. While disapproving the law laid down by a Division Bench of this Court in the case of Madhika Khurana (minor) v. M.D. University, Civil Writ Petition No. 15367 of 1991, where contrary view had been taken, the Full

Bench observed that the students seeking admission to the professional colleges are even otherwise matured enough and supposed to understand the full implication of filling the admission form and compliance with the instructions contained in the brochure.

10. *Subsequently, another Full Bench of this Court in the case of Rahul Prabhakar v. Punjab Technical University, Jalandhar, 1997 (3) RSJ 475 : (AIR 1998 Punj & Har 18) recapitulated the entire law on the subject. The Full Bench was considering the same brochure for the previous year of the Punjab Technical University. The Court held as under:—*

“A Full Bench of this Court in Amardeep Singh Sahota v. State of Punjab, (1993) 4 Serv LR 673 had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In Raj Singh v. Maharshi Dayanand University, 1994 (4) R.S.J. 289 another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur v. Punjab University, 1996 (1) RSJ 1 : (AIR 1996 Punj & Har 109) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No.

6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the co-ordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected.”

11. The cumulative effect of the above well enunciated principles of law, is that the terms and conditions of the brochure where they used pre-emptory language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an individual in such matters, to waive or dilute the stipulated conditions of the brochure would per se introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and conditions of the brochure, more particularly, where the cut off date itself has been provided in the brochure. The brochure has the force of law. Submission of applications complete in all respects is a sine

qua non to the valid acceptance and consideration of an application for allotment of seats in accordance with the terms prescribed in the brochure.”

23. This being the settled legal position the respondent- institution is right in strictly adhering to condition 7(3)(g) of the Prospectus and not entertaining the request of the petitioner for change of category after the last date of application and granting him admission against the vacant seat in the sponsored category.

24. The contention of the Ld. Counsel that provision 7(3)(g) be read down to the extent that in case no eligible candidate is available under the 'Sponsored Category', then eligible candidate, if available, under 'General Category' be considered and granted admission to the course of Master of Surgery (M.Ch.) (Plastic Surgery) on fulfilling the requisite eligibility conditions also is not tenable.

25. It has been settled by Hon'ble Supreme Court in various decisions that the doctrine of reading down or of recasting the statute can be applied in limited situations. One, for saving a statute from being struck down on account of its unconstitutionality in a situation where two interpretations are possible—one rendering it constitutional and the other making it unconstitutional. In that case the former should be preferred. The second situation is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. But when the language of a provision is definite and unambiguous and its intention is clear, it is not permissible

either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances its only duty is to strike it down.

26. The scope of this doctrine was explained in a recent decision ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416*** as under:

“The doctrine of “reading down”

64. *Several counsel appearing on behalf of the petitioners made alternative submissions stating that if the constitutional validity of the impugned provisions is to be upheld, then the amendment to the Code needs to be read down so as to make it conform with Articles 14 and 19(1)(g) and 300-A. Different suggestions were given as to reading down these provisions by different counsel. According to some of them, before an order admitting a Section 7 application is made, all the financial creditors of the corporate debtor could be called to NCLT so that NCLT can then ascertain their views. If the vast majority of them were to state that they would prefer to remain outside the Code, then the Section 7 application filed by a single allottee ought to be dismissed. Another learned counsel stated that there should be a threshold limit by which at least 25% of the total number of allottees of the project should be reached before they could trigger the Code. Other learned counsel suggested that at the stage of the Section 7 application, an inquiry be made to see if the corporate debtor is otherwise well-managed and is solvent, in which case the Section 7 application ought to be dismissed. Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of some of the petitioners, also suggested that allottees ought not to be allowed to trigger the Code at all, but that if the Code is otherwise triggered, they can be members of the Committee of Creditors to take decisions that will be beneficial to them. It was also suggested that, before the Code is triggered*

by an allottee, there should be a finding of “default” from the authorities under RERA. This is not unknown to law, and this Court has itself stated, in another context, that a jurisdictional finding by the Telecom Regulatory Authority of India must first be obtained before the Competition Commission of India gives a finding on unfair competition in the telecom sector, and CCI v. Bharti Airtel Ltd. was relied upon for this purpose. All these arguments were really made based on the presumption that some allottees who may now want to back out of the transaction and get a return of their money owing to factors which may be endemic to them, or owing to the fact that the market may have slumped as a result of which the investment made by them in the flat/apartment would fall flat requiring them to pull out of the transaction, would then be able to trigger the Code mala fide, and a reading down of these provisions would, therefore, obviate such problem. All these arguments have been refuted in detail earlier in this judgment. In a Section 7 application made by an allottee, NCLT’s “satisfaction” will be with both eyes open — NCLT will not turn a Nelson’s eye to legitimate defences by a real estate developer, as outlined by us hereinabove. There is, therefore, no necessity to read into or read down any of these provisions. Also, in COAI v. TRAI, this Court held that when a provision is cast in definite and unambiguous language, it is not permissible either to mend or bend it, even if such recasting is in accord with good reason and conscience. This Court said: (SCC pp. 740-41, paras 50-51)

“50. But it was said that the aforesaid Regulation should be read down to mean that it would apply only when the fault is that of the service provider. We are afraid that such a course is not open to us in law, for it is well settled that the doctrine of reading down would apply only when general words used in a statute or regulation

can be confined in a particular manner so as not to infringe a constitutional right. This was best exemplified in one of the earliest judgments dealing with the doctrine of reading down, namely, the judgment of the Federal Court in Hindu Women's Rights to Property Act, 1937, In re. In that judgment, the word "property" in Section 3 of the Hindu Women's Rights to Property Act was read down so as not to include agricultural land, which would be outside the Central Legislature's powers under the Government of India Act, 1935. This is done because it is presumed that the legislature did not intend to transgress constitutional limitations. While so reading down the word "property", the Federal Court held: (SCC OnLine FC)

'... If the restriction of the general words to purposes within the power of the legislature would be to leave an Act with nothing or next to nothing in it, or an Act different in kind, and not merely in degree, from an Act in which the general words were given the wider meaning, then it is plain that the Act as a whole must be held invalid, because in such circumstances it is impossible to assert with any confidence that the legislature intended the general words which it has used to be construed only in the narrower sense: Owners of SS Kalibia v. Wilson, Vacuum Oil Co. Pty. Ltd. v. Queensland, R. v. Commonwealth Court of Conciliation and Arbitration, ex p Whybrow & Co. and British Imperial Oil Co. Ltd. v. Federal Commr. of Taxation.'

51. This judgment was followed by a Constitution Bench of this Court in DTC v. Mazdoor Congress. In that case, a question arose as to whether a particular regulation

which conferred power on an authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating his services, or by making payment in lieu of such notice without assigning any reasons and without any opportunity of hearing to the employee, could be said to be violative of the appellants' fundamental rights. Four of the learned Judges who heard the case, the Chief Justice alone dissenting on this aspect, decided that the regulation cannot be read down, and must, therefore, be held to be unconstitutional. In the lead judgment on this aspect by Sawant, J., this Court stated: (SCC pp. 728-29, para 255)

'255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible—one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such

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recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so.'"

(emphasis in original)

65. *Given the fact that the Amendment Act has been held to be constitutionally valid, and considering that its language is clear and unambiguous, it is not possible to accede to the contentions of the petitioners to read down the clear provisions of the Amendment Act in the manner suggested by them."*

27. The respondent- institution in its reply has given valid reasons as to why such a provision has been incorporated and any deviation from it would create an untenable and uncertain situation.

28. Accordingly, there is no merit in the petition and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 14, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No