SUPREME COURT OF INDIA

Dr. Saurabh Choudhary

Vs.

Union of India

I.A. Nos. 6-7 and 8, 9-14 (Writ Petition (C) No. 29 of 2003)

(Ashok Bhan, S. B. Sinha, A. S. Lakshmanan, R. C. Lahoti and B. N. Agarwal JJ.)

07.05.2004

ORDER

The Order of the Court is as follows

1. Several applications have been filed seeking clarifications in, and/ or directions for implementing, the judgment of this Court dated November, 4, 2003 in W.P.(C) No. 29 of 2003 - Saurabh Chaudri and others vs. Union of India and others and connected cases (since reported as).

2. The issue arising for decision was: whether any reservation, be it based on residence or on institutional preference, is constitutionally permissible in PG courses of study. The conclusions arrived at by the Court may briefly be summed up as under:-

(1) All-India quota of PG seats should be 50% (instead of 25% as prevailing hitherto) which should be filled up by common entrance test.

(2) The original scheme as framed by this Court in Dr. Pradeep Jain's case should be continued unless replaced by a Central Legislation in preference to the scheme laid down by this Court in Dr. Dinesh Kumar's case .

(3) Institutional preference to be given to medical students for the purpose of admission against PG seats in All-India Institute of Medical Sciences should remain confined to 50% of the total seats in MBBS and the decision of this Court in AIIMS Students Union vs. AIIMS 2002 (1) SCC 428

should continue to hold the field.

3. The examination for admission against All-India quota seats in conducted by All India Institute of Medical Sciences (hereinafter, 'AIIMS'). The prospectus for holding All-India Entrance Examination for MD/MS/PG Diploma and MDS Courses 2004 was issued by the AIIMS and was available for sale on and from Sept. 22, 2003. Therein it was declared that the competitive entrance examination on All-India basis was being held for admission to 25% open merit seats in various post-graduate courses. Public advertisement in this regard was issued on September 16, 2003. The last date for receipt of applications was October 27, 2003. The examinations were held on January 11, 2004. The result was declared on March 4, 2004. The AIIMS commenced counselling for the purpose of allotting 25% PG seats. At this point of time, several applications have come to be filed. IA No. 8 of 2004 has been filed by the Union of India submitting that it would be proper to confine the percentage of seats for the All-India quota to 25%, i.e. the percentage based whereon the process for selection and admission had already commenced before the date of judgment of this Court. There are several other similar applications filed by a few students who have applied for admission against quotas other than All-India quota. IA No. 7 of 2004 has been filed by a batch of students seeking admission against All-India quota for directing the Union of India to make available 50% seats under the All-India quota consistently with the judgment of this Court. There are other similar applications.

4. We have heard the learned Solicitor General and all other learned counsel appearing for the several applicants. It is not disputed at the Bar that the process of admission commenced with the release of prospectus and public advertisement in September, 2003 and at that point of time the seats available under the All-India quota were only 25% and this is how the examination was planned and obviously the medical graduates also must have made applications seeking admissions against 25% seats. The law has been settled by the Constitution Bench of this Court through its judgment dated November 4, 2003. However, this Court has nowhere in its judgment made the declaration of law applicable to the process of admission which had already commenced. Indeed, there is no direction made to the contrary either, i.e. as to the prospective applicability of the judgment and prospective overruling of the decision of this Court in Dr. Dinesh Kumar's case (supra). This has prompted the several applications being filed and the position, therefore, needs to be clarified so as to clear the doubts.

5. In our opinion, it would be appropriate to hold and direct the decision in Dr. Saurabh Chaudri's case being made applicable only prospectively and thus exclude from the operation thereof the process of admission which had already commenced and was nearing finalisation when the judgment came to be pronounced # .

6. Accordingly, it is directed that the allotment of seats under All-India quota, the process as to which had commenced pursuant to the advertisement dated September 16, 2003 shall remain confined to 25% only. # As a consequence, I.A. No. 8 of 2004 filed by the Union of India and IA. Nos. 9, and 12, 13 and 14 seeking similar relief, and taking the same stand as has been taken by the Union of India, are allowed.

7. IA Nos. 6, 7 and 10 seeking implementation of 50% All-India quota for the current year and taking stand contrary to the one taken by the Union of India are dismissed.

8. IA No.11 seeking substitution of words 'post-graduate course' in place of 'MBBS course' in para 74 of the judgment (as reported in SCC) in totally uncalled for. It is also rejected.

9. The interim order of stay on counselling is vacated. The same show now be resumed.

Order

1. Whether a Constitution Bench decision of this Court in Saurabh Chaudri and and others vs. Union of India and others = (2003) 9 SCALE 272) should be applied prospectively from the academic year 2005-06 is the question involved in these interlocutory applications which have not only been filed by the rival groups of students aspiring admissions in the medical colleges in different disciplines of Post Graduate Courses but also by the Union of India.

2. The scheme relating to implementation of the policy of reservation evolved by various states, whether based on domicile or institution had been receiving attention of this Court for a long time. Institutional reservation in preference to domicile reservation found favour with this Court in Dr. Pradeep Jain and others vs. Union of India and others etc.) wherein it was held:

*"We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference, But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the presents circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any even exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis." **

(Emphasis supplied)

3. The said decision was modified by this Court in Dr. Dinesh Kumar and others (II) vs. Motilal Nehru Medical Colleges, Allahabad and others) stating:

"We therefore agree with the Government of India that the formula adopted by us in our main judgment dated June, 22, 1984 (Dr. Pradeep Jain vs. Union of India,) for determining the number of seats which should be made available for admission on the basis of All India Entrance Examination should be changed. We would direct, in accordance with the suggestion made in the Scheme by the Government of India, that not less than 15 per cent of the total number of seats in

*each medical college or institution, without taking into account any reservations validly made, shall be filled on the basis of All India Entrance Examination..." **

4. The principle was reiterated in Magan Mehrotra and others vs. Union of India and others (2003) 3 SCALE 101).

5. In Saurab Choudri (supra), having regard to the constitutional scheme and the need of the time while upholding the constitutional validity of institutional reservation, it was held:

"However, the test to uphold the validity of a statute on equality must be judged on the touch-stone of reasonableness. It was noticed in Dr. Pradeep's Jain's case (supra) that reservation to the extent of 50% was held to be reasonable. Although subsequently in Dr. Dinesh Kumar's case (supra) it was reduced to 25% of the total seats. The said percentage of reservations was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time have produced a large number of Post Graduate doctors. Our Constitution is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding.

*Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain's case (supra) should be reiterated in preference to Dr. Dinesh Kumar's case (supra) Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest." **

6. The Court further directed that only one test should be held for all the students taking admission throughout the country. The said order was passed keeping in view the fact that whereas one entrance test is held for admission against 25% of all India quota, the other tests are being held by the respective Universities/States. It was emphasized that the disparities in such tests should be done away with and merit of the students should be judged on the basis of one test held therefor.

7. The hearing in Saurabh Chaudri (supra) was completed and the judgment was reserved on 29.4.2003. The interlocutory application filed by the writ petitioners, for a direction upon the respondents not to take admission of the students pursuant to or in furtherance of the results published by the Delhi University, however, was heard on 29.4.2003 and the order thereupon was passed on 1.5.2003 directing:

"Keeping in view the fact that the process of admission is complete and successful students are to join their respective courses of studies on and from 2nd May, 2003, interest of justice will be subserved if the admission of petitioners may be subject to the decision of these petitioners.

*In that view of the matter, we are not inclined to pass any further interim orders. However, the admission of petitioners in Post Graduate Courses shall be subject to the decision in these petitions." **

8. It is not in dispute that the Union of India and all the States were parties to the writ petition, and, thus, were aware of the aforementioned orders as also the fact that the judgment in the matter has been reserved. Despite the same All India Institute of Medical Sciences (AIIMS) issued a purported advertisement on 16.9.2003 fixing 25% quota for the students appearing at the All India Admission test. It failed and/ or neglected to point out that the said advertisement would be subject to the result of the decision in Saurabh Chaudri (supra) although in its prospectus reference was made to the earlier order of this Court. The last date for receipt of the application was fixed on 29.10.2003 and entrance examinations were held on 11.1.2004 and allotment of seats by personal appearance had been fixed on 8.3.2004 wherefor results were declared on 4.3.2004.

9. Having regard to the fact that the Union of India was not implementing the judgment of this Court in Saurabh Chaudri (supra), various interlocutory applications were filed being I.A. Nos. 6, 7 and 10, inter alia, praying for the following reliefs:

"(a) direct the Director General Health Services to provide number of seats according to 25% additional seats, in terms of judgment dated 4.11.2003 passed by this Hon'ble Court, to AIIMs so as to enable it to declare result on that basis and hold counselling thereafter;

(b) stay the counselling scheduled to commence by DGHS from 15.3.2004 onwards for allotting seats to MS/MD/PG Course-2004;

(c) direct the Director General Health Services to issue instructions to all the contributing States/Universities not to fill more than 50% of its sears on the basis of institutional preference as permitted by this Hon'ble Court vide the aforesaid judgment; and may also.

*(d) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case." **

10. One of the said application was filed on 11.3.2004. The Union of India filed an application for clarification only on 19.3.2004 asking for certain clarificatory directions on the purported issues stated therein. It is unfortunate that the Union of India did not consider it expedient to approach this Court soon after the judgment was pronounced. If it faced any difficulty in relation to the efficacy of implementing the directions issued in the judgment, it could have approached this Court immediately after the pronouncement thereof; but it chose to wait till other applications had been filed by the students.

11. By reason of a judgment, as is well-known, a law is declared. Declaration of such law may affect the rights of the parties retrospectively. Prospective application of a judgment by the court must, therefore, be expressly stated. The order dated 1.5.2004 furthermore is a pointer to the fact that this Court refused to interfere at that stage having regard to the fact that the admission of the

students had already taken place. Despite the same, such admissions were made subject to the result of the writ petition. The parties, therefore, could not have any doubt as regard the fact that the judgment will be implemented in relation to the students who were to take admission in 2004 and onwards. The students appearing at the All India Entrance Examination held by AIIMs or by the State Governments or the Universities, presumably were aware of the said fact.

12. As would appear from one of the interlocutory applications being I.A. No. 12 of 2004 that the students had appeared at both the examinations. The students who evidently did not fare well in the All India Test but had fared well in the test held by the States, have filed application for a directions by this Court that the decision in Saurabh Chaudri (supra) be given effect from the academic year 2005-06. The said students submit that the examinations conducted by AIIMS, New Delhi and the one conducted for admission in the State quota are substantially different and the probability of the students scoring well in the State examination being not able to do well in the all-India Examination and vice-versa.

13. It is not the contention of anybody that the students in general could not appear both at the examination held by AIIMS as also the State/Universities. Once they have taken a chance, they cannot be heard to say that they had prepared for the examination held by University/State.

14. A perusal of the judgment in Dr. Saurabh Chaudri (supra) leaves no manner of doubt that the emphasis had been laid therein on merit. In no uncertain terms, this Court held that the merit of the students must be judged on the basis of one test which should be the criteria for determining the inter se merit of the students. Despite such clear direction, two examinations were held.

15. Reservation is anti-thesis to rule of merit. A 11-Judge Bench of this Court in T.M.A. Pai Foundation and Others vs. State of Karnataka and others 5) sought to strike a balance between the right of minority students to take admission in the minority institutions vis-a-vis the meritorious students. The said decision came up for interpretation in Islamic Academy of Education and Anr. vs. State of Karnataka and others). Therein this Court held:

*"For the purpose of achieving excellence in a professional institution, merit indisputably should be a relevant criterion. Merit, as has been noticed in the judgment, may be determined in various ways (para 59). There cannot be, however, any foold-proof method whereby and whereunder the merit of as a student for all times to come may be judged. Only, however, because a student may fare differently in a different situation and at different point of time by itself cannot be a ground to adopt different standards for judging his merit at different points of time. Merit for any purpose and in particular for the purpose of admission in a professional college should be judged as far as possible on the basis of same or similar examination. In other words, inter se merit amongst the students similarly situated should be judged applying the same norm or standard. Different types of examinations, different sets of questions, different ways of evaluating the answer books may yield different results in the case of the same student. **

Selection of students, however, by the minority institutions even for the members of their community

*cannot be bereft of merit. Only in a given situation less meritorious candidates from the minority community can be admitted vis-a-vis the general category; but therefor the modality has to be worked out. For the said purpose de facto quality doctrine may be applied instead of de jure equality as every kind of discrimination may not be violative of the quality clause. (See Pradeep Jain vs. Union of India - ." **

16. The aforementioned judgment had been noticed by one of us in Saurabh Chaudri (supra) also.

One of us, Lakshmanan, J. observed:

*"The view was approved by this Court in the case of Indra Sawhney vs. Union of India. If one looks at this issue in the light of the spirit of the ratios laid down in Preeti Srivastava vs. State of M.P. and in AIIMS students Union vs. AIIMS, 2001 AIR(SC) 3262 , one would come to the inevitable conclusions that the constitutional reservations contemplated under Article 15(4) should be kept at the minimal level so that national interest in the achievement of the goal of excellence in all fields is not unduly affected." **

17. It was, inter alia, concluded:--

*"(4) The institutional preference should be limited to 50% and the rest being left for open competition based purely on merits on an All India basis." **

18. Right of a meritorious student to get admission in a Post Graduate Course in a Fundamental and Human Right, which is required to be protected. Such a valuable right cannot be permitted to be whittled down at the instance of less meritorious students.

19. Constitution is living organ. Reasonableness of the policy of the State in the matter of reservation of seats is always subject to judicial scrutiny. Rights are, thus, determined in terms of judgment interpreting the constitution. In Union of India vs. Naveen Jindal and Another), this Court observed:

*"Interpretation of the Constitution is a difficult task. While doing so, the constitutional courts are not only required to take into consideration their own experience over the time, the international treatise and covenants but also keeping the doctrine of flexibility in mind. This Court times without number have extended the scope and extent of the provisions of the fundamental rights, having regard to several factors including the intent and purport of the constitution makers as reflected in Parts IV and IVA of the Constitution of India." **

20. It was further noticed:

"In People's Union for Civil Liberties (PUCL) and Another etc. vs. Union of India and another at page 403), this Court held:

*".. It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. The Constitution is required to be kept young, energetic and alive." **

21. This Court must remind itself that in Saurabh Chaudri (supra), a contention was raised that any reservation, be it domicile or institutional is not constitutionally permissible. This Court although did not agree with the said contention but interpreted the constitutional scheme having regard to the present requirement of the society. The judgment, therefore, must be given full effect so that no benefit is derived by the students who could not secure any rank in All-India Examination but secured rank in the examination held by the State. The said students are less meritorious than those who fared well in the all-India Examination held by AIIMS.

22. Furthermore, by reason of an advertisement alone, the students did not derive any right for less any vested or accrued right. (See Prafulla Kumar Das and others etc. vs. State of Orissa and others etc -).

23. A statute is applied prospectively only when thereby vested or accrued right is taken away and not otherwise.

(See S.S. Bola and others vs. B.D. Sardana and others - 3). A judgment rendered by a superior court declaring the law may even affect the right of the parties retrospectively.

24. This Court recently in Commissioner of Customs, Calcutta and others vs. Indian Oil Corpn. Ltd. and Another) stated the law thus:--

"As is evident from Section 151-A, the Board is empowered to issue orders or instructions in order to ensure uniformity in the classification of goods or with respect to levy of duty. The need to issue such instructions arises when there is a doubt or ambiguity in relation to those matters. The possibility of varying views being taken by the customs officials while administering the Act may bring about uncertainty and confusion. In order to avoid this situation, Section 151-A has been enacted on the same lines as Section 37-A of the Central Excise Act. The apparent need to issue such circulars is felt when there is no authoritative pronouncement of the Court on the subject. Once the relevant issue is decided by the Court at the highest level, the vary basis and substratum of the circular disappears. The law laid down by this Court will ensure uniformity in the decisions at all levels. By an express constitutional provisions, the law declared by the Supreme Court is made binding on all the courts within the territory of India (vide Article 141). Proprio Vigore the law is binding on all the tribunals and authorities. Can it be said that even after the law is declared by the Supreme Court the adjudicating authority should still give effect to the circular issued by the Board ignoring the

*legal position laid down by this Court? Even after the legal position is settled by the highest court of the land, should be Customs Authority continue to give primacy to the circular of the Board? Should Section 151-A be taken to such extremities? Was it enacted for such purpose? Does it not amount to transgression of constitutional mandate while adhering to a statutory mandate? Even after the reason and rationale underlying the circular disappears, is it obligatory to continue to follow the circular? These are the questions which puzzle me and these are the conclusions which follow if the observations of this Court in the two cases of Dhiren Chemical Industries are taken to their logical conclusion." **

25. Furthermore, it is extremely doubtful whether a Constitution Bench can modify a judgment rendered by a different Constitution Bench even in exercise of its jurisdiction under Article 142 of the Constitution of India. The jurisdiction of this Court under Article 142 of the Constitution of India must be applied at the time of rendition of the judgment and not thereafter. After a judgment is rendered the Court can only exercise its power of review, if it intends to take a different view from the one rendered in the main judgment. Review of the judgment cannot be granted in the garb of a clarification (See Delhi Administration vs. Gurdip Singh Uban and others).

26. Furthermore, an order of review of modification of a judgment should not also ordinarily be passed at the behest of the applicants who are not parties to the writ petition. Union of India and the States, on the other hand, were parties to the writ petition. They in terms of Article 141 as well as Article 144 of the Constitution of India were bound to implement the judgment. They had enough time to do so. If they had taken any other decision, it would be its own peril. Meritorious students cannot be permitted to suffer therefor.

27. We must notice that it is not a case of the Union of India that the judgment in Saurabh Chaudri (supra) cannot be given effect to even at this stage. If it can be given effect to the court should not issue a direction which would run contrary to the ratio laid down by this Court in the main judgment, particularly when the examinations had been held much after the rendition of the judgment. Asking the court to apply the judgment of this Court with prospective effect would amount to asking for a review and, thus, the same cannot be permitted to be achieved by filing an application for clarification.

28. Application for clarification/modification filed by Union of India is based on wholly wrong premise. A judgment, as is well-known, must be read as a whole. So read it is evident that declaration of law has clearly been made therein. There does not exist any ambiguity requiring clarification.

29. Therefore, I respectfully dissent with the opinion of Brother Lahoti, J. I am of the view that no case has been made out for applying the judgment in Saurabh Chaudri (supra) from the academic year 2005.