

(2006) 03 KL CK 0045

In the High Court Of Kerala

Case No : W.A. No"s. 292 and 294 of 2006

Mohammed Sulaiman

APPELLANT

Vs

Director of Medical Education

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (2006) 2 ILR (Ker) 83 : (2006) 2 KLT 205

Hon'ble Judges : V.K. Bali, C.J;J.B. Koshy, J

Bench : Division Bench

Advocate : T.V. George and Linda George, for the Appellant; C.K. Abdul Raheem, Government Pleader, for the Respondent

Judgement

V.K. Bali, C.J.—By this common order we dispose of two connected Writ Appeals arising from a common impugned judgment passed by the learned Single Judge dated 7th February, 2006 recorded in W.P.(C). Nos. 1590 of 2006 and 2030 of 2006.

2. Indian citizens of Kerala origin or those who have been residents of Kerala for a period of at least 8 years alone are eligible to apply for Post Graduate Medical course, qualifying examination of which is M.B.B.S., as per Clause IV(b) of Prospectus, Exhibit P5. The appellants who lost their cause before the learned Single Judge take exception to the clause aforesaid and state that domicile based reservation in Post Graduate courses is wholly impermissible, illegal and unconstitutional. In the context the only question debated before us pertaining to the legality of Clause IV(b) of Prospectus Exhibit P4, the brief facts of the case that need mention would reveal that the petitioners 1 and 2 in W.P.(C). 2090 of 2006, giving rise to Writ Appeal bearing No. 292 of 2006, are residents of Andaman-Nicobar Islands whereas the 3rd petitioner is from State of Haryana. They studied together in Government Medical College, Thrissur and got M.B.B.S. Degree from Calicut University. Whereas petitioners 1 and 2 got admission to M.B.B.S. Course in Kerala State as Central Government nominees, the 3rd

petitioner got admission to M.B.B.S. course in Kerala under All India Quota. They successfully completed the five year M.B.B.S. course having passed all the examinations and got M.B.B.S. degree. After obtaining the said degree, they are continuously working and studying to get admission to Medical Post Graduate Course in Kerala. While so, the Director of Medical Education, Kerala, 1st respondent in the Writ Petition, invited applications from interested candidates for admission to Post Graduate Medical Course, 2006. As a part of the same, a Prospectus was published by the 1st respondent stating inter alia the number of seats, eligibility conditions, etc. The last date fixed for receipt of the applications was as 21.01.2006. The petitioners filled their applications in the prescribed form, but the moment they approached the office of the 1st respondent they were informed that their applications would be rejected for the reason that they are not Indian citizens of Kerala origin nor are they residents of Kerala State for the last eight years as stipulated in Prospectus Ext. P5. They challenged Clause IV(b) which reads as follows:--

Nativity: Indian citizens of Kerala origin or those who have been residents of Kerala for a period of at least 8 years are eligible to apply for P.G. course. Nativity Certificate shall be obtained from Tahsildars/Village Officers of Kerala State. The Certificate in the body of the application form itself shall be submitted. Other certificates are not acceptable and applications will be rejected in such cases.

It has been the case of the petitioners that by incorporating the domicile condition in Clause IV(b) as an eligibility condition in Prospectus Exhibit P5 the respondents have imposed an unreasonable restriction in the matter of admission to P.G. Medical Course in Kerala and the respondents are illegally trying to discriminate the citizens of India on the basis of place of birth. It has further been their case that as they got admission to M.B.B.S. course under the All India Quota in Kerala and secured M.B.B.S. degree from University of Calicut even though they are born and brought in Andaman-Nicobar Islands and Haryana State, they are entitled to get admission to Post Graduate Medical Entrance course also on the basis of the method of selection based on institutional preference. They are entitled to be considered for Kerala Post Graduate Medical course if institutional preference was given, as that was the only reservation which could be made to the post graduate courses. The petitioners stated in the pleadings that in all other States a student is permitted and entitled to apply and appear for P.G. Medical Entrance examination if he Had studied in any of the recognized colleges in that State for M.B.B.S. course. In support of the said pleading, they placed on record copy of Prospectus of U.P. Post Graduate Medical Entrance Examination 2006, Post Graduate Medical Admission Test 2006 - Prospectus published by Bihar Combined Entrance Competitive Examination Board and Post Graduate Medical Admission Test 2005 - Prospectus published by Government of Jharkhand Combined Entrance Competitive Examination Board and urged that it would reveal that a candidate who is not a permanent resident/domicile of that State but has passed the

M.B.B.S. examination from any Medical College in that State approved by the Medical Council of India is eligible to appear in P.G. Medical Entrance Examination in that State. It has thus been the case of the petitioners that institutional preference for P.G. Medical Entrance Examination is followed all over India except in Kerala State. It has thus been urged that this Court should quash Clause IV(b) of Prospectus Exhibit P5 issued by the first respondent being illegal and violative of Articles 14,15 and 16 of the Constitution of India.

3. Inasmuch as there is no dispute to the facts, it would not be necessary to advert to the pleadings made by the respondents in the counter affidavit. The matter as it appears from the impugned Judgment passed by the learned Single Judge has been exclusively debated and determined on the basis of judicial precedents that govern the field. The learned Single Judge, however, dismissed the Writ Petitions by observing that the judicial precedents referred by the parties in unmistakable terms condemn College-wise reservation and permit reservation based-on domicile.

4. Learned counsel representing the appellants vehemently contends that the observations made by the learned Single Judge to the effect aforesaid are in sharp contrast to the judicial precedents mentioned by the Honourable Judge himself in the impugned judgment.

5. Perusal of the judgment passed by the learned Single Judge would show that judicial precedents in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, , *Dr. Parag Gupta Vs. University of Delhi and Others*, , *State of U.P. and Others Vs. Vineet Singh and Others*, , *Saurabh Chaudri and Others Vs. Union of India (UOI) and Others*, , *P.K. Goel and others Vs. U.P. Medical Council and others*, and *Mohan Bir Singh Chawla Vs. Punjab University, Chandigarh* and another, were taken into consideration in determining the issue. Before us, however, the learned Counsel representing the appellants and respondents have referred to two decisions of the Honourable Supreme Court in *Magan Mehrotra and Others Vs. Union of India (UOI) and Others*, and *Saurabh Chaudri and Others Vs. Union of India (UOI) and Others*, . In *Magan Mehrotra's* case (supra), Delhi University had issued a Bulletin of Information for academic session 2001-02 stipulating that the candidates who had passed M.B.B.S. examination from any other University under the 15% All India Quota would also be eligible for admission in post graduate course" if they were permanent residents of NCT of Delhi. The petitioners challenged the criterion adopted in that bulletin and the Supreme Court found that in the nature of preference adopted in that regard differed from State to State: While the States of Assam, Tamil Nadu, Goa and Karnataka had adopted preference on account of residence, most of the other States had adopted preference on the institutional basis. In such circumstances it was held that in dealing with admission to post graduate course the Supreme Court has all along been insisting on excellence and yet trying to balance the equity by considering the case of some preferential treatment to the students who were educated from the same university. It was also observed that decision

of the States of Assam, Tamil Nadu, Goa and Karnataka conferring preference on the basis of residence was not warranted under law inasmuch as to have a uniformity throughout the country and in the larger interest of all concerned taking into account the pattern of admission to post-graduate course, and also the excellence that is required for admission to post-graduate course the only preference that should be adopted by all States is institutional preference. The Supreme Court further held that the decision in Pradeep Jain's case (supra) had taken the correct criterion into consideration and the principles evolved and the ratio given therein are affirmed so far as the same relates to admission into the postgraduate courses. The impugned bulletin issued by the Delhi University in relation to the postdoctoral (DM/MCh) post-graduate decree was held to be contrary to the directions in Pradeep Jain's case (supra) and the same was accordingly quashed. In Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, a Constitution Bench of the Honourable Supreme Court once again reiterated the law laid down by it in Pradeep Jain's case (supra). The Prospectus and the judicial decisions as cited before the learned Single Judge and before us would unmistakably demonstrate that the law laid down in Pradeep Jain's cases (supra) holds the field. In the said case while dealing with admission to post graduate courses, such as M.S., M.D. and the like, it was held that it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. There the excellence cannot be compromised by any other considerations because that would be detrimental to the interest of the nation. It was further held that having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, it must be directed that a maximum limit of 50 per cent of seats may in the 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. The outer limit of 50 per cent will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed in the case of admissions to the M.B.B.S. course. But, even in regard to admissions to the postgraduate course, 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. Even though it may not have been clearly stated that reservation based on domicile in the post-graduate institutions is impermissible, but the same is, in any case, clearly discernible from the judgment of the Supreme Court in Pradeep Jain's case (supra). It is further clear that to a limited extent reservation in post graduate courses on the basis of institutional preference may be made and further that even such reservation is not permissible in super speciality courses. There is absolutely no doubt that domicile reservation in post graduate courses has been adversely commented upon by the Supreme Court in Pradeep Jain's case (supra). This position is further made clear by the Supreme Court in Magan Mehrotra's case (supra). It has now been clearly held that

preference on the basis of residence is not warranted under law. The impugned bulletin issued by the Delhi University in relation to the postdoctoral (DM/MCh) postgraduate degree was held to be contrary to the direction of the Supreme Court in Pradeep Jain's case (supra) and the same was accordingly quashed. Confronted with the law laid down by the Supreme Court in Magan Mehrotra's case (Supra) wherein the impugned bulletin making reservation on the basis of domicile was quashed, the learned Government Pleader has nothing at all to urge and he would rather in all fairness stated that in view of the law laid down by the Supreme Court frowning upon domicile based reservations it will not be possible for him to defend the impugned Judgment. Before we may part with the order, we would like to mention that the learned Single Judge appears to have decided against the petitioners by considering the contention of the petitioners as if they were asking for reservation in their favour on the basis of institutional preference as such institutions were located in the State of Kerala. Further, no distinction has been made by the learned Single Judge with regard to reservation in the matter of admission in graduate and post-graduate courses. Whereas it may be permissible to make reservation based on domicile for M.B.B.S. course, it is not permissible in the post graduate courses and it appears that learned Single Judge held reservation based on domicile to be in order and not against law in the context of admissions in M.B.B.S.

With the discussion as made above, we set aside the order of the learned Single Judge and allow the Writ Appeals. Consequently, Clause IV(b) of Prospectus Exhibit P5 providing reservation in the post-graduate courses on the basis of domicile is quashed. By an interim order the petitioners were permitted to take the examination which they have indeed taken. The result be declared and if they might be within the seats allocated in the State quota but otherwise eligible, they be admitted to post-graduate course. In view of the fluctuating fate of the parties, there will be no order as to costs. I.A. No. 393 of 2006 in W.A.292 of 2006 and I.A. No. 392 of 2006 in W.A. 294 of 2006 does not survive.