
(2011) 04 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 638 and 660 of 2011

Devendra Singh

APPELLANT

Vs

State of Rajasthan and Others
 Dr. Swati Sharma and
Others Vs RUHS

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 29(2), 32

Citation : (2011) 04 RAJ CK 0046

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—The bunch of writ petitions involves same issue for decision thus have been heard and are decided by this common order.

2. All these writ petitions pertain to admission in Pre-Post Graduate Medical Entrance Examination-2011 (for short "Pre-PG Entrance examination") for admission to MD/MS/Diploma Courses conducted by the Rajasthan University of Health Sciences, Jaipur (for short "the University"). Petitioners herein applied for Pre-PG entrance examination, however, their candidature have not been considered in view of eligibility condition No. 2(B) of Instructions Booklet applicable to general (non-service) category candidates. Aforesaid condition provides that one should have passed MBBS examination from the University of Rajasthan/Rajasthan University of Health Sciences and have completed satisfactorily one year"s compulsory rotating internship or would be completing the same before 30th April, 2011 with some other candidates.

3. Learned Counsel for Petitioners submit that eligibility condition No. 2(B) of the Instructions Booklet is violative of Article 14 of the Constitution of India. It is providing 100% institutional reservation in favour of those who have passed out their MBBS examination from University of Rajasthan or the Rajasthan University of Health Sciences, whereas, 100% reservation cannot be made for admission.

Petitioners belong to State of Rajasthan but had undertaken MBBS examination through a medical college/University in other state than state of Rajasthan. Few Petitioners had even taken admission in MBBS course by competing against 15% quota filled by all India entrance examination (AIPMT). Petitioner (in Writ Petition No. 638/2011) is a meritorious candidate, qualified the aforesaid entrance examination thus took admission in other State/University. Petitioner has now completed his MBBS course as well as internship and is otherwise registered with the Rajasthan Medical Council. He has been debarred for admission in PG course on account of aforesaid condition in the Instruction Booklet. The condition so imposed goes contrary to the judgment of the Hon''ble Supreme Court in the case of " Dr. Parag Gupta Vs. University of Delhi and Others, wherein, in the similar circumstances, Hon''ble Apex Court allowed admission to a candidate undertaken MBBS course from other State. It was held that a candidate undertaken MBBS examination from other State by competing All India Pre Medical Test against 15% quota would be entitled to get admission in his own State irrespective to his completion of MBBS course in other State.

4. It is further urged that even the Respondent University were provisionally permitting similarly situated candidates to undertake PG course in state of Rajasthan if they completed their MBBS course in other State through AIPMT, however, after the year 2009 such practice has been stopped in an illegal manner and, that too, without justifying their action. It is, accordingly, prayed that condition No. 2(B) of the Instructions Booklet may be struck down and Respondents may be directed to allow the Petitioners to seek admission in PG course pursuant to the entrance examination. This is more so when by the interim order dated 18.1.2011 Petitioners have already appeared in the Pre PG examination.

5. Learned Additional Advocate General Mr. SN Kumawat and learned Counsel for the University Mr. RA Katta, on the other hand, submit that condition No. 2(b) of the Instructions Booklet is based on amendment in the Ordinance. The amendment was made after the judgment of this Court in the case of "Ravindra Kumar Saini and Anr. v. State of Rajasthan and Ors. SB Civil Writ Petition No. 16111/2009, decided on 4.1.2010. Aforesaid was based on judgment of the Apex Court in the case of Magan Mehrotra and Others Vs. Union of India (UOI) and Others, The Petitioners are praying for nothing but claiming benefit based on residence which is not being permitted by the Hon''ble Apex Court in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others,

6. Dealing with the issue as to whether preference/reservation in PG course can be given based on residence, the Hon''ble Apex Court held that same is not permissible, however, institutional preference to the extent of 50% of the total available seats was permitted. After the aforesaid judgment, now, out of the total seats meant for PG course, 50% are filled based on All India Entrance Test and remaining 50% are filled in as per Ordinance 276E and 276G of the University of Rajasthan as adopted by the Rajasthan University of Health Sciences. The

Institutional preference has been given as directed by the Hon''ble Apex Court in the case of Dr Pradeep Jain (supra). The same controversy otherwise came up for consideration before the Hon''ble Apex Court in the case of Magan Mehrotra (supra) and, therein, a candidate from Delhi, after his admission based on 15% all India quota in other State was not held entitled to seek admission under Delhi University. The judgment in the case of Dr. Parag Gupta Vs. University of Delhi and Others, was also considered. Subsequently, the matter was referred to the Larger Bench in the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, . Therein, Five Judges Bench of Hon''ble Apex Court decided the same controversy approving the judgment in the case of Magan Mehrotra (supra). The judgment in the case of Saurabh Chaudri (supra) was rendered after taking note of the pattern of preference throughout India. The States having different criteria than directed by the Hon''ble Supreme Court, has been criticised.

7. In the State of Rajasthan, now the rule exists in consonance to the directions of the Hon''ble Apex Court in the case of Dr Pradeep Jain and Magan Mehrotra (supra). After the judgment in the case of Saurabh Chaudri (supra), Petitioners cannot claim a relief contrary to what has already been decided in those cases. The issue in reference was otherwise considered earlier by this Court in the case of "Dr Neha Sharma and Ors. v. Rajasthan University of Health Sciences" 2009 (3) WLC (Raj) 617 and subsequently in the case of "Ravindra Kumar Saini v. State of Rajasthan and Ors. SB Civil Writ Petition No. 16111/2009, decided by this Court on 4.1.2010.

8. It is further urged that an interim order has been given for provisional appearance to the Petitioners in the Pre PG entrance examination though same has been deprecated by the Hon''ble Apex Court. Interference of the court in such matters, that too, by interim order, has been seriously viewed thus Petitioners should not be allowed to claim any equity or benefit pursuant to the interim order in their favour. It is prayed that all the writ petition may be dismissed with costs.

9. I have considered rival submissions of learned Counsel for the parties and scanned the matter carefully.

10. The controversy raised in these writ petitions is not new rather it has already been settled by the Hon''ble Apex Court in the case of Magan Mehrotra and Saurabh Chaudri (supra). Petitioners, however, prayed for relief based on judgment in the case of Parag Gupta (supra) thus I am discussing the issue as has been focussed above.

11. Petitioners have come up with the case that they belong to the State of Rajasthan thus should not be deprived to get admission in PG course only on the ground they they have undertaken their MBBS course from the other State/ University. For consideration of the aforesaid issue, reference of the judgment in the case of Dr Pradeep Jain (supra) would be relevant. According to Hon''ble

Apex Court, it would not be desirable to provide reservation based on residence or even institutional preference but having regard to broader consideration of equality of opportunity and institutional continuity in education which has its own importance and value certain percentage of seats were allowed to be reserved based on institutional preference. Relevant part of para 22 of the judgment is quoted thus:

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/UT 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 admissions to the institutions of postgraduate 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 M.S., M.D. 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 border 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 M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical colleges 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 postgraduate 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 M.B.B.S. course. But, even in regard, to admissions to the postgraduate course, we would direct that so far as super specialities such as neurosurgery 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.

12. Perusal of the aforesaid clarifies that out of the total number of open seats available for admission to PG course, upto 50% of seats can be filled based on institutional preference and remaining 50% are to be filled in by all India entrance test. The controversy regarding reservation or preference based on institution or residence again came up for consideration before the Apex Court in the case of Parag Gupta (supra) and even in the case of State of U.P. and Others

Vs. Vineet Singh and Others, Later on, in the case of Magan Mehrotra (supra), wherein, after referring the judgment in the case of Parag Gupta (supra) as well as other judgments including judgment of the Hon''ble Apex Court in the case of Dr. Prachi Almeida Vs. The Dean, Goa Medical College and Others, the issue was decided. Delhi University had provided a room for admission in PG course for those candidates belonging to Delhi but passed out their MBBS course from other University based on 15% all India quota The information bulletin providing such a provision was struck down as it held to be against the judgment in the case of Dr Pradeep Jain (supra). The case in hand is similar as Petitioners make a prayer to allow them to undertake PG course in the State of Rajasthan as they have completed MBBS course from other State/University against 15% all India quota but belong to Rajasthan. In view of the aforesaid, prayer made is nothing but grant of relief against the judgment of the Hon''ble Apex Court.

13. In case of Magan Mehrotra (supra) the Hon''ble Apex Court had taken note of the fact that different States are providing different criteria for preference of reservation. The matter was entirely considered. Paras 1, 2, 3, 6, 7, 8 and 9 of the aforesaid judgment are quoted thus:

1. These petitions under Article 32 of the Constitution of India was filed because of the Bulletin of Information issued by the University of Delhi for the academic session 2001, whereby and whereunder following the judgment of this Court in Dr. Parag Gupta v. University of Delhi and Ors. it was stipulated that the candidates who have passed the MBBS Examination in an University other than Delhi University having been allotted the same under 15% quota by the Director General, Health Services would also be eligible if he/she is permanent resident of the National Capital Territory of Delhi.

2. The grievance of the Petitioner is that on account of different standards adopted by different States, the students are suffering great hardship and in fact there is no rationale in not allowing the students who might be the residents of one State but who have undertaken their Undergraduate study in some other State on being selected through a competitive examination on All India basis, to get preferential right in obtaining admission in post-graduate course.

3. This Court by a three-Judge Bench considered the question of admission to the Medical Colleges as well as reservation of seats for residents of the State or students of same University laboratory in the case of Dr. Pradeep Jain v. Union of India. So far as the admission to Post Graduate Course is concerned, the Court held that for admission to Post Graduate Courses it would be eminently desirable not to provide for any reservation based on requirement of residence within the State or on institutional preference. Having said so, the Court went on further to hold that 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. We are not concerned with the other observations made in the aforesaid case since in the case in hand we are also concerned only with the admission to the post-graduate course. The aforesaid decision unequivocally indicates that even though it would be ideal not to have any reservation either on residence requirement or on institutional preference but the students passing out their under-graduate study from a University should have some preferential treatment and it is in that context the aforesaid observation has been made. It may be stated that in the aforesaid case before disposing of the matter all States were duly noticed and those who had entered appearance, their contentions were taken into account and finally the matter stood disposed of, as stated above.

6. Be it stated that the aforesaid conclusion of the judgment of two learned Judges of this Court was in the peculiar facts of that case and it became necessary to hold that view because of the condition of residence being insisted upon in the State of Tamil Nadu where the very applicant had pursued his undergraduate study on being selected on the basis of an All India Entrance Examination in respect of 15% quota available to be filled up in the undergraduate course. Had the State of Tamil Nadu followed the direction of this Court in Pradeep Jain's case, the aforesaid contingency would not have arisen.

7. In the aforesaid judgment in paragraph 8 their Lordships have enumerated indicating which State has adopted what nature of preference and from that it is clear that the States of Assam, Tamil Nadu, Goa and Karnataka have adopted the preference on account of residence whereas most of the other States have adopted the preference on the institutional basis. In view of the judgment of the three-Judges Bench in Pradeep Jain case (supra), it must be held that the aforesaid decision of the States of Assam, Tamil Nadu, Goa and Karnataka conferring preference on the basis of the residence was not warranted under law inasmuch as to have a uniformity throughout 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 the post graduate course the only preference that should be adopted by all States is the institutional preference, as was indicated in Pradeep Jain's case. It would be necessary for us to take into consideration yet another judgment of this Court in Dr. Prachi Almeida v. Dean, Goa Medical College and Ors. which arises out of an admission to the Goa Medical College wherein the Court followed the earlier decision in Dr. Parag Gupta's case (supra) and held that the Petitioner therein having been selected in the 15% All India quota and having been allotted a seat in the State of Goa wherefrom she obtained graduation, her case should not be ignored on the basis of non-fulfilment of residential requirement. In fact,

therefore, their Lordships apparently followed Pradeep Jain's case though it has not been stated so in so many words. It would be, at this stage, appropriate to notice yet another judgment of a three-Judge Bench in *State of U.P. v. Vineet Singh and Ors.* where a stray observation has been made to the effect that there is no conflict between the Pradeep Jain's case and Parag Gupta's case.

8. Be it stated that in that particular case the Court was in fact not required to examine the issue that arose in Pradeep Jain or Parag Gupta's cases and answered in those two cases. A bare look at the judgment of the 3-Judge Bench in Pradeep Jain's case and two-Judge Bench in Parag Gupta's case in relation to the question of preference in the post graduate course it cannot but be held that the Parag Gupta's 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's case. Independently on examining the issue of preference, we are also of the considered opinion that the decision rendered by this Court in Pradeep Jain's case had taken a correct criteria into consideration and we therefore, agree with the principles evolved and the ratio given in Pradeep Jain's case so far as it relates to admission into the post graduate courses and the question of institutional preference to be given to those who had studied their undergraduate courses in the very institution as against the 15% quota on the All India basis. In this view of the matter, the impugned Bulletin of Information issued by the Delhi University in relation to the Post-doctoral (D.M./M.Ch.) Post Graduate Degree must be held to be contrary to the direction of this Court in Pradeep Jain's case and the same is accordingly quashed. However, this order shall be made effective from the next academic session.

9. We however direct the States of Assam, Tamil Nadu, Goa and Karnataka to follow the pattern of institutional preference as has been indicated by this Court in Pradeep Jain's case and reiterated by us today. These petitions stand disposed of accordingly.

14. Perusal of the paras quoted aforesaid shows that similar controversy as raised herein was settled by the Hon'ble Apex Court in the aforesaid judgment of Magan Mehrotra with a further direction to the State of Tamilnadu, Assam, Goa and Karnataka to follow the pattern of institutional preference. Therein, Information Bulletin providing room for those undertaken MBBS course from other State/University against 15% all India quota were held to be illegal and thus quashed in para 8. What has been prayed in these writ petitions is what was maintained in the Information Bulletin by the Delhi University and otherwise quashed by the Hon'ble Apex Court.

15. In the case of Saurabh Chaudri same issue was considered by the five Judges Bench of Hon'ble Apex Court. Therein also, the petition was filed by those who were originally resident of Delhi and joined the MBBS course out of Delhi against 15% all India quota as is the case of the Petitioners herein. The Petitioners therein, claimed to seek a relief as has been claimed herein. The Hon'ble Apex Court by a detailed judgment and after considering position of rules in all the

States in India refused to entertain main relief as prayed therein and as otherwise the prayer in these writ petitions. In para 3 to 7 of the aforesaid judgment, reference of the amendment made by the Delhi University pursuant to the judgment in the case of Magan Mehrotra exist whereby those students who had undertaken admission based on MBBS course in other States/University on the basis of 15% all India quota were debarred to get admission in PG course. Para 3 to 7 of the judgment in the case of Saurabh Chaudri are quoted hereunder to show as to what was the controversy therein:

3. For determination of the said question factual matrix of the matter, is being noticed from Writ Petition (Civil) No. 29 of 2003.

4. The Petitioners who are 52 in number are original residents of Delhi. They joined various medical colleges out of Delhi for undertaking their MBBS Courses of studies against the 15% all-India quota on being qualified therefore in the All India Medical Entrance Examination.

5. The Appellants intended to join the medical colleges of Delhi for their Post Graduate Medical Courses. They applied for and were granted admission forms having regard to the decision of this Court in Dr. Parag Gupta Vs. University of Delhi and Others, . In the Bulletin of Information issued by the University of Delhi, it was stated, that candidates like the Appellants would be entitled for admission in Post Graduate Courses subject to the decision of a matter pending in this Court, i.e. Magan Mehrotra and Ors. v. Union of India and Ors.

6. A three-Judge Bench of this Court in Magan Mehrotra (supra) inter alia, therein held that apart from institutional preference, no other preference including reservation on the basis of residence is envisaged in the Constitution, in view of the decision of this Court in Dr. Pradeep Jain and Ors. v. Union of India.

7. The Delhi University on or about 31.12.2002 relying on or on the basis of the decision of this Court in Magan Mehrotra (supra) issued the following notification:

In view of the judgment of the Hon^{ble} Supreme Court of India dated 17.12.2002 in Writ Petition (C) No. 417 of 2002. It is hereby notified that for admission of P.G. Courses during the Academic Session 2003, only Delhi University Medical Graduates would be eligible against the 75% reserved seats of the students from Delhi who have taken admission in the University/States under the 15% All-India quota will not be eligible to seek admission in the P.G. Degree/ Diploma Courses of Delhi University against the 75% Reserve Seats. All concern may please be note.

Accordingly the students who have done MBBS under 15% All-India quota from the University /States other than Delhi University and have applied for admission to the P.G. Degree/Diploma Courses are not eligible to appear in P.G. Medical Entrance Test 2003 to be held on 9.2.2003. They are advised to apply for the return of the Bank Draft/Cheque.

16. Perusal of the paras quoted above shows that Petitioners therein were

standing on the same pedestal as the Petitioners herein along with similar challenge. Therein also, amendment in the Instructions Bulletin was made providing only institutional preference as exist herein.

17. The Hon''ble Apex Court, in the aforesaid case, considered the judgment in the case of Dr Parag Gupta (supra) and held that judgment in the case of Dr Parag Gupta (supra) did not lay down any law, rather, dealt with the situation on equitable and humanitarian grounds but, while doing so, deviated from the law laid down in Dr Pradeep Jain's case (supra). It was further held that sympathetic consideration shown in case of Parag Gupta (supra) came to be misapplied by the Allahabad High Court in the case of State of U.P. and Others Vs. Vineet Singh and Others, to 56 of the judgment in the case of Saurabh Chaudri are quoted to clarify the position in reference to the judgment in the case of Dr Parag Gupta and Vineet Singh and other judgments:

54. A deviation to the said dicta, however, was sought to be made by a two-Judge Bench of this Court in Dr. Parag Gupta's case (supra). In the said decision some of the students complained that whereas the students who had undergone studies in other Universities were entitled to reservation by way of domicile or institutional preference, but they, although had successfully completed in All India Entrance Test in MBBS Course, are not being permitted to complete with their fellow students of Delhi University on the ground of institutional preference, although they belong to the same class of students.

55. This Court in Dr. Parag Gupta (supra) did not lay down any law. 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 (supra) only by way of an interim arrangement. In inadvertently created reservation on domicile which was forbidden in Dr. Pradeep Jain's case (supra). The said provisional directions being binding on Delhi University came to be followed in subsequent years. The sympathetic consideration shown by this Court in Dr. Parag Gupta's case (supra) came to be misapplied by the Allahabad High Court in Vineet Singh's case wherein the High Court directed consideration of cases of the students who belonged to the State of U.P. irrespective of the fact that whether they had gone out of their home State on 15% all-India quota or not. This Court in State of U.P. and Others Vs. Vineet Singh and Others, clarified the position holding that the High Court was wrong in extending the benefit in Dr. Parag Gupta's case (supra) to other students and reiterated that Dr. Parag Gupta's decision was confined to the students who had gone to other States under 15% all-India quota. The ratio of the judgment in Dr. Parag Gupta's case (supra) came to be reiterated in Abhinav Aggarwal and Another Vs. Union of India and Others,

56. In Dr. Prachi Almeida Vs. The Dean, Goa Medical College and Others, a problem was faced by a student from Delhi who was admitted into Goa Medical College under the 15% all-India quota. She was denied admission in Goa on the ground that she was not resident of the said State. She, however, was married in

Goa. This Court followed Dr. Pradeep Jain's case (supra) and directed that the student cannot be denied admission on the basis of residence requirement holding that if the candidate has done MBBS Course in that State such a candidate would be eligible for admission in Post Graduate Medical Course therein.

18. The Hon'ble Apex Court thereupon considered the judgment in the case of Magan Mehrotra (supra) in conflict with Parag Gupta (supra) and approved judgment in Magan Mehrotra's case, the part of which is also quoted herein for ready reference thus:

57. Some students of the Delhi University, thereafter filed a writ petition questioning the residential reservation in Magan Mehrotra and Others Vs. Union of India (UOI) and Others, A Bench of this Court therein by an order dated 11.8.2002 noticing the conflict between the decisions in Dr. Pradeep Jain (supra) on the one hand and Dr. Parag Gupta (supra) on the other, issued notices to all the States excepting the States of Jammu & Kashmir and Andhra Pradesh and referred the matter to a three-Judge Bench. In Magan Mehrotra (supra), this Court held that the decision in Dr. Parag Gupta (supra) is contrary to the decision in Dr. Pradeep Jain (supra) stating : (SCC p.190, paras 8-9)

19. Perusal of the para quoted aforesaid shows that judgment in the case of Dr Parag Gupta (supra) to be contrary to the case of Dr Pradeep Jain (supra). In view of the aforesaid, the judgment in the case of Dr Parag Gupta has not been approved. The final conclusions in the case of Saurabh Chaudri (supra) are quoted thus:

Conclusions:

1) In the case of Central educational institutions and other institutions of excellence in the country the judicial thinking has veered around the dominant idea of national interest with its limiting effect on the constitutional prescription of reservations. The result is that in the case of these institutions the scope for reservations is minimal.

2) As regards the feasibility of constitutional reservations at the level of super-specialities, the position is that the judiciary has adopted the dominant norm, i.e. "the higher the level of the specialty the lesser the role of reservation". At the level of super-specialities the rule of "equal chance for equal marks" dominates. This view equally applies to all super-speciality institutions.

3) As regards the scope of reservation of seats in educational institutions affiliated and recognised by State Universities, the constitutional prescription of reservation of 50% of the available seats has to be respected and enforced.

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.

5) As regards private non-minority educational institutions distinction between

government aided and unaided institutions. While government/State can prescribe guidelines as to the process of selection and admission of students, the government/State while issuing guidelines has to take into consideration the constitutional mandate of the requirement of protective discrimination in matters of reservations of seats as ordained by the decisional law in the country. Accordingly, the extent of reservation in no case can exceed 50% of the seats. The inter-se merit may be assessed on the basis of a common All India Entrance Test or on the basis of marks at the level of qualifying examination.

6) The position with respect to minority aided institutions is that they are bound by the requirement of constitutional reservation along with other regulatory controls. However, the right to admit students of their choice being part of the right of religious and linguistic minorities, to establish and administer educational institutions of their choice, the managements of these educational institutions can reserve seats to a reasonable extent, not necessarily 50% as laid down in Stephens College case. Out of the seats left after the deduction of management quota, the State can require the observance of the requirement of Constitutional reservation.

7) As regards the unaided institutions, they have large measure of autonomy even in matters of admission of students as they are not bound by the constraints of the demands of Article 29(2). Nor are they bound by the constraints of the obligatory requirements of Constitutional reservation.

20. Perusal of conclusions at sub-para 3 and 4 clarify that the total seats can be divided in two parts; 50% to be filled in based on institutional preference i.e. from the students of the educational institution affiliated and recognised by the State University and remaining 50% to be filled in by open competition based on merit on all India level.

21. In the light of the aforesaid, para 2(B) of the Instructions Booklet providing institutional preference of 50% is for those who have passed out MBBS course from the institution affiliated or recognised by the Rajasthan University of Health Sciences cannot be held to be illegal. In fact, Petitioners are entitled and eligible to compete against remaining 50% seats open for all India competition. This is apart from the fact that they would otherwise be entitled to the institutional preference from the State from where they passed out MBBS course and if such institutional preference is not given in that State then to question it that State based on the directions of the Hon'ble Apex Court in the case of Magan Mehrotra and Saurabh Chaudri. In the case of Magan Mehrotra criteria of institutional preference is directed to be applied by all the States of India debarring reservation based on residence.

22. In the light of the aforesaid, challenge to the condition No. 2(B) of the Instructions Booklet cannot sustain, rather acceptance of prayer would amount to granting relief contrary to the judgment of the Hon'ble Supreme Court.

23. Now comes the question as to whether provision of 50% preference on

institutional basis makes 100% reservation for those who are passing out MBBS course from same University/State. Petitioners have made an argument to the aforesaid but could not substantiate on facts. It is in the situation when out of total seats available, the Respondents are keeping 50% seats available for all India competition and remaining with institutional preference and even for in-service candidate in equal ratio. Thus, question of 100% reservation of seats does not arise. In fact, judgment in the case of Saurabh Chaudri broadly divided PG seats in two parts; 50% to be filled in by open competition on all India basis and remaining 50% based on institutional preference i.e. from a student of an affiliated and recognised institution under the same State/University. Thus bifurcation of seats as made in the aforesaid judgment cannot be unsettled by this Court. In fact, any provision contrary to the law laid down by the Hon''ble Apex Court in the case of Magan Mehrotra (supra) cannot even allowed to stand as those States having different rules were also directed to make it on the pattern of institutional preference as has been indicated in the case of Pradeep Jain (supra). The aforesaid directions were specifically given in para 9 of the judgment in the case of Magan Mehrotra and otherwise, the contrary provision in Information Bulletin of Delhi University was struck down in para 8 of the said judgment itself.

24. Since the controversy raised herein was before the Hon''ble Apex Court in the case of Magan Mehrotra and in the case of Saurabh Chaudri (supra), I cannot take a different view than taken by the Hon''ble Apex Court. Relevant paras of both the judgments have been quoted in this judgment to show that as to what was the controversy therein and decision thereupon. This was even to focus as to whether instant cases exist on the same facts or not. The present cases having been covered by the judgments aforesaid, I am unable to accept the prayer made in the present writ petitions.

25. In view of the discussion made above, I do not find any merit in these writ petitions. Accordingly, same are dismissed with no order as to costs.