

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15504 of 2017

1. Priyanka Bharti, daughter of Ram Pravesh Sah, resident of Mohalla + P.O. + P.S. - Supaul, District - Supaul.
2. Chandra Kishor, son of Satya Narayan Mandal, resident of Village + P.O. - Basaha, P.S. - Pipra, District - Supaul.
3. Manila Kumari, daughter of Ram Jaipal Singh, resident of Mohalla - Vijay Nagar, Road No. 1, Hanuman Nagar, P.O. - Lohia Nagar, P.S. - Patrakar Nagar, District - Patna.
4. Dharmendra Singh, son of Raj Narayan Singh, resident of Mohalla - Khajurbarma, P.S. Sultanganj, District - Patna.
5. Archana, daughter of Late Bhola Nath Sah, resident of Village - Belaw, P.O. - Belaw, P.S. - Kaler, District - Arwal.
6. Vinita Choudhary, daughter of Late Ram Briksh Choudhary, resident of Village + P.O. - Shamsheer Nagar, P.S. - Daudnagar, District - Aurangabad.

... .. **PETITIONERS**

VERSUS

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Deputy Secretary, (Homeopathic), Health Department, Government of Bihar, Patna.
4. The Director, AYUSH (Homeopathic), Health Department, Government of Bihar, Patna.
5. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board, Government of Bihar, Patna.
6. The Union of India, through the Director, AYUSH Ministry, New Delhi
7. Sarita Anju, c/o Avnish Kumar Singh, resident of village Maldah, P.O. Maujee, P.S. Hasanpur, District Samastipur, Bihar
8. Arti, c/o Late Lakhinder Sah, resident of Prabhat Nagar, Bharwanpur, District Muzaffarpur, Bihar
9. Sayistav Praveen, c/o Quamsuzzamah, village Ghorasahan, P.O. and P.S. Ghorasahan, District East Champaran, Bihar
10. Rajani Kumari, d/o Dinesh Prasad, resident of village Amar Singh Bigha, P.S. Sara, P.O. Nerut, District Nalanda, Bihar
11. Rubi Kumari, d/o Sahagird Manjhi, resident of village and P.O. Tarwara, P.S. Tarwara, District Siwan, Bihar
12. Dharmendra Kumar, s/o Bishnu Deo Sharma, resident of village Parsai, P.O. Bajitpur, P.S. Tiveriganj, District Supaul
13. Anuj Kumar, s/o Late Anandi Prasad, resident of village Bawshipur Chandrpur, P.O. Amarapur, P.S. Medni Chowki, District Lakhisarai
14. Indu Kumari, d/o Vijay Kumar Prasad, resident of village Ikkil, P.S. Makihdumpur, District Jehanabad
15. Vaidehi Kumari Gupta, d/o Maheshwar Prasad Gupta, resident of M/s Surya Internet Texari Road, Bala More, Dularijang, Gaya Bihar
16. Binod Kumar, s/o Ramdyal Singh, resident of village Silari, P. S. Kargat, District Rohtas

... .. **RESPONDENTS**



Appearance :

For the Petitioners	:	Mr. Mrigank Mauli Mr. Rakesh Kumar Sharma Mr. Samir Kumar
For the Union of India	:	Mr. S. D. Sanjay, Addl. S. G. Ms. Kanak Verma, CGC
For the State	:	Mr. Binod Kr, Yadav, SC18 Mr. Aditya Nath Jha
For the BCECEB	:	Mr. Prasoon Sinha
For intervenor-resps.	:	Mr. Bindhyachal Singh Mr. Alok Kumar Mr. Anish Kumar Ms. Smriti Singh

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 14-12-2017

It is an admitted fact that R. B. T. S. Government Homeopathy Medical College and Hospital, Muzaffarpur (hereinafter referred to as 'the College'), is the only Homeopathic Medical College established and run by the State Government of Bihar.

2. The dispute, in the present case, relates to admission in Post-Graduate Medical Homeopathic course in the College. The admissions are, admittedly, to be undertaken according to merit -cum- choice on the basis of the competitive test conducted by All India AYUSH Post-Graduate Entrance Test (AIAPGET)-2017, Department of AYUSH, Government of India.

3. The petitioners claim to have appeared for the said test. It is their case that they have pursued their Undergraduate Course



in Homeopathy, i.e. BHMS, through Government Homeopathy Colleges, situate outside the State of Bihar. The Bihar Combined Entrance Competitive Examination Board (BCECEB) is the agency of the State Government of Bihar, which conducts counselling for admissions to various technical and professional courses in the State of Bihar, including admission to Post-Graduate Homeopathy course. In that regard, the BCECEB issued prospectus for Post-Graduate Medical Admission Counselling-2017 for State quota seats of MD (Homeo) courses, based on merit list of AIAPGET-2017. Clause 5 of the Prospectus lays down for qualification and eligibility criteria for MD (Homeo) course. The petitioners are aggrieved by Clause 5.1 (i) of the said Prospectus, which reads thus:-

“**5.1 (i)** The candidates must have passed the B.H.M.S. Examination from any Govt. Homeopathy College of Bihar State included in the schedule of Central Council of Homeopathy, India.”

4. Apparently, the said provision makes only such candidates eligible to be considered for admission in the College, who have passed the BHMS examination from ‘*any Government Homeopathy College of Bihar State*’.



5. The resultant effect of the said provision is that there being only one Government Homeopathy College in the State of Bihar, and since the candidates, who have passed the BHMS examination from a Government Homeopathy College of Bihar State alone have been made eligible to admission to Post-Graduate Homeopathy course in the College, only such candidates who have passed BHMS examination from the College and Hospital, Muzaffarpur, can be considered for admission to Post-Graduate Homeopathy course in the said College. The petitioners have challenged the said Clause 5.1 (i) of the Prospectus on the plea of the same being violative of Article 14 of the Constitution of India and in teeth of the Supreme Court's decision, in the case of **Saurabh Chaudri and Others v. Union of India and Others**, reported in (2003) 11 SCC 146.

6. Before I proceed to take note of the pleadings and submissions advanced on behalf of the parties, it must be noted that the said Prospectus was issued on 23.10.2017 when the Court was closed for Puja Holidays. This writ application has been filed on 30.10.2017, once the Court re-opened after the Puja Holidays. Considering the urgency of the matter, this case was taken up on 31.10.2017. A submission was made on behalf of the petitioners that based on AIAPGET-2017, the BCECEB had proceeded for



counselling and 31.10.2017 itself was the last date for completing the process of admission.

7. In that background, considering the submission on behalf of the petitioners, in the light of the aforesaid Supreme Court's decision, in the case of **Saurabh Chaudri** (supra), the Court observed that the admissions allowed on the basis of the said Prospectus shall be subject to final result of the case.

8. The respondents were directed to file their respective counter affidavits. Counter affidavits have been filed on behalf of the BCECEB and the State of Bihar.

9. In the light of the observation made by this Court that any admission to the said Post-Graduate Homeopathy course will be subject to final result of this case, the BCECEB, in its notice, published vide Advertisement No. 2017/31, dated 06.11.2017, announcing the counselling programme, clearly mentioned in paragraph 15 thereof that seat allotment on the basis of the above mentioned counselling programme will be subject to final decision of this Court in the present case. The said notice has been produced before this Court by learned Counsel for the petitioners, Clause 15 of which reads thus:-

“15. The seat allotment on the basis of above mentioned counselling programme will be subject to the final decision of the Hon'ble



Patna High Court, Patna, in CWJC No. 15504
of 2017.”

10. The candidates, who came to be selected on the basis of counselling and who have been allowed admission to the Post-Graduate Homeopathy course, have intervened in the present proceeding by filing impleadment application and they have been impleaded as respondent nos. 7 to 16, by order, dated 12.12.2017, after having allowed their intervention application, being I. A. No. 8109 of 2017.

11. I have heard learned Counsel for the petitioners, learned Counsel representing BCECEB, learned Counsel for the State of Bihar and learned Counsel for the intervenor-respondents, at length.

12. Mr. Mrigank Mauli, learned Counsel appearing on behalf of the petitioners, has placed heavy reliance on Supreme Court’s decision, in the case of **Saurabh Chaudri** (supra), with special reference to paragraphs 48, 67 and 72, to buttress his contention. He has argued, with reference to the said decision of the Supreme Court, in the case of **Saurabh Chaudri** (supra), that the students for Post-Graduate training can be selected strictly on merit to be judged on the basis of academic records in the Undergraduate course and the entrance test. He has also submitted,



in the light of the said decision, in the case of **Saurabh Chaudri** (supra), that the admission to Post-Graduate courses should be open to candidates on All India basis and there can be no restriction on the ground of location of the institution. According to him, what has been done by the respondents, on the basis of Clause 5.1 (i) of the Prospectus that they have provided 100 per cent institutional preference in favour of such candidates, who have completed their BHMS course from the College.

13. Mr. Prasoon Sinha, learned Counsel appearing on behalf of the BCECEB, has submitted that the BCECEB has simply acted as an agent of the State Government of Bihar for the purpose of conducting counselling. He has also submitted that the said Prospectus was announced only after seeking approval of the State Government of Bihar.

14. Learned Counsel appearing on behalf of the State of Bihar, on the other hand, has submitted that the requirement under Clause 5.1 (i) of the Prospectus cannot be said to be discriminatory. The decision was taken to confine admissions to Post-Graduate Homeopathy course in the said R. B. T. S. Government Homeopathy Medical College and Hospital, Muzaffarpur, only to the students who have passed their BHMS course from Government Colleges of the State of Bihar, because



the Government Colleges are maintained by the State Government from public exchequer.

15. Mr. Bindhyachal Singh, learned Counsel appearing on behalf of the intervenor-respondents, has submitted that there is purpose behind making reservation by institutional preference, as, according to him, Article 14 of the Constitution of India, though forbids class legislation, it does not forbid reasonable classification. According to him, in the present case, classification is based on *intelligible differentia* and the differentia has a rational basis. Extending his argument, he has submitted that if provision of such kind is not made, students, passing out from the institution, will have no preference to have admission in the same institution in which they had pursued their Undergraduate course and, therefore, such kind of preference cannot be said to be discriminatory or offending Article 14 of the Constitution of India.

16. He has next submitted that, now, since the intervenor-respondents have already taken admissions, any interference at this stage by this Court will cause great hardship inasmuch as they will be not in a position to seek admission even in other Colleges for pursuing their Post-Graduate Homeopathy course.

17. After having considered rival submissions, I am of the considered view that the controversy involved in the present case



arising out of the provisions as contained in Clause 5.1 (i) of the Prospectus, laying down the eligibility criteria, as noted above, is squarely covered by the Supreme Court's decision, in the case of **Saurabh Chaudri** (supra). The Supreme Court, after having considered previous decisions on this aspect has clearly held, in the case of **Saurabh Chaudri** (supra), that so far as the admission to Post-Graduate courses, such as MS, MD and 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'*. The Supreme Court, however, acknowledged the significance of institutional continuity in education and held that though the residence requirement within the State would not be a ground for admission to Post-Graduate courses, a certain percentage of seats may be reserved on the basis of institutional preference. Explaining this position, the Supreme Court observed that a student, who has passed an MBBS course from a college or university may be given preference for admission to 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 the open seats available for admission to the Post-Graduate course. It will be



useful to quote following passage from paragraph 48 of **Saurabh Chaudri** (supra):-

“.....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 admission 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 neuron-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 is added)

18. The Supreme Court concluded, in paragraph 67 of **Saurabh Chaudri** (supra), as follows:-

“68. This Court may therefore notice the following:

(i) The State runs the Universities.

(ii) It has to spend a lot of money in imparting medical education to the students of the State.

(iii) Those who get admission in Post Graduate Courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

(iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for last about two decades.



(v) Even those States which defied the decision of this Court in *Dr. Pradeep Jain's case (AIR 1984 SC 1420)* had realized the need for institutional preference.

(vi) No sufficient material has been brought on record for departing from this well-established admission criteria.

(vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS Course. But together with the local students 15%, students who had competed in all India Entrance Examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in *Dr. Pradeep Jain's case (supra)* is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on



identifiable ground, there is hardly any scope for manipulation.”

19. After elaborate discussion, the Supreme Court, in no uncertain terms, held, in paragraph 72 of **Saurabh Chaudri** (supra), that reservation by way of institutional preference should be confined to 50 per cent of the total seats, the same being in public interest.

20. Learned Counsel for the intervenor-respondents has made alternative submission in order to save admissions already allowed to the intervenor-respondents to the said Post-Graduate course, to the effect that instead of quashing the entire exercise of counselling and admission based on the said provisions under Clause 5.1 (i) of the Prospectus, a middle path should be adopted, relying on a recent decision of the Supreme Court, rendered on 11.12.32017, in **Civil Appeal No. 367 of 2017 (Ran Vijay Singh and Others v. State of U.P. and Others)**.

21. I do not think the said decision needs to be applied in the present facts and circumstances of the case since in that case, the result of the competitive examination, in question, was altered thrice with the Court’s intervention, which had taken a lot of time, which had made the Supreme Court to adopt a middle path, by saving the candidates admitted earlier, if they were not found



successful in the third declaration of result. In the present case, as has been noticed above, the counselling was held on 07.11.2017 and admissions undertaken on 08.11.2017.

22. What has clearly emerged from the discussions, as above, that the eligibility criteria laid down in Clause 5.1 (i) of the Prospectus, allowing 100 per cent reservation on institutional basis is unconstitutional, being in teeth of Article 14 of the Constitution of India, in the light of law laid down by the Supreme Court, in the case of **Saurabh Chaudri** (supra) and, therefore, unsustainable.

23. In the light of the Supreme Court's decision, in the case of **Saurabh Chaudri** (supra), institutional reservation on the basis of institutional preference cannot go beyond 50 per cent. Reservation on the basis of institutional preference within 50 per cent, however, is reasonable and can be approved.

24. Accordingly, Clause 5.1 (i) of the Prospectus, in question, is hereby declared *ultra vires*. The counselling done on the basis of the said provision is also declared to be illegal, being in teeth of Article 14 of the Constitution of India. The admissions given on the said basis to the intervenor-respondents cannot be sustained and such admissions are accordingly held to be illegal.

25. The respondent-BCECEB is directed to hold a counselling afresh from the stage of registration by providing 50



per cent reservation on the basis of institutional preference. Normally, I would have directed the State Government and the BCECEB to take a decision on the question of providing the percentage of institutional preference, but considering the time constraint, I have directed the BCECEB to provide reservation on institutional preference following the decision of the Supreme Court, in the case of **Saurabh Chaudri** (supra), particularly, in the background of the fact that the State of Bihar, by the impugned action, had provided 100 per cent reservation on institutional preference, which I have found to be not permissible.

26. Rest of the conditions in the Prospectus, in question, shall remain intact. The counselling must be undertaken expeditiously and concluded within a maximum period of fortnight from the date of receipt/production of a copy of this order.

27. The period of fortnight I have prescribed because the BCECEB had earlier announced counselling programme on 02.11.2017 and had completed it by 07.11.2017.

28. I have kept in mind, while passing this order, that there is no statutory cut off date prescribed for admission to Post-Graduate Homeopathy course.

29. It is also made clear that till the process of counselling is over, the intervenor-respondents shall be allowed to pursue their



course, if they want, and those who are selected on the basis of counselling to be held under the orders of this Court, they shall be allowed to continue their course and those who do not succeed, their admissions shall stand cancelled, in view of this judgment and order.

30. This application is allowed.

31. However, there shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20-12-2017
Transmission Date	N/A

