

# SUPREME COURT OF INDIA

Kriti Lakhina

Vs.

State of Karnataka

WP.(Civil)No.204 of 2018

(Arun Mishra and Uday Umesh Lalit,JJ.,)

04.04.2018

## JUDGMENT

**Uday Umesh Lalit,J.,,**

1. This petition under Article 32 of the Constitution of India has been filed by 44 Doctors who did their MBBS/BDS Courses from State of Karnataka and have cleared the NEET-PG, 2018 examination with high merit position and are aspiring for admission to Post-Graduate Courses in Karnataka. The principal prayer in the writ petition seeks issuance of an appropriate writ, order or direction quashing Clause 4 of the Information Bulletin jointly issued by Directorate of Medical Education, Government of Karnataka and Karnataka Examinations Authority, Government of Karnataka, Respondent Nos.2 and 3 respectively.

2. The Information Bulletin in question lays down, inter alia, conditions for admission to Post-Graduate Medical and Dental Courses in respect of government quota seats in Medical/Dental Colleges in State of Karnataka and was published on the website on 10.03.2018. Relevant portion of Clause 4 of this Information Bulletin deals with eligibility conditions in following terms:

### “4. ELIGIBILITY

#### 4.1 ELIGIBILITY for Government seats (G) &GMP seats:

A candidate who fulfills the following criteria is eligible to appear for the online seat allotment process, namely:-

- He/she is a citizen of India, who is of Karnataka Origin and has studied MBBS or BDS degree in a Medical or Dental College situated in Karnataka or outside Karnataka and affiliated to any University established by law in India recognized by Medical Council of India or Dental Council of India and Government of India and has qualified in the NEET (National Eligibility-cum-Entrance Test) for admission to post graduate medical or dental degree/diploma courses. Note: Children for the purpose of

the rule means natural born son/daughter and not adopted son/daughter and not grandson/grand daughter.

Explanation: A candidate of Karnataka Origin: means, a candidate found eligible under clause A or B below.

(Clause A)

i) A candidate who has studied and passed in one or more Government or Government recognized, educational institutions located in the State of Karnataka for a minimum period of TEN academic years as on the 31st March, 2018, commencing for 1st standard to MBBS/BDS and must have appeared and passed either SSLC/10th standard or 2nd PUC/12th standard examination from Karnataka State. In case of the candidate who has taken more than one year to pass a class or standard, the year of academic study is counted as one year only (Document to be produced) (Clause B)

ii) The candidate should have studied and passed 1st and 2nd year Pre-University Examination or 11th or 12th standard examination within the State of Karnataka from an Educational Institution run or recognized by the State Government or MBBS/BDS from a professional educational institution located in Karnataka and that either of the parents must have studied/resided in Karnataka for a minimum period of 10 years. (Documents to be produced)”

3. It is submitted by the petitioners that this Information Bulletin issued by Respondent Nos.2 and 3, to the extent Clause 4.1 thereof imposes a condition of domicile for admission to MD, MS and Post-Graduate Diploma seats in State of Karnataka is invalid and unconstitutional. According to the petitioners said Clause 4.1 arbitrarily and illegally deprives the petitioners who had obtained MBBS/BDS Degrees from the Colleges situated in Karnataka from competing for admission to Post-Graduate Medical/Dental Courses in Government Medical Colleges and against Government quota seats in non-Governmental institutions. Reliance has been placed on the Judgment of this Court in *Vishal Goyal and Others v. State of Karnataka and Others*<sup>1</sup> to submit that the controversy is no longer res-integra and the view taken in Vishal Goyal (supra) ought to have been adhered to by Respondent Nos.2 and 3 while issuing the Bulletin.

4. Since the matter involves urgency and the career prospects of the petitioners and similarly situated candidates are in question, the matter was taken up for hearing immediately. State of Karnataka entered appearance and has filed its reply submitting inter alia, that under the eligibility conditions, only candidates of Karnataka origin could compete for admission to 50% government seats in government colleges and against government quota seats in private colleges. The reply further stated that these eligibility conditions were stipulated in order to ensure that the State's requirement of skilled human resource is met with and that the Post-Graduate Medical Education Regulation 2000 ('2000 Regulations' for short) of Medical Council of India do not prohibit the State from stipulating eligibility conditions for Post-Graduate courses. According to certain statistics given in the reply, candidates of Karnataka origin numbering 4093 candidates would be competing for admission to 1828 seats while

10003 candidates of origin other than Karnataka which number includes 1263 candidates from outside the State who had studied and completed MBBS/BDS Courses from the colleges situated in Karnataka would be competing for admission to 2301 seats. The reply further submitted that the State was within its right to formulate eligibility conditions to give preference to candidates who were most likely to serve the State.

5. In its reply, Medical Council of India (“MCI”, for short) submitted that the Information Bulletin (PGET-2014) issued by the State of Karnataka in the year 2014 contained similar eligibility criteria as provided in Clause 4.1 of the present Information Bulletin (PGET-2018) which was challenged in the case of Vishal Goyal (supra) and that this Court held the preference based on domicile to be violative of the principle of equality and liable to be set aside. After referring to various Judgments of this Court the reply set out the emerging legal position as perceived by MCI in following terms:-

“a. Reservation of seats at the post graduate level has been in principle disapproved by the Hon’ble Supreme Court;

b. Reservation of seats at the post graduate level on the basis of domicile/ residence/ place of origin is impermissible and cannot be done by the State;

c. Institutional reservation/ preference for reserving seats at the post graduate level is permissible subject to an outer limit of 50%;

d. Institutional reservation/ preference can be invalidated on the ground that the same is violative of the principle of equality enshrined under Article 14 of the Constitution of India;

e. There cannot be any domicile requirement imposed by the State while implementing institutional reservation;

f. Institutional reservation/ preference disguised as domicile reservation has been held to be invalid and violative of Article 14 of the Constitution.”

6. We heard Mr. Amrendra Sharan, learned Senior Advocate for the petitioners, Mr. Basavaprabhu S. Patil, learned Senior Advocate for State of Karnataka and official respondents and Mr. Gaurav Sharma, learned Advocate for MCI.

7. Mr. Sharan, learned Senior Advocate relied upon the decisions of this Court in *Dr. Pradeep Jain and Others v. Union of India and Others*<sup>2</sup>, *Saurabh Chaudri and Others v. Union of India and Others*<sup>3</sup>, *Magan Mehrotra and Others v. Union of India and Others*<sup>4</sup>, *Nikhil Himthani v. State of Uttarakhand and Others*<sup>5</sup> and finally on the decision of this Court in Vishal Goyal (supra). In his submission these decisions as culminated in the decision in Vishal Goyal (supra) fully conclude the matter. These submissions were supported by Mr. Gaurav Sharma, learned Advocate for the MCI.

8. Mr. Patil, learned Senior Advocate, on the other hand relied upon the decision of this Court in *D.P. Joshi v. State of Madhya Bharat and Another*<sup>6</sup> and on paragraphs 6, 13 and 16 of the decision in *Dr. Pradeep Jain (supra)*, in support of his submissions.

9. After conclusion of hearing, written submissions were filed by the parties. In their written submissions, petitioners inter alia submitted that Clause 4.1 of the Information Bulletin in question was violative of Article 14 of the Constitution and was opposed to Regulation 9 of 2000 Regulations. A chart was appended showing similarity between Clause 2 of PGET-2014 which was subject matter of the decision in *Vishal Goyal (supra)* and the present Clause 4.1. In its written submissions MCI also relied upon 2000 Regulations and specially Regulation 9 thereof. It was further submitted:

“It is important to note that there are primarily two types of courses at post-graduate level i.e. post-graduate diploma courses and post graduate degree courses. On a close reading of Regulation 9(IV) and 9(VII) the distinction between post graduate diploma course and post-graduate degree course is apparent. It needs to be emphasized that as per Regulation 9 and the amendments made therein from time to time, reservation of seats for in-service candidates is only permissible in post-graduate diploma courses. Further, there is no provision under the IMC Act, 1956 and the Regulations framed thereunder which permits reservation in post-graduate degree courses.”

10. State of Karnataka in its written submissions sought to justify the action but did not explain how the decision in *Vishal Goyal (supra)* would not be applicable in the present case. It was however submitted:-

“The State of Karnataka has 11615 Public Health Care Institutions managed by the Health and Family Department of the State. It is the objective of the State to provide secondary and tertiary care services too within the reach of common public. This objective is sought to be fulfilled by setting up of new State of the art institutions and strengthen the existing institutions through provisions of equipments, up-gradation of infrastructure and recruitment of skilled man power. Today, there are 3435 posts of specialists about which 1312 are vacant, underlying the deficiency of skilled medical professional to address the health care needs of the State. In the medical and dental educational institutions out of 2700 posts of specialists, 517 are vacant highlighting the deficiency of skilled medical teachers to address the medical teachers’ needs of the State. 16 out of 39 medical colleges in Karnataka are run by the State.

There are 970 senior resident posts in these medical colleges, 524 of which are vacant. The State has to ensure that these posts are filled up at any given point of time as stipulated by Medical Council of India. If these remain vacant for want of specialist, de-recognition looms large with the risk of jeopardizing the future of both undergraduate and post-graduate candidates’ studying in these colleges. The posts of senior resident need to be filled by fresh post graduates passing out every year. There is a huge requirement of specialists to run these institutions. Hence the State

Government has to ensure availability of adequate number of post graduates to fill these posts.”

11. The decision of this Court in *Dr. Pradeep Jain (supra)* had considered the Judgments rendered in *Kumari N. Vasundara v. State of Mysore and Another*<sup>7</sup>, *Minor P. Rajendran v. State of Madras and Others*<sup>8</sup>, *Minor A. Peeriakaruppan v. State of Tamil Nadu and Others*<sup>9</sup> and *D.N. Chanchala v. The State of Mysore and Others*<sup>10</sup> as well as the decision in *Dr. Jagadish Saran and others v. Union of India*<sup>11</sup> and finally concluded:

“.... We unreservedly condemn wholesale reservation made by some of the State Government on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit. We declare such wholesale reservation to be unconstitutional and void as being in violation of Article 14 of the Constitution.”

12. During the course of its Judgment in *Dr. Pradeep Jain (supra)* this Court also considered the impact of submissions from the concerned States as advanced in various Judgments that were considered in paragraphs 14 to 16, which submissions were similar to the ones advanced before us by the State either in the reply or in the written submissions. Para 22 of the decision in *Dr. Pradeep Jain (supra)* finally summed up the matter as regards post graduate courses as under:-

“22 The Medical Education Review Committee has also expressed the opinion that “all admissions to the post-graduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located”. So also in the policy statement filed by the learned Attorney General, the Government of India has categorically expressed the view that:

“So far as admission to the institutions of post-graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all-India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes.”

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 a ground for reservation in admissions to post-graduate courses, 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 but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course ”

13. In Vishal Goyal (supra) the challenge was to the validity of Clause 2.1 of the Information Bulletin for PGET-2014. The eligibility conditions as laid down in said Clause 2.1 are identical to those stipulated in the present clause, namely, Clause 4.1 of PGET-2018. Paragraphs 4, 10 to 13 and 15 of the decision in Vishal Goyal (supra) were as under:

“4. The said Clause 2.1 of the two Information Bulletins, which is identically worded for admissions to postgraduate medical and postgraduate dental courses, is extracted hereinbelow:

“2.1. No candidate shall be admitted to a professional educational institution unless the candidate possesses the following qualifications or eligibility to appear for the entrance test namely:

(a) He is a citizen of India who is of Karnataka origin and has studied MBBS/BDS degree in a medical/dental college situated in Karnataka or outside Karnataka, and affiliated to any university established by law in India recognised by Medical Council of India and the Government of India.

Explanation.—'A candidate of Karnataka Origin' means a candidate found eligible under clause (i) or (ii) below, namely:

(i) A candidate who has studied and passed in one or more government recognised educational institutions located in the State of Karnataka for a minimum period of TEN academic years as on the last date fixed for the submission of application form, commencing from 1st standard to MBBS/BDS and must have appeared and passed either SSLC/10th standard or 2nd PUC/12th standard examination from Karnataka State. In case of the candidate who has taken more than one year to pass a class or standard, the years of academic study is counted as one year only.

Documents to be produced, namely:

- (1) SSLC or 10th standard marks card.
- (2) 2nd PUC or 12th standard marks card of the candidate.
- (3) Candidates Study Certificate: A study certificate from the Head of educational institution where he or she had studied. Further, School Study Certificates should be countersigned by the Block Education Officer (BEO)/Deputy Director of Public Instructions (DDPI) concerned COMPULSORILY in the proforma prescribed.
- (4) Qualifying degree certificate and all phases marks card.

(5) Domicile certificate issued by the Tahsildar in the prescribed proforma (Annexure I); and if claiming reservation benefits: Caste/Caste Income Certificate issued by Tahsildar concerned, for SC/ST in Form D, Category 1 in Form E and 2-A, 2-B, 3-A and 3-B in Form F.

(6) MCI/DCI State Council Registration Certificate.

(7) Attempt Certificate issued by the college Principal concerned.

(ii) The candidate should have studied and passed 1st and 2nd years Pre-University Examination or 11th and 12<sup>th</sup> standard examination within the State of Karnataka from an educational institution run or recognised by the State Government or MBBS/BDS from a professional educational institution located in Karnataka and that either of the parents should have studied in Karnataka for a minimum period of 10 years. Documents to be produced, namely:

(1) SSLC or 10th standard marks card.

(2) 2nd PUC or 12th standard marks card of the candidate.

(3) Qualifying degree certificate and all phases marks card.

(4) Domicile certificate issued by the Tahsildar in the prescribed proforma (Annexure I).

(5) If claiming reservation benefits: Caste/Caste Income Certificate issued by Tahsildar concerned, for SC/ST in Form D, Category 1 in Form E and 2- A, 2-B, 3-A and 3-B in Form F; and

(6) (a) A study certificate for either of the parent having studied for at least 10 years in Karnataka from the Head of the educational institution where he/she had studied. Further, school study certificates should be countersigned by the Block Educational Officer (BEO)/Deputy Director of Public Instructions (DDPI) concerned COMPULSORILY in the proforma prescribed (Annexure III).

(b) The candidates study certificate for having studied both 1st and 2nd PUC or 11th and 12th standard in Karnataka issued by the Head of the educational institution.

(7) MCI/DCI State Council Registration Certificate.

(8) Attempt Certificate issued by the college Principal concerned.”

10. We have considered the submissions of the learned counsel for the parties and we find that the basis of the judgment of this

Court in Pradeep Jain case is Article 14 of the Constitution which guarantees to every person equality before the law and equal protection of the laws. As explained by this Court in paras 12 and 13 of the judgment in *Nikhil Himthani v. State of Uttarakhand*: (SCC pp. 244-45)

“12. Article 14 of the Constitution guarantees to every person equality before law and equal protection of laws. In *Jagdish Saran v. Union of India*, 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 postgraduate medical courses, such as MD. In the language of Krishna Iyer, J.: (SCC pp. 778-79, para 23)

23. 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 PhD, MD, 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 a important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk.’

13. Relying on the aforesaid reasons in *Jagdish Saran v. Union of India*, a three-Judge Bench of this Court in Pradeep Jain case held that excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate 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....”

In *Magan Mehrotra v. Union of India* and *Saurabh Chaudri v. Union of India* also, this Court has approved the aforesaid view in Pradeep Jain case that excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and will affect the right to equality of opportunity under Article 14 of the Constitution.

11. Mr Mariarputham is right that in *Saurabh Chaudri v. Union of India* this Court has held that institutional preference can be given by a State, but in the aforesaid decision of *Saurabh Chaudri*, it has also been held that decision of the State to give institutional preference can be invalidated by the court in the event it is shown that the decision of the State is ultra vires the right to equality under Article 14 of the Constitution. When we examine sub-clause (a) of Clause 2.1 of the two Information Bulletins, we find that the expression “A candidate of Karnataka origin” who only is

eligible to appear for entrance test has been so defined as to exclude a candidate who has studied MBBS or BDS in an institution in the State of Karnataka but who does not satisfy the other requirements of sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014. Thus, the institutional preference sought to be given by sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014 is clearly contrary to the judgment of this Court in Pradeep Jain case.

“22. ... 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 postgraduate course in the same medical college or university.. ”

13. Sub-clause (a) of Clause 2.1 of the two Information Bulletins does not actually give institutional preference to students who have passed MBBS or BDS from colleges or universities in the State of Karnataka, but makes some of them ineligible to take the entrance test for admission to postgraduate medical or dental courses in the State of Karnataka to which the Information Bulletins apply.

15. In the result, we allow the writ petitions, declare sub-clause (a) of Clause 2.1 of the two Information Bulletins for postgraduate medical and dental courses for PGET-2014 as ultra vires Article 14 of the Constitution and null and void. The respondent will now publish fresh Information Bulletins and do the admissions to the postgraduate medical and dental courses in the government colleges as well as the State quota of the private colleges in accordance with the law by the end of June 2014 on the basis of the results of the entrance test already held. We also order that the general time schedule for counselling and admissions to postgraduate medical courses in our order dated 14-3-2014 in *Fraz Naseem v. Union of India*<sup>12</sup> will not apply to such admissions in the State of Karnataka for the academic year 2014-2015. Similarly, the general time schedule for counselling and admissions for postgraduate dental courses will not apply to such admissions in the State of Karnataka. The parties shall bear their own costs.”

14. Paragraphs 13 and 15 of the Judgment of this Court in Vishal Goyal (supra) are clear that the Information Bulletin for PGET-2014 did not actually give institutional preference to students who had passed MBBS/BDS from Colleges or universities in State of Karnataka but made some of them ineligible to take the entrance test for admission to Post-Graduate Medical or Dental Course in State of Karnataka and that said clause was held ultra vires Article 14 of the Constitution and declared null and void. The relevant clause under consideration, namely, Clause 4.1 of the Information Bulletin for PGET-2018 is identical in substance to the one that was considered in Vishal Goyal (supra). The matter is thus no longer res- integra and is completely covered by the decision in Vishal Goyal (supra). In the circumstances, we respectfully follow the decision of this Court in Vishal Goyal (supra) and hold Clause 4.1 of the Information Bulletin (PGET-2018) which was published on the website on 10.03.2018 to be invalid to the extent it disqualifies petitioners and similarly situated candidates who completed their MBBS/BDS Degree Courses from colleges situated

in Karnataka from competing for admission to Post-Graduate Medical/Dental Courses in Government Medical Colleges and against government quota seats in non-governmental institutions

15. This writ petition stands allowed in the aforesaid terms. State of Karnataka and Respondent Nos.2 and 3 are directed to suitably modify and amend the Information Bulletin in question in keeping with the observations made in this Judgment and re-publish the Calendar of Events in terms of this Judgment and complete the entire process within the timeline stipulated by the concerned regulatory authorities.

Judgment Referred.

<sup>1</sup> (2014) 11 SCC 0456

<sup>4</sup> (2003) 11 SCC 0186

<sup>7</sup> (1971) 2 SCC 0022

<sup>10</sup> (1971) 2 SCC 0293

<sup>2</sup> (1984) 3 SCC 0654

<sup>5</sup> (2013) 10 SCC 0237

<sup>8</sup> (1968) 2 SCR 0786

<sup>11</sup> (1980) 2 SCC 0768

<sup>3</sup> (2003) 11 SCC 0146

<sup>6</sup> AIR 1955 SC 0334

<sup>9</sup> (1971) 2 SCR 0430

<sup>12</sup> (2014) 11 SCC 0453