

DR. PARAG GUPTA ETC.

v.

UNIVERSITY OF DELHI AND ORS.

APRIL 26, 2000

[S. RAJENDRA BABU AND R.C. LAHOTI, JJ.]

Education—Higher Education—Admission to Postgraduate Medical Courses : Petitioner, a resident of Delhi admitted to MBBS Course in Tamil Nadu on the basis of All-India competition under the 15% quota—Reservation of 75% seats at State level for admission to postgraduate courses and 25% seats to be filled on the basis of All-India Competition—Petitioner completed MBBS from Tamil Nadu—In Tamil Nadu 75% seats reserved for residents of Tamil Nadu itself—In Delhi 75% seats reserved for candidates completing graduate medical course from Delhi itself—Petitioner denied advantage of reservation in both the States—Entitled to admission only on the basis of All India competition limited to 25% seats—Held : Rule of residence preference on the basis of domicile or requirement of residence not bad in law provided it is within reasonable limits—Where students from different universities appear at a common entrance test, the rule of university-wise preference loses it relevance—Inclusion of students of home State leaving their State for pursuing graduate medical courses in other States would be disadvantageous to the students of home State only to a smaller degree—But such inclusion will bring uniformity all over the country and will remove disadvantage existing for students pursuing graduate courses from other States.

In India there are 32 States and Union Territories which provide for medical education and at the graduate level (MBBS) excepting Jammu & Kashmir and Andhra Pradesh, all the States and Union Territories pool 15% of seats to be filled from common entrance examination on all India basis. Rest of the 85% seats are filled by holding entrance examination at the State level. In 15% seats filled on all India basis students from one State have to migrate to other State allotted to them for pursuing MBBS course. Out of the above mentioned 32 States and Union Territories, apart from Jammu & Kashmir and Andhra Pradesh, provide postgraduate medical courses on pooling 25% seats to be filled on all India basis by a common entrance examination conducted by AIIMS. All MBBS qualified students can compete for admission without any restriction in this 25%

A quota and for filling the remaining 75% seats in post graduate courses the States or Union Territories have adopted different criteria for admission. Some States give institutional preference while some States give residential preference. The writ petitioner was born and brought up in Delhi and studied MBBS course in Tamil Nadu having been allotted to Tamil Nadu under the 15% quota of seats being filled up on All India basis. The case of the petitioner is that neither he is being given preference in the State of Tamil Nadu for admission to post graduate course because the State of Tamil Nadu gives preference on residential basis nor he is being given preference in Delhi as preference in Delhi is given on institutional basis. Thus, the petitioner is only entitled to compete on 25% seats reserved on all India basis.

The petitioner contended that the different criteria adopted by different State encroach upon the rights of the students who have qualified MBBS under the 15% all India quota who invariably migrate to other States from their home-States and do not get any opportunity for advancement of their career in their home-State as they are debarred from admission on account of different criteria, either on account of reservation on the ground of residential requirement in the migrating State or on the ground of institutional preference adopted by the State or Union Territories or Universities.

Partly allowing the writ petitions, this Court

HELD : 1. Presently, the practice all over the country is to make 15% of the seats in the MBBS course and 25% of the seats in postgraduate medical courses in all the government colleges in the country available on the basis of merit alone. Students from anywhere in the country can compete for these seats which are allotted on the basis of an All India test conducted by the designated authority. The rule of preference on the basis of domicile or requirement of residence is not bad provided it is within reasonable limits and does not result in reserving more than the aforesaid percentage. Where the students from different universities appear at a common entrance test the rule of university-wise preference loses its relevance. The explanation of difference in evaluation, standards of education and syllabus lose much of their significance when admission is based upon a common entrance test. At the same time, the right of the State Government to regulate the process

of admission and their desire to provide for own students should also be accorded due-defence. [638-F-H; 639-A]

Jadgish Saran (Dr.) v. Union of India, [1980] 2 SCC 768; *Pradeep Jain (Dr.) v. Union of India*, [1984] 3 SCC 654; *Dinesh Kumar (Dr.) (II) v. Motilal Nehru College*, [1986] 3 SCC 727; *State of Rajasthan v. Dr. Ashok Kumar Gupta*, [1989] 1 SCC 93; *Anant Madaan v. State of Haryana*, [1995] 2 SCC 135; *D.P. Joshi v. State of M.P.*, [1995] 1 SCR 1215 and *Sanjay Ahlawat v. Maharishi Dayanand University*, [1995] 2 SCC 762, relied on.

2. The grievance of the petitioners, if examined closely, is very limited and that is these students who have gone out of their home-States to pursue studies elsewhere on all India quota should be allowed to compete in their home-State where they have their roots, to pursue post graduate studies. There does not seem to be any unfair advantage in this regard inasmuch as all students have to take common entrance test with reference to their home state and face stiff competition. The students in home State if at all are put to disadvantage only to a small degree of taking competition with respect to very few students falling in that category of the petitioners. On the other hand, inclusion of such students will made at broad based as well as striking a balance. Thus, if students of the house State are also allowed to participate in the entrance test, there will be uniformity all over the country and small disadvantage removed with respect to a small section of student community does not disturb the balance and advantage derived achieves uniformity. On this basis the States/Union Territories/Universities should allow students who had pursued courses outside their home State to participate in the entrance examination held in their home State irrespective of any kind of preference that may have been adopted for selection to postgraduate medical courses. [642-D-G; 643-C]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 12 of 1999
Etc. Etc.

Under Article 32 of the Constitution of India.

Mukul Rohtagi, Additional Solicitor General, D.D. Thakur, Subodh Markandeya, Parag Tripathi, Joseph Vellapally, M.C. Dhingra, Mrs. Rashmi Virmani, R.K. Virmani, Vijay Gupta, Navin Prakash, N.K. Agarwal, M.A. Krishna Moorthy, Rajiv Nanda, D.S. Mehra, Ms. Varuna Bhandari, Tara Chandra Sharma, G. Prakash, Mrs. Kirti Renu Mishra, Mrs. Hemantika Wahi,

A Brijender Chaher, Ashok Mathur, V.G. Pragasam, Sakesh Kumar, S.K. Agnihotri, Mrs. Jayshree Anand, Karan Sharma, G. Sivabalamurugan, Rajiv Dutta, Ms. Kamini Jaiswal, Ms. Chitra Markandeya, Alok Gupta, Ms. Feroze Bano, A. Mariarputham, Aruna Mathur, Anurag D. Mathur, K.H. Nobin Singh, Anil Shrivastav, B.B. Singh, Ms. Sandhya Goswami, K.R. Nagaraja, B Vijay Hansaria, Sunil Jain, Ms. A. Subhashini, S.V. Deshpande, Kavin Gulati, Ms. Sunita Mukherjee, A.T.M. Sampath, V. Balaji, P.N. Ramalingam, R.S. Suri, Ms. Indu Malhotra, D.B. Vohra, Maninder Singh, Ms. Kavita Wadia and Manik Dogra for the appearing parties.

The Judgment of the Court was delivered by

C **RAJENDRA BABU, J.** Students who had qualified for medical degree course got admission under the All India quota of 15 per cent and migrated to different States to pursue the course of study and are now seeking admission into Postgraduate courses. Their grievance is that the States or concerned authorities have framed admission rules in such a way that they D can neither pursue their studies in the migrated State nor in their home State.

E Before we address to the controversy we may briefly survey a few decided cases. In *Jagadish Saran (Dr.) v. Union of India*, [1980] 2 SCC 768, the admission rules prescribed by the Delhi University provided that 70% of F the seats at the post graduate level in the medical courses shall be reserved for students who had obtained their MBBS degree from the same university and the remaining 30% seats were open to all, including the graduates of Delhi. After considering the decisions rendered till that day, this Court took G the view that "university-wise preferential treatment may still be consistent with the rule of equality of opportunity where it is calculated to correct an imbalance or handicap and permit equality in the larger sense. If University-wise classification for post graduate medical education is shown to be relevant and reasonable and the differentia has a nexus the larger goal of equalisation of education opportunities the vice of discrimination may not invalidate the rule." The admission to post graduate medical course are determined on the H basis of a common entrance test inasmuch as the students of Delhi University are drawn from all over India and are not confined to the Delhi region. The rule was held to be not invidious and recognised the desires of the students for institutional continuity in education and recognised as one of the grounds justifying the reservation. The argument of excessive reservation in that case could not be considered on the ground of inadequacy of material on record.

In *Pradeep Jain (Dr.) v. Union of India*, [1984] 3 SCC 654, this Court opined that wholesale reservation made by some of the States on the basis of 'domicile' or requirement of residence within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State and excluding the students not satisfying the said requirement, regardless of merit, is unconstitutional and being violative of Article 14 of the Constitution. Declaring that anyone from anywhere in the country, irrespective of his language, religion, place of birth or residence, is entitled to be afforded equal chance of admission to any secular educational course anywhere in the country, but, at the same time, recognising the factual position as to inequalities existing in the society and the need for affirmative action on that account, this Court directed that certain percentage of seats in the MBBS course and post graduate medical courses in all the government colleges in the State should be set apart for being filled purely on the basis of merit and students from all over the country were entitled to compete for these seats and the admission was directed to be based upon merit and merit alone. On further consideration of the matter, the percentage was fixed at 15% to students level and 25% P.G. level in a later decision in *Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College*, [1986] 3 SCC 727. It was, however, made clear that so far as super-specialties are concerned there should be no reservation either on the basis of institutional preference or otherwise and that admissions should be granted purely on merit determined on all-India basis. In *State of Rajasthan v. Dr. Ashok Kumar Gupta*, [1989] 1 SCC 93, the preference provided for admission to post graduate medical courses in the colleges affiliated to the Rajasthan University should be based upon the merit determined at the competitive examination, however, providing for 5 increasing marks if the applicant passed the final MBBS examination from the Rajasthan University and another 5 marks if the applicant passed the final MBBS examination from the same institution for which selections are being made was considered. This Court noticed that all the medical colleges in the State of Rajasthan located at Jaipur, Bikaner, Udaipur, Jodhpur and Ajmer were not similarly situated and the students who have passed their examination from Jaipur Medical College in the matter of admission to post graduate medical courses in that medical college brought about an extremely unfair and unjust result. It was pointed out that by virtue of rule of preference students with far less marks would steal a march over a student securing higher marks only because he has passed his MBBS examination from the same college.

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A In *Anant Madaan v. State of Haryana*, [1995] 2 SCC 135, challenge was to a rule made by the Government of Haryana providing that in the matter of admission to MBBS and BDS courses, 80% of the seats shall be reserved for candidates who have studied 10th, 11th and 12th standards as regular candidates in recognised institutions in the State of Haryana. This challenge was levelled by students who had passed their 10th, 11th and 12th examinations from schools and colleges outside the State of Haryana but whose parents were either residing in or domiciled in the State of Haryana. The challenge to the rule was repelled following the decision of this Court in *D.P. Joshi v. State of M.P.*, [1955] 1 SCR 1215, and *Jagadish Saran* (supra), *Dr. Pradeep Jain* (supra) and *Dinesh Kumar* (supra) treating the rule providing for preference on the ground of domicile or residence to be valid.

D In *Sanjay Ahlawat v. Maharishi Dayanand University*, 1995 (2) SCC 762, the challenge before the Court was in respect of a rule providing for admission to post graduate medical courses, preference being given to local students by adding ten extra marks. The validity of the rule was sustained on the basis that it was not a case of college wise or university wise reservation but it is a rule providing for preference on the basis of domicile.

These decisions lead us to the following principles.

E Though university wise preference is permissible, college wise preference is not. 70% to 80% reservation has been sustained even where the students from different universities appear at a common entrance test. After the decisions in *Dr. Pradeep Jain* (supra) and followed by *Dinesh Kumar* (supra) the practice all over the country was to make 15% of the seats in MBBS course and 25% of the seats in post graduate medical courses in all the government medical colleges in the country available on the basis of merit alone. Students from anywhere in the country can compete for these seats which are allotted on the basis of an all-India test conducted by the designated authority. The rule of preference on the basis of domicile or requirement of residence is not bad provided it is within reasonable limits and does not result in reserving more than the aforesaid percentage. Where the students from different universities appear at a common entrance test the rule of university-wise preference loses its relevance. The explanation of difference in evaluation, standards of education and syllabus lose much of their significance when admission is based upon a common entrance test. At the same time, H the right of the State Government to regulate the process of admission and

their desire to provide for their own students should also be accorded due deference. In the light of these principles, we examine the facts arising in the present case. A

There are 32 States and Union Territories which provide for medical education. At the graduate level (M.B.B.S.), except Jammu & Kashmir and Andhra Pradesh, all the States and Union Territories pool 15% seats to be filled from common entrance examination on all-India basis, rest of the 85% of seats are filled by holding entrance examination at the State level. In 15% seats filled on All-India basis students from one State have to migrate to other State allotted to them for pursuing MBBS course. 18 States and Union Territories, apart from Jammu & Kashmir and Andhra Pradesh, provide post graduate medical courses on pooling 25% seats to be filled on all-India basis by a common entrance examination conducted by AIIMS. All MBBS qualified students can compete for admission without any restriction in this 25% quota and for filling the remaining 75% seats in post graduate courses the States or Union Territories have adopted different criteria for admission. Some states have adopted institutional preference, while some others residential preference. Various States having different criteria of reservation may be tabled as follows :- B C D

	<i>State</i>	<i>Nature of Preference</i>	
1.	UP	Institutional	E
2.	Delhi	Institutional	
3.	Maharashtra	Institutional	
4.	Gujarat	Institutional	
5.	West Bengal	Institutional	F
6.	Assam	Residence	
7.	Tamil Nadu	Residence	
8.	Goa	Residence	
9.	Karnataka	Residence	
10.	Madhya Pradesh	Institutional OR Residence	G
11.	Haryana	Institutional OR Residence	
12.	Punjab	Institutional OR Residence	
13.	Rajasthan	Institutional OR Residence	
14.	Kerala	Institutional OR Residence	
15.	Orissa	Institutional OR Residence	H

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| A | 16. Himachal Pradesh | Institutional OR Residence |
| | 17. Bihar | Institutional OR Residence |
| | 18. Pondicherry | 25% All India quota + 37.5 %
institutional of available
seats + 27.5% of available
seats open for all |

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The contention put forth before us is that the different criteria adopted by different states encroach upon the rights of the students who have qualified MBBS under the 15% all-India quota who invariably migrate to other States from their home-State and do not get any opportunity for advancement of their career in their home-State as they are debarred for admission on account of different criteria, either on account of reservation on the ground of residential requirement in the migrating State or on the ground of institutional preference adopted by the State or Union Territories or Universities.

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Writ Petition (Civil) No. 12 of 1999 filed by Dr. Parag Gupta may be taken as an illustrative case. The plea put forward by the writ petitioner in this case is that he is born and brought up in Delhi and, therefore, he should be permitted to participate in the entrance examination being conducted by the Delhi University and should be considered for admission by Delhi University against the 75% seats. The plea put forth is that he studied the MBBS course in Tamil Nadu having been allotted to Tamil Nadu under the 15% quota of seats being filled up on all-India basis by the Director General Health Service pursuant to the scheme framed by this Court after the decision in *Dr. Pradeep Jain* (supra) and neither he is permitted in Tamil Nadu to appear in the entrance examination on the ground that he is not a resident

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of that State nor is he allowed to take the entrance examination being conducted by the Delhi University because he did not study for the last five years in the Delhi University. On the other hand, the stance of the Delhi University is that the petitioner can certainly compete for the all-India 25% of seats earmarked to be filled up on all-India basis from the candidates selected and sponsored by the Director General of Health Services, the remaining 75% having been earmarked for students who have graduated from Delhi University, he is not entitled to claim admission at all. Like most of the Universities across the country, even in Delhi University, reservation of seats other than the seats being filled up on all-India basis is on the basis of institutional preference, that is, the seats are reserved to be filled up in the

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post graduate medical courses in favour of students who have passed their MBBS course from the Delhi University. Irrespective of the place of birth and having been a resident of Delhi if an applicant is an MBBS graduate of the Delhi University, he is eligible to be considered for admission against 75% seats. This Court had upheld the validity of the criteria in view of the peculiar circumstances arising in Delhi University in *Jagdish Saran* (supra), to which we have adverted to earlier. This criteria was again considered by a Three Judge Bench of this Court in *Dr. Pradeep Jain* (supra) and, it is submitted that, since the criteria has already been upheld by this Court the challenge to the same is mis-conceived and is not maintainable at all. Inasmuch as the petitioner is not an MBBS graduate of Delhi University the proper course for him would be to seek a direction from the State of Tamil Nadu where he was a student of MBBS course that he should be permitted to seek admission in the post graduate medical courses in the State of Tamil Nadu and the requirement of domicile stipulated by the State of Tamil Nadu be considered to be invalid. It is further submitted that the petitioner would have an unfair advantage inasmuch as he had secured admission under 15% all-India quota, he would become ineligible in the State of Tamil Nadu even though he is a medical graduate from that State and would be deemed to be eligible from Delhi merely on the ground that he was born and brought up in Delhi; that because he obtained a low position in comparison to a large number of other candidates with whom he is competing for the MBBS course in the Delhi University, he would gain an unfair advantage on this and the petitioner being fully aware of the criteria followed by the Delhi University to the MBBS courses by the time he chose to secure admission in Tamil Nadu from all-India quota having been unable to secure admission in Delhi University. It is contended that if the claim put forward by the petitioner is accepted, then he would become eligible in 25% all-India quota in all institutions all over the country and would also become eligible for 75% seats in Tamil Nadu and 75% in Delhi. Thus he would have opportunity of competing against 175% of seats. As regards the meritorious candidates in Delhi they would be eligible against 100% of seats - 25% all-India quota and 75% seats in the Delhi University and thus it would confer unjustified favour and benefits to all such candidates as the petitioner in the present case. If the pattern followed by the Delhi University is adopted and followed by all institutions and States throughout the country which is in conformity with the norms laid down by this Court it would ensure that no candidate secures any unfair advantage in admission to post graduate courses. If the institutional preference is adopted

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A as a uniform criteria for reservation for post graduate courses, it would ensure that every candidate irrespective whether he secures admission to the MBBS courses from 85% seats reserved for local candidates or 15% seats for all-India basis or whether he was allotted in the State of his origin or residence, or to any other State, will have an equal opportunity to appear in post

B graduate course. Further it is contended that other institutions and States which have adopted the criteria of domicile for State quota ought to be directed to discontinue the same and reservation, if any, should be done as is permitted in *Dr. Pradeep Jain* case (supra) case on the basis of institutional preference.

C In this background, we have to evolve a principle which is equitable to all. Taking into consideration local and regional compulsions we have to strike a balance so that students who have pursued studies in a particular university or State are not invidiously stranded or marooned. The grievance of the petitioners, if examined closely, is very limited and that is

D these students who have gone out of their home-State to pursue studies else where on all India quota should be allowed to participate to compete in their home-State where they have their roots, to pursue post-graduate studies.

The objection of the University and the intervening students is that such students will have an unfair advantage of competing in All India quota +

E home-State quota + institutional quota in that University where they studied. We fail to see any unfair advantage in this regard inasmuch as all students have to take common entrance test with reference to their home State and face stiff competition. The students in home State if at all are put to disadvantage only to a small degree of taking competition with respect to very

F few students falling in that category of the petitioners. On the other hand, inclusion of such students will make it broad based as well thereby striking a balance. Thus, we think, if students of the home State are also allowed to participate in the entrance test, there will be uniformity all over the country and small disadvantage removed with respect to a small section of student

G community does not disturb the balance and the advantage derived achieves uniformity.

The Delhi University appears to have conducted its entrance examination and we had allowed the petitioners to participate in the same whose results will now have to be declared. Counselling in the Delhi University has

H gone on 10.4.2000 and 11.4.2000 and when we permitted the petitioners to

participate in such counselling subject to result of these petitions, the University thought fit to cancel such counselling already done and postponed the same. In these peculiar circumstances, we have riveted our attention only to the imminent problem arising and in the manner presented before us. We are not called upon to decide the larger issues requiring detailed examination of the effect of earlier decisions of this Court and extent or manner of reservation based on residence and/or institution with reference to conditions prevailing in each of the State and how the same will have to be maintained or properly balanced.

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On this basis we think the States/Union Territories/Universities should allow students who had pursued courses outside their home State to participate in the entrance examination held in their home State irrespective of any kind of preference that may have been adopted for selection to P.G.medical course.

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Before parting with this case, we make it clear that we are not deciding that vexed question of attaining uniformity in all P.G.courses all over the country except to the extent indicated earlier nor we are in a position to say whether institutional preference based on any study in an institution or requirement of residence or both fully complies with the various directions issued by this Court from time to time. We, therefore, think that it would be appropriate for the concerned States or other authorities to achieve uniformity by adopting institutional and/or residential preference in terms of the decisions referred to by us as otherwise, if challenged, may not stand scrutiny of the Court.

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The petitions are allowed to the extent indicated above.

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R.C.K.

Petitions partly allowed.