

186

SUPREME COURT CASES

(2003) 11 SCC

reasonable extent, not necessarily 50% as laid down in *Stephens College case*[†]. Out of the seats left after the deduction of management quota, the State can require the observance of the requirement of constitutional reservation. a

(7) As regards the unaided institutions, they have a large measure of autonomy even in matters of admission of students as they are not bound by the constraints of the demands of Article 29(2). Nor are they bound by the constraints of the obligatory requirements of constitutional reservation. b

109. Before parting with this case, I am of the opinion that *the younger generation in our society nurturing fond hopes and aspiration for their future professional careers should feel it as a pleasurable experience to explore the available options in higher education*. They should be spared from the mental torture due to hassles and unsavoury experiences in getting to the first base. To the extent possible, they should be made to feel that they are part of one nation. Tensions and frustrations at their impressionable age will surely result in a society with distorted and negative values damaging the foundations of a healthy society. The policies and procedures for admissions should be viewed from the larger impact on the future of India. c

[CITED ORDERS]

(1)

(2003) 11 Supreme Court Cases 186

(BEFORE G.B. PATTANAIK, C.J. AND K.G. BALAKRISHNAN
AND S.B. SINHA, JJ.)

MAGAN MEHROTRA AND OTHERS . . . Petitioners;

Versus

UNION OF INDIA AND OTHERS . . . Respondents. e

Writ Petitions (C) No. 417 of 2000 with No. 316 of 2000,
decided on December 17, 2002

Universities — Admission — Medical colleges — Admission to postgraduate courses — Reservation of seats — Proper criterion for preference to those who studied undergraduate course in a particular institution against 15% all-India quota, held, is institutional preference and not residential preference — Information Bulletin of Delhi University for academic session 2001-02 postulating to the contrary, quashed — However, the order directed to be effective from next academic session — States which have adopted the pattern of residential preference directed to follow the pattern of institutional preference — *Parag Gupta (Dr) v. University of Delhi*, (2000) 5 SCC 684, impliedly overruled f

Delhi University issued a Bulletin of Information for the academic session 2001-02 stipulating that the candidates who had passed MBBS examination from any other university under the 15% all-India quota would also be eligible for admission in postgraduate course if they were permanent residents of NCT of g

h

[†] *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558

a Delhi. The petitioners herein challenged the criterion adopted in that bulletin. The Supreme Court found that the nature of preference adopted in that regard differed from State to State. While the States of Assam, Tamil Nadu, Goa and Karnataka had adopted preference on account of residence most of the other States had adopted preference on the institutional basis. In such circumstances, the Supreme Court

Held :

b In dealing with admission to the postgraduate course the Supreme Court has all along been insisting on 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. (Para 5)

c The decision of the States of Assam, Tamil Nadu, Goa and Karnataka conferring preference on the basis of 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 postgraduate course the only preference that should be adopted by all States is institutional preference. (Para 7)

Pradeep Jain (Dr) v. Union of India, (1984) 3 SCC 654, *followed*

Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College, (1986) 3 SCC 727, *referred to*

Prachi Almeida (Dr) v. Dean, Goa Medical College, (2001) 7 SCC 640, *considered*

d Independently, on examining the issue of preference, it is held that the decision in *Pradeep Jain case*, (1984) 3 SCC 564 had taken the correct criterion into consideration and the principles evolved and the ratio given therein are affirmed so far as the same relates to admission into the postgraduate 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 all-India basis. Therefore, the impugned Bulletin of Information issued by Delhi University in relation to the postdoctoral (DM/MCh) postgraduate degree must be held to be contrary to the direction in *Pradeep Jain case* and the same is accordingly quashed. However, this order shall be made effective from the next academic session. (Para 8)

Pradeep Jain (Dr) v. Union of India, (1984) 3 SCC 654, *affirmed*

Parag Gupta (Dr) v. University of Delhi, (2000) 5 SCC 684, *impliedly overruled on this point*

f *State of U.P. v. Vineet Singh*, (2000) 7 SCC 262, *criticised*

The States of Assam, T.N., Goa and Karnataka are directed to follow the pattern of institutional preference as indicated in *Pradeep Jain case* and reiterated herein. (Para 9)

Pradeep Jain (Dr) v. Union of India, (1984) 3 SCC 654, *referred to*

H-M/Z/28540/C

g **Chronological list of cases cited**

on page(s)

1. (2001) 7 SCC 640, *Prachi Almeida (Dr) v. Dean, Goa Medical College* 190b
2. (2000) 7 SCC 262, *State of U.P. v. Vineet Singh* 190c-d
3. (2000) 5 SCC 684, *Parag Gupta (Dr) v. University of Delhi* 188a-b, 189d, 190b, 190c-d, 190d, 190d-e, 190e
4. (1986) 3 SCC 727, *Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College* 189a-b, 189b
- h 5. (1984) 3 SCC 654, *Pradeep Jain (Dr) v. Union of India* 188d, 189a-b, 189f-g, 189h, 190a-b, 190c-d, 190d, 190d-e, 190e, 190e-f, 190g, 190g-h

188

SUPREME COURT CASES

(2003) 11 SCC

ORDER

1. These petitions under Article 32 of the Constitution of India were filed because of the Bulletin of Information issued by the University of Delhi for the academic session 2001-02, whereby and whereunder following the judgment of this Court in *Parag Gupta (Dr) v. University of Delhi*¹ it was stipulated that the candidates who have passed MBBS examination in any 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 a 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 the postgraduate 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 the same university elaborately in the case of *Pradeep Jain (Dr) v. Union of India*². So far as the admission to the postgraduate course is concerned, the Court held that for admission to the postgraduate 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 postgraduate 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 postgraduate 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 postgraduate course. We are not concerned with the other observations made in the aforesaid case since in the case in hand we are concerned only with the admission to the postgraduate 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 from their undergraduate 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

1 (2000) 5 SCC 684

2 (1984) 3 SCC 654

and those who had entered appearance, their contentions were taken into account and finally the matter stood disposed of, as stated above.

- a 4. In the case of *Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College*³ the aforesaid percentage which was indicated in *Pradeep Jain case*² was altered as it was felt that the percentage indicated there is on the higher side. In *Dinesh Kumar case*³ 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
- b 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 apply also in regard to admissions to postgraduate courses and instead of making available for admission on all-India basis 50% of the open seats after taking into account reservations
- c 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.

- d 5. In dealing with the admission to the postgraduate course the Court has all along been insisting on 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*¹ came up for consideration before this Court before a two-Judge Bench, looking at the hardship which the applicant was facing on account of residence as a condition precedent for admission into postgraduate 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
- e on all-India quota should be allowed to participate to compete in their home States where they have their roots, to pursue postgraduate studies.

- f 6. 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 case*², the aforesaid contingency would not have arisen.

- g 7. In the aforesaid judgment in para 8 Their Lordships have enumerated indicating which State has adopted what nature of preference and from that it is clear that the State 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-Judge Bench in *Pradeep Jain case*² it must be held that the aforesaid decision of the States of Assam, Tamil Nadu, Goa and
- h Karnataka conferring preference on the basis of residence was not warranted

3 (1986) 3 SCC 727

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 postgraduate course the only preference that should be adopted by all States is the institutional preference, as was indicated in *Pradeep Jain case*². It would be necessary for us to take into consideration yet another judgment of this Court in *Prachi Almeida (Dr) v. Dean, Goa Medical College*⁴ which arises out of an admission to Goa Medical College wherein the Court followed the earlier decision in *Dr Parag Gupta case*¹ 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 case*² 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*⁵ where a stray observation has been made to the effect that there is no conflict between *Pradeep Jain case*² and *Parag Gupta case*¹.

8. Be it stated that in that particular case the Court was in fact not required to examine the issue that arose in *Pradeep Jain*² or *Parag Gupta*¹ cases and answered in those two cases. A bare look at the judgment of the three-Judge Bench in *Pradeep Jain case*² and two-Judge Bench in *Parag Gupta case*¹ in relation to the question of preference in the postgraduate course, it cannot but be held that *Parag Gupta case*¹ 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 case*². Independently, on examining the issue of preference, we are also of the considered opinion that the decision rendered by this Court in *Pradeep Jain case*² had taken the correct criterion into consideration and we therefore, agree with the principles evolved and the ratio given in *Pradeep Jain case*² so far as it relates to admission into the postgraduate 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 all-India basis. In this view of the matter, the impugned Bulletin of Information issued by Delhi University in relation to the postdoctoral (DM/MCh) postgraduate degree must be held to be contrary to the direction of this Court in *Pradeep Jain case*² and the same is accordingly quashed. However, this order shall be made effective from the next academic session.

9. 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 case*² and reiterated by us today. These petitions stand disposed of accordingly.

4 (2001) 7 SCC 640

5 (2000) 7 SCC 262