

(2016) 04 RAJ CK 0122

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4560 of 2016 with Civil Misc. Stay Application No. 4015 of 2016

Dr. Sreyas Sharma

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 WLC 231

Hon'ble Judges : Mr. Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Mr. S.K. Gupta, AAG, for the Respondent; Mr. Mahendra Shah, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

1. This writ petition has been preferred by Dr. Sreyas Sharma inter alia with the prayer that the action of the respondents in excluding the colleges run by other private statutory Universities in the eligibility clause of Instruction Booklet for State Medical and Dental PG seats On-line Allotments, 2016 issued by Respondent No.2 on the basis of AIPGMEE (NBE)/AIPGDEE (AIIMS)-2016 for Rajasthan, being illegal and unconstitutional, may be quashed and set aside.

2. According to the averments made in the writ petition, the petitioner has passed out his MBBS Degree in March, 2015 from National Institute of Medical Sciences University/Medical College created under the statute in the 1 name of NIMS University by the Act passed by the State Legislature, notified in the Gazette notification dated 29.03.2008. Such University has been duly recognised by Medical Council of India (for short "MCI") under Section 10 of " the Medical Council of India Act (for short ?MCI Act").

3. Mr. Mahendra Shah, learned counsel for the petitioner submitted that earlier the Central Government was organizing separate examination under 50% quota

in the name of All India Post Graduate Medical Entrance Examination and the State Government used to organize examination for remaining 50% seats for giving admission to different medical colleges run by different statutory Universities. In 2016, the Central Government decided to conduct All India Post Graduate Medical Entrance Examination, 2016 (for short "AIPGMEE, 2016") for filling up 50% of all India seats meant for Central Government. Remaining 50% seats were to be filled from common merit list prepared under AIPGMEE, 2016. It is applicable for those States, which have given their consent for common examination. The State of Rajasthan has given its consent for filling its 50% quota seats from AIPGMEE, 2016 instead of conducting the examination and therefore, it is bound by the guidelines and the instructions issued by the National Board of Examinations (for short "NBE") as per the MCI guidelines under the MCI Act. Learned counsel in this respect referred to Clause 9B of Information Bulletin for AIPGMEE, 2016 and submitted that this clause provided for admission to medical seats, other than all India 50% quota seats in various States. It is stated therein that State authorities namely the Director of Medical Education of the State/Principal Secretary of Medical Education/Vice-Chancellor/Principal/Superintendent of Institute or any other competent authority may approach the Ministry of Health and Family Welfare, Government of India for obtaining result and data of the candidates for AIPGMEE, 2016 from NBE. NBE shall be providing only the data of candidates and their results without applying the reservation prevalent in these particular states. The merit list/category wise lists for the State/University concerned shall be generated by the State itself as per their qualifying criteria, applicable guidelines and state reservation policies. Names of the States have also been provided therein, who at the time of publication of Bulletin have confirmed to NBE that they shall not be conducting their own entrance examination and shall make use of AIPGMEE, 2016 for admission to MD/MS/PG diploma courses under their control, which also includes name of State of Rajasthan. List of medical colleges of participating State Governments was also annexed therewith as Annexure-B, which also included name of NIMS College, Jaipur.

4. Mr. Mahendra Shah, learned counsel for the petitioner further submitted that Respondent No. 2, the Chairman, PG Medical and Dental Counselling Board-2016 has put an illegal condition in respect of candidates seeking admission in non-service category seats by providing that the candidates should have obtained MBBS qualification only from University of Rajasthan/Rajasthan University of Health Sciences. This condition, according to learned counsel, is wholly illegal and discriminatory because the petitioner has been treated to be ineligible candidates whereas similarly situated candidates, who have passed out MBBS from NIMS College, if they have joined services of the State Government, are eligible against in-service quota. Learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in Vishal Goyal & Others v. State of Karnataka & Others, (2014) 11 SCC 456, which matter also related to admission in postgraduate medical/dental courses in government medical and

dental colleges as well as in the State quota in private medical and dental colleges in the State of Karnataka. In that case, Clause 2.1(a) of the Information Bulletin of PGET-2014 dealing with eligibility criteria, debarred the writ petitioners therein from appearing in the entrance tests as they did not fulfil the criteria of being a candidate of Karnataka origin. The Supreme Court in that case held such exclusion ultra vires of Article 14 of the Constitution and declared the same null and void and the State Government was directed to publish fresh information bulletin for admission to PG courses in government colleges as well as State quota of the private colleges. It is argued that action of the State Government is wholly illegal and unconstitutional because the State Government has not conducted separate examination under 50% quota seats for the State and the colleges agreed to take students from the merit list under 50% State quota out of the examination conducted by NBE in the name of AIPGMEE, 2016. Learned counsel for the petitioner has produced for perusal of the Court statement showing intake of various medical colleges in the State including NIMS College, which he claims to have downloaded from the website of Medical Council of India. Instruction Booklet issued by the Office of Chairman, PG Medical and Dental Counselling Board-2016 provides that the instructions therein would be applicable for State Medical and Dental PG seats On-line Allotments, 2016. Since, there is no exclusion, either expressed or implied, this would also apply to private medical and dental colleges and the admission board has to allot students for RG. Medical Courses to private medical colleges.

5. Mr. S.K. Gupta, learned Additional Advocate General has opposed the writ petition and submitted that the respondents in the present case have not excluded the candidates from consideration for admission to PG courses on the basis of their domicile, which was the case before the Supreme Court in Vishal Goyal & Other (supra). In fact, the respondents in the instruction Booklet for State Medical and Dental PG Seats On-line Allotments 2016 (Annexure-2) have merely provided that the candidates seeking admission against non-service category should obtain MBBS qualification only from University of Rajasthan/Rajasthan University of Health Sciences. This provision is based on Ordinance 278-E-IV-(Eligibility for Admission) Clause (iii) read with Ordinance 278-E-II (Reservation) Clause (c) providing for non-service seats. Clause (iii) of Ordinance 278-E-IV clearly provides that candidates for admission against that quota must have passed Final MBBS/BDS examination from the University of Rajasthan/Rajasthan University of Health Sciences. The petitioner has not challenged the validity of the aforesaid Ordinances. It is wrong to suggest that PG Medical and Dental; Counselling Board-2016 would also allocate candidates to private medical colleges. Such private medical colleges make admission against intake of the seats provided to them by Medical Council of India on their own. The respondents have no role to play therein. In any case the question whether or not NIMS University is not conducting its own entrance examination and making admission in the post graduate medical studies courses against intake of MD/MS/PG/Diploma in various subjects provided to it cannot be determined without

impleadment of NIMS University as party respondent in the present writ petition. Private Medical colleges have their own specific procedure for admitting students against PG studies courses. Aforesaid Ordinances are not discriminatory qua the petitioner because it do not grant preferential treatment on the basis of domicile. It only tantamounts to giving institutional preferences. This provision was challenged before Division Bench of this Court at Principal Seat at Jodhpur in Dr. Shilpa Godara & Others v. State of Rajasthan & Others (D.B. Civil Writ Petition No. 477/2011 and 22 other connected writ petitions) and the Division Bench vide its judgment dated 26.08.2011 after relying on number of Supreme Court decisions upheld the aforesaid provision to be intra vires of the Constitution.

6. I have given my anxious consideration to rival submissions and carefully studied the cited judgments and examined material placed on record.

7. Under challenge before the Supreme Court in Vishal Goyal & Others (supra) was the provision of the Information Bulletins for Postgraduate Entrance Test, 2014 published by National Board of Examinations for admission to the State quota set as in Karnataka Government Colleges and institutions and Karnataka Government quota seats in private colleges/institutions/deemed universities. One Bulletin contained all information for admission to MD/MS/Medical Postgraduate Diploma Courses (Medical) and the other contained all information for admission to MDS/PG Diploma Courses (Dental). Clause 2.1 of these information Bulletins provided that no candidate shall be admitted to a professional educational institution unless he is a citizen of India, who is of Karnataka origin and has studied MBBS/MDS degree in a medical/dental college situated in Karnataka or outside Karnataka, and affiliated to any university established by law in India recognised by Medical Council of India and the Government of India. The Supreme Court relied on its earlier judgment in Dr. Pradeep Jain v. Union of India, (1984) 3 SCC 654 and observed that the basis of that judgment was Article 14 of the Constitution which guarantees to every person equality before the law and equal protection of the laws. The excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and will affect the right to equality of opportunity under Article 14 of the Constitution. The Supreme Court in para 12 of the report held, "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 in Vishal Goyal & Others (supra), the Supreme Court intervened because in the State of Karnataka, some seats in the private medical and dental colleges or institutions came to the State quota which were to be filled up by the State or its instrumentality or agency by giving preference on the basis of domicile of that, which are subject to the equality clauses in Article 14 of the Constitution. In the instant case, no preference has been given to any candidate on the basis of domicile.

8. In the present case, it is not that any seat of PG medical study course, out of the intake provided to NIMS College or any other private college has been given to the State quota where admission has to be made at the discretion of the State authorities. I do not find any reason to disbelieve statement of learned Additional Advocate General appearing on behalf of the respondents when he states at Bar that Respondent No. 2, PG Medical & Dental Counselling Board-2016 is holding counselling only for admission to PG medical and dental courses in the State medical colleges and that such Board is not holding any counselling for admission to private medical colleges. Neither any specific plea to the contrary has been taken by the petitioner in the memorandum of writ petition, nor any material suggesting otherwise has been placed on record. Even NIMS Medical College has also not been impleaded as party respondent to the writ petition. In any case, the question of institutional preference being intra vires of the Constitution is no more res-integra. So far this question is concerned, I am, in this behalf, fortified in taking that view from the judgment of the Division Bench of this Court in Dr. Shilpa Godara (supra). Division Bench of this Court in that case relied on judgment of the Supreme Court in Dr. Pradeep Jain (supra) wherein it was held that it is desirable not to provide for any reservation for residence requirement within the State or on institutional preferences. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, 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% of the total number of open seats available for admission to the post graduate course. The Division Bench also observed that ratio of the aforesaid judgment in Dr. Pradeep Jain (supra) has also been followed in Magan Mehrotra & Others v. Union of India & Others (2003) 11 SCC 186 wherein also provisions with regard to institutional preference to be given to those who have studied in institutions was upheld. The Division Bench in concluding para of the judgment held as under:

"In view of the aforesaid dictum of the Hon"ble Apex Court, we find that 50% of institutional reservation could have been made by Rajasthan University of Health Sciences. The provision cannot be said to be unconstitutional in any manner. The submission raised that they are not being permitted to stake claim in States from which they have passed. We cannot examine the legality of aforesaid action. Moreover, it is open to the petitioners to stake claim against 50% of PG Seats to be filled by way of All India Competitive Examination."

9. The Supreme Court in Dr. Pradeep Jain (supra) relying on its earlier judgment in Dr. Jagdish Saran & Others v. Union of India, AIR 1980 SC 820, in para 22 of

the report observed thus :

"22. So much for admission to the M.B.B.S. Course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement with the State or on institutional preference for admission to post graduate courses, such as,

M.D.; M.S. and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation.....

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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 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 M.B.B.S 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."

10. The Supreme Court in *Magan Mehrotra & Others* (supra) revisited its earlier decisions in *Dr. Pradeep Jain* (supra) and *Dr. Parag Gupta v. University of Delhi & Others*, (2000) 5 SCC 684 and in para 8 and 9 held as under:

"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* cases and answered in those two cases. A bare look at the judgment of the three-Judge Bench in *Pradeep Jain* case and two- Judge Bench in *Parag Gupta* case in relation to the question of preference in the postgraduate course, it cannot but be held that *Parag Gupta* case took a different view by upholding the residential preference, in essence, which was contrary to the judgment of three-Judge Bench in *Pradeep Jain* 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*

case had taken the correct criterion into consideration and we therefore, agree with the principles evolved and the ratio given in Pradeep Jain case so far as it relates to admission into the postgraduate 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 all-India basis. In this view of the matter, the impugned Bulletin of Information issued by Delhi University in relation to the postdoctoral (DM/MCh) postgraduate degree must be held to be contrary to the direction of this Court in Pradeep Jain 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."

11. In view of above, I do not find any merit in this writ petition and the same is accordingly dismissed.

Stay Application also stands dismissed.