

Magan Mehrotra And Ors. vs Union Of India (Uoi) And Ors. on 17 December, 2002

Equivalent citations: 2003(3)SCALE101, (2003)11SCC186, AIRONLINE 2002 SC 3, 2003 (11) SCC 186, (2003) 3 SCALE 101, (2004) 1 SCALE 583

Bench: Chief Justice, K.G. Balakrishnan, S.B. Sinha

ORDER

1. These petitions under Article 32 of the Constitution of India was filed because of the Bulletin of Information issued by the University of Delhi for the academic session 2001, whereby and whereunder following the judgment of this Court in *Dr. Parag Gupta v. University of Delhi and Ors.* it was stipulated that the candidates who have passed the MBBS Examination in an 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 permanent resident of the National Capital Territory of Delhi.

2. The grievance of the petitioner is that on account of different standards adopted by different States, the students are suffering great hardship and in fact there is no rationale in not allowing the students who might be the residents of one State but who have undertaken their Undergraduate study in some other State on being selected through a competitive examination on All India basis, to get preferential right in obtaining admission in post-graduate course.

3. This Court by a three-Judge Bench considered the question of admission to the Medical Colleges as well as reservation of seats for residents of the State or students of same University laboratory in the case of *Dr. Pradeep Jain v. Union of India*. So far as the admission to Post Graduate Course is concerned, the Court held that for admission to Post Graduate Courses it would be eminently desirable not to provide for any reservation based on requirement of residence within the State or on institutional preference. Having said so, the Court went on further to hold that 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. We are not concerned with the other observations made in the aforesaid case since in the case in hand we are also concerned only with the admission to the post-graduate course. The aforesaid decision unequivocally indicates that even though it would be ideal not to have any reservation either on residence requirement or on institutional preference but the students passing out their under-graduate study from a University should have some preferential treatment and it is

in that context the aforesaid observation has been made. It may be stated that in the aforesaid case before disposing of the matter all States were duly noticed and those who had entered appearance, their contentions were taken into account and finally the matter stood disposed of, as stated above.

4. In the case of Dr. Dinesh Kumar and Ors. (II) v. Motilal Nehru Medical College, Allahabad and Ors. the aforesaid percentage which was indicated in Pradeep Jain's case (supra) was altered as it was felt that the percentage indicated there is on the higher side. In Dinesh Kumar's case (supra) it was held that number of seats which should be made available for admission on the basis of All India Entrance Examination should be changed which necessarily relates to the admission into MBBS course and it was held that not less than 15% of the seats in each medical college or institution, without taking into account any reservation validly made, shall be filled on the basis of All India Entrance Examination. It was further held that the same formula must apply also in regard to admissions to post graduate courses and instead of making available for admission on all India basis 50% of the open seats after taking into account reservations validly made, we would direct that not less than 25% of the total number of seats without taking into account any reservations shall be made available for being filled on the basis of All India Entrance Examination. In dealing with the admission to the post graduate course the Court has all along been insisting for excellence and yet trying to balance the equity by considering the case of some preferential treatment to the students who were educated from the same university. When the case of Dr. Parag Gupta (supra) came up for consideration before this Court before a two-Judge Bench, looking at the hardship which the applicant was facing on account of the residence as a condition precedent for admission into post-graduate course which was in relation to Tamil Nadu, to resolve the impasse, the Court held that even those students who have gone out of their home States to pursue study elsewhere on all India quota should be allowed to participate to compete in their home-States where they have their roots, to pursue post-graduate studies.

5. Be it stated that the aforesaid conclusion of the judgment of two learned Judges of this Court was in the peculiar facts of that case and it became necessary to hold that view because of the condition of residence being insisted upon in the State of Tamil Nadu where the very applicant had pursued his undergraduate study on being selected on the basis of an All India Entrance Examination in respect of 15% quota available to be filled up in the undergraduate course. Had the State of Tamil Nadu followed the direction of this Court in Pradeep Jain's case, the aforesaid contingency would not have arisen.

6. In the aforesaid judgment in paragraph 8 their Lordships have enumerated indicating which State has adopted what nature of preference and from that it is clear that the States 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-Judges Bench in Pradeep Jain case (supra), it must be held that the aforesaid decision of the States of Assam, Tamil Nadu, Goa and Karnataka conferring preference on the basis of the 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 the post graduate course the only preference that should be adopted by all States is the institutional preference, as was indicated in

Pradeep Jain's case. It would be necessary for us to take into consideration yet another judgment of this Court in *Dr. Prachi Almeida v. Dean, Goa Medical College and Ors.* which arises out of an admission to the Goa Medical College wherein the Court followed the earlier decision in *Dr. Parag Gupta's case* (supra) 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-fulfilment of residential requirement. In fact, therefore, their Lordships apparently followed Pradeep Jain's 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 and Ors.* where a stray observation has been made to the effect that there is no conflict between the Pradeep Jain's case and Parag Gupta's case. 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's cases and answered in those two cases. A bare look at the judgment of the 3-Judge Bench in Pradeep Jain's case and two-Judge Bench in Parag Gupta's case in relation to the question of preference in the post graduate course it cannot but be held that the Parag Gupta's 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's case. Independently on examining the 7 issue of preference, we are also of the considered opinion that the decision rendered by this Court in Pradeep Jain's case had taken a correct criteria into consideration and we therefore, agree with the principles evolved and the ratio given in Pradeep Jain's case so far as it relates to admission into the post graduate 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 the All India basis. In this view of the matter, the impugned Bulletin of Information issued by the Delhi University in relation to the Post-doctoral (D.M./M.Ch.) Post Graduate Degree must be held to be contrary to the direction of this Court in Pradeep Jain's case and the same is accordingly quashed. However, this order shall be made effective from the next academic session. We however direct the States of Assam, Tamil Nadu, Goa and Karnataka to follow the pattern of institutional preference as has been indicated by this Court in Pradeep Jain's case and reiterated by us today. These petitions stand disposed of accordingly.