

(2014) 09 KL CK 0151

In the High Court Of Kerala

Case No : WA. No. 1327 of 2014 in WP (C). 20562/2014

Mayank Bharti

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 16(2), 32

Citation : (2015) 2 ILR 497 : (2014) 4 KLT 944

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : George Poonthottam and A.K. Preetha, Advocate for the Appellant; Roshan. D. Alexander, Sr. Government Pleader and Elvin Peter P.J, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. By Judgment dated 23.9.2014 the learned Single Judge has disposed of a batch of writ petitions. This writ appeal has been filed against the judgment dated 23.9.2014 in Writ petition No. 20562 of 2014, by which order the learned Single Judge has dismissed the writ petition filed by the appellant. The appellant is hereinafter referred to as the writ petitioner and respondent as respondent.

2. The facts giving rise to the appeal needs to be noted for deciding the issues in this appeal. The writ petitioner was an applicant seeking admission to Post Graduate Super Speciality Course in Kerala in pursuance to admission notice and Prospectus for admission to post-graduate Super Specialty courses, Kerala-2014, issued by the Directorate of Medical Education. The petitioner had applied for admission in M.Ch. Genito Urinary surgery and M.Ch. Neuro Surgery.

3. In the writ petition, the writ petitioner challenged clause 3.1.3 of the prospectus for admission in so far as it reserves 50% of the seats to candidates of Kerala origin. The petitioner had passed his MBBS in All India quota from Government Medical College, Calicut. He completed his post graduation in

General Surgery from Government Medical College Thiruvananthapuram. He also completed his senior residency in Government Medical College Thiruvananthapuram. The petitioner after submitting the application for admission for Super Specialty of M.Ch. Course had filed the writ petition on 6.8.2014 praying for the following relief's:

"(a) A writ of certiorari or other appropriate writ, order or direction quashing and setting aside Clause 3.1.3 of Exhibit P3 confining reservation of 50% to persons of Kerala Origin on the basis of place of birth of the candidate or either of the parent's as arbitrary, illegal and violative of Article 14 and 15 of the Constitution of India.

(b) Declare that Clause 3.1.3 of Exhibit P3 confining reservation of 50% to persons of Kerala Origin on the basis of place of birth of the candidate or either of the parent's is ultra vires the Constitution.

(c) Read down Clause 3.1.3 of Exhibit P3 as 50% of reservation to persons who have undergone/pursued their degree and postgraduate studies in Kerala in consonance with the prospectus of 2010, 2011, 2012 and 2013.

(d) A writ of mandamus or any other appropriate writ, order or direction directing the respondents to recast the selection list prepared pursuant to Exhibit P3 with institutional preference for 50% of the total seats.

(e) And be further pleased to issue such orders including interim orders as are warranted on the facts and circumstances of the case."

4. The learned Single Judge has passed an order on 12.9.2014 granting the following interim order:

" There shall be an interim order not to admit any candidate in the reserved quota for the Kerala origin in terms of the prospectus."

The learned Single Judge, after hearing the parties, by elaborate judgment has dismissed the writ petition on 23.9.2014. The learned Single Judge upheld Clause 3.1.3 of the Prospectus holding that the said clause is a separate source of admission to Super Specialty and does not violate any constitutionality. Aggrieved by the same, the appellant has come up in appeal.

5. This court, in this appeal, passed an interim order on 26.9.2014 directing the counselling which is scheduled to take place on 27.9.2014 to be continued subject to further orders to be passed in the writ appeal. By the consent of the learned counsel for the parties, the appeal has been heard today and is decided by this judgment.

6. We heard learned counsel for the appellant Sri. George Poonthottam, learned Government Pleader Sri. Roshen. D. Alexander appearing for respondents 1 to 3 as well as learned counsel for the fourth respondent Sri. Elvin Peter.

7. Learned counsel for the appellant/petitioner, in support of the writ petition

submitted that clause 3.1.3 of the prospectus which reserves 50% of the seats for candidates of Kerala origin is in violation of Article 15(1) of the Constitution of India and in teeth of several judgment of Apex Court. It was laid down there cannot be any reservation for seats in post graduation and Super Specialty in medical education on the basis of place of birth or residence. He submits that learned Single Judge committed error in upholding the said clause observing that clause 3.1.3 is a separate source of admission in super Specialty. He submits that although relevant judgments are relied on holding that reservation in Super Specialty medical education on the basis of place of birth or domicile is not permissible, the same is not considered in the right perspective and learned single Judge by giving untenable reasons had dismissed the writ petition.

8. Learned Government Pleader appearing on behalf of respondents 1 to 3, in support of the judgment of learned Single Judge submits that sufficient reasons were given by learned Single Judge. By filing counter affidavit the first respondent substantiated their stand in making 50% seats available to persons having Kerala origin or candidates who were domiciled in Kerala were considered under the said 50% quota. He submits that the reasons given in paragraph 3 and 4 justify the reservation of 50% seats for Kerala origin. He submits that the said clause does not violate Article 14 of the Constitution of India. He further submits that the admissions in various Specialities which were notified in the prospectus were already been completed much before passing the interim order on 12.9.2014. He submits that only counselling which took place on 27.9.2014 admissions have to be taken by 30.9.2014, which is the last date fixed for admission and hence at this later stage the court may not interfere in the admissions which were already completed prior to 12.9.2014.

9. Learned counsel for respondent No. 4 also supported the order of the learned Single Judge and adopted the argument made by respondents 1 to 3. He also submits that admissions have already been completed and the court may not interfere with clause 3.1.3. Learned counsel for the parties placed reliance on various judgments of the Apex Court and this Court in support of their submissions.

10. The issue which is to be answered in the present writ appeal is with regard to clause 3.1.3. Clause 3 of the prospectus deals with eligibility for admission Clause 3, which is relevant in the present is quoted below:

"3. ELIGIBILITY FOR ADMISSION

3.1 Nativity : Applicants should have satisfied the following conditions in clause 3.1.1 & 3.1.2.

3.1.1 Indian citizen

3.1.2 Have passed the MBBS degree/PG degree (MD/MS/Dip NB) from any of the Medical Colleges within India.

3.1.3 Not exceeding 50% of the seats in each speciality are set apart for Indian

Citizen of Kerala origin for selection based on their rank in the rank list.

3.2 Basic Academic qualifications

3.2.1 MBBS Degree

3.2.2 Appropriate Postgraduate degree(MD/MS) of the universities in Kerala or any other university recognized by Kerala University of Health Science (KUHS) as equivalent thereto or appropriate Diplomat of National Board (Dip. N.B.)

Appropriate Post Graduate qualification required for applying to each of the Super Speciality Course will be MD/MS/Dip. N.B. in the subjects noted below"

Another clause which is relevant is Clause 9.5. It requires certificate/documents to be attached. Clause 9.5 is to the following effect:

"9.5. Certificates/Documents to be attached along with the application form.

Attested Xerox copies of the following documents: (1) MBBS Degree Certificate.

(ii) Post Graduate Degree/Dip. N.B. Certificate *.

* Candidates who have appeared or are appearing for the MD/MS/Dip. N.B. Examination should produce the PG Degree Certificates at the time of counselling.

(iii) Certificate to prove age.

(iv) Relevant page of the Secondary School Leaving Certificate/Indian Passport/Birth Certificate showing the candidate's or either of the parent's place of birth in Kerala to prove nativity as per clause 3.1.3. In case of certificate of parent is attached, corroborative certificate to establish the relationship between the parent and the candidate should also be attached.

(v) Any other certificate required along with the application.

Fee receipt of the amount paid in bank, in original. Certificate in the application form:

(vi) For applicants who have undergone MBBS/PG Degree/Dip. N.B. course in the Medical Colleges in India, a certificate to that effect obtained from the Principal of the Medical College, where he/she has studied, will be accepted for nativity claim as per clause 3.1.2.

11. Clause 3.1.3 as quoted above provides that not exceeding 50% of the seats in each speciality are set apart for Indian Citizen of Kerala origin for selection based on their rank in the rank list. The substance of the said clause is that 50% in each speciality are set apart for the students of Kerala origin for selection based on their rank in the rank list. Only candidates having Kerala origin are eligible to compete against the 50% quota in each speciality. The said clause is being violative of Article 15(1) of the Constitution. Article 15(1) reads as follows :

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place

of birth.-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

12. The issue which has been raised in the appeal has been considered by the Apex Court in several judgments. Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , was a case where the Apex Court had laid down that on the medical admission on the basis of residence violates Article 14 of the Constitution of India. The relevant paragraph in the said judgment is paragraph 17.

17. We may also conveniently at this stage refer to the decision of" this Court in D.N. Chanchala's case (supra). The reservation impugned in this case was university-wise reservation under which preference for admission to a medical college run by a university was given to students who had passed the PUC examination of that university and only 20 per cent of the seats were available to those passing the PUC Examination of other universities. The petitioner who had passed PUC examination held by the Bangalore University, applied for admission to any one of the medical colleges affiliated to the Karnataka University. But she did not come within the merit list, on the basis of which 20 per cent of the open seats were filled up and since she had not passed the PUC Examination held by the Karnataka University, her application for admission to a medical college affiliated to the Karnataka University was rejected. She therefore filed a writ petition under Article 32 of the Constitution contending inter alia that the University-wise distribution of seats was discriminatory and being without any rational basis was violative of Article 14. This contention was however rejected by a 3 Judge Bench of this Court. Shelat, J, speaking on behalf of the Court held that there was no constitutional infirmity involved in giving preference to students who had passed the PUC Examination of the same University and gave the following reasons in support of this conclusion:-

"The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government as also other private agencies, who found such centers for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the Universities are set up for satisfying the educational needs of different areas where they are set up and medical colleges are established in those areas, it can safely be presumed that they also were so set up to satisfy the needs for medical training of those attached to those universities. In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like

medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of district wise or unit wise selection as any student from any part of the State can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders up to 20% of the total available seats in any one of these colleges, i.e., those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is therefore, impossible to say that the basis of selection adopted in these rules would defeat the object of the rules as was said in *Rajendran's* case or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held by them. A preference to one attached to one university in its own institutions for post-graduate or technical training is not un-common. Rules giving such a preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with these which were held invalid in the aforesaid two decisions. Further, the Government, which bears the financial burden of running, the Government colleges is entitled to lay down criteria for admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged. In our view, the rules lay down, a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Art. 14." University-wise distribution of seats was thus upheld by the Court as constitutionally valid even though it was not in conformity with the principle of selection based on merit and marked a departure from it. The view taken by the court was that university wise distribution of seats was not discriminatory because, it was based on a rational principle. There was nothing unreasonable in providing that in granting admissions to medical colleges affiliated to a university, reservation shall be made in favour of candidates who have passed PUC examination of that university, firstly, because it would be quite legitimate for students who are

attached to a university to entertain a desire to "have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own" university, since that would promote institutional continuity which has its own value and secondly, because any student from any part of the country could pass the qualifying examination of that university, irrespective of the place of his birth or residence."

13. The Constitution Bench judgment in *Saurabh Chaudri and Others Vs. Union of India (UOI) and Others*, was a case where the Apex Court had again occasion to exercise the issue of reservation of seats in Medical Education based on residence and institutional preference. Paragraphs 29 to 32 which relevant are quoted below:

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 appeared 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* case a Constitution Bench held so in no uncertain terms.

30. This Bench is bound by the said decision.

31. In *State of U.P. v. Pradip Tandon* this Court observed: (SCC p. 277, para 9)

"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 homogeneous 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."

32. Answer to the said question must, therefore, be rendered in the negative."

14. The Apex Court categorically stated that no reservation can be made on the basis of place of origin or domicile. The Apex Court has followed the judgment in D.P. Joshi Vs. The State of Madhya Bharat and Another, . The judgment of the Apex Court in Nikhil Himthani Vs. State of Uttarakhand and Others, is a case which covers the issue which has arisen in the present case. In the said case, the petitioner who was a person from Delhi and had qualified in the All India Pre-Medical Test conducted by the Central Board of Secondary Education for the 15% seats reserved for all India quota. He was admitted in the MBBS course in the year 2007 in the Medical College at Haldwani in the State of Uttarakhand. He completed his MBBS course and thereafter completed one year of internship. He appeared in the NEET examination conducted by the Medical Council of India for admission to post graduate medical course in India and qualified in the examination and claims to have secured 60th rank of the State of Uttarakhand. In the Information Bulletin it is published that for counselling for Uttarakhand State quota seats in MD/MS/MDS/PG Diploma courses in medical/dental colleges of Uttarakhand State through NEET PG-2013/MDS-2013 for the academic session 2013-14 the eligibility criteria was mentioned in paragraph 3, which is quoted below :

"3. On 07.06.2013, the Department of Medical Education, Government of Uttarakhand, Dehradun, published an Information Bulletin for counselling for Uttarakhand State quota seats in MD/MS/MDS/PG Diploma courses in the medical/dental colleges of Uttarakhand State through NEET PG-2013/MDS-2013 for the academic session 2013-14. In this Information Bulletin, the Eligibility Criteria for admission to the postgraduate medical/dental courses was as follows:

Eligibility Criteria:

The Counselling for admission shall be open to such candidates who:

1. Have passed the MBBS/BDS Examination from Uttarakhand viz. Government Medical College, Haldwani. Shri Guru Ram Rai Institute of Medical Sciences, Patel Nagar Dehradun, Himalayan Institute of Medical Sciences, Jolly Grant, Dehradun, Uttaranchal Dental College, Maajri Grant, Dehradun & Seema Dental College, Rishikesh and were admitted through competitive examination (Uttarakhand State PMT) and not through NRI/Management/Institute Quota.
2. Are Domicile of Uttarakhand and have passed MBBS/BDS examination from Medical/Dental Colleges of other States, recognized by MCI/DCI, and were admitted through 15% All India Quota (allotted by Government of India).
3. Are Domicile of Uttarakhand and have passed MBBS/BDS examination from Medical/Dental Colleges of other States in India, recognized by MCI/DCI, and were admitted through Pre Medical Entrance Test conducted by the concerned State Government.
4. Have completed Compulsory Rotatory Internship Training on or before 31.03.2013.

5. The eligible candidates who get selected through NEET-PG 2013/NEET (MDS)-2013 will be given admission on available seats in post graduate courses by Counselling Board according to their rank in State merit list, made available by NBE/MCI/DCI/AIIMS and the seat available at that time.

6. Having name in the State merit list of eligible candidates provided by MCI/DCI/NBE/AIIMS will not be the right of the candidate for getting PG seats unless he/she fulfills all the eligibility criteria regarding Domicile, reservation policy, provisions of bond etc. mentioned in the information bulletin and/or amendments made thereafter till the time of counselling."

Before the Apex Court, it was contended by learned counsel for the petitioner relying on the judgment Dr. Pradeep Jain (Supra) that there cannot be any reservation on the basis of domicile or place of birth. The contention was objected by the State. The Apex Court referring to an earlier judgment of Apex Court, in paragraph 14, held that clause 2 and 3 of the eligible criteria on which preference was given on the basis of residence or domicile in the state of Uttarakhand under clause 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 Nikhil Himthani's case (Supra), paragraphs 14, 15 and 16 are as follows :

"14. 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).

15. In fact, in Dr. Parag Gupta Vs. University of Delhi and Others, the facts were that Dr. Parag Gupta was born and brought up in Delhi but had studied the MBBS course in Tamil Nadu having been allotted to Tamil Nadu under the 15% All India quota on the basis of his selection on All India basis. He filed a writ petition praying that he should be permitted to participate in the entrance examination conducted by the Delhi University for admission to 75% seats reserved for candidates who have passed MBBS in the institutions in Delhi. His contention before the Court was that his home State is Delhi and he had gone out to the State of Tamil Nadu to pursue his studies on All India quota and he should now be allowed to participate in the competition for the post-graduate seats reserved for the students passing MBBS from institutions under Delhi University. The Delhi

University and the intervening students of different institutions under Delhi University who were competing for the institutional quota of Delhi University raised an objection to the aforesaid contention of Dr. Parag Gupta. A two Judge Bench of this Court allowed Dr. Parag Gupta to participate in the competitive examination for the institutional quota of Delhi University and rejected the objection of the Delhi University and the intervening students in the following words:

12. The objection of the University and the intervening students is that such students will have an unfair advantage of competing in all-India quota + home State quota + institutional quota in that University where they studied. We fail to see any unfair advantage in this regard inasmuch as all students have to take common entrance test with reference to their home State and face stiff competition. The students in the home State if at all are put to disadvantage only to a small degree of taking competition with respect to very few students failing in that category of the Petitioners. On the other hand, inclusion of such students will make it broad-based as well thereby striking a balance. Thus, we think, if students of the home State are also allowed to participate in the entrance test, there will be uniformity all over the country and small disadvantage removed with respect to a small section of the student community does not disturb the balance and the advantage derived achieves uniformity.

These reasons given by the two Judge Bench of this Court in Dr. Parag Gupta v. University of Delhi and Ors. (supra) did not find the approval of the larger Bench of three Judges in Magan Mehrotra and Ors. v. Union of India and Ors. (supra) which held:

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 the three-Judge Bench in Pradeep Jain case.

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.

16. 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 postgraduate medical courses hold the required number of classes as prescribed by the MCI."

15. Another recent judgment relied on by the learned counsel for the appellant is judgment of Apex Court in Vishal Goyal and Others Vs. State of Karnataka and Others, . In the said case, which was against pursuing of admission to post graduate medical Dental course in the State of Karnataka, the eligible criteria was framed, which provided that candidate should be a citizen of India, who is of Karnataka origin and has studied MBBS/BDS degree in a medical/Dental college in Karnataka. Paragraph 2.1 is relevant and it is quoted below:

"2.1 No candidate shall be admitted to a professional educational institution unless the candidate possesses the following qualifications or eligibility to appear for the entrance test namely:

a. He is a citizen of India who is of Karnataka origin and has studied MBBS/BDS degree in a Medical/Dental college situated in Karnataka or outside Karnataka, and affiliated to any university established by law in India recognized by Medical Council of India and Government of India.

Explanation: "A candidate of Karnataka Origin" means a candidate found eligible under Clause (i) or (ii) below, namely:

i. A candidate who has studied and passed in one or more Government recognized, educational institutions located in the State of Karnataka for a minimum period of TEN academic years as on the last date fixed for the submission of application form, commencing from Ist standard to MBBS/BDS and must have appeared and passed either SSLC/10th standard or 2nd PUC/12th standard examination from Karnataka State. In case of the candidate who has taken more than one year to pass a class or standard, the years of academic study is counted as one year only."

Clause 7 (ii) which is also relevant is to the following effect :

7) xx xx xx

"ii. The candidate should have studied and passed 1st and 2nd years pre-University Examination or 11th and 12th standard examination within the State of Karnataka from an Educational Institution run or recognized by the State Government or MBBD/BDS from a professional educational institution located in Karnataka and that either of the parents should have studied in Karnataka for a minimum period of 10 years.

Documents to be produced, namely:

- 1) SSLC or 10th standard Marks card;
- 2) 2nd PUC of 12th standard Marks Card of the candidate;
- 3) Qualifying degree certificate and all phases marks card;

4) Domicile certificate issued by the Tahsildar in the prescribed proforma (Annexure-I);

5) If claiming reservation benefits: Caste/Caste Income Certificate issued by concerned Tahsildar-For SC/ST in Form-D, Category-I in Form-E and 2A, 2B, 3A and 3B in Form F and

6)(a) A study certificate for either of the parent having studied for at least 10 years in Karnataka From the Head of the educational Institution where he/she has studied. Further, school study certificates should be countersigned by the concerned Block Educational Officer (BEO)/Deputy Director of Public Instructions (DDPI) COMPULSORILY in the Proforma prescribed (Annexure-III);"

The Apex Court considering the earlier judgment and considering the submission of learned counsel for the parties laid down the following in Nikhil Himthani's case (Supra) in paragraph 10 and 12:

"10. The Constitution Bench of this Court has held in Saurabh Chaudhri and Ors. v. Union of India and Ors. (supra) that giving institutional preference is a matter of State Policy which can be invalidated only in the event of it being violative of Article 14 of the Constitution. Hence, the question that we have to decide in this writ petition is whether clauses 1, 2 and 3 of the Eligibility Criteria in the information bulletin are ultra vires Article 14 of the Constitution of India."

"12. Relying on the aforesaid reasons in Dr. Jagadish Saran and Ors. v. Union of India (supra) a three Judge Bench of this Court in Dr. Pradeep Jain's case (supra) held that 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 therefore reservation based on residential requirement in the State will affect the right to equality of opportunity under Article 14 of the Constitution but: 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. This view expressed in Dr. Pradeep Jain's case has been reiterated by another three Judge Bench of this Court in Magan Mehrotra and Ors. v. Union of India and Ors. (supra) after a reconsideration and independent examination."

16. The law declared by the Apex Court in the aforesaid case clearly lays down that for admission to Post graduate Medical Course, no reservation can be made on the basis of place of birth or domicile. Clause 3.1.3 which is quoted above clearly indicates that reservation of 50% seats have been made on the basis of Kerala origin i.e., place of birth.

17. Learned counsel appearing for respondents 1 to 3 submits that under Clause 3.1.3, the persons who were also domicile of the State were also treated under the same clause and permitted. Clause 3.1.3 read with clause 9.5 as quoted

above indicate that reservation for admission has been made on the basis of place of birth of the candidate or of either of the parents" place of birth in Kerala. In the above circumstances, a candidate has to be a native of Kerala, to become eligible to the benefit of clause 3.1.3. The said clause is clearly in teeth of Article 15(1) of the Constitution of India and law as declared by the Apex Court as noted above. Learned counsel for respondents 1 to 3 has placed reliance on the Division Bench judgment in Dr. Saurabh Jain and Others Vs. State of Kerala and Others, The Division Bench in the said case, considering the clause where, for admission in Post graduate Medical course in Kerala, it was provided that only on account of non-availability of candidate of Kerala origin, the candidates belonging to other State shall be considered for admission. Learned Single Judge has struck down the said clause and held violative of Article 15(1). A Writ Appeal was filed challenging the said order. In the said context, several observations were made by the Division Bench where the Division Bench has made observation that the application or violation of Article 14 has to be considered in a realistic manner and it should not be applied State wise or region wise when the students seeking admission hail from all States and all parts of the country. Observation was made that it was just and equitable for the court to hold that Clause (9) and Article 14 should apply for admissions only to the Universities in Kerala, which will deprive the local students in Kerala. In Saurabh Jain's case (supra) the court held that :

" In our view, the application or violation of Article 14 has to be considered in a realistic manner and it should not be applied State wise or region wise when the students seeking admission hail from all States and all parts of the country. Cl. (9) of the Medical Council regulations above referred applies to Universities of all other states and it is the admitted position that in most States reservation or preference is given to local students. When this is the position in other States, we do not think it would be just and equitable for the court to hold that Cl. (9) and Art. 14 should apply for admissions only to the Universities in Kerala, which will deprive the local students in Kerala of the preferences given to them by the Government in Kerala. In other words, in our view, so long as equal opportunity to Keralites is not provided in Universities of other States, there is nothing wrong in Government providing preference for admission to Keralites in the Medical Colleges in Kerala."

Ultimately, the Division Bench held that 100% reservation for Kerala students is not justified and has to be declared unreasonable and arbitrary and no relief was granted since the admissions commenced six months before. The Division Bench judgment of this court has not approved that reservation of seats to Kerala origin upto 50% is permissible. The Division Bench had declared 100% reservation as unreasonable and arbitrary. The question as to whether 50% reservation for Kerala origin is violative or not did not fall for consideration before the Division Bench. The said judgment is to be thus confined to the law as laid down and the ratio of judgment cannot be read to mean that the Division Bench laid down that reservation upto 50% to Kerala origin is permissible. More so the pronouncement of the Apex Court as noted above that it was clearly laid down that reservation

on the basis of place of birth or domicile is violative of Article 14 of the Constitution and does not help the respondents in the present case.

18. The learned counsel for the appellant has also referred to another Division Bench judgment in Mohammed Sulaiman Vs. Director of Medical Education, in which the Division Bench has struck down a similar clause in the prospectus pertaining to admission in MBBS Course where 100% reservation was given to candidates of Kerala origin. The said Division Bench judgment was not placed before the Division Bench in Dr. Saurabh Jain and Others Vs. State of Kerala and Others, .

19. In view of the above, we are of the clear observation that clause 3.1.3 is in violation of Article 15(1) and cannot be sustained. Thus we are of the view that clause 3.1.3 deserves to be struck down from the prospectus.

20. Now we come to the issue of relief which may be granted to the appellant in the present appeal. As noted above, interim order was issued directing the respondents not to admit any candidate in the reservation quota for the Kerala origin, which was passed on 12.9.2014. We have also in the said writ appeal passed an order on 26.9.2014 permitting the counseling which was scheduled on 27.9.2014, which as to go on, subject to the result of the writ appeal. It has been the submission of learned Government Pleader that counselling was earlier held on 31.7.2014 and admission on the said counseling had already been completed.

21. In view of the orders passed by the learned single judge, by interim order dated 12.9.2014 and order of this court on 26.9.2014 we are of the view that only a direction can be issued to respondents 1 to 3 to re-do the counseling, which was held on 27.9.2014, disregarding Clause 3.1.3. In view of the fact that admissions have to be completed by 30.9.2014, we direct respondents 1 to 3 to re-do the counseling on 30.9.2014 and thereafter consequential admission be completed. The appellant in the event is eligible for admission in re-doing of counseling, may also be granted admission.

22. In the result, this appeal is allowed and the following directions are issued:

1. The judgment of learned Single Judge dated 23.9.2014 is set aside.
2. Clause 3.1.3 of the prospectus, Ext. P3 is struck down. However, the admissions made on the basis of counseling held prior to 12.9.2014 shall not be affected by this judgment.
3. Respondents 1, 2 and 3 shall re-do the admission which was completed on 27.9.2014 disregarding clause 3.1.3 and make consequential order regarding admission including the claim of the appellant.
4. Parties shall suffer their respective costs.

Learned counsel for respondents 1, 2 and 3 may note down the operative portion and communicate the order for compliance.