

Nikhil Himthani

v.

State of Uttarakhand & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE A.K. PATNAIK HON'BLE MR. JUSTICE FAKKIR
MOHAMED IBRAHIM KALIFULLA

Writ Petition (Civil) No. 379 Of 2013 | 06-08-2013

A.K. Patnaik, J.

1. In this writ petition under Article 32 of the Constitution, the petitioner has made a grievance that his fundamental right to equality in the matter of admission in post-graduate medical course in the State quota in the medical colleges in the State of Uttarakhand guaranteed by Article 14 of the Constitution has been violated by respondent nos. 1 and 2.

Facts:

2. The facts very briefly are that the petitioner is a permanent resident of Delhi and had qualified in the All India Pre-Medical Test conducted by the Central Board of Secondary Education (for short 'the CBSE') for the 15% seats reserved for the All India quota. He was admitted in the MBBS course in the year 2007 in the Medical College at Haldwani in the State of Uttarakhand. He completed his MBBS course in March, 2012 and thereafter completed one year of internship in March, 2013. The petitioner then appeared in the NEET Examination, 2013 conducted by the Medical Council of India (for short 'the MCI') for admission to post-graduate medical courses in India and qualified in the examination and claims to have secured 60th rank of the State of Uttarakhand.

3. On 07.06.2013, the Department of Medical Education, Government of Uttarakhand, Dehradun, published an Information Bulletin for counseling for Uttarakhand State quota seats in MD/MS/MDS/PG Diploma courses in the

medical/dental colleges of Uttarakhand State through NEET PG-2013/ MDS-2013 for the academic session 2013-14. In this Information Bulletin, the Eligibility Criteria for admission to the post-graduate medical/dental courses was as follows:

"Eligibility Criteria:

The Counselling for admission shall be open to such candidates who:

1. Have passed the MBBS/BDS Examination from Uttarakhand viz. Government Medical College, Haldwani, Shri Guru Ram Rai Institute of Medical Sciences, Patel Nagar Dehradun, Himalayan Institute of Medical Sciences, Jolly Grant, Dehradun, Uttaranchal Dental College, Maajri Grant, Dehradun & Seema Dental College, Rishikesh and were admitted through competitive examination (Uttarakhand State PMT) and not through NRI/Management/Institute Quota.
2. Are Domicile of Uttarakhand and have passed MBBS/BDS examination from Medical/Dental Colleges of other States, recognized by MCI/DCI, and were admitted through 15% All India Quota (allotted by Government of India).
3. Are Domicile of Uttarakhand and have passed MBBS/BDS examination from Medical/Dental Colleges of other States in India, recognized by MCI/DCI, and were admitted through Pre Medical Entrance Test conducted by the concerned State Government.
4. Have completed Compulsory Rotatory Internship Training on or before 31.03.2013.
5. The eligible candidates who get selected through NEET-PG 2013/NEET (MDS)-2013 will be given admission on available seats in post graduate courses by Counselling Board according to their rank in State merit list, made available by NBE/MCI/DCI/AIIMS and the seat available at that time.

6. Having name in the State merit list of eligible candidates provided by MCI/DCI/NBE/AIIMS will not be the right of the candidate for getting PG seats unless he/she fulfills all the eligibility criteria regarding Domicile, reservation policy, provisions of bond etc. mentioned in the information bulletin and /or amendments made thereafter till the time of counselling."

4. It will be clear from clause 1 of the Eligibility Criteria that a candidate must have passed MBBS examination from Uttarakhand in any of the colleges named therein and must have been admitted through the competitive examination, namely, Uttarakhand State PMT. The petitioner was not admitted through the Uttarakhand PMT to the Medical College, Haldwani and therefore did not fulfill the eligibility criteria for admission to the medical post-graduate course under clause 1 of the Eligibility Criteria. It will be further clear from clause 2 of the Eligibility Criteria that candidates who are domicile of Uttarakhand and passed MBBS examination from medical colleges from other States and were admitted through 15% All India quota were also eligible for admission to the post-graduate medical courses. The petitioner was not a domicile of Uttarakhand and had not passed MBBS examination from a medical college of other States and therefore was not eligible for admission to the post-graduate course also under clause 2 of the Eligibility Criteria. Under clause 3 of the Eligibility Criteria, candidates who are domicile of Uttarakhand and have passed MBBS from medical colleges of other States in India and were admitted through pre-medical test conducted by the concerned State Government were eligible for admission to the post-graduate medical course. As the petitioner is not a domicile of Uttarakhand and had not passed MBBS from a medical college of some other State in India he was not eligible even under clause 3 of the Eligibility Criteria. The petitioner, therefore, could not get an opportunity to continue his post-graduate medical course in the State quota in the Medical Colleges in the State of Uttarakhand even though in the merit list of NEET (PG-2013) he claims to have secured 60th rank of the State of Uttarakhand. He has thus filed this writ petition for quashing clauses 1, 2 and 3 of the Eligibility Criteria in the Information Bulletin on the ground that the clauses are discriminatory and violative of Article 14 of the Constitution of India.

Contentions of learned counsel for the petitioner:

5. Ms. Asha Jain Madan, learned counsel for the petitioner, submitted that this Court has held in *Dr. Pradeep Jain and Others vs. Union of India and Others* [(1984) 3 SCC 654] 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, but having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, a certain percentage of seats may 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. She further submitted that the view taken by this Court in *Dr. Pradeep Jain's case* (supra) has been reiterated in *Magan Mehrotra and Others vs. Union of India and Others* [(2003) 11 SCC 186] in which the information bulletin issued by Delhi University was found to be contrary to the direction of this Court in *Dr. Pradeep Jain's case* and was thus quashed.

6. She submitted that clauses 2 and 3 of the Eligibility Criteria in the impugned information bulletin which made candidates who are domicile of Uttarakhand eligible for admission to the post-graduate courses in the medical colleges of Uttarakhand in the State quota are therefore contrary to the directions of this Court in *Dr. Pradeep Jain's case* (supra) as reiterated in *Magan Mehrotra and Others vs. Union of India and Others* (supra). She submitted that similarly clause 1 of the Eligibility Criteria, inasmuch as, it excludes candidates who have completed MBBS course in the medical college of the State but have not been admitted to the MBBS course through the Uttarakhand PMT from admissions in the post-graduate medical courses in the State quota in the medical colleges in the State of Uttarakhand is also contrary to the directions of this Court in *Dr. Pradeep Jain's case* (supra). She vehemently submitted that the directions in the judgment of this Court in *Dr. Pradeep Jain's case* (supra) for giving institutional preference would mean that candidates studying in MBBS course in any institution in the State of Uttarakhand should be given a preference to continue the post-graduate course in the same institution.

Contentions of learned counsel for the respondents:

7. In reply, Mr. Rakesh Dwivedi, learned senior counsel appearing for the State of Uttarakhand, submitted that clause 1 of the Eligibility Criteria in the Information Bulletin is not a criteria relating to domicile. He submitted that clause 1 of the Eligibility Criteria is only an institutional preference permitted by the judgment of this Court Dr. Pradeep Jain's case (supra) as it gives preference to all candidates who have studied MBBS in the Medical Colleges in the State of Uttarakhand having been admitted through the Uttarakhand, PMT. He referred to the additional affidavit filed on behalf of respondent nos. 1 and 2 on 22.07.2013 to explain that prior to the year 2009, the Medical College at Haldwani in which the petitioner was studying MBBS was a private college run by a trust namely Uttarakhand Forest Hospital Trust and the petitioner must have been admitted in the management quota. He submitted that it was from the academic session 2009-2010 that 15% All India quota in under-graduate medical courses was introduced in this college and the first batch of All India quota students in Government Medical College, Haldwani will complete MBBS only in the year 2014 and will be eligible to take admission in post-graduate medical courses in the academic session 2015-2016 after completing compulsory internship. He also referred to the additional affidavit filed on behalf of respondent nos. 1 and 2 to explain that in Vir Chandra Singh Garhwali Medical & Research Institute, Srinagar, Garhwal also 15% All India quota students were given admission from 2008 and the first batch will be eligible for post-graduate medical courses from amongst such students admitted to the All India quota only in the academic session 2014-2015. He submitted that as no candidate was given admission in MBBS course in the State of Uttarakhand in the 15% of All India quota in the academic session 2007-2008 and it is only the students who had taken admission in the MBBS course in the academic session 2007-2008 or before who would be seeking admission in post-graduate medical courses in the academic session 2013-2014 in clause 1 of the Eligibility Criteria, it was not necessary to include candidates who had been admitted to the 15% All India quota on the basis of All India PMT conducted by the CBSE.

8. He submitted that clauses 2 and 3 of the Eligibility Criteria in the Information Bulletin, however, give candidates who have passed MBBS course in the colleges outside the State, a preference if they are domicile in the State of Uttarakhand. He submitted that clauses 2 and 3 are dilutions of the institutional preference under clause 1 of the Eligibility Criteria in the impugned information bulletin, inasmuch as, it gives opportunity to a domicile of Uttarakhand who has studied MBBS in a college in another State to be admitted to a post-graduate medical course in the State quota in Uttarakhand.

9. He cited the Constitution Bench judgment of this Court in *Saurabh Chaudri and Others v. Union of India and Others* [(2003) 11 SCC 146] for the proposition that giving institutional preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India. He submitted that the State of Uttarakhand was, therefore, entitled to make its own policy with regard to institutional preference in clauses 1, 2 and 3 of the Eligibility Criteria.

Findings of the Court:

10. The Constitution Bench of this Court has held in *Saurabh Chaudri and Others v. Union of India and Others* (supra) that giving institutional preference is a matter of State Policy which can be invalidated only in the event of it being violative of Article 14 of the Constitution. Hence, the question that we have to decide in this writ petition is whether clauses 1, 2 and 3 of the Eligibility Criteria in the information bulletin are ultra vires Article 14 of the Constitution of India.

11. Article 14 of the Constitution guarantees to every person equality before law and equal protection of laws. In *Dr. Jagdish Saran and Others vs. Union of India* [(1980) 2 SCC 768], Krishna Iyer J, writing the judgment on behalf of the three Judges referring to Article 14 of the Constitution held that equality of opportunity for every person in the country is the constitutional guarantee and therefore merit must be the test for selecting candidates, particularly in the higher levels of education like post-graduate medical courses, such as MD. In the language of Krishna Iyer, J.:

"Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure all the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph.d. M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by

matching excellence, has more meaning and cannot be diluted much without grave risk....."

12. Relying on the aforesaid reasons in *Dr. Jagadish Saran and Others vs. Union of India* (supra) a three Judge Bench of this Court in *Dr. Pradeep Jain's case* (supra) held that excellence cannot be compromised by any other consideration for the purpose of admission to post-graduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and therefore reservation based on residential requirement in the State will affect the right to equality of opportunity under Article 14 of the Constitution but:

"a certain percentage of seats may in the present 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".

This view expressed in *Dr. Pradeep Jain's case* has been reiterated by another three Judge Bench of this Court in *Magan Mehrotra and Others vs. Union of India and Others* (supra) after a reconsideration and independent examination.

13. Keeping in mind the aforesaid law as laid down by this Court, we may now consider the Eligibility Criteria in the Information Bulletin. On a reading of clause 5 of the Eligibility Criteria, we find that eligible candidates who get elected through NEET PG-2013/NEET (MDS) -2013 will be given admission on available seats in post-graduate courses by Counselling Board according to their rank in State Merit List. Hence, under clause 5 of the Eligibility Criteria merit as determined through NEET is the basis for admission to the post-graduate medical courses. But when we look at clause 1 of the Eligibility Criteria, we find that the candidates who have passed MBBS examination from different colleges in the State of Uttarakhand are eligible for admission to the medical post-graduate courses in the State quota only if they were admitted through the Uttarakhand State PMT. The petitioner, who has studied the MBBS Course in the Government Medical College in Haldwani, was not admitted to the aforesaid course through the Uttarakhand State PMT examination, but it has

been admitted in the additional affidavit filed on behalf of the respondent nos. 1 and 2 on 22.07.2013 that the petitioner had qualified in the pre-medical examination in the year 2007 for admission in the All India Quota. It so happened that the Medical College at Haldwani was then not a Government College in 2007 and therefore in the Medical College at Haldwani, there was no All India Quota at that time. The fact however remains that the petitioner had the merit to be admitted in MBBS Course in 2007 when he was actually admitted in the Medical College at Haldwani. We are thus of the considered opinion that to exclude the petitioner from consideration on the basis of his merit only on the ground that he was not admitted to the MBBS course through the Uttarakhand PMT would be to deny him equality of opportunity in matter of admission to the post-graduate medical course and to violate his right to equality under Article 14 of the Constitution as explained by this Court in the case of *Dr. Pradeep Jain and Others vs. Union of India and Others* (supra).

14. We now come to clauses 2 and 3 of the Eligibility Criteria in the Information Bulletin. Under clauses 2 and 3, a domicile of Uttarakhand who has passed MBBS from a medical college of some other State having been admitted either through the 15% All India quota or through the pre-medical test conducted by the concerned State Government has been made eligible for admission to a post-graduate medical course in the State quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to post-graduate course under clauses 2 and 3 of the Eligibility Criteria. Preference, therefore is given only on the basis of residence or domicile in the State of Uttarakhand under clauses 2 and 3 of the Eligibility Criteria and such preference on the basis of residence or domicile within a State has been held to be violative of Article 14 of the Constitution in the case of *Dr. Pradeep Jain and Others vs. Union of India and Others* (supra) and *Magan Mehrotra and Others vs. Union of India and Others* (supra).

15. In fact, in *Dr. Parag Gupta vs. University of Delhi and Others* [(2000) 5 SCC 684] the facts were that Dr. Parag Gupta was born and brought up in Delhi but had studied the MBBS course in Tamil Nadu having been allotted to Tamil Nadu under the 15% All India quota on the basis of his selection on All India basis. He filed a writ petition praying that he should be permitted to participate in the entrance examination conducted by the Delhi University for admission to 75% seats reserved for candidates who have passed MBBS in the institutions in Delhi. His contention before the Court was that his home State is Delhi and he

had gone out to the State of Tamil Nadu to pursue his studies on All India quota and he should now be allowed to participate in the competition for the post-graduate seats reserved for the students passing MBBS from institutions under Delhi University. The Delhi University and the intervening students of different institutions under Delhi University who were competing for the institutional quota of Delhi University raised an objection to the aforesaid contention of Dr. Parag Gupta. A two Judge Bench of this Court allowed Dr. Parag Gupta to participate in the competitive examination for the institutional quota of Delhi University and rejected the objection of the Delhi University and the intervening students in the following words:

"12. The objection of the University and the intervening students is that such students will have an unfair advantage of competing in all-India quota + home State quota + institutional quota in that University where they studied. We fail to see any unfair advantage in this regard inasmuch as all students have to take common entrance test with reference to their home State and face stiff competition. The students in the home State if at all are put to disadvantage only to a small degree of taking competition with respect to very few students falling in that category of the petitioners. On the other hand, inclusion of such students will make it broad-based as well thereby striking a balance. Thus, we think, if students of the home State are also allowed to participate in the entrance test, there will be uniformity all over the country and small disadvantage removed with respect to a small section of the student community does not disturb the balance and the advantage derived achieves uniformity."

These reasons given by the two Judge Bench of this Court in *Dr. Parag Gupta vs University of Delhi and Others* (supra) did not find the approval of the larger Bench of three Judges in *Magan Mehrotra and Others vs. Union of India and Others* (supra) which held:

"A bare look at the judgment of the three-Judge Bench in *Pradeep Jain* case and two-Judge Bench in *Parag Gupta* case in relation to the question of preference in the postgraduate course, it cannot but be held that *Parag Gupta* case took a different view by upholding the residential preference, in essence, which was contrary to the judgment of the three-Judge Bench in *Pradeep Jain* case."

Thus, it will be clear from what has been held by the three-Judge Bench of this Court in *Magan Mehrotra and Others vs. Union of India and Others* (supra) that no preference can be given to candidates on the basis of domicile to compete for the institutional quota of the State if such candidates have done their MBBS course in colleges outside the State in view of the decisions of this Court in *Dr. Pradeep Jain and Others vs. Union of India and Others* (supra). Hence, clauses 2 and 3 of the Eligibility Criteria in the Information Bulletin are also violative of Article 14 of the Constitution.

16. In the result, we allow the writ petition, quash clauses 1, 2 and 3 of the Eligibility Criteria in the Information Bulletin and declare the admissions made on the basis of clauses 1, 2 and 3 of the Information Bulletin as void. The respondents will now publish a fresh Information Bulletin and re-do the admissions to the post-graduate medical courses in the Government colleges of State of Uttarakhand in accordance with law by the end of August, 2013 and also ensure that the colleges in which the students are admitted in post-graduate medical courses hold the required number of classes as prescribed by the MCI.