

(2006) 04 MP CK 0100

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 4103, 4127-28, 4138, 4140, 4162, 4238, 4347, 4477, 4497, 4563, 4577, 4685, 5035, 5257 and 5515 of 2006

Dr. Jaya Khicharia and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Conduct of Examinations and Admission Rules, 2006 — Rule 15, 15(1)
Constitution of India, 1950 — Article 14, 226

Citation : (2006) 3 MPJR 181 : (2006) 4 MPLJ 78

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Ajay Mishra and Ku. Shilpa Pathak, No. 3 in W.P. Nos. 4103, 4127, 4128, 4138 and 4140/2006, Sanjay Yadav, Dy. A.G. Nos. 1 to 3 in W.P. Nos. 4162, 4563, 4577, 4685, 4497 and 5515/2006, Ajay Mishra and Ku. Shilpa Pathak, No. 6 in W.P. No. 4162/2006, Sanjay Yadav, Dy. A.G. Nos. 1, 3 and 4 in W.P. No. 4238/2006, Ajay Mishra and Ku. Shilpa Pathak, No. 2 in W.P. No. 4238/2006 and Sanjay Yadav, Dy. A.G. No. 1 and 3 in W.P. No. 4477/2006, Sumit Raghuwanshi, in W.P. No. 4347, 4477, 4497 and 4685/2006, N.S. Kale, Kapil Patwardhan and Sumit Raghuwanshi, in W.P. No. 4103/2006, Alok Arathe, in W.P. Nos. 4127, 4128, 4138 and 4140/2006, Akshay Dharmadhikari, in W.P. No. 4162 and 4577/2006, Manikant Sharma, in W.P. No. 4238/2006, Ravindra Shukla, in W.P. No. 4563/2006, Sharad Verma, in W.P. 5035 and 5257/2006 and N. Tiwari, in W.P. No. 5515/2006, for the appearing parties; Sanjay Yadav, Dy. A.G. for the Respondent Nos. 1 and 2 in W.P. Nos. 4103, 4127, 4128, 4138, 4140, 4347, 5035 and 5257/2006, Ajay Mishra and Ku. Shilpa Pathak, for the Respondent No. 3 in W.P. Nos. 4103, 4127, 4128, 4138 and 4140/2006, Sanjay Yadav, Dy. A.G. for the Respondent Nos. 1 to 3 in W.P. Nos. 4162, 4563, 4577, 4685, 4497 and 5515/2006, Ajay Mishra and Ku. Shilpa Pathak, for the Respondent No. 6 in W.P. No. 4162/2006, Sanjay Yadav, Dy. A.G. for the Respondent Nos. 1, 3 and 4 in W.P. No. 4238/2006, Ajay Mishra and Ku. Shilpa Pathak, for the Respondent No. 2 in W.P. No. 4238/2006 and Sanjay Yadav, Dy. A.G. for the Respondent No. 1 and 3 in W.P. No. 4477/2006, for the Respondent

Judgement

A.K. Patnaik, C.J.—The petitioners" in all these writ petitions under Article 226 of

the Constitution of India are all candidates for the Pre-P.G. Medical and Dental Test for admissions into the Post-Graduate and Post-Graduate Diploma Courses in the Medical and Dental Colleges in the State of Madhya Pradesh. In the Rules, made by the State Government relating to entrance to Post-Graduate and Post Graduate Diploma Courses in Medical and Dental Colleges in the State of Madhya Pradesh in 2005 (hereinafter referred to as the Rules of 2005), to be eligible for the entrance examination, a candidate was required to be a bona fide resident of Madhya Pradesh or must have passed all MBBS/IJDS examinations from Medical/Dental College of Madhya Pradesh. A new set of Rules has been framed by the State Government relating to entrance to Post-Graduate and Post-Graduate Diploma, Medical and Dental Courses in Medical and Dental Colleges in the State of Madhya Pradesh in 2006, called the Pre-PG Medical and Dental Post-Graduate Entrance Test, 2006, Conduct of Examinations and Admission Rules (hereinafter referred to as the Rules of 2006). Rule 15 of the Rules of 2006 is titled "Eligibility" and Clause 1 (i) of the said Rule 15 provides that the candidate must be a bonafide resident of Madhya Pradesh and must have passed all MBBS/BDS examinations from Medical/Dental Colleges of Madhya Pradesh. The petitioners have challenged the aforesaid provision in Rule 15 (1) (i) of the said Rules of 2006 in so far as it provides that the candidate must be a bonafide resident of Madhya Pradesh on the ground that the said provision is ultra vires Article 14 of the Constitution of India.

2. Mr. N.S. Kale, learned Senior Counsel for the petitioners in W.P. No. 4103 of 2006 submitted that whereas under the Rules of 2005, the candidates was to be either a bonafide resident of Madhya Pradesh or one who has passed all MBBS/BDS examinations from Medical/Dental College in the State of Madhya Pradesh, under the impugned Rules of 2006, the candidate has to be a bonafide resident of Madhya Pradesh and also must have passed all MBBS/BDS examinations from Medical/Dental College in the State of Madhya Pradesh. He submitted that the petitioners in these cases have passed all MBBS/BDS examinations from Medical/Dental Colleges in the State of Madhya Pradesh but they are not bonafide residents of Madhya Pradesh and therefore, under the said Rule 15(1) of the impugned Rules of 2006, they are ineligible for the Pre-Post-Graduate Test and for this reason, they have challenged the aforesaid provision in Rule 15 (1) of the Rules of 2006, in so far as it provides that the candidate must be a bonafide resident of Madhya Pradesh, lie submitted that in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , a three Judges Bench of the Supreme Court held that residence requirement within the State cannot be a ground for admission to Post-Graduate Courses, although a certain percentage of seats may be reserved on the basis of institutional preference in the sense that students who have passed MBBS examination from a Medical College or a University may be given preference to PG Course in the same Medical College or the University, but such reservation on the basis of institutional preference basis should not exceed 50% of the number of open seats available to the students for admission to the Post-Graduate Course. He submitted that the aforesaid law laid down by

the Supreme Court in Dr. Pradeep Jain (supra), has been reiterated by the Supreme Court in Magan Mehrotra and Others Vs. Union of India (UOI) and Others, , as well as in Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, . He submitted that in view of the aforesaid clear law laid down by the Apex Court time and again that residence requirement within the State cannot be an eligibility criterion for purposes of admission to Post-Graduate Medical Courses, the provision in Rule 15 (1) of the Rules of 2006 to the effect that the candidate must be a bonafide resident of Madhya Pradesh is clearly violative of Article 14 of the Constitution of India and the law declared by the Supreme Court. learned Counsel for the petitioners in W.P. Nos. 4127, 4128, 4138, 4140 and 4162 of 2006 submitted that although the petitioners are all bonafide residents of Madhya Pradesh, they apprehend that their applications for the entrance examination may be rejected on the ground that they are not bonafide residents of the State of Madhya Pradesh. learned Counsel for all the petitioners in this batch of cases adopted the aforesaid submissions of Mr. Kale.

3. Mr. Sanjay Yadav, learned Deputy Advocate General appearing for the respondent State relying on the return filed by the answering respondents in W.P. No. 4347 of 2006 submitted that the aforesaid provision in Rule 15 (1) of the Rules of 2006 that the candidate must be a bonafide resident of Madhya Pradesh was introduced after the decision of the Apex Court in the case of Saurabh Chaudri and Ors. (supra), in compliance with the letter dated 3-12-2004 of the Directorate General of Health Services (Medical Examination Cell). He relied on some paragraphs from the judgment of the Supreme Court in Saurabh Chaudri and Ors. (supra), in support of his aforesaid submission.

4. In Dr. Pradeep Jain and Ors. v. Union of India and Ors. (supra), the Supreme Court, while holding that no reservation based on residence requirement within the State is at all permissible in admissions to Post-Graduate Courses in Medical Colleges and University such as MS and MD, observed that a certain percentage of seats may be reserved on the basis of institutional preference, but such reservation on the basis of institutional preference should not in any event exceed 50% of the total number of open seats available for admission to the Post-Graduate Courses. The relevant paragraph of the said decision of the Supreme Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, is quoted hereinbelow:

We are therefore of the view that so far as admissions to Post-Graduate Course, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for an 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 admission 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. 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 Post-Graduate 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.

In *Magan Mehrotra and Ors. v. Union of India and Ors.* (supra), the Supreme Court found that a two Judges Bench in *Dr. Parag Gupta Vs. University of Delhi and Others*, had taken a different view by upholding residential preference, which was contrary to the judgment of the three Judges Bench in *Dr. Pradeep Jain's* case, and observed that the decision rendered by the Court in *Dr. Pradeep Jain's* case had taken the correct criteria into consideration and agreed with the principles evolved and the ratio given in *Dr. Pradeep Jain's* case. In *Saurabh Chaudri v. Union of India and Ors.* (supra), four Judges of the Supreme Court, speaking through Khare, C.J., as he then was, observed that Courts have specifically banished the residence requirement for purposes of admission in Post- Graduate Medical Courses for all times and in support of this proposition, referred to the decisions of the Supreme Court in various cases including *Dr. Pradeep Jain's* case and *Magan Mehrotra* (supra). Hence, so far as residence requirement within the State was concerned, the Supreme Court has taken a clear view in the aforesaid case at *Saurabh Chaudri*, that residence within the State cannot be a requirement for admission to Post-Graduate Medical and Dental Courses.

5. In the said judgment, the Supreme Court found that in *Dr. Pradeep Jain's* case, the reservation by way of institutional preference should be to the extent of 50% if it was to be reasonable and not violative of Article 14 of the Constitution, but in the case of *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, the extent of reservation by way of institutional preference was reduced to 25% of the total seats and the Supreme Court observed that the original scheme as framed in *Dr. Pradeep Jain's* case, should be reiterated in *Dr. Dinesh Kumar* (supra), and reservation under the institutional preference therefore should be enhanced to 50% of the total seats since that was in the public interest. It is this increase of reservation by way of institutional preference from 25% in *Dinesh Kumar's* case to 50% in *Saurabh Chaudri's* case on the basis of *Pradeep Jain's* case, which has led to the Directorate General of Health Services (Medical Examination Cell) to issue the letter dated 3-12-2004 saying that the reservation by way of institutional preference should now be confined to 50% of the seats in the public interest.

This would be clear from the letter dated 3-12-2004 of the Directorate General of Health Services (Annexure R-I), relevant paragraph of which is quoted hereinbelow:

I am directed to say that as per the "Scheme" approved and devised by the Hon'ble Supreme Court of India the allotment of seats by personal appearance of the candidates for admission against PG (Medical) courses in different specialities under 50% All India Quota - 2005 will start from 3-3-2005. The allotment of PG seats in MD/MS and Diploma Courses will be based on the information provided by participating Colleges in All India Quota Scheme. During preceding years this Directorate used to call for the information from Colleges/Institutes/States about the number of Post-Graduate seats to be allocated under 25% All India Quota. However, in this connection, I am to mention that the Hon'ble Supreme Court in their judgment dated 4th November, 2003 in Writ Petition (Civil) No. 29 of 2003 (Saurabh Chaudhari and Ors. v. U.O.I, and Ors.) has ruled as follows :

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's case (supra), should be reiterated in preference to Dr. Dinesh Kumar's case (supra). Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.

6. The stand taken by the respondents in the reply, therefore, that the provision in Rule 15 (1) of the Rules of 2006 to the effect that the candidate must be a bonafide resident of Madhya Pradesh has been made pursuant to the decision of the Supreme Court in the case of Saurabh Chaudh and Ors. v. Union of India and Ors. (supra), and the letter dated 3- 12-2004 of the Directorate General of Health Services is not at all correct. As we have held above, in Saurabh Chaudri and Ors. v. Union of India and Ors. (supra), the Supreme Court has reiterated the law laid down in Dr. Pradeep Jain's, case that residence within the State cannot be a requirement for admission into Post-Graduate Medical/Dental Courses.

7. For the aforesaid reasons, we direct that the petitioners in these cases will not be denied admissions to the Post-Graduate Degree and Diploma Courses (Medical/Dental) in Medical Colleges in the State of Madhya Pradesh on the ground that they are not bonafide residents of Madhya Pradesh. We make it clear that this judgment will not in anyway affect the examinations and the selection process for admissions to the Post-Graduate Degree/Diploma Courses in different Medical and Dental Colleges in the State of Madhya Pradesh, which have to be completed within the prescribed time schedule and the relief granted herein is confined to the petitioners in these case .