

(2001) 01 DEL CK 0098

In the Delhi High Court

Case No : C.M. No. 36 of 2001 and Civil Writ Petition No. 34 of 2001

Anupam Guar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 5 AD 247 : (2001) 90 DLT 503

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : P.H. Parekh and S.R. Jawahar Lal, Maninder Singh and Pratibha Singh, A. Mariaputham and Anurag Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.

Rule.

1. With the consent of the parties the matter has been heard and is being disposed of finally.

2. The petitioner claims himself to be a permanent resident of the National Capital Territory of Delhi. In terms of the memo of understanding between the Medical Council of India and the Ministry of Higher Secondary and Special Education of the then USSR, the Govt. of India used to nominate 50 Indian students for under-graduate medical education and 50 students for post-graduate level medical education in the medical institutions in the erstwhile USSR. In terms of the Bulletin of Information for Admission in USSR, an entrance test is held and the students used to be selected strictly in order of merit for admission to the under-graduate and post-graduate level medical education in the institutions in Russia. Petitioner appeared in the entrance examination conducted on All India basis by the Medical Council of India for admission in one of the colleges in the erstwhile USSR and on his being declared successful in such

examination, he was nominated by the Medical Council of India for admission to study under-graduate Medicine in Kharkov Medical University, Ukraine, USSR. The petitioner cleared his under-graduate course in Medicine from that University and was registered with the Medical Council of India on 14th March, 1995.

3. Respondent No. 3 offers courses in post-graduate medical education and 75% of the seats are reserved for students who had completed their under-graduate course in medicine from the University. Prior to April, 2000 candidates who were allotted a seat by the Medical Council of India in an institution outside Delhi within 15% all india quota were not permitted to participate in the entrance examination against 75% quota for admission to post-graduate course offered on the ground that the same was earmarked only for the students who had graduated from respondent No. 3 university. The Supreme Court, however, in a judgment reported as *Dr. Parag Gupta Vs. University of Delhi and Others*, held that students admitted to the under-graduate courses in medicine under the All India quota of 15% and had migrated to different States/Union Territories to pursue their course, after passing the degree course, held, cannot be debarred to compete for admission to the post-graduate course in their home States/Union Territories irrespective of any preference adopted there for selection. Since the petitioner was not admitted to the under-graduate course in medicine in a University in the U.S.S.R. under the All Indian quota of 15%, his admission form was not accepted by the University for admission to the post-graduate course which resulted in the filing of the present writ petition.

4. Mr. Parekh, learned Counsel for the petitioner, has contended that the petitioner was born and brought up in Delhi and he having been allotted a seat in a college in the erstwhile U.S.S.R. by the Medical Council of India strictly on merits on the basis of an entrance examination conducted by the Government, he should be considered for admission in the post-graduate course by the Delhi University against 75% seats. It is submitted by him that the principles laid down by the Supreme Court in *Parag Gupta v. University of Delhi* (supra) are fully applicable to him inasmuch as he was allotted a seat by the Medical Council of India on the basis of an entrance examination strictly on merits. It is submitted that since the petitioner has done his under-graduate course in medicine from an University outside India, he cannot be put to a disadvantage by not being permitted to participate against the 75% seats for the post-graduate course offered by the Delhi University inasmuch as he, in that case, will not be eligible to appear in an entrance test for the post-graduate course conducted by any other University since the Supreme Court has already upheld the criteria of institutional preference. He, Therefore, submits that in view of the judgment of the Supreme Court in *Parag Gupta v. University of Delhi* case (supra), a mandamus is required to be issued to the University of Delhi to permit the petitioner to appear in the entrance examination for admission to the post-graduate diploma course offered by the University of Delhi.

5. In a recent judgment of the Supreme Court reported as *State of U.P. and*

Others Vs. Vineet Singh and Others, , it is held by the Supreme Court that only such students who got admission for medical degree course under All India quota of 15% and migrated to different States/Universities to pursue the course of study and after obtaining the degree were desirous of pursuing the post-graduate course in their home States/Universities and not all such students who have gone out of their home States and desire to return to their home States, would be entitled to participate in the entrance examination for post-graduate course held in their home State irrespective of any kind of preference that may have been adopted for selection of post-graduate course. The Court further clarified that the general directions given by the High Court following the judgment of the Supreme Court in Dr. Parag Gupta's case (supra) in respect of all the candidates without examining their cases whether they fell within 15% All India quota and who had been selected under the 15% all India quota and migrated to other States or not, would not be appropriate. The Supreme Court modified the directions given by the High Court by confining its order only to students who were covered by Dr. Parag Gupta's (supra) case, that is such students who had migrated to other States/Universities under 15% All India quota.

6. The aforesaid judgment of the Supreme Court is fully applicable to the facts of the present case. Since the petitioner is not one of those students who had migrated to other States/Union Territories under 15% All India quota and who are desirous of pursuing studies in their home States, in my opinion, the petitioner is not eligible to appear in the entrance test against the 75% quota for admission to the post-graduate courses offered by the University of Delhi.

7. For the foregoing reasons, the petitioner is not entitled to any relief in this petition and the same is, accordingly, dismissed with no order as to costs.

8. Petition dismissed.