
(2015) 01 CAL CK 0049

In the Calcutta High Court

Case No : Writ Petition Nos. 32902, 34182 and 33988 (W) of 2014

Saket Prakash and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Indian Medical Council Act, 1956 — Section 33(1)

Citation : (2015) 1 CALLT 281

Hon'ble Judges : Dipankar Datta, J.

Bench : Single Bench

Advocate : Kaushik Chanda, Debamitra Bhardwaj and Lokenath Chatterjee, for the Appellant; Pradip Kumar Dutta and Munmun Tewari, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dipankar Datta, J.—These three writ petitions relate to a common dispute and, accordingly, have been heard together. By this common order, this Bench proposes to dispose of all the three writ petitions. The petitioners in W.P. No. 32902(W) of 2014 and W.P. No. 33988(W) of 2014 have obtained MBBS degrees from Government medical colleges of the State affiliated to the West Bengal University of Health Sciences (hereafter the University) whereas the petitioners in W.P. No. 34182(W) of 2014 have obtained similar degrees from various private medical colleges of the State affiliated to the same University. One common feature of all the petitioners is that they hail from States other than West Bengal and this is the immediate cause for their consternation. The State Government has imposed restrictions by prohibiting their admission in the post-graduate medical courses (MD/MS/MDS/PG Diploma) in medical colleges of West Bengal in "Open Category State Quota" (hereafter the State quota). The relevant decisions of the State Government are contained in memoranda dated 1st December, 2014 and 4th December, 2014; the latter having been issued in continuation of the former. The petitioners in W.P. No. 32902(W) of 2014 and W.P. No. 33988(W) of

2014, and the petitioners in W.P. No. 34182(W) of 2014 considering themselves aggrieved by memoranda dated 1st December, 2014 and 4th December, 2014 respectively have prayed for orders to set aside the same and to allow them to take the competitive test scheduled to be held on 1st February, 2015 for ultimate admission in State quota, should they be found deserving of such admission on merit.

2. For facility of reference, the contents of the memoranda are quoted below one after the other:

"No. HF/O/MERT/1570/2H 06/14 Dated : 1st December 2014 MEMORANDUM

The undersigned is directed by order of the Governor to say that, w.e.f. from the date of issuance of this memorandum, the following shall be the eligibility criteria for admission in "State Quota" postgraduate MD/MS/MDS/PG - Diploma seats in the Medical/Dental Co(s) of West Bengal;-

1. The candidates, who are permanent residents/Domicile of West Bengal but passed MBBS/BDS from MCI/DCI recognised Colleges situated in a State other than West Bengal, will be allowed to appear at the Post Graduate entrance test, along with Domiciled Candidates of West Bengal and seek admission in "State Quota" postgraduate MD/MS/MDS/PG-Diploma seats in the Medical/Dental Colleges of West Bengal;

2. The candidates, who are permanent residents/Domicile of other States but passed MBBS/BDS from MCI/DCI recognised Colleges of West Bengal, through All India Quota (AIQ) will not be appear at the Post Graduate entrance test for State Quota postgraduate MD/MS/MDS/PG-Diploma seats in the Medical/Dental Colleges of West Bengal against All India Quota (AIQ) postgraduate seats."

Special Secretary to the Govt. of West Bengal"

No. HF/O/MERT/1588/2H 06/14 Dated: 4th December 2014 MEMORANDUM

In continuation of this Department memo No. HP/O/MERT/1570/2H-06/14 Dated 1st December 2014, the undersigned is directed by order of the Governor to clarify the following regarding the eligibility criteria for admission in "State Quota" postgraduate MD/MS/MDS/PG-Diploma seats in the Medical/Dental Colleges of West Bengal:-

1. The eligibility for in-service reservation facilities for officers of WBHS, WBMS and WBPH and AS within the State Quota postgraduate MD/MS/MDS/PG - Diploma seats in the Medical/Dental Colleges of West Bengal, will be guided by extant TR Rules;

2. The officers who are in Government service in West Bengal, other than WBHS/WBMS/WBPHAS, will be allowed admission against "Open Category State Quota" Postgraduate Degree/diploma seats in medical and dental Colleges in

West Bengal, irrespective of their State of domicile or residency;

3. The candidates, who are permanent residents/domicile of West Bengal but passed MBBS/BDS from MCI/DCI recognised Colleges situated in a State other than West Bengal, or from medical/dental colleges in Countries outside India and possessing permanent registration numbers from MCI/DCI/WBMC/WBDC, will also be allowed to appear at the Post Graduate entrance test and seek admission in "Open Category State Quota" postgraduate MD/MS/MDS/PG - Diploma seats in the Medical/Dental Colleges of West Bengal;

4. The candidates, who are permanent residents/Domicile of other States but passed MBBS/BDS from MCI/DCI recognised private medical/dental Colleges of West Bengal, through Management Quota/NRI Quota will not be allowed to appear at the Post Graduate entrance test for State Quota Post Graduate MD/MS/MDS/PG - Diploma seats in the Medical/Dental Colleges of West Bengal seats.

Special Secretary to the Govt. of West Bengal"

3. Mr. Chanda, learned senior advocate appearing for the petitioners contends that the State Government has acted illegally and without jurisdiction in restricting the scope of admission of candidates like the petitioners, who have obtained their MBBS degrees after studying in medical colleges in the State, on the specious ground that they are neither permanent residents nor are domiciled in the State of West Bengal. According to him, the decision of the State Government to provide for special benefits to candidates who are permanent residents or having domicile in the State is in the teeth of the decisions of the Supreme Court reported in--

A. Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ;

B. Magan Mehrotra and Others Vs. Union of India (UOI) and Others, ;

C. Nikhil Himthani Vs. State of Uttarakhand and Others, and

D. Vishal Goyal and Others Vs. State of Karnataka and Others,

4. He has, accordingly, prayed for relief claimed in the writ petitions.

5. An affidavit-in-opposition to W.P. No. 32902(W) of 2014 has been filed on behalf of the State Government. While dealing with the contents thereof, the justification for issuance of memoranda dated 1st December and 4th December, 2014 has been provided in paragraphs 10, 11 and 14 of such affidavit reading as follows:

"10. 50% of seats of every State are filled by All India Quota Examination. For every hundred seats, 50 seats of each college and each disciplines have been apportioned for All India Quota pool from the State of West Bengal. Any MBBS/BDS passed candidates including the petitioners with recognized degree may compete for those seats. For every hundred seats, 50 seats goes to All India pool

as mentioned above, 20 goes to in-service doctors in regular service of the Govt. of West Bengal in the Health and Family Welfare Department. Therefore, only 30 seats are left for open category candidates who are residents of West Bengal. It has been witnessed by the Health and Family Welfare Department that doctors after doing their MD/MS/MDS and EG Diplomas in Modern Medicines and super specialty courses leave the State of West Bengal and this State is deprived from getting their services for common men. This situation seriously hampers not only services in the hospitals, but also seriously affects the medical/Dental Colleges to get faculties in replenishing for the attrition due to retirement and resignation as well as for getting faculties to set up new college by the Government or Private entrepreneur for dearth of qualified degree holders. To address this serious issues for public interest, State has every right to act in the right perspective. Candidates, not being resident of West Bengal, passed MBBS/BDS from the colleges situated at the State of West Bengal are likely eligible to appear for State Quota seats from their own State. Therefore, a student is likely to get chances of being selected both from All India Quota as well as from own State Quota seats. Further claim for another chance from the State quota seat from West Bengal is absolutely illogical. I say that in several other States, similar provisions have been made debarring students, who are not domiciled in such States, from filling up State Quota Seats in post graduate medical degree and diploma courses of different states as would appear from record, which I shall crave leave to refer at the time of hearing.

11. I say that the bar imposed under the memorandum dated 1st December, 2014 and the subsequent memorandum dated 4th December, 2014 is not at all in violation of the rights of equality, as guaranteed under Article 14 of the Constitution of India.

14. I say that by issuing the memorandum referred to hereinabove, an endeavor has been made by the State to select those students, who are more likely to serve as doctors in the State after they passed out. It would appear from first record that after passing P.G. examination by the non-admitted students Govt. get hardly any service from them. It was found that only 2% of the pass out remainder in the state service. I say that it was absolutely for the State to determine the sources of selection of candidates, the decision taken by the Government in its wisdom must be upheld. I most respectfully submit that the Constitution of India does not forbid classification. The classification contemplated in the memorandum impugned is justified inasmuch as there appears to be a close nexus in between the classification and the object to be achieved. I repeat and reiterate that by issuing the memorandum, an endeavor has been made to select those students, who are more likely to serve as doctors in the State after they passed out.

...*****"

6. Insofar as laying down the criteria for eligibility for admission to postgraduate medical courses is concerned, the affidavit reveals the following pleadings:

"16. I most humbly submit that it is for the State to primarily determine the sources from which students are to be drawn for admission to post graduate medical degree and diploma courses. It is the State Government, who bears the financial burden of running the medical colleges in the State of West Bengal and it is for the State to lay down the criteria for eligibility.

17. I most humbly submit that the Government cannot be denied the right to decide from what sources the admission to post graduate medical degree and diploma courses would be made. Such a decision is essentially a question of policy and depends, inter-alia, on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons, for whom it is essential to provide facilities to medical education."

7. It is based on such affidavit that Mr. Dutta, learned senior advocate representing the State in W.P. No. 32902(W) of 2014, Mr. Banerjee, learned advocate for the State in W.P. No. 34182(W) of 2014 and Mr. Mukherjee, learned senior advocate for the State in W.P. No. 33988(W) of 2014 contend that the restrictions, which have been imposed, are neither illegal nor unreasonable and that the petitioners can have no cause for grievance particularly in the light of the fact that they are not debarred from pursuing post-graduate medical courses by seeking admission from the all India quota.

8. They have accordingly, in unison, prayed for dismissal of the writ petitions.

9. Mr. Banerjee, learned advocate appearing for the University while adopting the submissions of the learned advocates for the State also submits that although the petitioners have challenged the memoranda dated 1st December and 4th December, 2014 in its entirety, they are really aggrieved by paragraph 2 of the memorandum dated 1st December, 2014 and paragraph 4 of the memorandum dated 4th December, 2014 and consequently, the Court may consider the desirability of moulding the relief claimed by the petitioners, if at all it is satisfied that a case for interference has at all been set up.

10. The Medical Council of India (hereafter the Council) has been represented by Mr. Bhattacharya, learned advocate. Apart from referring to the decisions on which Mr. Chanda has relied on, Mr. Bhattacharya has advanced submissions of significant worth. According to him, the Indian Medical Council Act, 1956 (hereafter the Act) has been enacted by the Parliament having regard to Entry 66 of List I of the Seventh Schedule of the Constitution. Section 33(1) of the Act has been referred to by him thereafter, which confers power on the Council to frame regulations for "the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations." He contends that in furtherance of such power, Medical Council of India Post Graduate Medical Education Regulations, 2000 (hereafter the Regulations) have been framed and regulations 8 and 9 thereof were specifically relied on by him to contend that

admission to post-graduate medical courses must be regulated strictly on the basis of the academic merit of the candidates aspiring for admission. Referring to the decision of the Supreme Court reported in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, , it was submitted by him that the Regulations framed by the Council upon obtaining prior sanction of the Central Government are mandatory, having statutory force and that the Council has a duty to ensure adherence to its regulations by all State Governments in course of conducting the process of admission to post-graduate medical courses. Reference was also made by Mr. Bhattacharya to Entry 25 of List III to contend that the States' power to enact laws or to make executive orders in relation to medical education must be subject to the law and/or executive orders made under Entry 66 of List I and to the extent any such law or executive order is inconsistent with the Central laws or the rules/regulations framed thereunder, the same have to be regarded as a nullity.

11. According to Mr. Bhattacharya, the State Government and the University being under an obligation to ensure admission of candidates in post-graduate medical courses strictly on inter se academic merit, which is to be determined on the basis of the competitive test that the State Government proposes to hold on 1st February, 2015, there is no scope for restricting admission in the State quota to only those candidates who are either permanent residents or having domicile in the State. He accordingly supports the claim of the petitioners and prays for appropriate orders being passed to maintain uniformity in the selection process for admission to post-graduate medical courses all over the country.

12. The submissions of the rival parties have been considered and the decisions cited by them perused.

13. It is settled law that matters of policy are within the executive's domain and that a decision on a policy matter taken by the executive is not open to interference merely because the Court perceives it to be impracticable or less advantageous to that class of persons for whose benefit the policy is conceived or because the Court considers that a more reasonable alternative is possible. In a case where it is indubitably proved that the executive in taking the policy decision impugned has overstepped its jurisdiction or has acted in breach of Constitutional provisions, the Court would be justified in its interference therewith. Bearing this principle in mind, the contentious issues would require examination.

14. Prior to consideration of the decisions that the parties have cited, it is appropriate to note the provisions of regulations 8 and 9 of the Regulations. Regulations 8 and 9, to the extent relevant for decision on these writ petitions, are set out herein below:

"8. GENERAL

(1) *****

1(A) *****

(2) *****

(3) *****

"Every student, selected for admission to a Post Graduate medical course in any of the medical institutions on acquiring MBBS Degree or an equivalent qualification thereto shall have obtained permanent registration with the Medical Council of India, or any of the State Medical Council(s) or shall obtain the same within a period of one month from the date of his/her admission, failing which his/her admission shall stand cancelled;"

9. SELECTION OF POSTGRADUATE STUDENTS.

9(1)(a) Students for Post Graduate medical courses shall be selected strictly on the basis of their inter-se Academic Merit.

(b) *****

9(2) For determining the "Academic Merit", the University/Institution may adopt the following methodology:-

(a) On the basis of merit as determined by a "Competitive Test" conducted by the state government or by the competent authority appointed by the state government or by the university/group of universities in the same state; or

(b) On the basis of merit as determined by a centralized competitive test held at the national level; or

(c) On the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wise. or

(d) Combination of (a) and (c)

Provided that wherever "Entrance Test" for postgraduates admission is held by a state government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes."

15. From the scheme of the Regulations it is clear that merit, and only merit, is

decisive for admission of students in post-graduate medical courses. Although in the affidavit the State Government has pleaded that it is well within its competence to determine the source from which admission is to be made, the State Government does not appear to have been conferred with any power by the Act or the Regulations to impose restrictions of the nature impugned herein; such restrictions, in effect, are contrary to the scheme of the Regulations. The power to issue executive order drawing inspiration from Entry 25 of List III must be exercised in consonance with the law enacted in terms of Entry 66 of List I and not in derogation thereof. If indeed only candidates who are permanent residents or having domicile in the State and who have acquired MBBS degrees, may be from medical colleges of other States, are allowed to seek admission in post-graduate medical courses in the State quota in preference to candidates like the petitioners, the possibility of merit being compromised at the cost of deserving candidates (who may not be permanent residents or domiciled in the State) cannot be ruled out. It is this factor of merit that was considered by the Supreme Court while deciding the case of Dr. Pradeep Jain (supra). It would be relevant to quote paragraph 22 of the said decision herein below:

"22. So much for admission to the MBBS course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to the post-graduate courses, such as, MD, MS and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Dr. Jagadish Saran and Others Vs. Union of India (UOI), , and we wholly endorse what he has said:

"The basic medical needs of a region or the preferential push justified for handicapped group cannot prevail in the same measure at the highest scales of specialty where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk, (SCC pp. 778-79, para 23)

* * *

If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks, this proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the

lesser levels of education, jobs and disciplines of social inconsequence, but more that the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nations' talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless. (SCC p. 785, para 39)

* * *

Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or postdoctoral courses in the specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathies mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post doctoral. (SCC p. 786, para 44)"

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and indeed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that plying with merit, so far as admissions to post-graduate courses are concerned, for pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian Medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration:

"Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities."

The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located". So also

in the policy statement filed by the learned Attorney-General, the Government of India has categorically expressed the view that:

"So far as admission to the institutions of post-graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all-India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes."

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 post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialities 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."

(underlining for emphasis)

16. Once the Supreme Court observed that it would not be desirable to provide any reservation based on residence requirement within the State and that residence requirement within the State shall not be a ground for reservation in admission to post-graduate courses, it is beyond the comprehension of this Bench as to how the State Government could introduce the restrictions which are sought to be imposed by paragraph 2 of the memorandum dated 1st December, 2014 insofar as candidates who have acquired MBBS degrees from Government medical colleges is concerned and paragraph 4 of the memorandum dated 4th December, 2014 regarding those who graduated from private medical colleges.

17. It is worthy of being noticed that the decision in Dr. Pradeep Jain (supra) has been consistently followed in the subsequent decisions viz. Magan Mehrotra (supra), Nikhil Himthani (supra), and Vishal Goyal (supra) and there has been no change in the legal position warranting a change in stance. In Magan Mehrotra (supra), it was held as follows:

"7. *** 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 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 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. ***" 18. The observations as above are a complete answer to the State's contention that some other States have introduced reservation on the basis of residence. Even though the State may be factually correct, such introduction is not legal and valid. One ought to also notice the decision in Nikhil Himthani (supra). There, it was ruled as follows:

"16. We now come to Clauses 2 and 3 of the eligibility criteria in the Information Bulletin. Under Clauses 2 and 3, a domicile of Uttarakhand who has passed MBBS from a medical college of some other State having been admitted either through the 15% all-India quota or through the pre-medical test conducted by the State Government concerned has been made eligible for admission to a postgraduate medical course in the State quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to the postgraduate 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 Pradeep Jain v. Union of India and Magan Mehrotra v. Union of India." 19. The impugned memoranda itself did not record the reasons as to why it was felt necessary by the State Government to impose the restrictions that it did but the justification has been provided for in the affidavit. The justification so advanced by the State sounds logical and could be relevant for regulating admissions to under-graduate medical courses and one would find upholding of such stance by the Supreme Court in Dr. Pradeep Jain (supra) too. While dealing with admissions in under-graduate courses, the Supreme Court had the occasion to observe as follows:

"The claim of State interest in providing adequate medical service to the people of the State by imparting medical education to students who by reason of their residence in the State would be likely to settle down and serve the people of the State as doctors has thus been regarded by the Court as a legitimate ground for laying down residence requirement for admission to medical courses in the State." 20. However, a different yardstick having been laid down for admissions to post-graduate medical courses, it was obligatory for the State not to make a departure by providing for reservation on the basis of residence alone.

21. Mr. Dutta in course of hearing had referred to certain observations made by the Supreme Court in the decision reported in Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, in paragraphs 39, 41, 42 and 46 of the

decision. However, the question that the Supreme Court in Saurabh Chaudhri (supra) had been called upon to answer was whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India or not. Such question was answered in the negative. Whatever observations have been made by the Supreme Court in Saurabh Chaudhri (supra) thus have to be read and understood in the light of the question that fell for consideration. It is trite that a decision is an authority for what it actually decides and not what can logically be deduced therefrom. The observations made by the Supreme Court in the paragraphs referred to by Mr. Dutta do not, therefore, constitute the ratio of the decision and is thus of no assistance to the State.

22. However, certain facts recorded in Saurabh Chaudhri (supra) must not go unnoticed. The Supreme Court in paragraph 25 had noticed that before and after the decision reported in Dr. Parag Gupta Vs. University of Delhi and Others, as well as on the date of delivery of judgment, the nature of preference that was inter alia extended by the State of West Bengal was institutional preference only. This was followed by the following findings:

"26. It is neither in doubt nor in dispute that before the scheme was evolved in Dr. Pradeep Jain case notices had been issued to all the States and all of them were fully heard. But despite the same, the orders passed by this Court in Dr. Pradeep Jain case had been flouted with impunity, inter alia, by the States of Assam, Karnataka, Goa and Tamil Nadu. Now it transpires that even the State of Punjab has also not been following the said decision." 23. It is time to return a finding that the State of West Bengal has taken the unusual step of following the States of Assam, Karnataka, Goa, Tamil Nadu and Punjab in flouting the orders passed by the Supreme Court.

24. For the reasons aforesaid, this Bench is of the considered view that restricting admission in State quota to only those candidates who are permanent residents and/or having domicile in the State is not only illegal, arbitrary, unreasonable, unconstitutional and ultra vires on the ground that the same is in clear violation of the Constitutional mandate of equality and the dicta of the Supreme Court in the aforesaid decisions but is also without jurisdiction when viewed in the light of lack of competence of the State to lay down such restrictions. It is, accordingly, ordered that paragraph 2 of the memorandum dated 1st December and paragraph 4 of the memorandum dated 4th December, 2014 shall not be acted upon by the State while conducting the competitive test for admission to seats in connection with post-graduate medical courses in the medical colleges of this State on 1st February, 2015 and that all the petitioners as well as other similarly placed candidates shall be entitled to seek admission in State quota seats notwithstanding the fact that they are either not permanent residents or do not have their domicile in the State. However, the other clauses of the impugned memoranda shall stand.

25. In terms of the interim order passed by this Bench while entertaining W.P. No. 32902(W) of 2014, the last date for submission of on-line applications is

required to be extended suitably and accordingly, this Bench directs that all the petitioners and other similarly placed candidates shall be at liberty to submit their applications on-line by 5-00 p.m. of next Monday (19th January, 2015) and shall be entitled to have such applications processed by the University for issuance of admit cards for facilitating their appearance at the competitive test scheduled to be held on 1st February, 2015. The time for production of hard copies of the applications as well as other credentials shall stand extended till next Thursday (22nd January, 2015). The writ petitions stand disposed of, without orders for costs.

Photostat copy of this order, duly counter signed by the Assistant Court Officer, shall be retained with the records of W.P. No. 34182(W) of 2014 and W.P. No. 33988(W) of 2014.

Urgent Photostat certified copy of this order, if applied for, be furnished expeditiously.