

CASE NO.:
Writ Petition (civil) 420 of 2000

PETITIONER:
DR. PRACHI ALMEIDA

Vs.

RESPONDENT:
THE DEAN, GOA MEDICAL COLLEGE & ORS....RESPONDENTS

DATE OF JUDGMENT: 03/09/2001

BENCH:
S.R.Babu, Doraiswamy Raju

JUDGMENT:

J U D G M E N T
RAJENDRA BABU, J. :

The petitioner before us was admitted into Goa Medical College under the 15% all-India quota. She passed out of the College in 1998 and completed the internship successfully, namely, rural posting in Goa and the remaining nine months in a hospital in Delhi recognised by the Medical Council of India and, thereafter she was granted permanent registration under the Goa Medical Council and was also awarded a degree of having passed M.B.B.S. by the Goa University. She applied for admission to post-graduate course in March 2000. However, she was denied admission on the ground that she did not fulfil the condition relating to residence in State of Goa for a period of 10 years in terms of the Goa (Rules for Admission for Postgraduate Degree Courses of the Goa University at Goa Medical College) Rules, 1998 [hereinafter referred to as 'the Rules']. Rule III of the Rules reads as under :

"Rule III : Eligibility, Preference and Order of Merit.

(1) Eligibility :

Candidates applying for the admission to the post graduate degree/diploma course shall :-

- (i) possess the M.B.B.S. degree of the Goa University or any other University recognised as equivalent thereto by the Goa University and the Medical Council of India.
- (ii) complete Compulsory Rotatory Internship of one year on or before the last date of receipt of application.
- (iii) have resided in the State of Goa for a minimum period of ten years preceding the last date of receipt of applications.

(2) Preference :-

While selecting the candidates for admission to the post graduate courses preference in the following order shall be observed :-

- (a) Candidates who have graduated from Goa Medical College and have also satisfactorily completed full internship at the Goa Medical College. If such candidates are not available, then
- (b) Candidates who have graduated from the Goa Medical College but have done the internship outside the Goa Medical College. If such candidates are again not available, then
- (c) Candidates who have graduated from colleges other than the Goa Medical College, but who have completed the internship in the Goa Medical College. If such candidates are again not available, then
- (d) Candidates who have graduated from and who have done their internship in Colleges other than Goa Medical College."

Though, Goa Bench of the Bombay High Court had held the said Rule to be directory in character, on appeal to this Court in Civil Appeal No. 1966 of 2000 (Dean, Goa Medical College vs. Dr. Sudhir Kumar Solanki & Anr.), we have upheld the validity of this Rule.

This Court in Dr. Parag Gupta vs. University of Delhi & Ors., 2000 (5) SCC 684, considered the effect of decisions in Dr. Pradeep Jain vs. Union of India, 1984 (3) SCC 654; Dr. Dinesh Kumar II vs. Motilal Nehru Medical College, 1986 (3) SCC 727; State of Rajasthan vs. Dr. Ashok Kumar Gupta, 1989 (1) SCC 93; Anant Madan vs. State of Haryana, 1995 (2) SCC 135; D.P. Joshi vs. State of M.B., 1955 (1) SCR 1215; Sanjay Ahlawat vs. Maharishi Dayanand University, 1995 (2) SCC 762, and stated the law on the matter to be as follows :

"These decisions lead us to the following principles : though universitywise preference is permissible, collegewise 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 and followed by Dinesh Kumar the practice all over the country was to make 15% of the seats in MBBS course and 25% of the seats in postgraduate 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 universitywise preference loses its relevance. The explanations 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 their own students should also be accorded due deference." [pp. 689, 690]

We have to balance the interests of the students who had secured admission into the under-graduate medical course on an all- India competition and local students. In such cases, there is reservation at the graduate level and 15% of seats are to be filled by the common entrance examination on all-India basis, rest of the 85% seats to be filled by holding entrance examination at the State level. In 15% seats filled on all-India basis students from one State have to migrate dehors their own choice to other States allotted to them for pursuing M.B.B.S.

course on account of compulsions arising out of the enforcement of the said scheme. 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 All India Institute of Medical Sciences. All M.B.B.S. 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 of the States have adopted institutional preference, while some others residential preference.

The contention put forth in the present case is that the criteria adopted by the respondents in not allowing the petitioner to get admission to post-graduate course on the ground of residential requirement in the migrating State is unjustified. The rule regarding this question having been upheld by us as stated earlier, that contention is no longer available.

It is brought to our notice that the petitioner has married a Goan and has now settled down in Goa. Therefore, Delhi is no longer her home State. The contention advanced on behalf of the respondents 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 and the remaining 75% seats having been earmarked for the students of the State of Goa and the petitioner is not entitled to claim admission on that quota at all. It is submitted that the petitioner would have an unfair advantage since she had secured admission under 15% all-India quota, she would become eligible for admission in Delhi in view of the decision of this Court in *Dr. Parag Gupta vs. University of Delhi & Ors.* (supra); that she is also eligible in 25% all-India quota in all institutions all over the country; and that she also becomes eligible for admission for 75% seats in the State of Delhi and as well as 75% seats in the State of Goa.

In the present case, we do not propose to examine the larger question of attaining uniformity in all post-graduate courses all over the country since we are not in a position to state on the material before us whether the institutional preference criteria adopted by a State or requirement of residence or both fully complies with the various decisions of this Court adverted to by us in *Dr. Parag Gupta's* case (supra). We, therefore, think, it would be appropriate for the States concerned to achieve uniformity by adopting either institutional or residential preference in terms of the decisions of this Court.

The petitioner having been selected in the 15% all-India quota, allowed to study in the State of Goa, obtained graduation, we do not think, her case should be ignored on the basis of non-fulfilment of residential requirement. The students falling under the 15% all-India quota should be allowed to participate to compete in the State where they studied irrespective of the rule of residence. The argument of unfair advantage does not appeal to us as all students have to attain a common standard with reference to the State in which they studied and the number of students of this nature will be very small. Out of students admitted in medical colleges in the State out of the 15% all-India quota, on completion of studies, many may prefer to return to their home State or take 25% all-India quota entrance examination and some others may not make necessary grade to compete with the local students. If they are also allowed to participate in the entrance test for admission to post-graduate medical courses, it will not disturb the balance to any extent but, on the other hand, achieve uniformity to an extent. This principle we have evolved on dictates of necessity and the need for adjusting equities in the matter of fair and proper implementation of the scheme evolved for providing a quota of seats to be filled up on an all-India basis of merit performance in the background we have set out above.

The petition is allowed by directing the respondents to consider the case of the petitioner for admission to post-graduate course for the year for which she had applied if she could have been on the basis of her performance selected to an appropriate course chosen by her in that year without reference to the Rule relating to requirement of 10 years

residence. The petitioner shall, however, be admitted in such course to which she is selected for the current year. Rule is made absolute accordingly.

JUDIS