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W.P(C)No. 417 OF 2000  
ITEM No.103

COURT No. 1

SECTION X

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition No. 417 of 2000@@  
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Magan Mehrotra & Ors.

...Petitioner(s)

Versus

vs.

Union of India & Ors.

...Respondent(s)

(With appl(s) for directions and with office report)

With  
WP(C) No. 316/2000-(With appl(s) for stay and office report)

CA 1653/99- (With appl(s) for impleading party and intervention with  
office report)

[ With IA 6: Appln. on behalf of appellant for impleadment of  
Medical Council of India as party respondent ]

CA 1381/02-(With appl(s) for impleading party and intervention with  
office report)

Date :17/12/2002 The matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN  
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner(s)/Appellant (s) :

Ms. Kamini Jaiswal, Adv.  
Ms. Shomila Bakshi, Adv.  
Ms. Tehmina Ram, Adv.

Mr. Vijay Kumar, Adv.  
Mr. Vishwajit Singh, Adv.

Mr. Dinesh Dwivedi, Sr. Adv.  
Mr. Manoj Ranjan Sinha, Adv.  
Ms. Gitanjali Mohan, Adv.

For Respondent (s)/Appearing parties :

For MCI Mr. Maninder Singh, Adv.  
Mr. A. Mariarputham, Mr. Ankur Talwar,  
Mrs. Prathiba M. Singh, Adv.

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For Delhi University Mr. A. Mariarputham, Adv.  
Ms.Aruna Mathur, Adv.

for M/s. Arputham Aruna & Co.

For State of Sikkim Mr. A. Mariarputham, Ms. Aruna Mathur, Adv.  
for Arputham Aruna & Co.

State of Assam Ms. Krishna Sarma, Adv.  
Ms. Asha G. Nair, Adv. for  
M/s. Corporate Law Group

Mr. M A Krishnamoorthy, Adv.

Mr. N L Ganapathi, Adv.

State of Maharashtra Mr. S.S. Shinde, Adv.  
Mr. V.N. Raghupathy, Adv.

State of Tripura Mr. Gopal Singh, Adv.  
Mr. Rajiv Mohapatra, Adv.  
Mr. Navin Prakash, Adv.

Mr. Rahul Singh, Adv.

Mr. Kailash Vasdev, Sr. Adv.  
Mr. D.S. Mahra, Adv.  
Ms. Sunita Sharma, Adv.

State of Nagaland Mr. Kailash Vasdev, Sr. Adv.  
Mrs. V.D. Khanna, Adv.

State of T.N. Mr. S. Prasad, Adv.  
Mrs. Revathy Raghavan, Adv.  
Mr. Abhay Kumar, Adv.  
Mr. Gopal Krishan, Adv.

Mrs. D. Bharathi Reddy, Adv.

St. of Arunachal P. Mr. Anil Srivastava, Adv.

State of Uttaranchal Mr. A.S. Rawat, Adv.  
Mr. J.K. Bhatia, Adv.

St. of Chhatisgarh Mr. Prakash Shrivastava, Adv.

for B.H.U. Mr. Rakesh Dwivedi, Sr. Adv.  
Mr. Amitesh Kumar, Adv.  
Ms. Vimla Sinha, Adv.  
Mr. Vivek Singh, Adv.  
Mr. Lakshmi Raman Singh, Adv.

Mr. R.S. Suri, Adv.

Govt. of Pondicherry Mr. V.G. Pragasaam, Adv.

State of W. Bengal Mr. Tara Chandra Sharma, Adv.  
Ms. Neelam Sharma, Adv.

State of Karnataka Mr. S.R. Hegde, Adv.  
Mr. Satya Mitra, Adv.

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State of Goa Ms. A. Subhasni, Adv.

State of Manipur Kh. Nobin Singh, Adv.

Mrs. Hemantika Wahi, Adv.

Mr. Manoj Prasad, Adv.

UPON hearing counsel, the Court passed the following  
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Heard learned counsel for the parties for 40 minutes.  
Applications for impleadment and intervention are  
rejected.

The writ petitions stand disposed of in terms of the  
signed order. Civil Appeals are disposed of in terms of the  
separate signed order.

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Sarita (J.S. Rawat) (Suneet Bala Sharma)  
Court Master Assistant Registrar

(Two signed orders are placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. 417 of 2000@@  
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Magan Mehrotra & Ors. ...Petitioner(s)

Versus

Union of India & Ors. ...Respondent(s)

With

W.P. (C) No. 316/2000@@  
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These petitions under Article 32 of the Constitution  
of India was filed because of the Bulletin of Information  
issued by the University of Delhi for the academic session  
2001, whereby and whereunder following the judgment of this  
Court in Dr. Parag Gupta v. University of Delhi & Ors.@@  
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[(2000) 5 SCC, 684] it was stipulated that the candidates who  
have passed the MBBS Examination in an 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 permanent resident of the National  
Capital Territory of Delhi.

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 post-graduate course.

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 same University elaborately in the case of Dr. Pradeep Jain@@

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v. Union of India [1984(3) SCC 654]. So far as the admission@@

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to Post Graduate Course is concerned, the Court held that for admission to Post Graduate 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 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. We are not concerned with the other observations made in the aforesaid case since in the case in hand we are also concerned only with the admission to the post-graduate 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 their under-graduate 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 and those who had entered appearance, their contentions were taken into account and finally the matter stood disposed of, as stated above.

In the case of Dr. Dinesh Kumar & Ors. (II) v.@@

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Motilal Nehru Medical College, Allahabad & Ors. [1986(3) SCC@@

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727] the aforesaid percentage which was indicated in Pradeep Jain's case (supra) was altered as it was felt that the percentage indicated there is on the higher side. In Dinesh Kumar's case (supra) 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 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 must apply also in regard to admissions to post graduate courses and instead of making available for admission on all India basis 50% of the open seats after taking into account reservations 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.

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

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

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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's case, the aforesaid contingency would not have arisen.

In the aforesaid judgment in paragraph 8 their Lordships have enumerated indicating which State has adopted what nature of preference and from that it is clear that the States 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-Judges Bench in Pradeep Jain case (supra), it must be held that the aforesaid decision of the States of Assam, Tamil Nadu, Goa and Karnataka conferring preference on the basis of the 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 the post graduate course the only preference that should be adopted by all States is the institutional preference, as was indicated in Pradeep Jain's case. It would be necessary for us to take into consideration yet another

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judgment of this Court in Dr. Prachi Almeida v. Dean, Goa@  
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Medical College & Ors. [(2001) 7 SCC 640] which arises out of@@  
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an admission to the Goa Medical College wherein the Court followed the earlier decision in Dr. Parag Gupta's case (supra) 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's case 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 & Ors. [(2000) 7 SCC@262) where a stray observation has been made to the effect that there is no conflict between the Pradeep Jain's case and Parag Gupta's case.

Be it stated that in that particular case the Court was in fact not required to examine the issue that arose in Pradeep Jain or Parag Gupta's cases and answered in those two cases. A bare look at the judgment of the 3-Judge Bench in Pradeep Jain's case and two-Judge Bench in Parag Gupta's case in relation to the question of preference in the post graduate course it cannot but be held that the Parag Gupta's case 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's case. Independently on examining the

issue of preference, we are also of the considered opinion that the decision rendered by this Court in Pradeep Jain's case had taken a correct criteria into consideration and we therefore, agree with the principles evolved and the ratio given in Pradeep Jain's case so far as it relates to admission into the post graduate 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 the All India basis. In this view of the matter, the impugned Bulletin of Information issued by the Delhi University in relation to the Post-doctoral (D.M./M.Ch.) Post Graduate Degree must be held to be contrary to the direction of this Court in Pradeep Jain's case and the same is accordingly quashed. However, this order shall be made effective from the next academic session.

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's case and reiterated by us today. These petitions stand disposed of accordingly.

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( K.G. BALAKRISHNAN ) @@  
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New Delhi;  
December 17, 2002

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( S.B. SINHA ) @@  
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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1653 OF 1999@@  
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VERSUS

BANARAS HINDU UNIVERSITY & ORS. ...RESPONDENTS

WITH C.A.NO.1381/2002

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These appeals in fact deal with the correctness of the institutional preference for admission to the Post Graduate Course in the medical college of Banaras Hindu University. While the matter was pending in this Court under interim orders, the University has been directed to continue the practice of institutional preference limited to the extent of 60% of the intake-capacity. The University had taken a decision on 26th December, 2000 following the demand of excellence and competence by holding that the admission to the Post Graduate Court in the institute of medical science shall be made through All India Entrance Test strictly on the basis of merit and without any institutional preference with immediate effect. The students of the college have assailed the ..2/-

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legality of the aforesaid decision of the University by filing a writ petition in the Allahabad High Court, which is pending. Even though admission to Post Graduate Courses on merit is an ideal condition, but we do not express any opinion as to the legality of the aforesaid decision of the University dated 26/12/2000 since the matter is pending consideration before the Allahabad High Court. But until and unless that decision is held to be erroneous and annulled, question of considering the matter relating to institutional preference and the percentage does not arise. In this view of the matter, in our considered opinion these appeals have become infructuous.

It is contended by Ms. Kamini Jaiswal, learned counsel and Mr. Dinesh Dwivedi, learned senior counsel that the interim order should be allowed to operate until the High Court finally decides the pending writ petition, whereas on behalf of the respondents Mr. Rakesh Dwivedi, learned senior counsel contended that there should not be any interim direction, particularly, when by virtue of the impugned resolution of the University merit is of prime consideration for admission to the Post Graduate Course in medical science. Since ..3/-

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the interim order has been operating since 1999, notwithstanding the resolution having come into force on 26th December, 2000, we modify the interim order and direct that the practice of institutional preference be limited to the extent of 30% of the intake-capacity in the Post Graduate Course/speciality in medical science until the writ petition is disposed of by the learned

Single Judge. We are, in fact, forced to issue such interim direction since the admission to the Course will be made in January, 2003 and it is just not possible for the High Court to dispose of the matter by that date. We would request the Allahabad High Court to hear and dispose of the writ petition by May, 2003.

The appeals are disposed of accordingly.

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.....J.  
(K.G. BALAKRISHNAN)

New Delhi,  
Decembber 17, 2002.

.....J.  
(S.B. SINHA)