

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5624 of 2020

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1. Dr. Keshav S/o Dr. Ashok Kumar R/o House No. A1661, Devi Sthan Road, Mahuabagh, (Near Jagdeo Path), Dhanaut, Sahay Nagar, P.S.- Rupaspur, District Patna.
 2. Dr. Amrita Rashmi D/o Dr. Ashok Kumar R/o House No. A1661, Devi Sthan Road, Mahuabagh, (Near Jagdeo Path), Dhanaut, Sahay Nagar, P.S.- Rupaspur, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Under Secretary Department of Health, Government of Bihar, Patna.
4. The Bihar Combined Entrance Competitive Examination Board IAS Association Building, Patna through the Chairman.
5. The Controller of Examinations Bihar Combined Entrance Competitive Examination Board, Patna.
6. The Officer on Special Duty Bihar Combined Entrance Competitive Examination Board, Patna.
7. The Medical Council of India Pocket-14, Sector-8, Dwarka Phase-1, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Patanjali Rishi, Advocate
For the Intervener	:	Mr. Mrigank Mauli, Advocate
		Mr.Amresh Kumar Sinha
For State	:	Mr.Ajay, GA-5
For MCI	:	Mr. Kumar Brijnandan, Advocate
For BCECEB	:	Mr.Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 07-05-2020

The present matter relates to admission to various Post Graduate Medical Courses against 50% State Quota Seats of Bihar on the basis of NEET(PG)-2020 and NEET (MDS)-2020. Since the process of admission is to be completed within a time



frame and as per schedule prescribed by the Supreme Court, filing of the application through *email* and hearing of the case through virtual Court proceeding has been permitted under the orders of Hon'ble the Chief Justice, in the wake of nationwide lockdown declared consequent upon outbreak of COVID-19 Pandemic.

2. It must be noticed at the outset that several defects have been pointed out by the Registry in filing of the writ application for non-compliance of the provisions under the Patna High Court Rules, laying procedure for filing applications. Because of continuance of the lock-down, the defects have not been and could not have been removed. Despite such defects, the matter has been taken up on merits, subject to the condition that the defects shall be removed within two months from the filing of the writ application.

3. I have heard Mr. Patanjali Rishi, learned counsel appearing on behalf of the petitioners, Mr. Ajay, learned Government Advocate No.5, for the State of Bihar, Mr. Prosoon Sinha, learned counsel appearing on behalf of B.C.E.C.E.B, Mr. Kumar Brijnandan, learned counsel appearing on behalf of



Medical Council of India and Mr. Mrigank Mauli, assisted by Mr. Amresh Kumar Sinha, appearing for the Intervener at length.

4. The petitioners are seeking following reliefs in the present application filed under Article 226 of the Constitution of India:-

“i. For issuance of a writ in the nature of certiorari or a writ of certiorari or any other writ of the like nature thereby quashing clauses 6(1) (I) and 7(1) (I) of the prospectus for PGMAC 2020 issued by the respondent no.4 herein whereby the eligibility criteria fixed for admission to post graduate courses specified in the clause 4 of the said prospectus has been MBBS and BDS degrees obtained from the medical or dental colleges in the State of Bihar for admissions to post graduate courses in medical sciences and dental sciences respectively to the extent that they have the effect of reserving 100% seats of the state quota under institutional preference.

ii. For issuance of a writ in the nature of certiorari or a writ of certiorari or any other writ of the like nature thereby



quashing the communication as contained in Memo No. 447 (1) Swa, Dated 15/04/2020 sent by the respondent no.3 to the respondent no.6 so far as thereby instructing the respondent no.4 vide paragraph no. 'Ga' to not to give 30% weightage of marks to the doctors who have served in the 'Remote/Rural and/or difficult areas.

iii. For issuance of a writ in the nature of mandamus or a writ of mandamus or any other writ of the like nature thereby directing the respondent authorities to consider the case of the petitioners herein for their admissions to the post graduate courses offered by all the dental and medical colleges respectively in the State of Bihar after striking down clauses 6(1)(i) and 7(1)(i) of the PGMAC-2020 Prospectus.

iv. For issuance of a writ in the nature of mandamus or a writ of mandamus or any other writ of the like nature thereby directing the respondent authorities to give 30% weightage in marks for the service rendered by the petitioners herein in remote/difficult areas.



v. *For issuance of a writ in the nature of mandamus or a writ of mandamus or any other writ of the like nature thereby directing the respondent authorities to consider the petitioners for admission to dental and medical Colleges run by the State of Bihar.*

vi. *For issuance of a writ in the nature of mandamus or a writ of mandamus of any other writ of the like nature thereby directing the respondent authorities to not to proceed with the process of admission during pendency of this writ petition and in alternative the respondents be directed to reserve one seat each in dental and medical stream respectively for the petitioners herein which may be allotted after adjudication of this writ petition.”*

5. When the matter was taken up on 28.04.2020, following order was passed:-

“Keeping in mind the extreme urgency, filing of the present writ application under Article 226 of the Constitution of India has been accepted and posted before me for



hearing through video conference under the orders of Hon'ble the Chief Justice, in the wake of the nationwide lockdown declared because of COVID-19 outbreak.

I have heard Mr. Patanjali Rishi, learned counsel for the petitioners, Mr. Ajay, learned Ga-5 for the State of Bihar and Mr. Kumar Brijnandan, learned counsel for the Medical Council of India (hereinafter referred to as "the MCI"). The Bihar Combined entrance competitive Examination Board, Patna (hereinafter referred to as "the BCECEB") is a necessary party. It is not clear whether notice of filing of the present writ application has been duly served on the learned counsel who represents BCECEB.

Let steps be taken for service of notice of the present writ application on Mr. Prasoon Sinha, learned Advocate who represents the BCECEB. The petitioners shall be at liberty to serve notice of the present writ application on Mr. Sinha through e-



mail. Learned counsel for the petitioners informs, however, that a copy of the writ application has been sent to Mr. Sinha through e-mail. Let it be done again.

The dispute in the present matter relates to admission to Post Graduate Courses, namely, Md./MS/PGD Post Graduate Dental Courses, on the basis of Post Graduate Medical Admission Counseling, 2020 against 50% State quota seats, by the BCECEB.

The petitioners, who have acquired Under Graduate qualifications from institutions outside the State of Bihar, through are residents of Bihar, are challenging Clause 6(1) (i) and 7(1) (i) of the Prospectus for Post Graduate Medical Admission Counseling, 2020 (hereinafter referred to as the Prosectus) whereby passing of MBBS/BDS course from the colleges situate in the State of Bihar has been prescribed as an essential eligibility criteria. It is the petitioners' case that such restriction amounts to providing



100% institutional reservation, which is in teeth of the law laid down by the Supreme Court in case of Saurabh Dwivedi Vs. Union of India in (2017) 7 SCC 626 which is based on a Constitution Bench decision of the Supreme Court in case of Saurabh Chaudri Vs. Union of India reported in (2003) 11 SCC 146.

This is to be noted that the petitioners also claim additional marks for the purpose of preparation of merit list for the admission in question, for having served in remote/rural and/or difficult areas in the State of Bihar. Mr. Ajay, learned GA-5 informs that this issue raised in CWJC No. 15523 of 2018 has been considered by this Court in a proceeding taken up yesterday (27.04.2020) only and the matter has been disposed of.

Mr. Ajay appears to be correct in his submission that the issue of grant of additional marks has been pointedly considered by this Court in CWJC No. 15523 of 2018 wherein following order has been passed on



27.04.2020:-

“In view of the discussions made and law laid down by the Supreme Court, in the case of State of Uttar Pradesh and others Vs. Dr. Dinesh Singh Chauhan, reported in (2016) 9 SCC 749, the contention of the State respondents taken in its supplementary counter affidavit is rejected and the concerned respondents are directed to consider the claim of the petitioners for grant of incentive marks strictly in conformity with and in terms of Regulation 9 (IV) of the Post Graduate Medical Education Regulation, 2000, as amended and lastly notified vide Notification No. MCI-18(1)/2010/Mad/62052, dated 15th February, 2012, and make applicable from academic year 2013-14 and, thereafter, prepare the State merit list for admission in Post Graduate Degree/Diploma Courses of the eligible candidates for the present session 2020 accordingly.”

Mr. Kumar Brijnandan, learned counsel appearing on behalf of MCI has submitted that he would be



examining the legal aspect of the matter in the light of Supreme Court decisions and would be seeking instructions on the petitioners' challenge to Clause 6(1) (i) and 7(1) (i) of the Prospectus issued by the Board of Admission in question.

Mr. Ajay has submitted that the result of the counseling is not going to be published one week from today.

For the present, I am not commenting upon the legality or otherwise of the claim of the petitioners to the extent it relate to the challenge to Clause 6(1) (i) and 7(1) (i) of the Prospectus.

Let affidavits be filed on behalf of the State of Bihar and BCECEB by next Tuesday (05.05.2020).

Learned counsel for the petitioners agrees that the second part of the relief for grant of additional marks on the ground of having worked in rural/remote area stands redressed. It goes without saying that the said direction of this Court dated 27.04.2020 in CWJC No. 15523 of 2018 will have to be applied uniformly to all similarly



situated candidates.

This Court would expect due assistance from Mr. Kumar Brijnandan, learned counsel for the MCI on the next date on the legal issue involved.

List this matter on 05.05.2020.

Let Mr. Prasoon Sinha, Advocate be intimated about the present order on his e-mail address and a link be positively sent to him for hearing of the case on the next date.

Since there is a lockdown, the Court has considered it appropriate to adopt following procedure for communication of the present order:-

(i) The order, which has been dictated during the course of the proceeding of virtual Court, shall be communicated to me on my e-mail I.D. by the Secretary.

(ii) The corrected copy of the order shall be transmitted by me from my e-mail I.D. to the Secretary, which shall be treated to be the authentic, copy of the order passed by this Court today in the present proceeding.

(iii) Hard copy of the order,



duly signed by me, shall be preserved in my residential office for documentation and future use, if any.

(v) Let a copy of the order be communicated to learned counsel for the parties on their respective e-mail address.

(vi) Let steps be taken by the Registry for uploading of the present order without compromising with the norms of social-distancing.”

6. In compliance of the said order, counter affidavits have been filed on behalf of the State of Bihar and the Bihar Combined Entrance Competitive Examination Board, Patna (hereinafter referred to as ‘the BCECEB’).

7. In relation to the order of this Court dated 27.04.2020 passed in CWJC No. 15523 of 2018, which has been noticed in the order dated 28.04.2020, statement has been made in paragraph 12 that the State intends to prefer an appeal before the Division Bench of this Court, questioning the legality of the said order dated 27.04.2020 passed by this Court. Needless to say that the question as to whether the petitioner would be entitled to 30 % weightage of marks for the purpose of



preparation of merit list for admission to the Courses in question against 50% State Quota Seats would depend on this Court's answer to the main issue as to whether Clause 6(1) (i) and 7 (1) (i) of the Prospectus for Post Graduate Medical Admission Counseling, 2020 (PGMAC-2020) is legally sustainable or not which prescribe acquisition of MBBS/BDS degree from Medical or Dental Colleges situate in the State of Bihar as essential eligibility criteria for admission to the said Post Graduate Courses against 50% State Quota Seats. The prospectus has been brought on record by way of annexures to the writ application. Clause 6.1 (i) reads as under:-

“6.1 Educational:-

(i) The candidates must have passed by the MBBS Examination from any Medical College of Bihar State which is established or financially aided by the State Government or established and run by private management and included in the schedule of Medical Council of India. For Private Medical Colleges, this criteria is liable to be modified in the light of memo No.74/2016-404(1)n



dated 06.04.2019 and related directives of Department of Health Govt. of Bihar (See Annexure-5) ”

8. Clause 7.1 (i) reads as under:-

“ 7.1 Educational:-

(I) The candidates must have passed the BDS Examination from any recognized Dental College of Bihar State included in the schedule of Dental Council of India. For Private Dental Colleges, this criteria is liable to be modified in the light of memo No. 1/- 74/2016-404(1) dated 06.04.2019 and related directives of Department of Health, Govt. of Bihar (See Annexure-5(a/b)). ”

8. Admittedly, the petitioner No.1 has obtained his BDS degree from Rajiv Gandhi University of Health Sciences, Karnataka and petitioner No.2 has obtained her MBBS degree from Maharashtra University of Health Sciences, Nasik, Maharashtra. They are siblings and claim to be the residents of the State of Bihar. It is their case that prescribing passing of



MBBS/BDS courses from institutions within the State of Bihar as an essential eligibility condition for admission against 50% State Quota Seats tentamounts to permitting 100% reservation on the basis of institutional preference. According to them, the said stipulation is in disregard to the law laid down by the Supreme Court in case of **Pradeep Jain and others Vs. Union of India and others** reported in (1984) 3 SCC 654 and subsequent decision in case of **Saurabh Chaudri Vs. Union of India** reported in (2003) 11 SCC 146. It is their case that institutional preference cannot exceed 50%. It is also their case that the said prescription is in breach of Regulation-9 of the Medical Council of India Post Graduate Medical Education Regulation, 2000 (hereinafter referred to as 'the MCI Regulation').

9. It has been stated in the writ application that after having obtained their degrees as noted above, from institutions outside the State of Bihar, they are presently in regular employment under the Health Services of the Government of Bihar. Both of them are said to have appeared in the NEET MDS-2020 and NEET PG-2020 conducted by the



National Board of Examination. They claim thus, that after quashing the Clauses of the Prospectus, which permits 100% reservation against 50% State Quota Seats for candidates who obtained MBBS/BDS qualification from the institutions situated in the State of Bihar, they should be allowed weightage for their services which they have rendered in remote areas in the State of Bihar, as Medical Officers.

10. Mr. Patanjali Rishi, learned counsel appearing on behalf of the petitioners has placed heavy reliance on the Supreme Court's decision in case of **Saurabh Dwivedi and others Vs. Union of India and others** reported in (2017) 7 SCC 626 so as to contend that it is impermissible to allow benefit of Regulation 9 (IV) of 2000 Regulation to only those in-service doctors, who had cleared their MBBS/BDS examination from within the State of Bihar.

11. It would be apt to quote Sub-Regulation (IV) of Regulation 9 of the MCI Regulations, 2000, which permits the States/Union Territories to allow reservation of seats in medical colleges/institutions. The proviso to Sub-Regulation (IV) of Regulation 9 of MCI Regulation, 2000 is being reproduced



herein below, considering the nature of submission, which has been made by Mr. Patanjali Rishi:-

“9. Procedure for selection of candidate for postgraduate courses shall be as follows:-

*(I)-(III) * **

(IV) The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all-India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to postgraduate courses from the said merit lists only:

Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/competent authority as an incentive @ 10% of the marks obtained for each year of service in remote and/or difficult areas up to the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance



Test. The remote and difficult areas shall be as defined by the State Government/competent authority from time to time.”

(Underlined for emphasis)

12. He has placed strong reliance on the observation made by the Supreme court in paragraph 16 in case of **Saurabh Dwivedi** (supra), which reads thus:-

“16. We, therefore, hold that the High Court erred in deciding that only those in-service doctors who had cleared their MBBS examination from within the State of U.P., were only entitled to the benefit of Regulation 9 (IV) of the 2000 Regulations.”

13. He has submitted that in any event, there cannot be 100% reservation of State Quota Seats, which would be violative of the principles of equality enshrined under Articles 14 and 16 of the Constitution of India.

14. He has referred to a decision of this Court in case of **Priyanka Bharti Vs. State of Bihar** reported in **2018 (1) PLJR 555** in support of the said plea that reservation on the basis of institutional preference cannot go beyond 50%. He has



placed reliance on a co-ordinate Bench decision of this Court in case of **Paritosh Kumar Vs. State of Bihar** reported in **2013(3) PLJR 598** to submit that since the petitioners have served in remote areas of the State of Bihar, they should not be excluded altogether from consideration, for the purpose of admission to the Courses in question.

15. Mr. Kumar Brijnandan, learned counsel appearing on behalf of the Medical Council of India has drawn my attention to a Division Bench decision of this Court dated 09.10.2013 passed in LPA No. 1024 of 2013 in case of **Paritosh Kumar** (supra), which arose out of the single Judge decision of this Court, whereby the said decision of the learned single Judge reported in **2018(1) PLJR 555 (Priyanka Bharti)** (supra) has been set aside.

16. On perusal of the Division Bench decision in case of **Paritosh Kumar** (supra), it is evident that the single Bench decision in case of **Paritosh Kumar** (supra), reliance of which has been placed by the learned counsel for the petitioners has been set aside, I shall not be referring to any more, the said decision.



17. I must notice at this stage itself that the case of Paritosh Kumar related to Post Graduate Diploma course under State quota against 50% of seats reserved for in-service candidates who had served the State Government for at least three years in remote and difficult areas of the State. Clause 5(1) of the Prospectus laid down qualification and eligibility for MD/MS/PG Diploma Courses, 5.1(i) of which read as under:-

“5.1 Educational:-

(i) The candidates must have passed the MBBS Examination from any Medical College of Bihar State included in the schedule of Medical Council of India.”

18. Disagreeing with the view taken by the learned single Judge in case of **Paritosh Kumar** (supra), the Division Bench held as under in LPA No. 1024 of 2013:-

“We have considered the submissions on behalf of the parties. The issue principally relates to preference in admission against the 50% State Quota seats. If completion of MBBS course from a medical college situated within the



State was an essential condition of eligibility and 50% of the same was reserved for admission in postgraduate diploma course, to hold that the two constituted separate class would defeat the essential condition of eligibility prescribed in clause 5.1, rendering the clause itself meaningless. Such an interpretation has necessarily to be avoided. We are in agreement with the submission of the Principal Additional Advocate General that the entire purpose was to give preference to those who fulfilled the essential condition of eligibility and of further benefits within the same to those who fulfilled prescribed additional requirements.

In conclusion we find it difficult to uphold the order under appeal that persons in clause 4.4 and 5.1 constituted separate class.

The order under appeal is set aside.

The appeal is allowed.”

19. It is quite apparent that identical provision was



there as in the present case laying down the eligibility condition to the effect that the candidates must have passed MBBS examination from any Medical College of Bihar State included in Schedule of the Medical Council of India.

20. Mr. Ajay, learned Government Advocate No.5 appearing on behalf of the State of Bihar in his submission and has relied on Supreme Court's decision in case of **Pradeep Jain Vs. Union of India** reported in (1984) 3 SCC 654, **Saurabh Chaudri and others Vs. Union of India and others** reported in (2003) 11 SCC 146 and in case of **Yatinkumar Jasubhai Patel and others vs. State of Gujarat and others** reported in (2019) 10 SCC 1 to contend that seats up to 50% of total number of seats available for admission to Post Graduate courses can be reserved on the basis of institutional preference. He has submitted that PGMAC,2020 is being conducted to fill up 50% of State Quota Seats, which has been reserved for those candidates who have obtained MBBS/BDS degrees from various institutions of the State of Bihar. He accordingly, contends that the impugned policy of the State Government is in conformity with the law laid down by the Supreme Court



consisted and not in breach thereof.

21. Mr. Mrigank Mouli, learned counsel appearing on behalf of the Intervener, on the other hand, has argued with reference to Division Bench decision dated 23.03.2010 rendered in LPA No. 990 of 2009 and other analogous cases that the same issue had fallen for consideration before the Court in case of **Rajnish Kumar and others Vs. State of Bihar and anr.** He has referred to paragraph 9 of the said decision, which reads as under:-

“9. In view of the aforesaid, the appellant-writ petitioner, who has graduated in medicine from Rjasthan, could not have appeared in the examination meant for State quota. As far as the examination in respect of All-India quota is concerned, he chose not to appear and, therefore, his case is totally bereft of merit and, accordingly, the learned single Judge has rightly dismissed the same. Resultantly, we concur with the conclusion arrived at by the learned single Judge as far as the case of the appellant/writ petition is concerned.”

(Underlined for emphasis)



22. He has accordingly submitted that the petitioners' challenge to Clause 6 (1) (i) and 7(1) (i) of the Prospectus of PGMAC-2000 is not sustainable.

23. I have given anxious consideration to submissions advanced on behalf of the parties in relation to the case the issue involved, in the present case. The issue which has been raised in the present application is no more *res integra* in the light of the law consistently enunciated by the Supreme Court in Constitution Bench decisions in case of **Pradeep Jain** (supra) **Sourabh Choudri** (supra) and **Yatinkumar Jasubhai Patel** (supra).

24. The Constitution Bench in case of **Pradeep Jain** (supra) faced with the question as to whether admission to a Medical College or any other institution of higher learning situate in a State can be confined to those who had their 'domicil' within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who did not possess 'domicil' or residential qualification within the State, irrespective of merit. The Supreme Court then posed a question to itself as to whether



residential requirement of institutional preference in admission to Technical and Medical Colleges can be regarded as constitutionally permissible and whether it can stand the test of Article 14 of the Constitution of India. The Court noticed the enormous increase in demand for admission to Medical Colleges which outstripped the availability of the seats in the medical colleges in the country. The Court not only noticed the historical background but also socio-economic aspects while dealing the central issue. After discussing various aspects threadbare, the Supreme Court in case of **Pradeep Jain** (supra) noted in paragraph 20 that the only question was remained to be considered was as to what should be the extent of reservation based on residence requirement and institutional preference. The Supreme Court, for the MBBS courses held that in any event, at least of 30% of open seats shall be available for admission of students on all-India basis irrespective of the State or University from which they came and such admissions shall be granted purely on merit on the basis of either all-India entrance examination or entrance examination to be held by the State.



25. Coming to the Post Graduate Courses, the Supreme Court in case of **Pradeep Jain** (supra), held in paragraph 22 as under:-

“22. 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 uper 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.”

26. The outer limit for reservation on the basis of institutional preference was fixed at 50 per cent in case of **Pradeep Jain** (supra) for admission to P.G. Course such as MS/MD. The Court further held that the same principle shall apply to MDS course also.

27. One can't loose sight of clear observation made



in case of **Pradeep Jain** (supra) that as far as super specialities such as neuro-surgery and cardiology are concerned, there should not be any reservations at all, on the basis of institutional preference and admission should be granted purely on merit on all-India basis. The decision in case of **Pradeep Jain** (supra) was subsequently affirmed by Constitution Bench of the Supreme Court in case of **Saurabh Chaudri and others** (supra).

28. This is to be noted that in case of **Dinesh Kumar (II) vs Motilal Nehru Medical College** reported in (1986) 3 SCC 727, the Supreme Court was of the view that outer limit of reservation on the basis of institutional preference etc, should be reduced to 25 per cent of the total seats. In the subsequent decision of **Saurabh Chaudri** (supra), the Supreme Court reiterated the original scheme as framed in **Pradeep Jain** case (supra) in preference of **Dinesh Kumar (II)** (supra) and held that reservation by way of institutional preference, should be confined to 50 per cent of the seats since it was in public interest. Paragraph 72 of the said decision, which lays down the ratio is being reproduced herein below:-



“72. Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain case, should be reiterated in preference to Dr. Dinesh Kumar (II) case. Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.”

29. The constitutional validity of the scheme allowing reservation to the extent of 50 per cent of total available seats has been clearly upheld in case of **Saurabh Chaudri** (supra).

30. This is not in dispute that admission to Post Graduate Courses in Medical Colleges in the country is allowed on the basis of NEET. 50 per cent of the seats are filled on merit on all-India basis and 50 per cent of seats are filled on merit, drawn on State-wise basis. It is within the State merit list that a provision has been made for providing weightage to in-service doctors as per Regulation 9 (IV) in favour of those doctors who have worked in remote or difficult areas of the State. In my



opinion, the petitioners' reliance on Supreme court's decision in case of **Saurabh Dwivedi** (supra) to question the constitutional validity of the scheme in question is wholly misconceived. In case of **Saurabh Dwivedi** (supra), the matter related to permitting institutional preference in Aligarh Muslim University (AMU) and Banaras Hindu University (BHU), which are Central Universities. A decision of Allahabad High Court was under challenge before the Supreme court in case of **Saurabh Dwivedi** (supra), whereby the Allahabad High Court had set aside the scheme of institutional preference for admission to Post Graduate Medical courses in the said two Universities and had directed that the Post Graduation Seats in those institutions shall be filled up only from those students who had passed MBBS course from institutions/Universities and Colleges in the State of Uttar Pradesh. Disapproving the view taken by the High Court, the Supreme Court observed that there was no 'State Quota' of seats in the Central Universities like AMU and BHU or other Central institutions like All India Institute of Medical Sciences, etc and, therefore, the State would have had no control over the seats in those Medical Colleges, which were



part of the Central Universities/institutions. Those seats, the Supreme Court observed, had to be filled up on the basis of merit and institutional preference could be given to the extent permissible. It was in that background, the Supreme Court in case of **Saurabh Dwivedi** (supra), observed in paragraph 16 as under:-

“16. We, therefore, hold that the High Court erred in deciding that only those in-service doctors who had cleared their MBBS examination from within the State of U.P., were only entitled to the benefit of Regulation 9 (IV) of the 2000 Regulations.”

31. The said observation made in case of **Saurabh Dwivedi** (supra), will have to be read in context in which the same was made.

32. I find substance in the submission made by Mr. Mrigank Mouli, learned counsel for the Intervener that the issue in question has been dealt with and directly answered by a Division Bench of this Court in case of **Rajnish Kumar and others** (supra), relying on Supreme Court's decision in case of



Saurabh Chaudri (supra), paragraph 9 of which has been quoted hereinabove.

33. Recently a question had arisen before the Supreme Court in case of **Yatinkumar Jasubhai Patel** (supra) as to whether subsequent introduction of NEET as the basis for admission to PG Courses had to do something with reservation on the basis of institutional preference as repeatedly approved by the Supreme Court. The Supreme court after analyzing all judicial precedents has categorically approved institutional preference to the extent of 50%.

34. I must not fail to notice the Single Bench decision of this Court rendered in **Priyanka Bharti case** (supra), reliance on which has been placed by the learned counsel for the petitioner. The said decision, in my view, does not support the petitioners' case as the fact of the said case were entirely different. The matter, in that case related to reservation on the basis of institutional preference in Homeopathy Medical College, Muzaffarpur, which was the only Homeopathy Medical College established and run by the State of Bihar. The prospectus prescribed, *inter alia*, that the candidates must have



BHMS examination from any government Homeopathy College of Bihar State included in schedule to the Central Council of Homeopathy, in India. The said prescription had the consequences of providing 100% reservation on the basis of institutional preference which was held to be illegal, being violative of Article 14 of the Constitution of India and in teeth of the Supreme court’s decision in case of **Saurabh Chaudri** (supra).

35. The present case, on the other hand, relates to filling up of 50% of State quota seats of Bihar considering the law laid down by the Supreme Court and this Court in various decisions and discussions noted above, I do not find any merit at all in the present writ application which is dismissed.

36. There shall be no order as to costs.

arun/-

(**Chakradhari Sharan Singh, J**)

AFR/NAFR	NAFR
CAV DATE	05.05.2020
Uploading Date	07.05.2020
Transmission Date	

