
(2009) 05 CHH CK 0019
In the Chhattisgarh High Court

Dr. Abhishek Mishra and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 21

Citation : AIR 2009 Chh 58

Hon'ble Judges : R.N. Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Judgement

Dhirendra Mishra, J.—The petitioners by the instant petition have prayed for the following substantial reliefs:

? A writ and/or an order in the nature of writ of certiorari or any other writ, do issue quashing the condition i.e. Clause No. 6.2 of Pre. P.G. Entrance Examination, 2009, prescribing that the candidates appearing the Pre. P.G. Examination must be a bona fide resident of the Chhattisgarh be struck down, as violative of fundamental rights guaranteed to the citizens of India.

? A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondent authorities to allow the petitioners to appear in the Pre. P.G. Entrance Examination, 2009 scheduled to be held on 11-4-2009 after accepting the form and other necessary documents available with the petitioners and if the petitioners qualify for the P.G. course, then be allowed to pursue their studies as per the rules prescribed in P.G. Medical Course.

2. The case of the petitioners, in brief, is that they were selected in all India Pre. Medical Test Entrance Examination and thereafter the Government of India, Directorate of Health Services allotted them seats in the Pt. Jawahar Lal Nehru Memorial Medical College, Raipur, against 15% reserved All India Quota. After obtaining degree, they got themselves registered with the Chhattisgarh Medical Council (Annexure-P/3).

3. The grievance of the petitioners is that they have obtained M.B.B.S. degree

from Medical College, Raipur. They have been registered by the State Medical Council and thus, they are entitled to practice medical profession throughout the country. At the time of their admission, they were eligible to appear in the Pre P. G. Entrance Examination, as per prevailing eligibility criteria under Rule 6.2 of the Chhattisgarh Pre P.G. Admission Examination Rules. However, in Chhattisgarh Pre P.G. Admission Examination 2009, eligibility criteria, as contained in Rule 6.2 of the Chhattisgarh Medical Snatkottar Pravesh Pariksha Niyam, 2004 (for short "the Rules, 2004"), has been amended to their detriment by prescribing that the candidate seeking admission to Post Graduate Course should be bona fide resident of the Chhattisgarh in terms of the definition laid down by the Government of Chhattisgarh apart from other conditions.

4. Shri B. P. Sharma, learned Counsel appearing for the petitioners submitted that the petitioners were allotted seats in the Medical College, Raipur of the State of Chhattisgarh against the prescribed All India Quota. By prescribing eligibility criteria of bona fide resident, 100% seats have been reserved for the candidates, who are bona fide residents of the Chhattisgarh or employees working under the Government of Chhattisgarh, which is not permissible. The same violates basic structure of the Federal State which guarantees every person to settle at any part of India and carry on any business for his livelihood and thus, the same violates Articles 14, 15, 16, 19 and 21 of the Constitution of India.

5. Reliance is placed in the matters of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , Dr. Parag Gupta Vs. University of Delhi and Others, , Dr. Prachi Almeida Vs. The Dean, Goa Medical College and Others, and Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, .

6. On the other hand, respondents No. 1 and 2 in their return as well as in their oral submissions, submitted that in the Medical College Raipur, in all 40 seats are available in the Post Graduation Course. Out of 40 seats, 20 seats have been surrendered to All India Pre PG Quota, similarly 12 of 24 seats of PG Diploma Course have already been surrendered to All India PG Quota. The examination to be held for the academic year 2009 is only for the State seats i.e. 20 PG Decree + 12 PG Diploma, therefore, contention of the petitioners that 100% seats for PG Course have been reserved for the bona fide residents of the Chhattisgarh is without any basis. Since 50% seats of PG Course is open to All India Quota, the candidate, who is not the bona fide resident of the State, can appear in All India Pre P.G. Entrance Examination including the petitioners. The constitutional validity of eligibility criteria based on domicile has been upheld by the Constitution Bench of the Supreme Court in the matter of Saurabh Chaudri (supra). The petition is misconceived and deserves to be dismissed.

7. We have heard learned Counsel for the parties.

8. The petitioners have questioned constitutional validity of Rule 6.2 of the Rules, 2004 which was amended vide notification; dated 20th February, 2009. The State Government in exercise of powers conferred under Sub-section (1) of

Section 4 of the Chhattisgarh Chikitsa Mahavidyalaya Ke Snatkottar Pathyakramon Main Pravesh Adhiniyam, 2002 (No. 28 of 2002), (for short "the Act, 2002") made the Chhattisgarh Medical Snatkottar Pravesh Pariksha Niyam, 2004, vide notification dated 24th April, 2004. Rule 6 of the above rules deals with eligibility criteria for admission to Post Graduate Course. Prior to the impugned amendment, the relevant portion of Rule 6.2 of the Rules, 2004 read as under:

Has passed MBBS (All examinations of MBBS course) from a Medical College now situated in Chhattisgarh State, and recognized by Medical Council of India and has completed compulsory rotating internship in a hospital recognized by Medical Council of India on or before 30th April of the year, in which Pre P.G. Examination is held.

Or

Is a bona fide resident of Chhattisgarh in terms of the definition laid down by the Government of Chhattisgarh and has passed MBBS examination from any Medical College recognized by Medical Council of India, and has completed compulsory rotating internship in a hospital recognized by Medical Council of India on or before 30th April of the year in which Pre-P.G. Examination is held.

9. The above rules were amended vide notification dated 20th February, 2009 by the State Government. The petitioners are aggrieved by the amended eligibility criteria according to which only bona fide residents of the Chhattisgarh in terms of the definition, laid down by the State Government, have been made eligible for admission against the State quota seats available for admission to Post Graduate Course. The grievance of the petitioners is that prior to amendment, the candidates, who had passed MBBS from Medical College situated in the Chhattisgarh and recognized by the Medical Council of India, were also eligible for admission. However, the aforesaid eligibility criteria has been deleted by an amendment in the rules effected in the year 2009.

10. From the averments. In the return filed by the respondents, which has not been disputed by the petitioners, it appears that 50% of the total seats available in the State of Chhattisgarh for Post, Graduate Course as well as Post Graduate Diploma Course have been surrendered to All India P.G. quota and the examination to be conducted under the Rules, 2004 is only for admission to the remaining 50% seats available under the State quota.

11. The questions involved in this petition are:

? Whether reservation in admission to PG Course on the basis of domicile is permissible ?

? Whether the petitioners, who joined medical course and obtained graduation degree of MBBS from the colleges situated in the State of Chhattisgarh, could be denied admission in Pre-PG Entrance Examination to be conducted by the respondents under the Rules, 2004 only on the ground that they are not bona

bona fide residents of Chhattisgarh State ?

12. The above questions and other related questions with regard to admission to post-graduate courses in medical colleges came for consideration before the Supreme Court on numerous occasions. The principles of law laid down in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, still hold field and the same has been affirmed by the latest judgment of the Constitution Bench in the matter of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, .

13. In the case of Dr. Pradeep Jain, the question before the Hon"ble Supreme Court was - Whether, consistently with the constitutional values, admission to a medical college or any other institution of higher learning situate in a State can be confined to those "who have their domicile within the State or who are residents within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess domicile or residential qualification within the State, irrespective of merit"? Extensively dealing with fundamental right guaranteed under Part-III of the Constitution, it was observed thus:

6. But, it is clear that so far as admissions to an educational institution such as a medical college are concerned, Article 16(2) has no application. If, therefore, there is any residence requirement for admission to a medical college in a State, it cannot be condemned as unconstitutional on ground of violation of Article 16(2). Nor can Article 16(2) be invoked for invalidating such residence requirement because that article prohibits discrimination on ground of place of birth and not on ground of residence and, as pointed by this Court in D.P. Joshi Vs. The State of Madhya Bharat and Another, , residence and place of birth are "two distinct conceptions with different connotations both in law and in fact". The only provision of the Constitution on the touchstone of which such residence requirement can be required to be tested in Article 14 and that is precisely the challenge which falls to be considered by us in these writ petitions.

Extensively dealing with numerous judgments delivered by the Hon"ble Supreme Court in this regard, it has been held that reservation based on residence requirement does not impinge upon principles of equality enshrined in Article 14 of the Constitution. The rules framed by various State Governments providing for requirement of bona fide resident of the State or resident for a particular number of years of the State was upheld.

14. After taking into consideration large number of decisions on the point and upon detailed analysis of the constitutional provisions and case laws, in paragraph 22 of the judgment it was held thus:

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 postgraduate 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. 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 MBBS course. But, even in regard to admissions to the postgraduate course, we would direct that so far as super specialities such as neuro-surgery 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.

15. In the matter of Dr. Parag Gupta Vs. University of Delhi and Others, , students were admitted in MBBS course under 15% all India quota in the medical colleges situated in the States, other than their origin. They were seeking admissions in post-graduate courses, however, the States or authorities concerned have framed admission rules in such a way that they could neither pursue their studies in the migrated State nor in their home State. Considering peculiar grievances of the petitioner of that case, it was held thus:

14. On this basis we think the State/Union Territories/universities should allow students who had pursued courses outside their home State to participate in the entrance examination held in their home State irrespective of any kind of preference that may have been adopted for selection to PG medical course.

16. In the matter of Dr. Prachi Almeida Vs. The Dean, Goa Medical College and Others, , the grievance of the petitioner was that she was admitted into Goa Medical College under 15% all-India quota. She was denied admission to the Post Graduate course on the ground that she did not fulfil the conditions relating to residence in the State of Goa for a period of 10 years in terms of the Goa (Rules for Admission for Post-graduate Degree Courses of Goa University at the Goa Medical College) Rules, 1998. In the meanwhile, the petitioner was also married to one Goan and she had settled down in Goa. The Hon'ble Supreme Court allowed the petition and directed the respondents to consider the case of the petitioner for admission to the Post Graduate Course for the year for which she had applied if she could have been on the basis of her performance selected to an appropriate course chosen by her in that year without reference to the Rule relating to requirement of 10 years' residence.

17. In the matter of The Dean, Goa Medical College, Bambolim, Goa and Another Vs. Dr. Sudhir Kumar Solanki and Another, , the question for consideration was - constitutional validity of Goa (Rules for Admission for Postgraduate Degree Courses of Goa University at the Goa Medical College) Rules, 1998, which

provided thus:

III. Eligibility, Preference and Order of Merit-(1) Eligibility.- Candidates applying for admission to the postgraduate degree courses shall:

- (i) possess the MBBS degree of Goa University or any other university recognized as equivalent thereto by Goa University and the Medical Council of India,
- (ii) complete compulsory rotatory internship of one year on or before the last date of receipt of application,
- (iii) have resided in the State of Goa for a minimum period of ten years preceding the last date of receipt of application.

The High Court of Bombay at Goa allowing the claim of the respondents issued direction that the first respondent and other similarly situated students who applied for the post-graduate course in Goa Medical Colleges in terms of the above rules shall be considered keeping in view that residency requirement as contained in Rule III(1)(iii) is directory. Allowing the appeal of the State of Goa, the Hon"ble Supreme Court held that there is no infirmity whatsoever in Rule III(1)(iii) of the Goa Rules. 1998 and the same cannot be said to be merely directory or for any reason illegal. The eligibility criteria statutorily stipulated can by no means be held to be directory resulting in nebulous state of affairs in the matters of selection of candidates for admission.,.

18. The question before the Constitution Bench of the Hon"ble Supreme Court in the matter of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, centered around constitutional ". validity of the reservation whether based on domicile or institution in the matter of admission into post-graduate courses in government-run medical colleges. While answering the above question in negative, it has been held thus:

29. The first question that arises for ; consideration is. whether the reservation on the basis of domicile is impermissible in terms of Clause (1) of Article 15 of the Constitution of India. The term "place of birth" occurs in Clause (1) of Article 15 but not "domicile". If a comparison is made between Article 15(1) and Article 16(2) of the Constitution of India, it would appear that whereas the former refers to "place of birth" alone, the latter refers to both "domicile" and "residence" apart from place of birth. A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression "place of birth" is not synonymous to the expression "domicile" and they reflect two different concepts. It may be true, as has been pointed out by Shri Salve and pursued by Mr. Nariman, that both the expressions appears to be synonymous to some of the members of the Constituent Assembly but the same, in our opinion, cannot be a guiding factor. In D.P. Joshi Vs. The State of Madhya Bharat and Another, a Constitution Bench held so in no uncertain terms.

30. This Bench is bound by the said decision.

31. In *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, this Court observed (SCC p. 277 : (at p. 569 of AIR), para 29):

29. The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogenous class. Poverty in rural areas cannot be the basis of classification to support reservation for, rural areas. Poverty is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the district to which he belonged that he was born in rural area and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15.

19. After elaborately discussing the earlier judgments on the subject, ratio of law laid down in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, has been affirmed thus:

70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in *Dr. Pradeep Jain*. The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India.

71. However, the test to uphold the validity of a statute on equality must be judged on the touchstone of reasonableness. It was noticed in *Dr. Pradeep Jain* case that reservation to the extent of 50% was held to be reasonable. Although subsequently, in *Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others*, it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time produced a large number of post-graduate doctors. Our Constitution is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding.

72. Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in *Dr. Pradeep Jain* case should be reiterated in preference to *Dr. Dinesh Kumar (II)* case. Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.

20. If we examine the impugned provisions incorporated in the Rules, 2004 by way of amendment in the year 2009 in the light of principles of law laid down by the Hon'ble Supreme Court, as detailed in the foregoing paragraphs, we observe that indisputably 50% of the total seats available in PG course in the State of

Chhattisgarh has been allocated to all India quota and the same is to be filled by all India competitive examination and the Pre-PG Entrance Examination is conducted for admission to the remaining 50% seats available in the colleges of the State. As per the constitutional mandate 15% of the above seats are reserved for the candidates belonging to SC category, 21% is reserved for ST category and 14% seats are reserved for the candidates belonging to Other Backward Category (excluding creamy layer). A total number of 6 seats of Postgraduate Degree and 2 seats of Post-graduate Diploma are reserved for Assistant Surgeons working under and sponsored by the State Government.

21. According to return filed by the State, 40 seats are available in, the Post Graduation Course and 24 seats are available in the PG Diploma Course in the State and thus, only 20 seats of PG Course and 12 seats for PG Diploma Course is available under the State quota. The petitioners, who were admitted in the Medical College situated in the State of Chhattisgarh against 15% All India quota can participate in the said Entrance Examination conducted for Post Graduate Course against 50% seats surrendered by the State Government. Apart from this, the petitioners can also participate against the State quota reserved for post-graduate courses in their States of origin.

22. As regards the contention of the petitioners that while they were allotted State of Chhattisgarh for admission to MBBS course against all India quota, they legitimately expected that they shall be also eligible for participating in the Pre-P.G. Entrance Examination to be conducted by the State of Chhattisgarh, their admission against 15% all India quota for MBBS course in the State of Chhattisgarh does not confer them any right to seek admission against the State quota for post-graduate course. The State Government in exercise of powers conferred u/s 4 of the Act, 2002 was well within its right to regulate admission to PG Course in the medical colleges/universities in the State of Chhattisgarh. The constitutional validity of the rules prescribing bona fide resident as eligibility criteria has already been upheld by the Hon'ble Supreme Court in its various Judgments, therefore, the same cannot be held to be unconstitutional solely on the ground that at the time of admission of the petitioners to be medical courses, institutional candidates of the State Medical Colleges were also eligible for admission to PG course against the State quota. The object of the State or framing impugned rules appears to be an attempt to impart medical education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the inhabitants of the State of Chhattisgarh apart from providing adequate means of livelihood to them. The object of classification underlying the impugned rules is clearly to help to some extent students who are residents of Chhattisgarh in prosecution of their studies and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. The State has to contribute for the upkeep and the running of its

educational institutions. The establishment of medical college requires considerable finance to maintain such an institution. If the State has to spend considerable money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State ? Therefore, restricting admission against 50% quota reserved by the State to the candidates who are bona fide residents of this State cannot be termed to be unreasonable classification.

23. On the basis of aforesaid discussion, we hold that Rule 6.2 of the Rules, 2004, as amended in the year 2009, is neither unconstitutional nor illegal.

24. There is no substance in the instant petition, the same deserves to be and is accordingly dismissed.

There shall be no orders as to costs.