

(2009) 04 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No's. 705, 748, 826, 913, 954, 955, 1103, 1104 and 2147 of 2009

Chetan Goyal and Others

APPELLANT

Vs

Government of Gujarat and Another

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 21

Citation : (2009) 2 GLH 268

Hon'ble Judges : K.S. Radhakrishnan, J; Akil Kureshi, J

Bench : Division Bench

Advocate : Mihir Thakore, Aspi M. Kapadia, Archana Raval, Siraj Gori and B.K. Damani, for Petitioner Nos. 1 - 27, for the Appellant; Kamal B. Trivedi, General and Sangita Vishen, Assistant Government Pleader for Respondent No. 1, V.D. Nanavati, for Respondents Nos. 3-4 and P.V. Hathi, P.K. Jani and Harshadray A. Dave, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Petitioners in all these cases question the legality of the Circular issued by the Education Department of the State

Government dated 21.1.2009 to all the Universities in the State and the directions issued to amend the eligibility criterion laid down in the Post

Graduate Medical Admission Rules, for admission to the Post Graduate Courses from 50% State Quota. Following the above mentioned Circular,

various Universities in the State of Gujarat carried out necessary amendments to the P.G Admission Rules of respective Universities for admission

during the current year. Government in its Circular referred to the report of Dr. Kanubhai Kalsaria Committee and stated that Committee has

found that in so far as the State Quota of 50% for Post Graduate Admissions, the

requisite qualification which defined the eligibility, was not properly stipulated for the Universities of Gujarat compared to other States. Further it was also pointed out that it would be an anomaly if students who have not passed through HSC from Gujarat and whose parents are not domicile in the State get admitted to the State Quota. Government therefore, directed the Universities to amend the eligibility criteria for admission to Post Graduate Medical Courses from the State quota of 50% as follows:

(1) A student should have passed 12th Standard Examination from -

The Gujarat Board; or

The Central Board of Secondary Education, provided that the school in which the candidate has studied should have been located in the State of

Gujarat; or

The Council of Indian School Certificate Examination, New Delhi provided that the school in which the candidate has studied should have been

located in the State of Gujarat.

(2) A student should have passed the MBBS Examination from the University situated in the State of Gujarat.

The Universities in the State of Gujarat consequently amended their Post Graduate Medical Admission Rules, following the Government directives,

the legality of which is under challenge in all these petitions.

2. Petitioners in all these cases have completed their MBBS from various Medical Colleges in the State of Gujarat, after getting themselves

admitted to the MBBS Course under the 15% quota reserved for All India Pre-Medical Test Quota (AIPMT). Petitioners had passed their 12th

Standard from schools situated outside the State of Gujarat. After getting admission to MBBS Course in various colleges in the State of Gujarat

under AIPMT quota, they completed their MBBS course successfully but are not permitted to compete with their fellow students for admission to

PG Decree course in the State of Gujarat on the ground that they had not passed 12th standard from educational institutions situated within State

of Gujarat. Along with the petitioners there were also students who had got admission to MBBS in the 85% State quota, who had passed their

12th Standard from the institutions situated in State of Gujarat, but they can

apply even though they have studied with the petitioner for the MBBS course in the same college. Petitioners submit that Circular dated 21.1.2009 and the consequent amendment effected in the Post Graduate Admission Rules by various Universities is illegal and violative of Articles 14, 15 and 21 of the Constitution of India and also contrary to various judgments rendered by the Supreme Court.

3. Detailed counter affidavit has been filed on behalf of the State of Gujarat. Counter affidavit refers to the report of Dr. Kanubhai Kalsaria

Committee and states that the above mentioned eligibility criteria has been prescribed with a view to get more representation to the students of the

State in the matter of admission to P.G Medical Courses in various Government and Government aided Medical Colleges. Detailed reference has

been made in paragraph 7 of the counter affidavit with regard to the situation prior to the issuance of the communication dated 21.1.2009 and

stated that if 15% All India Quota filled in with students from out-side the State are allowed to compete in the 50% State Quota, then students

who belong to State of Gujarat would get less opportunity for admission to P.G Medical Courses in the State. It is stated that most of the students

taking admission in 15% All India Quota are from outside the State and most of them would return back after completion of the P.G Course. State

Government has stated it spends huge amount for their training, but their services are not available for the local populace and non-availability of

doctors in Primary Health Centres/Community Health Centres and in the Medical Colleges have caused considerable prejudice to the State.

Further it is stated that doctors coming from other States are not knowing Gujarati language and they are not able to understand the local Gujarati

dialect. Counter affidavit also states that in many States in the country, Rules of Admission to P.G Medical Courses run by the State Government,

provide for reservation based on residence/domicile requirement, as against this the State Government has decided to use a more rational criteria

of providing for passing of examination as standard 12th and MBBS from State of Gujarat as the eligibility criteria for being considered for

admission in the 50% P.G Medical seats so as to see that the concerned student aspiring for admission is a local student which is intended to

convey the idea of residing permanently or indefinitely in the State of Gujarat.

Further, it is also stated that while doing so, a balance is struck out so that students like petitioners coming from out-side the State can very well compete in 50% total seats reserved for All India candidates and remaining 50% seats in P.G course can be made available to the "sons of the soil" in the Medical Colleges aided by the State Government. Further it is also stated that if Circular or amendment is effected in various Universities, it shall not violate Articles 14, 15 and 21 of the Constitution of India.

4. Senior Counsel Shri Mihir Thakore submitted that the question raised in this petition is no more res-integra. Learned Counsel took us elaborately to judgment of the Apex Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, and submitted that ideally there should be no reservation in medical courses and admission should only be given on the basis of merits, though having regard to the socio economic disparity and inequity certain reservations in MBBS and Post Graduate Medical Courses would be permissible. Court though held that for integrated courses like MBBS, reservation on the basis of residential requirement would be permissible for Post Graduate Courses, a residential requirement shall not be the criterion. Learned Counsel also referred to the decision of the Apex Court in Magan Mehrotra and Others Vs. Union of India (UOI) and Others, and Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, and submitted that the Apex Court has upheld the criterion of institutional preference to be given to those who had studied their undergraduate courses in the very institution as against 50% quota on All India basis. Learned Counsel cited various other Supreme Court decisions holding that in Post Graduate Medical Courses, reservation on the basis of residence is not permissible and only permissible reservation is institutional preference. Learned Counsel submitted that eligibility criteria stipulated by the State Government of passing 12th Standard from the State of Gujarat is with an oblique motive to give preference to the local students of Gujarat expounding the theory of sons of the soil, which has been deprecated by the Supreme Court in various judicial pronouncements.

5. Learned Advocate General Shri Kamal B. Trivedi did not advocate the theory of sons of the soil, but submitted that rationale behind the

Circular is to provide a broad-based institutional preference to the students, so that they may start getting acquainted and acclimatized with the environment of education, language, culture and host of the other hard realities of the State before starting the first year of under graduate course.

Learned Advocate General also submitted that under such circumstances, there is nothing wrong to insist for such a requirement since the same is

likely to provide the continuity of all the factors, while being admitted to PG course. Learned Advocate General submitted that Circular has been

issued by the State Government so as to provide for broad based institutional reservation and not residential reservation. Learned Advocate

General made reference to the decision of the Apex Court in D.P. Joshi Vs. The State of Madhya Bharat and Another, . Learned Advocate

General has submitted that when State is spending lot of money for education it should to some extent enure to its benefit by preferring students

who had studied 12th Standard from the institutions situated in the State of Gujarat. Reference was also made to the decision of the Supreme

Court in Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, . He submitted that Government cannot be denied the right to

decide, what sources the admission will be made and that essentially is a question of policy and it depends inter-alia on over all assessment and

survey of the requirement of residence of particular territories and other categories of persons for whom it is necessary to provide facilities for

medical education. Learned Advocate General also referred to the decision of the Apex Court in The Dean, Goa Medical College, Bambolim,

Goa and Another Vs. Dr. Sudhir Kumar Solanki and Another, , and Abhinav Aggarwal and Another Vs. Union of India and Others, and

submitted that instances of rules relating to admission to PG Medical courses based on residential reservation has to be appreciated from the

language used in the regulations governing P.G admission in respective States. So far as State of Gujarat is concerned, learned Advocate General

submitted that State Government has never made any promise or representation that there would never be any change in the eligibility criteria

regarding admission to P.G Medical Course and in any view of the matter, the University has amended the statutory Rules and hence, plea of

legitimate expectation has no force. Learned Advocate General also submitted that judgment of the Supreme Court in the case of Dr. Prachi

Almeida Vs. The Dean, Goa Medical College and Others, was rendered in the peculiar facts of that case, more particularly when the admission

criterion for P.G course in that case based on reservation relating to residential requirement came to be upheld as legal and valid by the Supreme

Court in the case of The Dean, Goa Medical College, Bambolim, Goa and Another Vs. Dr. Sudhir Kumar Solanki and Another, and hence,

judgment in Dr. Prachi Almedia (supra) does not operate as a binding precedent.

6. We fully agree with the counsels appearing for the petitioners that the issue raised in this petition is no more res-integra and it is unnecessary to

refer to the host of decisions cited by Counsel on either side, since the question involved in this case has clearly been answered by the Five Judges

Bench decision of the Apex Court in Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, The core question centered around in the

above mentioned decision is with regard to the constitutional validity of reservation, whether it is based on domicile or institution in the matter of

admission into post-graduate courses in government run medical colleges. The question which was initially raised before the Supreme Court was as

to whether reservation made by way of institutional preference is ultra-vires Articles 14 and 15 of the Constitution of India, but during the course of

hearing, a larger issue as to whether any reservation, be it on residence or institutional preference, is constitutionally permissible, was raised at the

Bar. In view of the importance of question involved, the Bench in terms of the order, directed issuance of notice to all the States and Union

Territories, pursuant whereunto, except the State of Andhra Pradesh and the State of Jammu & Kashmir, all the States filed their returns and were

heard. Thus, decision rendered by the Apex Court in Saurabh Chaudri and Ors. v. Union of India (supra) is binding on the State of Gujarat as

well. In paragraph 25 of the above mentioned judgment, the Apex Court has examined the position with regard to the admission in Post Graduate

Courses before the decision of the Apex Court in Dr. Parag Gupta's case. State of Gujarat figures at serial No. 4 in paragraph 25 of the judgment.

It is stated that before Dr. Parag Gupta's case, the nature of preference followed by State of Gujarat, was institutional and after Dr. Parag Gupta's

case also, nature of preference prevailing in State of Gujarat is ""institutional"". So also when the case was decided by the Apex Court. The Supreme

Court noticed that before the scheme was evolved in Dr. Pradeep Jain's case, notices were issued to all the State Governments and all of them were fully heard, and despite orders were passed by the Apex Court in Dr. Pradeep Jain's case, some of the States have flouted the same with impunity. Reference was made in that case of Assam, Karnataka, Goa, Tamil Nadu and Punjab. Apex Court also noticed that in Magan Mehrotra's case, the Apex Court not only reiterated that the reservation by way of institutional preference be maintained but also directed the aforementioned States to follow the same. Various other questions also cropped up for consideration of the Apex Court. One was whether the reservation on the basis of domicile is impermissible in terms of Clause 1 of Article 15 of the Constitution of India. Second question was whether reservation by way of institutional preference comes within the suspected classification warranting strict scrutiny test; and the third question which arose with the Apex Court was whether the reservation by institutional preference was valid. After survey of various decisions, including Dr. Pradeep Jain's case, it was reiterated that the Apex Court has specifically banished the residential requirement for the purpose of admission into post graduate medical courses for all times. Apex Court also opined that Dr. Parag Gupta's case did not lay down any law and it dealt with the situation on equitable and humanitarian grounds but while doing so, it indisputably deviated from the law laid down in Dr. Pradeep Jain's case only by way of an interim arrangement, and it inadvertently created reservation on domicile which was forbidden in Dr. Pradeep Jain's case. The Court reiterated that it does not find any reason to depart from the ratio laid down in Dr. Pradeep Jain's case and held that reservation by way of institutional preference must hold to be not offending Article 14 of the Constitution of India. The Apex Court, therefore, concluded as follows:

This Court may therefore, notice the following:

The State runs the universities.

It has to spend a lot of money in imparting medical education to the students of the State

Those who get admission in post graduate courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

The criterion for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for the last about two decades.

Even those States which defined the decision of this Court in Dr. Pradeep Jain case had realised the need for institutional preference.

No sufficient material has been brought on record for departing from this well-established admission criterion.

It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working

out the percentage of reservation invariably some local student will have preference having regard to the fact that domicile/residence was one of the

criteria for admission in MBBS course. But together with the local students, 15% students who had competed in All India entrance examination

would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference

would further go down if the decision of this Court in Dr. Pradeep Jain case is scrupulously followed.

Giving of such a 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.

The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation.

7. We may reiterate that the above mentioned judgment was delivered by the Supreme Court after hearing State of Gujarat and therefore, the

principle laid down by the Apex Court in Saurabh Chaudri v. Union of India (supra) has to be scrupulously followed by the State of Gujarat.

Further, we have noticed that decision in Magan Mehrotra v. Union of India (supra) was elaborately considered by the Apex Court in the decision

in Saurabh Chaudri's case (supra). In Magan Mehrotra's case, Three Judges Bench of the Apex Court has opined that Dr. Parag Gupta's case is

not correctly decided and held as follows:

In dealing with admission to the postgraduate course the Supreme Court has all along been insisting on excellence and yet trying to balance the

equity by considering the case of some preferential treatment to the students who were educated from the same university... the decision of the

States of Assam, Tamil Nadu, Goa and Karnataka conferring preference on the

basis of residence was not warranted under law inasmuch as to have a uniformity through out the country and in the larger interest of all concerned taking into account the pattern of admission to undergraduate course, and also the excellence that is required for admission to post graduate course the only preference that should be adopted by all States is institutional preference.

8. We may now test the validity of Circular issued by the State Government on 21.1.2009 and the respective amendments effected by the various

Universities in the State in their P.G Admission Rules in the light of the law laid down by the Apex Court. Stand of the State Government in the

counter affidavit was that the requirement that a student should pass 12th Standard Examination from the State of Gujarat was with a view to give

more representation to the students of the State of Gujarat in the matter of admission to P.G Medical Course and to encourage sons of the soil

theory, which has been clearly deprecated by the Apex Court in various decisions. The only permissible reservation is institutional preference i.e.

preference can be given to students who has done MBBS from any particular University. The Apex Court in various decisions has permitted

reservation on the basis of residential criteria to the undergraduate courses of MBBS, but not to the Post Graduate Courses.

9. Learned Advocate General has fairly conceded that there can be no reservation on the ground of residential requirements in Post Graduate

Courses in various Medical colleges in the State, but submitted that passing of 12th Standard from the State of Gujarat would amount only to a

broad based institutional preference and hence, such a stipulation is not violative of principles laid down by the Apex Court in Dr. Saurabh

Chaudri's case (supra). We find it difficult to accept the contention of learned Advocate General. By insisting passing of 12th Standard from the

State, State is in fact trying to propound the theory of "sons of the soil". Dr. Kanubhai Kalsaria Committee's report as well as the counter affidavit

filed by the Under Secretary to the Government of Gujarat would clearly indicate that the idea of such a stipulation of passing 12th Standard from

Gujarat State is to give more representation to the students who belong to the State of Gujarat, in the matter of admission to the Postgraduate

course in the Government or Government run medical colleges. What cannot be

done directly is being achieved indirectly on the basis of Circular

and also the directions issued by the State Government to various Universities to amend the P.G Admission Rules accordingly.

10. We are not prepared to accept the rationale of passing 12th Standard from State of Gujarat is to provide broad based institutional preference.

Institutional preference means University-wise preference, which has nothing to do with the passing of 12th standard from the State of Gujarat. In

fact, this question came for consideration before a Division Bench of this Court in *Karamsad Medical Colleges v. State of Gujarat* 2000 (2) GLR

1648, and the Division Bench of this Court while dealing with admission to Post Graduate Medical Courses took the view, referring to the decision

of the Apex Court in *D.N. Chanchala's case* 1971 Supp. SCR 608 that reservation shall be made in favour of candidates who have passed

examination of that University, which would promote institutional continuity. The Court held that candidates passing through qualifying examination

held by a University form a class by themselves as distinguished from those passing through such examination from other Universities and

University-wise preference is not discriminatory at all. The Court held that there is nothing unreasonable in providing that in granting admissions to

medical colleges affiliated to a University, reservation shall be made in favour of candidates who have passed examination of that University, firstly

because it would be quite legitimate for students who are attached to a University to entertain a desire to have a training in specialised subjects, like

medicine, satisfied through colleges affiliated to their own University, since that would promote institutional continuity which has its own value and

secondly because any student from any part of the country can pass the qualifying examination of that University, irrespective of the place of his

birth or residence. Institutional continuity means, continuity from the M.B.B.S to Post Graduate level and, not from 12th Standard to M.B.B.S.

Prescription of such a stipulation on the grab of broad based institutional continuity is an attempt to promote residential requirement which has to

be deprecated. We have therefore, no hesitation to hold that the insistence of passing of 12th Standard from the State of Gujarat for getting

admission for P.G Course in the State of Gujarat is clearly an attempt to get over the principle laid down by the Apex Court in various decisions

including the decision in the case of Saurabh Chaudhri (supra), which was rendered after hearing the State of Gujarat. Petitioners after having admitted in the 15% AIPMT along with 85% of State quota for MBBS in the State of Gujarat forms a class by themselves. Further classification among themselves on the basis of residence requirement on the guise of passing of 12th Standard in Gujarat has no reasonable nexus with the object sought to be achieved, by such classification, merit has been sacrificed and the principle of institutional preferences has been given a go-by, which is discriminatory and will not stand test of reasonable classification.

11. We are therefore, clearly of the view that the Circular issued by the State Government dated 21.1.2009 and the amendments effected by various Universities in the P.G Admission Rules, insisting that a student should pass 12th Standard from the State of Gujarat for being considered for admission to the P.G Course in the 50% quota is illegal, violative of Articles 14 and 15(1) of the Constitution and also violative of various principles laid down by the Apex Court in the decisions referred to herein-above. Government Circular dated 21.1.2009 is therefore, quashed, and the amendments effected by the Universities in the Admission Rules are held to be violative of various principles laid down by the Apex Court and are accordingly struck down. All Special Civil Applications are accordingly allowed. We may however make it clear that benefit of this judgment will be available only to those students who have either under the interim orders of this Court or otherwise appeared in the Entrance Test, wherever conducted by the concerned Universities and, in the cases, of those Universities who have not conducted the Entrance Test, provided the students are eligible as per law.