
(2016) 09 RAJ CK 0117
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12573 of 2016

Jitender

APPELLANT

Vs

Rajasthan University of Health Sciences

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 WLC 414

Hon'ble Judges : Mr. Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : Mr. Kapil Gupta, Advocate, for the Petitioner; Mr. M.A. Khan, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mr. Kanwaljit Singh Ahluwalia, J. - Instant petition has been preferred under Article 226 of the Constitution of India praying inter alia that the respondents be directed to grant admission to the petitioner in M.Sc. (Medical) Course and furthermore, the action of the respondents not to consider the petitioner for admission in M.Sc. Medical Course on the ground that he is not resident of State of Rajasthan, be set aside, as the same is not permissible.

2. Briefly, stated the petitioner obtained Degree in Bachelor of Science from Maharaja College, Jaipur, which is affiliated to the University of Rajasthan. The petitioner, in pursuance of the advertisement issued by the Rajasthan University of Health Sciences, applied for admission to M.Sc. Medical Course.

3. Mr. Kapil Gupta, learned counsel appearing for the petitioner, has submitted that the petitioner, being meritorious is entitled to grant of admission, but he is being denied the same on the ground that he is not resident of State of Rajasthan.

4. Mr. M.A. Khan, learned counsel appearing for the respondent/University, has drawn attention of this Court towards Information Booklet issued by the

Rajasthan University of Health Sciences.

5. In the said Booklet, under the heading of "Domicile Criteria", it has been specified as under :-

"Domicile Criteria.

Admission to these courses through RUHS M.Sc. (Med.) Entrance Examination is open to all residents of India. However, preference shall be given to candidates of Rajasthan domicile."

6. Counsel appearing for the petitioner contends that even though the petitioner was meritorious, in the counselling, he has not been granted admission for the reason that he is not domicile of the State of Rajasthan. Counsel appearing for petitioner further contends that the residential preference is not permissible in view of law laid down by Supreme Court in the case of Nikhil Himthani v. State of Uttarakhand and Others, reported as (2013) 10 S.C.C. 237.

7. It may be apposite to reproduce here relevant Paras i.e. Para Nos.16, 19 and 20 from the above quoted judgment rendered by Supreme Court in Nikhil Himthani (supra) :-

16. We now come to clauses 2 and 3 of the Eligibility Criteria in the Information Bulletin. Under clauses 2 and 3, a domicile of Uttarakhand who has passed MBBS from a medical college of some other State having been admitted either through the 15% All India quota or through the pre-medical test conducted by the concerned State Government has been made eligible for admission to a post-graduate medical course in the State quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to post-graduate course under clauses 2 and 3 of the Eligibility Criteria. Preference, therefore is given only on the basis of residence or domicile in the State of Uttarakhand under clauses 2 and 3 of the Eligibility Criteria and such preference on the basis of residence or domicile within a State has been held to be violative of Article 14 of the Constitution in the case of Dr. Pradeep Jain and Ors. v. Union of India and Ors. (supra) and Magan Mehrotra and Ors. v. Union of India and Ors. (supra)."

19. Thus, it will be clear from what has been held by the three-Judge Bench of this Court in Magan Mehrotra and Ors. v. Union of India and Ors. (supra) that no preference can be given to candidates on the basis of domicile to compete for the institutional quota of the State if such candidates have done their MBBS course in colleges outside the State in view of the decisions of this Court in Dr. Pradeep Jain and Ors. v. Union of India and Ors. (supra). Hence, clauses 2 and 3 of the Eligibility Criteria in the Information Bulletin are also violative of Article 14 of the Constitution.

20. In the result, we allow the writ petition, quash clauses 1, 2 and 3 of the Eligibility Criteria in the Information Bulletin and declare the admissions made on the basis of clauses 1, 2 and 3 of the Information Bulletin as void. The Respondents will now publish a fresh Information Bulletin and redo the

admissions to the post-graduate medical courses in the Government colleges of State of Uttarakhand in accordance with law by the end of August, 2013 and also ensure that the colleges in which the students are admitted in post-graduate medical courses hold the required number of classes as prescribed by the MCI."

8. As held by the Supreme Court in *Nikhil Himthani* (supra), domicile criteria as given in the Information Booklet published by the Rajasthan University of Health and Sciences is violative of the Constitution of India.

9. This Court cannot ignore that national unity is a paramount social value that envisions equal treatment of all citizens of the nation. Furthermore, there can be no escape from the fact that merit is the rule in case of courses of higher education i.e. Post-graduation.

10. Consequently, there is no other opinion but to strike down the domicile criteria as given in the Information Booklet published by the Rajasthan University of Health and Sciences being violative of Article 14 of the Constitution of India.

11. Hence, present petition is, hereby, allowed. Respondents are directed to consider the petitioner on the basis of the merit. The act of the respondents to grant preference to the domicile of the State of Rajasthan over the meritorious candidates being bad in the eye of law is struck down and the respondents are directed to make admission on the basis of merit alone dehors of the domicile criteria.

12. Upon disposal of main petition, the stay application, filed therewith does not survive and the same is also disposed of.