

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.7939 OF 2019
(Arising from SLP(C) No. 7003 of 2017)

Yatinkumar Jasubhai Patel and others ...Appellants

Versus

State of Gujarat and others ...Respondents

WITH

WRIT PETITION (C) NO. 122 OF 2018

WRIT PETITION(C) NO. 1479 OF 2018

WRIT PETITION (C) NO. 1142 OF 2019

J U D G M E N T

M.R. SHAH, J.

Leave granted in the special leave petition.

2. The “Institutional Preference” for Post Graduate Medical Admissions is the core issue involved in these appeal/petitions.

3. Pursuant to the order passed by a two Judge Bench of this Court dated 12.09.2018, all these appeal/petitions are placed before the larger Bench.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 22.02.2017 passed by the Division Bench of the High Court of Gujarat in Special Civil Application No. 19918/2016, by which the Division Bench has dismissed the said writ petition upholding the vires of Rules 2, 3, 4.1 and 4.3 relating to admission to the Post Graduate Medical Courses framed by the Gujarat University providing that the preference shall be given to the candidates graduating from the Gujarat University (providing for “Institutional Reservation”), the original writ petitioners have preferred the special leave petition/appeal. Thus, the original writ petitioners are challenging the “Institutional Preference” in the Post Graduate Medical Courses.

4.1 Writ Petition (C) No. 1479 of 2018 under Article 32 of the Constitution of India has been preferred by the petitioners also challenging the policy of “Institutional Preference” for admission to the Post Graduate Medical Courses insofar as respondent no.3

– University of Delhi and respondent no.4 – Guru Gobind Singh Indraprastha University is concerned. Similar prayers are made in Writ Petition (C) No. 122/2018 and Writ Petition(C) No. 1142/2019 also challenging the policy of “Institutional Preference” in the Post Graduate Medical Courses.

4.2 For the sake of convenience, Civil Appeal arising from Special Leave Petition(C) No. 7003/2017 arising out of the impugned judgment and order dated 22.02.2017 passed by the High Court of Gujarat is treated and considered as a lead matter and the relevant rules of the Gujarat University relating to admission to the Post Graduate Medical Courses framed by the Gujarat University are considered.

5. In exercise of powers under Section 39 read with Section 32 of the Gujarat University Act, 1949, the Gujarat University has framed the rules for the purpose of governing admission to Post Graduate Courses. The relevant Rules are Rules 2, 3, 4.1, 4.2 and 4.3, which read as under:

“2. As per directive of Hon’ble Supreme Court of India, New Delhi, 50% of total available seats in Academic year in various post graduate degree and diploma courses in each subject in Government Institution/Colleges will be filled up as a All India Quota Seats as per All India 50% quota rank by competent authority. The remaining seats

will be available for the candidates passing from Gujarat University in accordance with Rule 4.1. The student passing from other statutory Universities within Gujarat State will be considered as per their merit in accordance with Rule 4.3.

3. Remaining 50% (or more) of total seats after Rule 2.0 (and Rule 2.1) in post graduate courses will be filled up by the “Admission Committee” of University.

4.0 Selection: Selection of candidates eligible under rule 1 for seats under rule 3.0 will be done category and status wise on the basis of merits as laid down herein further.

4.1 Preference shall be given to candidates graduating from Gujarat University.

4.2 Deleted.

4.3 After the merit list prepared under Rule 4.1 is exhausted the candidates graduating from any other University located in Gujarat State will be considered.”

5.1 As per the aforesaid Rules, 50% of the total available seats in the academic year in various Post Graduate Degree and Diploma Courses in each subject in Government Institution/Colleges will be filled up as “All India Quota Seats” by competent authority and the remaining seats will be filled up in accordance with Rule 4.1 of the Rules of the University. As per Rule 3 of the Rules, remaining 50% of the total seats in Post Graduate Courses will be filled up by the “Admission Committee”

of University. As per Rule 4.3 of the Rules, after merit list prepared under rule 4.1 is exhausted, candidates graduating from any other University located in Gujarat State will be considered.

5.2 The original writ petitioners challenged the vires of the afore-stated Rules providing “Institutional Preference” – giving preference to the candidates graduating from Gujarat University mainly on the ground that in view of introduction of the National Eligibility Entrance Test (hereinafter referred to as ‘NEET’) and the admissions are to be given solely on the basis of the merits and the marks obtained in the NEET, the Rules providing “Institutional Preference” shall be violative of the Indian Medical Council Act, 1956 and the Post Graduate Medical Education Regulations, 2000 framed under the Indian Medical Council Act. That by the impugned judgment and order and after considering the decisions of this Court in the cases of *Dr. Pradeep Jain v. Union of India* reported in 1984 (3) SCC 654; and *Saurabh Chaudri v. Union of India* reported in 2003 (11) SCC 146 and after considering the scheme of the NEET (PG), the High Court has dismissed the said petition holding the “Institutional Preference”.

Hence, the present appeal challenging the policy of “Institutional Preference” in the Post Graduate Medical Courses.

6. Learned counsel appearing for the writ petitioners have vehemently submitted that it is true that earlier – prior to the introduction of the NEET, the “Institutional Preference” in the Post Graduate Medical Courses is held to be permissible. However, in view of the introduction of the NEET which brings about the change to the effect that all admissions to the Post Graduate Medical Courses should be only on the basis of merit in the NEET, as per Regulation 9 of the Post Graduate Medical Education Admission Regulations, 2000, now “Institutional Preference” would not be permissible and the same shall be ultra vires the Medical Council Act and the Regulations, 2000 and contrary to the scheme of the NEET.

6.1 It is vehemently submitted by the learned counsel for the writ petitioners that the purpose due to which such “Institutional Reservation” was held permissible by this Court no longer exists as now there exists 50% All India Quota and the admission is also done on the basis of an All India Examination – NEET.

6.2 It is further submitted by the learned counsel for the writ petitioners that even the MCI Regulations for the Post Graduate

Admissions, namely, Regulations, 2000 do not permit “Institutional Reservation”. It is submitted that the MCI Regulations have been held by this Court to be a complete Code and therefore no reservations could be provided unless the same is permitted under the regulations. In support of the above, reliance is placed upon the decision of this Court in the case of *State of U.P. v. Dinesh Singh Chauhan reported in (2016) 9 SCC 749*.

7. So far as the Delhi University and Guru Gobind Singh Indraprastha University are concerned, it is submitted by the learned counsel for the respective petitioners that under the MCI Regulations, admissions are to be done only by way of two lists, i.e., (i) 50% seats on the basis of “All India Merit List”; and (ii) 50% seats to be filled on the basis of “State-wise List”. It is submitted that the admissions to the State Quota seats in the aforesaid two Universities are not being done on unified “State-wise List” but both the universities are preparing two separate “University-wise” lists which is not in accordance with the MCI Regulations.

7.1 It is further submitted by the learned counsel for the respective petitioners that the two universities have provided

“Institutional Reservation” to an extent of 100% of the State Quota seats, i.e., the entire State quota has been reserved for their alumni completely denying opportunity of selection to other State candidates. It is submitted that the petitioners being MBBS graduates from the State of NCT of Delhi are entitled to be considered under the State quota seats. It is submitted that at present because of the “Institutional Reservation”, the petitioners are not entitled to be considered under the State quota at all. It is submitted that therefore 100% “Institutional Reservation” cannot at all be permitted even if it is otherwise held to be permissible.

8. It is further submitted by the learned counsel for the writ petitioners that in the case of *Dr. Pradeep Jain (supra)*, “Institutional Preference” was limited to 50% of the total number of open seats. It is submitted that the same was held to be permissible at a time when 100% seats in the State colleges were filled up by the State. It is submitted that in the case of *AIIMS Students’ Union v. AIIMS reported in (2002) 1 SCC 428*, the “Institutional Reservation” was permitted only to an extent of 25%. It is submitted that similarly in the case of *Dr. Saurabh Chaudhary (supra)*, the “Institutional Preference” was permitted

to the extent of 50%. It is submitted that even if this Court holds the “Institutional Preference” permissible, in that case, the same should be limited to the 50% of the total number of State quota seats.

9. All these appeal/petitions are vehemently opposed by the learned Advocates appearing on behalf of the respective States, respective Universities and the learned counsel appearing on behalf of the MCI. Learned counsel appearing on behalf of the respective respondents have vehemently submitted that, as such, the “Institutional Preference” is held to be permissible by this Court right from 1971. It is submitted that the issue involved with respect to “Institutional Preference” is now not *res integra* in view of the decisions of this Court in the cases of *D.N. Chanchala v. State of Mysore* reported in (1971) 2 SCC 293; *Dr. Pradeep Jain (supra)*; a Constitution Bench judgment in the case of *Saurabh Chaudri (supra)*; and *Gujarat University v. Rajiv Gopinath Bhatt* reported in (1996) 4 SCC 60. It is submitted therefore now it will not be open for the petitioners to again re-agitate the issue with respect to “Institutional Preference”. It is submitted that the relevant regulations prescribing “Institutional Preference” are

absolutely in consonance with the law laid down by this Court in the aforesaid decisions.

9.1 Learned counsel appearing on behalf of the MCI, while opposing the present appeal/petitions, has vehemently submitted that admission to Post Graduate Medical Courses in the medical colleges is done on the basis of the NEET merit and 50% seats are filled up on merit drawn on “All India basis” and 50% seats are filled up on merit drawn on “State-wise basis”. It is submitted that earlier the Gujarat University used to hold examinations for Post Graduate Medical Courses and now instead of such test by the Gujarat University, merit is to be determined on the basis of NEET examination results. It is submitted that the National Board of Examinations is entrusted with the job of holding NEET test for admission to Post Graduate Medical Courses. It is submitted that as per the information bulletin issued by the National Board of Examination, 50% of the available seats are All India Quota seats and the remaining seats are to be filled either by the State Government or Colleges or Universities at the institute level using NEET-PG score and as per the applicable regulations and/or eligibility criteria, reservation policy, etc. It is submitted that for the remaining 50% seats, it is

left open for the State Government and Government Agency to make admission in such colleges, universities and institutions following the score obtained by the students in the NEET examination. It is submitted therefore that holding of common examination cannot lead to invalidity of “Institutional Preference” as has been held permissible by this Court in catena of decisions. It is further submitted that after uniform entrance examination through NEET, provisions of Section 10D does not debar source from which admissions are to be made at the post graduate level.

9.2 Making the above submissions, it is prayed to dismiss the present appeal/writ petitions.

10. The short question which is posed for consideration of this Court is, whether after the introduction of the NEET Scheme, still the “Institutional Preference” in the Post Graduate Medical Courses would be permissible?

10.1 At the outset, it is required to be noted that, as such, and it is not in dispute that such “Institutional Preference” in the Post Graduate Medical Courses is held to be permissible by this Court in catena of decisions, more particularly a three Judge bench decision of this Court in the case of *Dr. Pradeep Jain (supra)*; a Constitution Bench decision of this Court in the case of *Saurabh*

Chaudri (supra); and in the case of *Saurabh Dwivedi v. Union of India* reported in (2017) 7 SCC 626.

10.2 In the case of *Dr. Pradeep Jain (supra)*, it is observed and held by this Court as under:

“We are therefore of the view that so far as admissions to post-graduate 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 neuro-surgery 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.”

[emphasis supplied]

10.3 Thereafter, a five Judge Bench of this Court in the case of *Saurabh Chaudri (supra)* has reiterated the scheme of “Institutional Preference” as framed in *Dr. Pradeep Jain (supra)* and has approved the “Institutional Preference” confined to 50% of the total number of open seats. In that decision, this Court also took note of the subsequent decision in the case of *Dinesh Kumar (Dr.) (II) v. Motilal Nehru Medical College, reported in (1986) 3 SCC 727* fixing the “Institutional Preference” to the extent of 25%. However, after taking note of the said decision, this Court has reiterated the scheme framed in *Dr. Pradeep Jain (supra)* providing “Institutional Preference” confined to 50% of the total number of open seats. In the case of *Saurabh Dwivedi (supra)*, this Court has again approved the “Institutional Preference”. Thus, right from 1971 onwards till 2017, consistently this Court has approved and/or permitted the “Institutional Preference” in the Post Graduate Medical Courses.

However, it is the case on behalf of the petitioners that in view of the introduction of the NEET Scheme and in view of Section 10D of the MCI Act, by which admissions are to be given on the basis of the merit in the NEET, such an “Institutional

Preference” would not be permissible. It is required to be noted that introduction of the NEET has, as such, nothing to do with any preference/Institutional Preference, more particularly the “Institutional Preference” as approved by this Court time and again. The purpose and object of the introduction of the NEET was to conduct a uniform entrance examination for all medical educational institutions at the under-graduate level or post-graduate level and admissions at the under-graduate level and post-graduate level are to be given solely on the basis of the merits and/or marks obtained in the NEET examination only. It is required to be noted that earlier the respective universities including the Gujarat University used to hold examination for post-graduate admission to medical courses and now instead of such tests by the Gujarat University/concerned universities, merit is to be determined on the basis of the NEET examination results only and admissions are required to be given on the basis of such merits or marks obtained in NEET. The only obligation by virtue of introduction of NEET is that, once centralized admission test is conducted, the State, its agencies, universities and institutions cannot hold any separate test for the purpose of admission to Post-Graduate and PG and Diploma Courses and

such seats are to be filled up by the State agencies, universities/institutions for preparing merit list as per the score obtained by the applicants in NEET examination and therefore by introduction of the NEET, Section 10D of the MCI, Act has been amended, consequently amendment to the Post-Graduate Education Regulations, 2000, admission to Post Graduate Courses are made providing for solely on the basis of the score secured by the candidates seeking admission based on centralized examination, i.e., NEET.

10.4 Even while giving admissions in the State quota/institutional reservation quota, still the admissions are required to be given on the basis of the merits determined on the basis of the NEET examination results. Under the circumstances, introduction of the NEET Scheme, as such, has nothing to do with the “Institutional Preference”. Therefore, the change by introduction of the NEET Scheme shall not affect the Institutional Preference/Reservation as approved by this Court from time to time in catena of decisions, more particularly the decisions referred to hereinabove. Under the guise of introduction of the NEET Scheme, the petitioners cannot be permitted to re-agitate and/or re-open the issue with respect to Institutional Preference

which has been approved and settled by this Court in catena of decisions, more particularly the decisions referred to hereinabove.

11. Now so far as the submission on behalf of the petitioners that if the 50% seats are reserved for State quota and if institutional preference/reservation is permitted to the extent of 50% of the total number of open seats, in that case, not a single seat in the State quota shall be available and therefore the percentage of Institutional Preference may be reduced to the extent of 25% or so is concerned, at the outset, it is required to be noted that as such the Institutional Preference to the extent of 50% of the total number of open seats has been approved by this Court in catena of decisions, more particularly the decisions referred to hereinabove. The decision of this Court in the case of *Dinesh Kumar (Dr.) (II) (supra)* permitting 25% Institutional Preference has been distinguished by a Constitution Bench of this Court in the case of *Saurabh Chaudri (supra)*. Therefore, once the Institutional Preference to the extent of 50% of the total number of open seats has held to be permissible, in that case, thereafter it will be for the appropriate authority/State to consider how much percentage seats are to be reserved for Institutional Preference/Reservation. It will be in the realm of a

policy decision and this Court cannot substitute the same, unless it is held to be arbitrary and/or mala fide and/or not permissible. As observed hereinabove, a five Judge Bench of this Court in the case of *Saurabh Chaudri (supra)* has categorically allowed/permitted/approved the Institutional Preference/Reservation in the post graduate medical courses to the extent of 50% of the total number of open seats.

12. Therefore, for the reasons stated above and considering the decisions of this Court in the cases of *Dr. Pradeep Jain (supra)*; a Constitution Bench decision of this Court in the case of *Saurabh Chaudri (supra)*; and *Saurabh Dwivedi (supra)*, Institutional Preference to the extent of 50% is approved and it is observed and held that introduction of the NEET Scheme shall not affect such Institutional Preference/Reservation. Such a regulation providing 50% Institutional Preference/Reservation shall not be in any way ultra vires to Section 10D of the MCI Act. Even otherwise, as observed hereinabove, even in the case of Institutional Preference/Reservation, the admissions in the post graduate courses are to be given on the basis of the merits and marks obtained in the NEET examination result only.

In view of the above and for the reasons stated above, all these appeal/writ petitions deserve to be dismissed and are accordingly dismissed. No costs.

.....J.
[ARUN MISHRA]

.....J.
[M.R. SHAH]

NEW DELHI;
OCTOBER 04, 2019.

.....J.
[B.R. GAVAI]