
(2009) 04 RAJ CK 0001
In the Rajasthan High Court

Neha Sharma (Dr.)

APPELLANT

Vs

Raj. University of Health Sciences

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Rajasthan University Act, 1946 — Ordinance 278E

Citation : (2010) 1 RLW 877

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Judgement

M.N. Bhandari, J.—By these writ petitions, a challenge has been made to Ordinance 278-E and 278-G of University of Rajasthan as adopted by Rajasthan University of Health Sciences (hereinafter referred to as "the University") apart from the challenge to Sub-clause (v) of Eligibility Clause Category (B) and (C) of the instruction booklet issued by the respondent University pertaining to Pre Post Graduate Medical Examination, 2009. Petitioners have prayed for grant of consequential relief for treating them to be eligible for Pre P.G. Examination of 2009.

2. Respondent University issued instruction booklet for the purpose of Pre P.G. Examination of 2009. In para (1), it is provided that out of total seats available in various MD/MS/Diploma courses, 50% of the seats would be filled as per the allocations made by the Director General of Health Services, Government of India, New Delhi. This allocation would be made on the basis of All India Competitive Entrance Examinations for admission to P.G. Courses on open merit system, which is as per the direction of Hon'ble Supreme Court of India. Remaining 50% of total seats available would be filled on the basis of merit pursuant to the Pre P.G. Medical Examination, 2009. The present writ petitioners pertain to 50% of the seats to be filled pursuant to Pre P.G. Entrance Examination, 2009 conducted by the respondent university. In para 2 of the instruction booklet, eligibility for admission is being specified. In sub-para (v), three categories have been provided for General (Non-Service) candidates. The

main dispute pertains to category B and category C, which are quoted hereunder for ready reference:

For General (Non-Service) Candidates:

Candidates must fulfill the criteria for eligibility in one of the three categories listed below:

Category A....

Category B: Candidate

(i) is a bonafide resident of State of Rajasthan

(ii) was admitted to a medical college, through all India Competitive basis i.e. through Pre Medical Test conducted by any Government (Central/State) agency, and

(iii) has passed the final MBBS Examination from the medical college recognized by the Medical Council of India. The candidate must submit an attested copy of the Bonafide resident certificate in support of (i) above from competitive authority to Government of Rajasthan. The candidate must submit the certificate in support of (ii) and (iii) above from the principal of the Medical College in the format specified in the application form.

Category C: Female Candidate married to a bonafide resident of State of Rajasthan and has passed the final MBBS Examination from the Medical College, recognized by the medical Council of India. Such candidates must submit an attested copy of the bonafide resident certificate or her husband and an attested copy of the marriage certificate issued by the competent authority.

3. Since a reference of Ordinance 278-E and G of the Rajasthan University as modified and adopted by the respondent University exists in para (i) of the instruction booklet, hence the Ordinance 278-E is also quoted to the extent, it is relevant to the present case:

278-E...For seats not reserved in Sub-clauses (a) and (c) of the Clause II, candidates must have passed Final M.B.B.S. examination from the University of Rajasthan or the candidates should have been nominee of the Rajasthan Government and was admitted to the M.B.B.S. course as State nominee in a Medical College outside the State of Rajasthan and has obtained the M.B.B.S. Degree from a medical College from outside the State of Rajasthan, where they secured admission on All India Competitive basis. Besides, those Lady doctors/spouse who are not born in Rajasthan and because of their marriage and they have become bonafide residents of Rajasthan, shall also be eligible, subject to the condition that they have passed their M.B.B.S. examination from a Medical College, recognised by Medical Council of India.

4. In reference to the quoted instructions and provisions, several arguments have been raised by the learned Counsel for the petitioners apart from in

reference to one more provision, which is sub-para (i) of the eligibility condition, arguments have been made and for ready reference, it is also quoted hereunder:

Eligibility for admission:

(1) Applicable to all:

(i) Obtained registration from Rajasthan Medical Council.

5. Learned Counsel appearing for the petitioners firstly submit that the instruction contained in category (B) more specifically category B(ii) is contrary to the Ordinance 278E. Elaborating the aforesaid issue, it is urged that so far as the Ordinance 278-E is concern, a candidate having obtained MBBS degree from medical college outside the State of Rajasthan would be eligible provide he/she secured admission on All India Competitive basis. Emphasizing on the word "All India Competitive Basis." it is submitted that the Ordinance does not provide that such All India Competitive Examination is conducted by any government (Central/ State) agency, which otherwise has been mentioned in Clause Category B(ii), thus according to the petitioners, instruction issued by the respondent university is contrary to the provisions of ordinance.

6. Second argument of the learned Counsel for the petitioners is that even it is presumed that the. instruction contained in the instruction booklet is in consonance of the Ordinance 278-E of the university then both the ultra virus, thus deserves to be struck down. It is stated that petitioners have undertaken their medical courses from private/other universities/colleges but it is on All India Competitive Basis and once petitioners are registered with Medical Council of India or Rajasthan Medical Council then being bonafide resident of Rajasthan, they cannot be excluded for pursuing their studies of P.G. Courses in the State of Rajasthan. It is submitted that reserving the P.G. Course only for the students having studied from Rajasthan University or from respondent university apart from any other university based on their admission on All India Competitive Basis conducted by the Central/State agency, means discrimination between the resident of same area, which otherwise is not permissible as per Article 14 of the Constitution of India more so when degree obtained by the petitioners after completion of MBBS course is treated at per with any student pursuing his studies from Rajasthan University or respondent university or from any other university based on All India Competitive Entrance Examination conducted by Central/State agency. It is urged that a resident of Rajasthan cannot be denied admission in P.G. Course in his own State only for the reason that he undertook his MBBS course from an university/college outside State of Rajasthan more so when the petitioner would not get admission even out of his own State in absence of requirement of domicile, thus a serious prejudice is caused to the petitioners in view of the provisions of ordinance and instructions, thus it deserves to be struck down.

7. The 3rd argument raised by the learned Counsel for the petitioners is that requirement of registration with Rajasthan Medical Council is not legal and

deserves to be struck down because some of the petitioners out of many are having their registration with Medical Council of India or other Medical Council created under statute and once registration is conferred on the candidate by the Medical Council, it is to be treated at par and one cannot be refused to undertake P.G. Course only for the reason that the student is not having registration with a particular medical council.

8. It is lastly urged that the provision in category (c) of eligibility given in the instruction booklet and also in the Ordinance 278-E providing that if a female married to bonafide resident of Rajasthan then she would be eligible to undertake P.G. Course irrespective of the fact that she is not a resident of Rajasthan and even undertaken her MBBS course from an university/college outside State of Rajasthan. It is urged that the aforesaid provision is discriminatory in nature as female of Rajasthan is denied benefit for admission in P.G. Course only for the reason that she undertook her MBBS course from an university/college outside Rajasthan without any entrance examination conducted by the Government Agency. It. was also urged that between females, there cannot be discrimination making two groups and otherwise such a reservation or eligibility is not permissible, which is basically benefit based on domicile/residence of the spouse. Thus, looking to the aforesaid, the prayer of the learned Counsel for the petitioners is to struck down the Ordinance 278 E in respect of the aforesaid issue and the category (C) of the instruction booklet.

9. Narrating facts of the case to make out the ground so raised above, it is stated that all the petitioners involved in these writ petitions are those, who had taken admission in university/college based on All India Competitive and few of the petitioners are those, who had undertaken their MBBS course from recognized universities like Aligarh Muslim University, Banaras University etc. apart from other petitioners, who had undertaken their MBBS course from well known universities like Manipal etc. It is focused that all those admissions in MBBS course were made on All India Competitive Basis thus confirms the requirement of Ordinance 278-E and in view of the above, petitioners are entitled to get admission in P.G. Course. Referring to the interim order of this Court dated 10th February 2009, it is given out that petitioners were permitted to undertake Pre P.G. Examination on provisional basis and their result were called in the Court in sealed cover, thus it is prayed that after opening the sealed cover, if it is found that petitioners are meritorious then a further direction may be given to allow the petitioners in the counseling. To substantiate arguments as raised by the learned Counsel for the petitioners, judgment of Hon"ble Apex Court has been referred, which would then be discussed at the time of dealing with the arguments of both the parties.

10. The side opposite submit that none of the arguments raised by the learned Counsel for the petitioners are tenable.

11. Coming to the first issue regarding instruction in category B(ii) alleged to be contrary to Ordinance 278-E, it is submitted that the word "All India Competitive

Basis" used in the ordinance is in reference to All India Competitive Examination conducted by the government agency only. It is stated that All India Competitive Examinations were started and is conducted pursuant to the judgment of Hon"ble Supreme Court and in all those judgments, wherever reference of All India Competitive Examination for MBBS course or Pre P.G. Course is made then it is in reference to the examination to be held by the government agency and not in reference of private university or college. Hence, while clarifying aforesaid aspect it is urged that to keep it in consonance of the judgment of Hon"ble Apex Court, category B(ii) was formulated, thus cannot be said to in contradiction to the Ordinance 278-E. It was therefore, prayed that the word "All India Competitive Basis" has to be understood in reference to the judgment of Hon"ble Apex Court and for that purposes, various judgments were referred.

12. Coming to the second issue regarding constitutional validity of Ordinance 278-E and the eligibility condition based on the aforesaid and narrated in the instruction booklet, it is submitted that the aforesaid issue has already been dealt with by the Hon"ble Apex Court in several cases, thus it is no more available for further litigation or argument. It is stated that institutional preference is permissible in view of the judgment of Hon"ble Supreme Court and Ordinance 278-E and condition in the instruction booklet basically provides for institutional preferences, thus petitioner cannot challenge the validity of the aforesaid only on the ground that he being resident of Rajasthan is to be treated eligible for P.G. Course. Clarifying the above, it is stated that it would then amount to reservation based on residence, which otherwise not permissible. It has further been elaborated that it is not a case of total reservation based on institutional preference because out of the total seats in the State of Rajasthan 50% are filled on the basis of All India Entrance Examination conducted by the Director General of Health Sciences. Petitioner is having a chance to compete and get admission in the aforesaid quota to pursue his studies in the State of Rajasthan apart from availability of chance to undertake P.G. Course in any of the State based on All India Entrance Examination referred to above, thus it is not a case where, the petitioner is totally debarred to undertake his P.G. Course in State of Rajasthan. In view of the above, it is prayed that the challenge to the validity is not sustainable rather heavy burden lies on the petitioner to prove that the provision and the instruction are ultra virus as otherwise presumption lies in favour of the validity.

13. Coming to the third issue, i.e., regarding a condition for registration with Rajasthan Medical Council, it is stated that if the student other than State of Rajasthan having registration with other medical council, gets admission then there would be no surety that those students would practice or serve with to State for which the State otherwise spent heavy amount, hence justification of the aforesaid condition was also made.

14. Coming to the last issue as to whether a female married to a bonafide resident of Rajasthan can be given admission in P.G. Course despite her studies

for MBBS Course out of Rajasthan and that too without an entrance test on All India Competitive Basis. It is urged that the aforesaid provision was provided so as to make a room for a female, who may have difficulty to study her P.G. Course, thus treating such female to become resident of Rajasthan after her marriage, the aforesaid provision under Ordinance 278-E was made, thus there exists no discrimination between females, if some additional benefit is given to a female marriage to a bonafide resident of Rajasthan. On the strength of Article 15 of the Constitution of India, the aforesaid argument was tried to be substantiated.

15. I have considered the rival submissions made by the learned Counsel for the parties and scanned the matter carefully.

16. According to me, the first two arguments are required to be dealt with simultaneously being the issues and grounds, which are intermixed. It is not in dispute that out of total seats of P.G. Course in State of Rajasthan, 50% of seats are to be filled based on All India Competitive Entrance Examination conducted by the Director General of Health Services and in the said examination, every candidate is eligible to seek admission subject to condition of his or her passed MBBS Course and completion of one years internship followed by registration with medical council, thus it becomes clear that out of total seats meant for State of Rajasthan, 50% of the seats are available for all category of students, which includes even petitioners, who had taken their MBBS course out of State of Rajasthan. In view of the above, it becomes clear that it is not a case where exists total reservation/preference to the seats of a State.

17. Now comes the issue as to whether provisions of eligibility under Ordinance 278-E and G and condition of eligibility in instruction booklet are either ultra virus so as to exclude the petitioner to appear in P.G. Course in the state quota or the instruction contained in the instruction booklet are contrary to the provisions of Ordinance 278-E.

18. Coming to the first issue as to whether there exists contradiction between provision of Ordinance 278-E and the eligibility condition in the instruction book, it is necessary to make a reference of certain judgments cited by the learned Counsel for both the parties. In the case of Dr. Jagadish Saran and Others Vs. Union of India (UOI), , the Hon''ble Apex Court dealt with the issue of constitutionality of reservations of seat or quota for local candidates in professional courses. The Hon''ble Apex Court initially observed that in the graduate courses, the admission should be made strictly as per the merit but a direction was thereafter given to formulate national wide scheme for admission. In the other case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, the issue was elaborated and the aforesaid case become a landmark judgment on the issue. In the aforesaid case, it was held that total reservation of seats based on residence or for students of some university is violative of Article 14 but having regard to socio economic disparities, reservation of certain percent of seats is valid but therein it was observed that admission on All India Basis

should be ultimate goal and therein the maximum limit for reservation was also given tentatively. It was further made clear that in case of admission to Post Graduate Medical Courses, partial reservation based on residence is not permissible though reservation based on institutional preference to the extent of 50% would be permissible. Aforesaid judgment in the case of Dr. Pradeep Jain is of reference to decide the matter in hand as the admission to MBBS course on All India Competitive Basis means the type of examination envisaged by the Hon'ble Apex Court in the aforesaid judgment, which was not in reference to All India Competitive Examination by private university or college. Relevant observation in view paras are quoted hereunder:

It is of course true that the Medical Education Review Committee established by the Government of India has in its report recommended after taking into account all relevant considerations, that the "final objective should be to ensure that all admissions to the MBBS course should be open to candidates on an all-India basis without the imposition of existing domiciliary condition", but having regard to the practical difficulties of transition to the stage where admissions to MBBS course in all medical colleges would be on all -India basis, the Medical Education Review Committee has suggested "that to begin with not less than 25 per cent seats in each institution may be open to candidates on all-India basis." we are not at all sure whether at the present stage it would be consistent with the mandate of equality in its broader dynamic sense to provide that admissions to the MBBS course in all medical colleges in the country should be on all-India basis. Theoretically, of course, if admissions are given on the basis of all-India national entrance examination, each individual would have equal opportunity of securing admission, but that would not take into account diverse considerations, such as, differing level of social, economic and educational development of different regions, disparity in the number of seats available for admission to the MBBS course in different States, difficulties which may be experienced by students from one region who might in the competition on all-India basis get admission to the MBBS course in another region far remote from their own and other allied factors. There can be no doubt that the policy of ensuring admissions to the MBBS course on all-India basis is a highly desirable policy, based as it is on the postulate that India is one nation and every citizen of India is entitled to have equal opportunity for education and advancement, but it is an ideal to be aimed at and it may not be realistically possible, in the present circumstances, to adopt it, for it cannot produce real equality of opportunity unless there is complete absence of disparities and inequalities-a situation which simply does not exist in the country today." "we are glad to find that the policy of the Government of India in the matter of reservation based on residence requirement and institutional preference accords with the view taken by us in that behalf. We may point out that even if at some stage it is decided to regulate admissions to the MBBS course on the basis of all-India entrance examination, some provision would have to be made for allocation of seats amongst the selected candidates on the basis of residence or institutional affiliation so as to

take into account on the aforementioned factors.

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 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 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 admission to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialties 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.

19. Aforesaid issue becomes further clear if we make reference of many other judgments of the Hon'ble Apex Court pertaining to admission in MBBS and P.G. Course dealing with the issue pertaining to percentage of reservation to be kept by State and at the same time, requirement of seats in each state based on All India Competitive Entrance Examination. Reference of the judgments in the case of Dr. Prachi Almeida Vs. The Dean, Goa Medical College and Others, Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, , Magan Mehrotra and Others Vs. Union of India (UOI) and Others, ; State of U.P. and Others Vs. Vineet Singh and Others, and Abhinav Aggarwal and Another Vs. Union of India and Others, would be relevant apart from the judgment in the case of Dr. Parag Gupta Vs. University of Delhi and Others, and in the case of The Dean, Goa Medical College, Bambolim, Goa and Another Vs. Dr. Sudhir Kumar Solanki and Another, In all these judgments, whenever reference of All India Entrance Examination or All India Competitive Basis is made, it is obviously made in reference to such entrance examination conducted by the government agency and not in reference to the private and other university/college. Learned Counsel for the respondents has submitted that the provision in the ordinance in regard to MBBS course based on All India Competitive Basis is made to make a room for those students, who had taken admission in MBBS course based on All India Entrance Examination conducted by the government agency and therefore only, Ordinance 278-E further provides it to be a case of state nominations of the students to other states, thus it cannot be said that instruction so contained in the instruction booklet is contrary to provision of ordinance 278-E. It is important

to note that the very same issue involved in the present matter was earlier decided by this Court in the case Dr. Bhaskar Choudhary v. State of Rajasthan and Ors. bearing S.B. Civil Writ Petition No. 972/2006 decided on 4th April 2006 therein also the pleas raised in this case by the petitioner were not accepted, however, the only difference between two cases are that in the case of Dr. Bhaskar Choudhary, the validity of ordinance and instructions were not under challenge. Against the aforesaid judgment of Dr. Bhaskar Choudhary, an appeal was preferred by Dr. Gauri Mathur bearing D.B. Civil Special Appeal No. 370/2006 titled Dr. Gauri Mathur v. University of Rajasthan and Ors. and therein, the Division Bench passed a detailed interim order on 28.4.2006 and by way of interim direction, the appellant as well as Dr. Bhaskar Choudhary were allowed to participate in the counseling for allotment of seat as a result of P.G. Medical Entrance Examination. The aforesaid interim order was produced before me by the learned Counsel for the petitioners to show that the issue as to what would be the meaning of "All India Competitive Basis" is an issue pending consideration before the Division Bench and looking to the interim order passed by the Division Bench, same order should be passed by this Court.

20. I have carefully gone through the order passed by the Division Bench and I find that the Division Bench has not considered and discussed any of the judgment of Hon''ble Apex Court on the issue more specifically the judgment in the case of Abhinav Aggarwal and Another Vs. Union of India and Others, A look at the aforesaid judgment along with the judgment in the case of Magan Mehrotra and Others Vs. Union of India (UOI) and Others, would show that entire controversy on the issue has already been decided.

21. In the case of Abhinav Aggrawal v. Union of India and Ors., decision was given by the Hon''ble Apex Court referring the provisions for eligibility for P.G. Course as was provided by Delhi University. Perusal of those rules show that provisions/instructions in hand and in appeals are similar to what was there before Hon''ble Apex Court and in reference to those rules, the dispute of the similar nature was decided, as the petitioner therein was belonging to Delhi but completed his MBBS course from college situated in other part of the country but then he was not given admission in PG course as otherwise he had not taken admission in MBBS course pursuant to All India Quota in MBBS. The Hon''ble Apex Court dismissed the appeal after holding that the petitioner therein was eligible to compete against All India quota. Since, the scheme of rule as well as the issue is similar to what has been raised herein, thus the aforesaid judgment itself covers the controversy of this case. Relevant part of the aforesaid judgment being para 1, 7 & 8 are quoted hereunder:

1. The petitioners in these cases claim to hail from Delhi and have completed MBBS course from colleges situate in different parts of the country. They state that they passed entrance examination held by the Governments of the States concerned in which the colleges are situate or the entrance test conducted by such colleges; that the classmates of the petitioners who are studied in Delhi and

continued their study in the medical courses also in one or the other medical college have an advantage over the petitioners as they are being considered for admission to PG medical courses in Delhi University by providing for institutional preference. Delhi University has prescribed the conditions for admission as follows:

Requirement for admission to post-graduate degree courses:

(A) 1. Candidate must have completed satisfactorily one year of compulsory rotating internship after passing the final MBBS examination from University of Delhi on or before 31.3.2001 and must have full registration with the State Medical Council/Medical Council of India.

2. The candidate who has passed the MBBS examination from a university other than Delhi University, having been allotted to the same under the 15% all-India quota by the Director General of Health Services, would also be eligible if he/she is a permanent resident of the National Capital Territory of Delhi, (the proviso has been incorporated as per the direction of the Hon'ble Supreme Court in Dr. Parag Gupta case and is subject to further order of the Hon'ble Supreme Court) and if he/she also fulfils all the following three conditions:

(i) He/she has passed 10+2 examination from the "National Capital Territory of Delhi.

(ii) He/She is a permanent resident of the National Capital Territory of Delhi.

(iii) He/She has passed the MBBS examination from a university other than Delhi University, having been allotted to the same under the 15% all India quota by the Director General of Health Services if he/she is a permanent resident of the National Capital Territory of Delhi.

Note:-(i) A candidate must produce any one of the following documents to prove his/her permanent residence in the National Capital Territory of Delhi:

(a) Ration Card (b) Voter's identity card

(c) Passport (d) Driving license

(ii) The candidate must submit documentary proof for Serial Nos. (i) and (iii).

7. In a way the decision in State of U.P. v. Vineet Singh, covers the matter in dispute. In that case extending the principle in Dr. Parag Gupta case, the High Court of Allahabad had directed to allow taking entrance examination in respect of all students who had migrated to other States and sought for admission in their home States. This Court explained that the decision in Dr. Parag Gupta case was applicable only to those selected pursuant to 15% all-India quota provided under a scheme framed in Dinesh Kumar case. It is submitted that in these case independent of Dr. Parag Gupta case the petitioners' cases have to be examined as to whether the petitioners are discriminated against other students in their home States. The question of attaining uniformity in the matter of admission in

PG medical courses in all medical colleges is wrought with many complexities. Students who have studied outside Delhi are also eligible to the 25% all -India quota provided under the scheme for admission to PG medical courses. In view of the law declared by this Court and directions issued pursuant thereto, schemes have been framed by respondents institutions. We reiterate that it would be ideal for the States/authorities concerned to achieve uniformity by adopting appropriate criteria in the matter of admission to PG courses in medical colleges.

8. When the admission rules have been framed pursuant to the decision of this Court to which we have adverted to and those decisions have been rendered bearing in mind the scope of Article 14 of the Constitution vis-a-vis the local needs, we do not think, it is permissible or appropriate for us to disturb that scheme. Hence, we decline to interfere with the process of selection being made to consider the cases of the petitioners.

22. The issue has further been settled by the Hon''ble Apex Court in the case of Magan Mehrotra and Others Vs. Union of India (UOI) and Others, wherein again dealing with the provision as referred in the judgment of Abhinav Aggrawal (supra), the decision has been given and therein the judgment of the Hon''ble Apex Court in the case of Dr. Parag Gupta (supra) was also explained. It was held therein that in view of the judgment of Dr. Pradeep Jain, only preference can be given based on institution and not on residence. In the aforesaid judgment, it was clarified that judgment in the case of Dr. Parag Gupta (supra) directing that the student of the same State having taken admission in outside State based on All India Entrance Basis conducted by the government agency, would be entitled to seek admission in P.G. Course of his own state, is not a decision as per Pradeep Jain's case (supra). The out come of the Dr. Parag Gupta's judgment was that if a student of Delhi having admission in MBBS Course outside Delhi based on All India Entrance Basis conducted by the government agency then he was made eligible to undertake P.G. Course in the State of Delhi but then the aforesaid judgment of Dr. Parag Gupta was not approved by the Hon''ble Apex Court in Magan Malhotra's case (Supra). Para 7 and 8 of the aforesaid judgment are quoted for ready reference. The perusal of the judgment more specifically contents of para 7 shows that Dr. Parag Gupta's case holding that a candidate selected against all-india quota, 15% would be eligible to appear in P.G. Course of his own State was not then approved being a preference contrary to judgment of Pradeep Jain. In para 8, what has been held is quoted hereunder to clarify that even the Hon''ble Apex Court has not approved grant of admission in P.G. Course to those candidates, who had undertaken MBBS course outside State even on All India Entrance Basis through government agency.

23. The relevant paras are quoted hereunder:

1. These petitions under Article 32 of the Constitution of India were filed because of the Bulletin of Information issued by the University of Delhi for the academic session 2001-02, whereby and whereunder following the judgment of this Court

in *Parag. Gupta (Dr.) v. University of Delhi* it was stipulated that the candidates who have passed MBBS examination in any university other than Delhi University having been allotted the same under 15% quota by the Director General, Health Services would also be eligible if he/she is a permanent resident of the National Capital Territory of Delhi.

7. In the aforesaid judgment in para 8 Their Lordships have enumerated indicating which State has adopted what nature of preference and from the it is clear that the State of Assam, Tamil Nadu, Goa and Karnataka have adopted the preference on account of residence whereas most of the other States have adopted the preference on the institutional basis. In view of the judgment of the three-Judge Bench in *Pradeep Jain* case it must be held that the aforesaid decision of the States of Assam, Tamil Nadu, Goa and Karnataka conferring preference 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 undergraduate course, and also the excellence that is required for admission to postgraduate course the only preference that should be adopted by all States is the institutional preference, as was indicated in *Pradeep Jain* case. It would be necessary for us to take into consideration yet another judgment of this Court in *Prachi Almedia (Dr.) v. Dean, Goa Medical College* which arises out of an admission to Goa Medical College wherein the Court followed the earlier decision in *Dr. Parag Gupta* case and held that the petitioner therein having been selected in the 15% all-India quota and having been allotted a seat in the state of Goa wherefrom she obtained graduation, her case should not be ignored on the basis of non-fulfillment of residential requirement. In fact, therefore. Their Lordships apparently followed *Pradeep Jain* case though it has not been stated so in so many words. It would be, at this stage, appropriate to notice yet another judgment of a three-Judge Bench in *State of U.P. v. Vineet Singh* where a stray observation has been made to the effect that there is no conflict between *Pradeep Jain* case and *Parag Gupta* case.

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* case 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 the 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 sessions.

24. Perusal of the quoted part shows that even preference to a student taken admission in MBBS course, out of State against 15% quota of All India Basis is not entitled to seek admission in P.G. Course in the State quota and therefore, a direction was given to the respondent therein and accordingly, the information bulletin published by the Delhi University was quashed but the said order was made applicable from the next academic session. Perusal of the judgment in the case of Magan Malhotra shows that even a student, who had taken MBBS course based on All India Entrance Examination in a different State, cannot be made eligible to P.G. Course against State quota, as it amounts to reservation on the basis of residence, which otherwise not permissible. In the case of Abhinav Aggrwal, not only the rule position is similar but even factual position is also similar as it of this case and therein the same controversy is decided against the petitioner, hence the present case is very well covered by the judgments in the case of Abhinav Aggrawal and Magan Malhotra (supra). It is apart from the another judgment of the Hon''ble Apex Court in the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, In the aforesaid judgment, it has further been held that there is a presumption of validity of rule and discussing the law as applicable U.S.A., the Hon''ble Apex Court has decided that in what cases, the provision can be struck down. The case aforesaid was again in reference to the controversy as otherwise exists in the present matter but it is not required to be elaborated in view of the fact that matter in hand is covered by other two judgments of the Hon''ble Apex Court as indicated above.

25. In view of the above, even after consideration of all the judgments referred by the learned Counsel for the petitioners, it does not come out that there exists any judgment showing that there can be a preference based on residence as the judgment in the case of Dr. Parag Gupta (supra) was not approved by the Hon''ble Apex Court in subsequent judgment of Magan Malhotra. After decision in the case of Magan Malhotra, the position is now that even a student taken admission on All India Competitive Basis outside State of Rajasthan is not eligible to compete against state quota but would be eligible only for the quota meant and to be filled on All India Competitive Basis for P.G. Course. Hence, the issue as to what is the meaning of "All India Competitive Basis" and as to whether the instruction booklet contains contrary condition becomes insignificant more so when similar provision in the bulletin of Delhi University was thereafter struck down by the Hon''ble Supreme Court in the case of Magan Malhotra. Thus even the interim order passed by the Division Bench in the case of Dr. Gauri Mathur is contrary to the judgment of the Hon''ble Apex Court, thus cannot be relied. The interim order of the Division Bench further shows that the judgments of the Hon''ble Apex Court referred herein were not otherwise discussed. Thus, so far

as the first two issues are concerned, the same are decided against the petitioners and in favour of the respondents.

26. So far as the 3rd issue, i.e., regarding requirement of registration in Rajasthan Medical Council is concerned, the aforesaid issue becomes academic in view of the negative answer on the earlier two issues, thus the aforesaid issue is not required to be decided.

27. Now coming to the last issue pertaining to making a female eligible for P.G. Course, who married to a resident of Rajasthan, constitutional validity of Order 278-E in reference to the aforesaid is also under challenge as also the condition in instruction booklet more specifically category (C). A close look at the provision shows that it is to extend benefit to female marrying to the resident of State, the analogy seems to be that on marriage, female became resident of the State where her better half resides and is resident. Other than that, no analogy is given by the learned Counsel for the respondents.

28. After taking note on the aforesaid, it becomes clear that it is literally a reservation based on residence and not on the basis of institution. It is otherwise could not be clarified or elaborated by the learned Counsel for the respondents as to how between the females there can be discrimination more so when a female of State of Rajasthan undertaken MBBS course from the university/State outside and another female marrying to a resident of State, has also undertaken MBBS course from the same college or a college outside state can be given different treatment and if different treatment is given then it is based on residential preference instead of institutional preference. Thus, the condition of category "C" of the information booklet and part of the Ordinance 278-E providing certain benefit to married female married to resident of Rajasthan should be held to be violative of constitution, thus deserves to be struck down by holding it to be ultra virus and otherwise contrary to the judgment of Hon'ble Apex Court in the case of Dr. Pradeep Jain. In the case of Magan Malhotra (supra), it has elaborately discussed that preferences on the basis of institution is permissible but not on the basis of residence. Thus, in view of the aforesaid, the part of provision of Ordinance 278-E and instruction booklet being contrary to the judgment of the Hon'ble Apex Court cannot allow to hold and thus, deserves to be struck down.

29. In view of the above discussion, all the writ petitions are dismissed on all the issues other than the issue challenging validity of category "C" of the information booklet and part of Ordinance 278-E providing reservation to a female marrying to resident of Rajasthan which are held to be ultra virus and thus struck down. It is directed that the aforesaid provision may be deleted appropriately but the direction as given herein would be applicable for the next academic session, i.e., from the year 2010.

30. It is further necessary to observe that in view of the judgment of the Hon'ble Apex Court in the case Magan Malhotra and Abhinav Aggrawal as discussed

above and the provision of Delhi University being almost analogous to the provision of respondent university, it is necessary for the respondent university now to suitably amend their provision as otherwise required in view of the order of the Hon''ble Apex Court in Magan Malhotra's case more specifically para 8 of the judgment.

31. In the substance, the controversy raised in the present matter is squarely covered by the judgment in the case of Madan Malhotra as decided by the Hon''ble Apex Court dealing with almost similar provision and similar facts, thus the present matter would be governed by that judgment.

32. Accordingly, all the writ petitions are decided with the direction as indicated above. No order as to costs.