

(2014) 04 SC CK 0141

In the Supreme Court Of India

Case No : Writ Petition (Civil) Nos. 48, 70, 72, 75, 65, 92, 156, 83, 87 and 196 of 2014 (Under Article 32 of the Constitution of India)

Vishal Goyal and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 32, 371J

Citation : (2014) 3 AKR 365 : (2014) 5 AWC 4422 : (2014) 3 JLJR 270 : (2014) 7 JT 200 : (2014) 3 PLJR 398 : (2014) 5 SCALE 706 : (2014) 7 SCJ 202 : (2014) 3 SCT 102 : (2015) 1 SLJ 87

Hon'ble Judges : Fakkir Mohamed Ibrahim Kalifulla, J;A.K. Patnaik, J

Bench : Division Bench

Judgement

A.K. Patnaik, J.—This batch of writ petitions Under Article 32 of the Constitution relates to admissions in Post Graduate Medical Dental courses in Government medical and dental colleges as well as in the State Quota in private medical and dental colleges in the State of Karnataka.

2. The Petitioners claim that they were selected on the basis of common entrance tests conducted by the CBSE or by the authorities of the State Government or by the association of private medical and dental colleges in the State of Karnataka and admitted into the MBBS/BDS courses in different Government or private medical and dental colleges and after completing their MBBS/BDS courses were keen to get admitted into Post Graduate medical or dental courses in the year 2014.

3. The National Board of Examinations issued two Information Bulletins for Post Graduate Entrance Test, 2014 (for short 'the PGET-2014') for admissions to the State Quota seats in Karnataka Government Colleges and Institutions and Karnataka Government Quota seats in private colleges/institutions/deemed universities. One Bulletin contained all information for admission to MD/MS/Medical Post Graduate Diploma Courses (Medical) and the other contained all

information for admission to MDS/PG Diploma Courses (Dental). Clause 2 of these Information Bulletins lays down the criteria for PGET-2014. Clause 2.1 of these Information Bulletins for PGET-2014 provides that no candidate shall be admitted to a professional educational institution unless the candidate possesses the qualifications or eligibility to appear for the entrance test stipulated thereunder. The said Clause 2.1 of the two Information Bulletins, which is identically worded for admissions to Post Graduate Medical and Post Graduate Dental Courses, is extracted hereinbelow:

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

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

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

i. A candidate who has studied and passed in one or more Government recognized, educational institutions located in the State of Karnataka for a minimum period of TEN academic years as on the last date fixed for the submission of application form, commencing from 1st standard to MBBS/BDS and must have appeared and passed either SSLC/10th standard or 2nd PUC/12th standard examination from Karnataka State. In case of the candidate who has taken more than one year to pass a class or standard, the years of academic study is counted as one year only.

Documents to be produced, namely:

- 1) SSLC or 10th Standard Marks Card;
- 2) 2nd PUC of 12th Standard Marks Card of the candidate;
- 3) Candidates Study Certificate: A study certificate from the Head of educational institution where he or she had studied. Further, School Study Certificates should be counter signed by the concerned Block Education Officer (BEO)/Deputy Director of Public Instructions (DDPI) COMPULSORILY in the proforma prescribed;
- 4) Qualifying degree certificate and all phases marks card;
- 5) Domicile certificate issued by the Tahsildar in the prescribed proforma (Annexure-I); and if claiming reservation benefits: Caste/Caste Income Certificate issued by Concerned Tahsildar-For SC/ST in Form-D, Category-1 in Form-E and 2A, 2B, 3A and 3B in Form F.
- 6) MCI/DCI State Council Registration Certificate.
- 7) Attempt Certificate issued by the concerned college Principal.

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

Documents to be produced, namely:

- 1) SSLC or 10th Standard Marks Card;
- 2) 2nd PUC or 12th Standard Marks Card of the candidate;
- 3) Qualifying degree certificate and all phases marks card;
- 4) Domicile certificate issued by the Tahsildar in the prescribed proforma (Annexure-I);
- 5) If claiming reservation benefits: Caste/Caste Income Certificate issued by Concerned Tahsildar-For SC/ST in Form-D, Category-1 in Form-E and 2A, 2B, 3A and 3B in Form F and
- 6) (a) A study certificate for either of the parent having studied for at least 10 years in Karnataka from the Head of the educational institution where he/she had studied. Further, school study certificates should be countersigned by the concerned Block Educational Officer (BEO)/Deputy Director of Public Instructions (DDPI) COMPULSORILY in the proforma prescribed (Annexure-III);
(b) The candidates study certificate for having studied both 1st and 2nd PUC or 11th & 12th Standard in Karnataka issued by the head of the educational institution.
- 7) MCI/DCI State Council Registration Certificate
- 8) Attempt Certificate issued by the concerned Principal.

4. It will be clear from Sub-clause (a) of Clause 2.1 of the Information Bulletins extracted above that to be eligible to appear for the Entrance Test, a candidate must be of "Karnataka Origin". The Explanation under Sub-clause (a) of Clause 2.1 of the Information Bulletins gives the meaning of "A candidate of Karnataka Origin". The case of the Petitioners is that by virtue of Sub-clause (a) of Clause 2.1 of the two Information Bulletins, they are debarred from appearing in the Entrance Tests for admissions to MD/MS/Medical Post Graduate Diploma Courses, 2014 or to MDS/Dental Post Graduate Diploma Courses, 2014 in the State of Karnataka even though they have studied MBBS/BDS in institutions in the State of Karnataka. They have, therefore, challenged Sub-clause (a) of Clause 2.1 of the two Information Bulletins, as ultra vires Article 14 of the Constitution as interpreted by this Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . They also contend that in the aforesaid case of Dr. Pradeep Jain (supra), this Court has held that a certain percentage of seats must be reserved

on the basis of institutional preference to enable students who have passed MBBS or BDS courses from medical or dental colleges in the State of Karnataka to get admission to Post Graduate medical or dental courses in the medical or dental colleges of the State of Karnataka. The Petitioners have, therefore, prayed that Sub-clause (a) of Clause 2.1 of the two Information Bulletins be declared as ultra vires the Constitution and appropriate writs and directions be issued to the Respondents to permit the Petitioners to participate in the admission process of MD/MS/MDS and other Post Graduate medical and dental courses in the State of Karnataka.

5. Soon after the writ petitions were filed and moved, this Court passed orders permitting the Petitioners to take the Entrance Test for admission to Post Graduate medical and dental courses in the State of Karnataka conducted by the National Board of Examinations and pursuant to the said orders the Petitioners have also been permitted to take the Entrance Test.

6. Learned Counsel for the Petitioners submitted that the judgment of this Court in Dr. Pradeep Jain's case (supra) still holds good. They referred to the decision of this Court in Magan Mehrotra and Others Vs. Union of India (UOI) and Others, , Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, and Nikhil Himthani Vs. State of Uttarakhand and Others, , in which this Court has reiterated the principles laid down in Dr. Pradeep Jain's case (supra). They submitted that this Court, should, therefore, strike down Sub-clause (a) of Clause 2.1 of the two Information Bulletins as ultra vires the Constitution and direct the Respondents to give institutional preference in accordance of the judgment in Pradeep Jain's case.

7. In reply to the contentions of the Petitioners, Mr. A. Mariarputham, learned senior counsel appearing for the State of Karnataka, relied on the statements of objections filed on behalf of the State of Karnataka. He submitted that Article 371J of the Constitution is titled 'Special Provisions with respect to State of Karnataka' and Clause (2) read with Clause (1) Sub-clause (C) of this Article provides that the Governor may, by order make reservation of a proportion of seats in educational and vocational training institutions in the Hyderabad-Karnataka region for students who belong to that region by birth or by domicile. He submitted that the State of Karnataka has, therefore, fixed institutional preference quota of 50% and this was constitutionally permissible as per the judgment of this Court in Saurabh Chaudri v. Union of India (supra).

8. Mr. Mariarputham next submitted that pursuant to the judgment of this Court in Dr. Pradeep Jain's case (supra), a scheme has been formulated by this Court in Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, and a reading of the said scheme would show that it applies to only medical and dental colleges or institutions run by the Union of India or a State Government or a Municipal and other local authority. He submitted that the judgments of this Court in Dr. Pradeep Jain's case (supra) and in Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors. (supra), therefore,

do not apply to private medical and dental college in the State of Karnataka. He explained that the State of Karnataka has also a quota of seats in the private medical and dental colleges in the State of Karnataka and the seats for Post Graduate medical and dental courses that fall in the State quota can be filled up by the State from among the candidates of Karnataka Origin as provided in Sub-clause (a) of Clause 2.1 of the two Information Bulletins.

9. We have considered the submissions of learned Counsel for the parties and we find that the basis of the judgment of this Court in Dr. Pradeep Jain's case (supra) is Article 14 of the Constitution which guarantees to every person equality before the law and equal protection of the laws. As explained by this Court in paragraphs 12 and 13 of the judgment in Nikhil Himthani v. State of Uttarakhand and Ors. (supra):

12. Article 14 of the Constitution guarantees to every person equality before law and equal protection of laws. In Dr. Jagadish Saran and Others Vs. Union of India (UOI), , Krishna Iyer, J., writing the judgment on behalf of the three Judges referring to Article 14 of the Constitution held that equality of opportunity for every person in the country is the constitutional guarantee and therefore merit must be the test for selecting candidates, particularly in the higher levels of education like postgraduate medical courses, such as MD. In the language of Krishna Iyer, J. (SCC pp. 778-79, para 23)

23. Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure all 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 a important lose their potency. Here, equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk.

13. Relying on the aforesaid reasons in Jagadish Saran v. Union of India, a three-Judge Bench of this Court in Pradeep Jain case held excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and therefore reservation based on residential requirement in the State will affect the right to equality of opportunity Under Article 14 of the Constitution....

In Magan Mehrotra v. Union of India (supra) and Saurabh Chaudri v. Union of India (supra) also, this Court has approved the aforesaid view in Dr. Pradeep Jain's Case that excellence cannot be compromised by any other consideration for the purpose of admission to postgraduate medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and

will affect the right to equality of opportunity Under Article 14 of the Constitution.

10. Mr. Mariarputham is right that in *Saurabh Chaudri v. Union of India* (supra), this Court has held that institutional preference can be given by a State, but in the aforesaid decision of *Saurabh Chaudri*, it has also been held that decision of the State to give institutional preference can be invalidated by the Court in the event it is shown that the decision of the State is ultra vires the right to equality Under Article 14 of the Constitution. When we examine Sub-clause (a) of Clause 2.1 of the two Information Bulletins, we find that the expression "A candidate of Karnataka Origin" who only is eligible to appear for Entrance Test has been so defined as to exclude a candidate who has studied MBBS or BDS in an institution in the State of Karnataka but who does not satisfy the other requirements of Sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014. Thus, the institutional preference sought to be given by Sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014 is clearly contrary to the judgment of this Court in *Dr. Pradeep Jain's case* (supra). To quote from paragraph 22 of the judgment in *Dr. Pradeep Jain's case*:

...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 postgraduate course in the same medical college or university....

Sub-clause (a) of Clause 2.1 of the two Information Bulletins does not actually give institutional preference to students who have passed MBBS or BDS from Colleges or Universities in the State of Karnataka, but makes some of them ineligible to take the Entrance Test for admission to Post Graduate Medical or Dental courses in the State of Karnataka to which the Information Bulletins apply.

11. We now come to the argument of Mr. Mariarputham that the scheme formulated by this Court in *Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors.* (supra) pursuant to the judgment in *Dr. Pradeep Jain's case* (supra) is confined to medical and dental colleges or institutions run by the Union of India or a State Government or a Municipal or other local authority and does not apply to private medical and dental colleges or institutions. Paragraph (1) of the scheme on which Mr. Mariarputham relied on is extracted hereinbelow:

(1) In the first place, the Scheme has necessarily to be confined to medical colleges or institutions run by the Union of India or a State Government or a municipal or other local authority. It cannot apply to private medical colleges or institutions unless they are instrumentality or agency of the State or opt to join the Scheme by making 15 per cent of the total number of seats for the MBBS/ BDS course and 25 per cent of the total number of seats for the postgraduate course, available for admission on the basis of All India Entrance Examination. Those medical colleges or institutions which we have already excepted from the

operation of the judgment dated June 22, 1984 will continue to remain outside the scope of the Scheme.

This Court has, thus, said in the aforesaid paragraph (1) of the scheme that the scheme cannot apply to private medical and dental colleges or institutions unless they are instrumentalities or agencies of the State or opt to join the scheme. The reason for this is that private medical and dental colleges or institutions not being State or its instrumentalities or its agencies were not subject to the equality clauses in Article 14 of the Constitution, but the moment some seats in the private medical and dental colleges or institutions come to the State quota, which have to be filled up by the State or its instrumentality or its agency which are subject to the equality clauses in Article 14 of the Constitution, the principles laid down by this Court in Dr. Pradeep Jain's case (*supra*) will have to be followed while granting admissions to the seats allotted to the State Quota in post graduate medical and dental courses even in private colleges.

12. In the result, we allow the writ petitions, declare Sub-clause (a) of Clause 2.1 of the two Information Bulletins for post graduate medical and dental courses for PGET-2014 as ultra-vires Article 14 of the Constitution and null and void. The Respondent will now publish fresh Information Bulletins and do the admissions to the post graduate medical and dental courses in the Government colleges as well as the State quota of the private colleges in accordance with the law by the end of June, 2014 on the basis of the results of the Entrance Test already held. We also order that the general time schedule for counselling and admissions to post graduate Medical Courses in our order dated 14.03.2014 in Dr. Fraz Naseem and Ors. v. Union of India will not apply to such admissions in the State of Karnataka for the academic year 2014-2015. Similarly, the general time schedule for counselling and admissions for post graduate dental courses will not apply to such admissions in the State of Karnataka. The parties shall bear their own costs.