
(2017) 05 GAU CK 0019
In the Gauhati High Court
Case No : 6665 of 2014

Dr. Narendra Kumar Sharma

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

Constitution of India, Article 14, Article 15 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Annulment or suspensio

Citation : (2017) 05 GAU CK 0019

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : DIVISION BENCH

Advocate : B. Pathak, R. Sarma, K.N. Choudhury, R.M. Deka, N. Deka, D. Saikia, D. Upamanya, S. Sharma

Judgement

1. This judgment and order shall dispose of WP(C) 1083/15, WP(C) 222/2016, WP(C) 6665/2014, WP(C) 2372/2017 and WP(C) 2441/2017. The petitioners, in all these petitions, are residents of Assam but have earned their respective MBBS degrees from Medical Institutions outside Assam. They are mainly aggrieved with Rule 6(iii) of the Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 2006 and have therefore challenged its validity. The Rule under challenge reads as under: "6(iii) Have MBBS degree from a Medical College of Assam/University of the State of Assam recognised by the Medical Council of India."

2. The above quoted Rule provides that only those candidates, who have earned their MBBS degrees from Medical Colleges of Assam/University of the State of Assam recognised by the Medical Council of India, are eligible for admission to Post Graduate Courses in the State. Therefore, due to the restriction imposed by it, the petitioners have been found ineligible for admission to Post Graduate Courses.

3. According to the petitioners, the impugned Rule is in violation of Articles 14 and 15(1) of the Constitution of India as well as the law laid down by the Supreme Court in *Pradeep Jain (Dr.) v. Union of India* (1984) 3 SCC 654 and *Saurabh Chaudri v. Union of India* (2003) 11 SCC 146. The petitioners also submit that since all of them are residents of Assam, they cannot be denied admission to Post Graduate Courses only for the reason that they have earned their MBBS degrees from outside Assam. The State, on the other hand, has defended the Rule on the ground that it is strictly in consonance with the above referred decisions of the Supreme Court.

4. The present position of Post Graduate courses in the State of Assam is as such. There are total 482 of both Post Graduate degree and Diploma Seats in the Government Medical Colleges of the State. Out of which, 433 seats are for Post Graduate degree and 49 seats are for Diploma seats. And, out of 433 seats, for Post Graduate degree, 50% i.e. 217 seats have been earmarked for the State quota on the basis of institutional preference in terms of impugned Rule 6(iii) and 216 seats have been earmarked for the All India quota for the Session, 2017. Also, 433 being odd number, 217 and 216 seats are allotted to the State and All India quota on rotation basis alternatively. Likewise, out of 50% of 49 Post Graduate Diploma seats, 25 seats have been earmarked for All India quota and 24 seats have been earmarked for the State quota. Admittedly, two seats from the State quota are reserved for the North Eastern Council.

5. The question, which calls for our consideration, is whether Rule 6(iii) is constitutionally valid and is in consonance with the decisions of the Supreme Court in *Pradeep Jain (Dr.)* and *Saurabh Chaudri* (supra).

6. In the case of *Pradeep Jain (Dr.)*, the Supreme Court made a detailed analysis of the constitutional provisions and also the practical difficulties faced by the State in the admission of Post Graduate Medical Courses. And, while doing so, the Supreme Court referred to the recommendation of the Indian Medical Council, which reads as under:- "Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities."

The Supreme Court then also referred to the opinion expressed by the Medical Education Review Committee. The opinion is as follows:

"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/Union Territory in which the institution is located".

Not only this, even the policy statement of the Government of India was taken into consideration, which is as follows:-

"So far as admission to the institutions of post-graduate 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."

7. The Supreme Court, after having considered these recommendation, opinion and policy statement, in paragraph 22 of the judgment, held as under:- "We are therefore of the view that so far as admissions to postgraduate 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 postgraduate 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 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 MBBS 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."

8. Later, in the case of Saurabh Chaudri (supra) also, the Supreme Court has approved and reiterated its view taken in Pradeep Jain's case.

9. The Supreme Court has, thus, held that admission to Post Graduate Courses may not be desirable on reservation based upon institutional preference, but having regard to broader considerations of equality of opportunity and institutional continuity in education, which has its own importance, the State may reserve 50% of the total number of open seats available on institutional preference. And, nowhere it has said that 50% of the total number of seats available, be reserved from the seats earmarked for the State quota. For reservation on institutional preference, the Supreme Court has not made any distinction between the seats earmarked for State and All India quota. Meaning thereby that the State is free to reserve 50% of the total 482 seats available for admission to Post Graduate Degrees and Diploma courses in Government Medical colleges. Therefore, the reservation provided under Rule 6(iii) on institutional preference is from total number of 482 Post Graduate degree and Diploma seats in the four Medical Colleges of the State, which do not exceed 50% of the open seats available for admission. The Rule is apparently in consonance with the law laid down by the Supreme Court on reservation based on institutional preference. We accordingly uphold its validity.

10. The learned Advocate General, however, states that the petitioners, who have been admitted to Post Graduate Courses during the academic session 2015-16 and are pursuing the same, shall not be disturbed nor their admissions will be cancelled. We appreciate this stand of the State Government and direct that admissions of such petitioners, if any, shall not be disturbed and the same shall be treated as final admissions.

11. Before parting, we wish to mention that in the impugned Rule 6(iii), no exception is made in respect to students who had qualified for medical degree courses and had got admission under the All India quota of 15% and migrated to different States to pursue their course of study and now wish to seek admission into Post Graduate courses in the State of Assam. We hope and trust that appropriate exception will be made by the State Government in the light of decision of the Supreme Court in *Dr. Parag Gupta v. University of Delhi*, (2000) 5 SCC 684.

12. Subject to our direction in paragraph 10 of the judgment and order, the petitions are dismissed.