

**(2017) 02 GUJ CK 0171**

**GUJARAT HIGH COURT**

**Case No:** 19918 of 2016

YATINKUMAR JASUBHAI PATEL  
&ORS.

APPELLANT

Vs

STATE OF GUJARAT & ORS

RESPONDENT

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**Date of Decision:** Feb. 22, 2017

**Acts Referred:**

- Constitution of India, Article 14, Article 226, Article 15(4) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts to Issue certain writs - Annulment or suspension of acts and resolutions of District and Regional Councils
- Medical Council Act, 1956, Section 10, Section 10D - The Executive Committee
- Gujarat University Act, 1949, Section 39, Section 32 - Post-graduate teaching - Regulation and Rules

**Hon'ble Judges:** R Subhash Reddy, Vipul M Pancholi

**Bench:** Division Bench

**Advocate:** Nikhil S Kariel, Devang Vyas, Nirzar S Desai, S N Shelat, V D Nanavati, Disha N Nanavaty, Avni H Pandya

**Final Decision:** Dismissed

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**Judgement**

1. This petition under Article 226 of the Constitution of India is filed by the petitioners who have completed their M.B.B.S. course and /or undergoing their Internship Programme challenging the vires of Rules 2, 3, 4.1 and 4.3 relating to admission to the Post Graduate Medical Courses framed by Respondent No.3 - Gujarat University. 3rd Respondent - University is a body constituted under the Gujarat University Act, 1949. Aforesaid impugned Rules are framed in exercise of powers under Section 39 read with Section 32 of the Gujarat University Act, 1949 for the purpose of governing admission to Post Graduate Courses. Said Rules 2, 3, 4.1,

4.2 and 4.3 read as under :"

2. As per directive of Hon"ble Supreme Court of India, New Delhi, 50% of total available seats in Academic year in various post graduate degree and diploma courses in each subject in Government Institution / Colleges will be filled up as a All India Quota Seats as per All India 50% quota rank by competent authority. The remaining seats will be available for the candidates passing from Gujarat University in accordance Rule 4.1. The student passing from other statutory Universities within Gujarat State will be considered as per their merit in accordance with Rule 4.3.

3. Remaining 50% (or more) of total seats after Rule 2.0 (and Rule 2.1) in post graduate courses will be filled up by the "Admission Committee" of University.

4. Selection : Selection of candidates eligible under Rule 1 for seats under rule 3.0 will be done category and status wise on the basis of merits as laid down herein further.

4.1. Preference shall be given to candidates graduating from Gujarat University

4.2. Deleted.

4.3. After the merit list prepared under Rule 4.1 is exhausted the candidates graduating from any other University located in Gujarat State will be considered."

**2.** As per aforesaid Rules, 50% of the total available seats in the academic year in various Post Graduate Degree and Diploma courses in each subject in Government Institution / Colleges will be filled up as All India Quota Seats by competent authority and remaining seats will be filled up in accordance with Rule 4.1 of the Rules of the University. As per Rule 3 of the Rules, remaining 50% of the total seats in Post Graduate Courses will be filled up by the "Admission Committee" of University. As per Rule 4.1 of the Rules, preference is provided to the candidates graduating from Gujarat University. As per Rule 4.3 of the Rules, after merit list prepared under Rule 4.1 is exhausted, candidates graduating from any other University located in Gujarat State will be considered.

**3.** The case of the petitioners is as under :

3.1. In this petition, it is the say of the petitioners that National Eligibility Entrance Test (NEET) is designed to ensure that except merit there is no other criteria for making admission to Post Graduate and Under Graduate courses. It is stated that the petitioners who are students seeking to secure admission to Post Graduate Courses are affected by impugned Rules.

3.2. In the petition it is stated that impugned Rules are ultra vires in view of various judgments of the Hon''ble Supreme Court and also violative of the Indian Medical Council Act, 1956 and the Post Graduate Medical Education Regulations, 2000 framed under the Indian Medical Council Act.9

3.3. It is stated in the petition that in the State of Gujarat there are various colleges imparting education in Post Graduate Medical Courses in Medical faculty affiliated to various Universities throughout the State. Out of total number of seats for Post Graduate Medical Courses available in each of the colleges, 50% of the seats are reserved for students of All India Quota and remaining seats are for State Quota. In the 50% of State Quota, normal practice was that each University / Institution would hold its own separate entrance examination and allocation of seats in these institutions was on the basis of their own students getting priority in admission in first and second list, whereas, any student not having studied in the same University / Institution would get admission in third preference.

3.4. Reference is made to Notifications dated 21.12.2010 and 31.05.2012 issued by the Medical Council of India to hold Single Entrance Examination, for admission into Medical Courses for Graduate and Post Graduate Students, which were challenged before the Hon''ble Supreme Court in the case of Christian Medical College, Vellore and Ors. v/s. Union of India and Ors., reported in 2014 (2) SCC 305. In the aforesaid judgment, Hon''ble Supreme Court has quashed the notifications by majority judgment and subsequently in the year 2016, Medical Council of India preferred Review Petition. Same was allowed by the Hon''ble Supreme Court in the case of Medical Council of India v/s. Christian Medical College, Vellore and Ors. reported in 2016 (4) SCC 342, by which the Hon''ble Supreme Court recalled its earlier order dated 18.07.2013.

3.5. Further in the case of Sankalp Charitable Trust and Anr. v/s. Union of India in Writ Petition No.261 of 2016, by order dated 27.04.2016 (reported in (2016) 7 SCC 487, the Hon''ble Supreme Court has issued directions to the authorities to hold NEET Examination for the purpose of admission to MBBS and BDS courses for the academic year 2016 - 17. Subsequently, Medical Council of India Act, 1956 was amended by inserting section 10(D) which read as under :

"10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner.

Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016 - 17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination."

3.4. It is the case of the petitioners that third respondent - University seeks to give preference to the students graduating from its own University, which is against scheme of holding NEET. It is alleged that Medical Council of India Act and Post Graduate Medical Education Regulations, 2000 mandates to conduct NEET for admission to Post Graduate Medical Courses and control of such examination vested with Ministry of Health and Family Welfare, Government of India. It is stated that in absence of any power conferred under Medical Council of India Act and/or Regulations, 2000, Universities have no say in the admission process so as to give preference to students of the same Universities. In the petition itself, it is stated that while Institutional Preference has been deemed to be a valid reservation practice in the past, but in view of introduction of Common Entrance Examination by NEET system, concept of Institutional Preference no longer holds good. In the petition, reference is made to the judgment of the Hon"ble Supreme Court in the case of Dr. Pradeep Jain and Ors. v/s. Union of India reported in 1984 (3) SCC 654 and in the case of Saurabh Chaudri and Ors. v/s. Union of India and Ors. reported in 2003 (11) SCC 146.

**4.** Affidavit in reply is filed on behalf of 3rd respondent - University. In the reply affidavit, while denying various allegations made by the petitioners, it is stated that no legal or fundamental rights of the petitioners have been abridged by the aforesaid impugned Rules framed by the University. As such the petitioners are not entitled for any relief as prayed for. It is submitted that Gujarat University is constituted under the Gujarat University Act, 1949 and said University has framed rules for admission to the graduate and post graduate medical courses for medical colleges affiliated to the Gujarat University in exercise of powers under section 39 read with section 32 of the Gujarat University Act. It is stated that said rules have been framed subsequent to directions of the Hon"ble Supreme Court in case of Vikram Shah v/s. State of Gujarat reported in 1983 (1) GLR 554. Such rules with

regard to admission to graduate and post graduate medical courses are subsequently modified in accordance with the directions contained in the judgment of the Hon"ble Supreme Court in the case of Dr. Pradeep Jain v/s. Union of India reported in 1984 (3) SCC 654.

**4. 1.** While referring to provisions under section 10(D) of the Medical Council of India Act and the impugned Rules, it is stated that such Rules provide for Institutional preference to the students of Gujarat University. The basis for the institutional preference is that the candidates for admission to the post graduate course is a medical graduate of the Gujarat University. To defend institutional preference, respondent University has placed reliance on the judgments of the Hon"ble Supreme Court in the case of D.N.Chanchala v/s. State of Mysore and others reported in (1971) 2 SCC 293, Dr.Pradeep Jain v/s. Union of India reported in (1984) 3 SCC 654, Dr. Dinesh Kumar and Ors. v/s. Motilal Nehru Medical College, Allahabad reported in AIR 1986 SC 1877 and Gujarat University v/s. Rajiv Gopinath Bhatt and ors. Reported in AIR 1996 SC 2066. Reference is also made to judgment of the Hon"ble Supreme Court in the case of Nikhil Himtani v/s. State of Uttrakhand reported in (2013) 10 SCC 237 and Dr. Sandeep v/s. Union of India reported in (2016) 2 SCC 228.

**4. 2.** In the reply affidavit, it is stated that earlier to introduction of NEET system, Gujarat University was holding entrance examination for post graduate admission to medical course and now instead of such test by the Gujarat University, merit is now to be determined on the basis of National Eligibility cum Entrance Test (NEET). It is stated that holding of common examination cannot lead to invalidity of institutional preference as per the judgments of Hon"ble Supreme Court. It is stated that object behind institutional preference is convenience, suitability and familiarity with educational environment. It is stated that such preference will ensure to the benefit of advantage of continuing studies for higher degree of competence. It is specifically pleaded in the reply affidavit that after NEET test, provisions of section 10D does not debar source from which admissions are to be made at the post graduate level. It is also pleaded that all statutory Universities of the State of Gujarat are providing institutional preference for their own students. No injustice is caused to any student within the State of Gujarat or even outside State of Gujarat as 50% seats are available to them on the basis of NEET merit.

**5.** Affidavit in reply is also filed on behalf of Medical Council of India. Referring to various sections of Medical Council of India Act and Post Graduate Medical Education Regulations, 2000, it is pleaded that Writ Petition filed by the petitioners is not maintainable as reliefs sought are contrary to the Medical Council of India Act, 1956 and Regulations made thereunder. With reference to plea of the petitioners, in reply it is stated in paragraph no.31 that as per directions of the Hon"ble Supreme Court, 50% of the total available seats in various post graduate medical courses in

an academic year shall be filled up as All India Quota Seats as per the merit secured in the NEET (PG) - 2017 examination and thereafter, the competent admitting authority of the State / University shall oversee the admission to the remaining 50% of the seats in various post graduate medicine courses in accordance with law as per the merit secured in NEET (PG) - 2017 examination.

**6.** Impleaded private respondents have filed separate affidavit. In such affidavit, it is stated that the petition filed by the petitioners is bereft of material particulars. The petitioners have not stated any material fact regarding their present status as to where they are studying and what is the basis of their right. It is further pleaded that the petitioners have an opportunity to secure admission in post graduate courses offered by the Gujarat University as any other student by securing admission on the basis of the score against 50% All India Quota seats. It is stated that education in post graduate medicine in the State of Gujarat is imparted by different Universities through their respective post graduate centers and each University is a separate examining body and conducts courses in accordance with their academic policies as framed by their respective academic Council. It is stated that in the State of Gujarat, all Universities viz. Gujarat University, Maharaja Sayajirao University, Sardar Patel University, Veer Narmad South Gujarat University, Saurashtra University, Bhavnagar University and Kachch University are offering post graduate courses in medicine. It is stated that all Universities provide preference in favour of graduates of their University. In the affidavit, it is stated that impugned Rules are framed by Gujarat University for providing institutional preference in their favour and same are in conformity with the judgment of Hon''ble Supreme Court in the case of Saurabh Chaudri v/s. Union of India reported in 2003 (11) SCC 146. It is lastly pleaded that in view of approval by the Hon''ble Supreme Court in various judgments" for institutional preference, it is stated that conduct of NEET does not in any manner affect or alter constitutionality of institutional preference provided in the Rules.

**7.** On behalf of the petitioners, rejoinder is filed. While reiterating the contentions raised in the petition, it is pleaded that upon coming into force of NEET scheme, merit would be sole criteria for deciding admissions to Medical courses. It is also pleaded that in view of introduction of NEET, respondent University has no role in the admission process and as such, Institutional Preference amounts to 100% reservation of seats allotted to the State, which is in breach of Article 14 of the Constitution of India. In paragraph no.7, it is pleaded that ratio applied in Dr. Pradeep Jain's case will not apply in view of changed circumstances at this point of time.

**8.** Heard Mr. Nikhil Kariel, learned counsel for the petitioners, Mr. S.N.Shelat, Senior counsel assisted by Ms.V.D.Nanavati, learned counsel for respondent nos.3 and 4, Mr.Devan Vyas, learned Additional Solicitor General appearing for 2nd respondent

and learned counsel appearing for private respondents.

**9.** Mr. Nikhil Kariel, learned counsel for the petitioners submitted that though institutional preference was approved in the earlier judgments of the Hon"ble Supreme Court, but in view of introduction of NEET and by virtue of Regulations framed under Medical Council of India Act, it is not open for the Universities to give preference to the University graduates. It is submitted that such preference conferred in the impugned Rules is illegal, arbitrary and run contrary to the constitutional scheme guaranteed under Article 14 of the Constitution of India. Learned counsel has also placed reliance on the judgment of the Hon"ble Supreme Court in the case of Dr. Pradeep Jain & Ors. v/s. Union of India and Ors. Reported in 1984 (3) SCC 654 and in the case of Saurabh Chaudri v/s. Union of India reported in 2003 (11) SCC 146.

**10.** On the other hand, it is submitted by learned senior counsel Mr.Shelat appearing for respondent - University that students including the petitioners can seek admission to the Gujarat University within All India Quota of 50% seats available as per the Rules on the basis of merit of NEET examination and impugned Rules provide as source of admission in providing 50% quota by classifying students on the basis of institutional preference. It is submitted by learned senior counsel that institutional preference is not new phenomena and is approved by the Hon"ble Supreme Court in various decisions viz. in the case of D.N. Chanchala v/s. State of Mysore reported in (1971) 2 SCC 293, Dr. Jagdish Saran and Ors. v/s. Union of India reported in AIR 1980 SC 820, M.R.Mini v/s. State of Kerala reported in AIR 1980 SC 838, Dr. Pradeep Jain v/s. Union of India reported in (1984) 3 SCC 654, Megan Mehrotra v/s. Union of India reported in (2003) 2 SCC 189, Dr.Dinesh Kumar and Ors. V/s. Motilal Nehru Medial College reported in AIR 1986 SC 1877, Gujarat University v/s. Rajiv Gopinath Bhatt and Ors. reported in AIR 1996 SC 2066, Saurabh Chaudhari v/s. Union of India reported in (2003) 11 SCC 186, Vishal Goyal v/s. State of Karnataka reported in (2014) 11 SCC 456 and in the case of Sandeep v/s. Union of India reported in (2016) 2 SCC 238.

**11.** Before we proceed further, to examine the issue which fall for consideration, briefly we refer to the provisions of Medical Council of India Act, 1956 and related provisions which resulted in holding of NEET examination. The Medical Council of India Act, 1956 was enacted for the purpose of reconstituting the Medial Council of India and to provide for maintenance of the Indian Medical Register and matters connected therewith. The Act confers upon the Council the responsibility of maintenance of the highest standards of medical education throughout the country. In order to conduct a uniform entrance examination to all medical educational institutions and undergraduate and post graduate level for all candidates, the Council constituted under the Medical Council of India, issued notification to conduct single entrance examination viz. NEET by amending Post Graduate Medical

Education Regulations, 2000. In the year 2013, the Hon"ble Supreme Court quashed the such notification. Thereafter, Review Petitions were filed by the Central Government and Medical Council of India before the Hon"ble Supreme Court. Hon"ble Supreme Court vide order dated 11th April, 2016 allowed the review petitions and recalled the judgment dated 18th July, 2013. Thereafter, the Hon"ble Supreme Court vide order dated 28th April, 2016 and 9th May, 2016 in the case of Sankalp Charitable Trust and Ors. v/s. Union of India directed that NEET shall come into force immediately. Thereafter, Medical Council of India Act was amended by inserting section 10D in the Act. However, as per proviso to provision under Section 10D, provision of Section 10D was not made applicable for undergraduate level for the academic year 2016-17.

**12.** National Board of Examinations is entrusted job of holding NEET test for admission to Post Graduate Medical Course for the academic year 2017. Information bulletin issued by National Board of Examination is produced during the course of hearing. Perusal of said information bulletin, makes it clear that NEET - PG is an eligibility cum ranking examination prescribed as single entrance examination to various MD / MS and PG Diploma Courses as per Section 10 of the Indian Medical Council Act, 1956. It is also made clear that single window entrance examination is for PG courses and no other entrance examination, is valid for entry into to MD / MS / PG Diploma Courses as per Indian Medical Council Act, 1956 with effect from 2017 admission session. As per said bulletin, 50% of the available seats are All India Quota Seats and remaining seats are to be filled by either State Government or Colleges or Universities, at the institute level using NEET - PG score and as per applicable regulations and /or their eligibility criteria, reservation policy etc. From the above information bulletin, provisions of Medical Council of India and amended Regulations makes it clear that for the purpose of admission to Post Graduate Course, there will be one Test i.e. NEET - PG and admission are to be based on the score obtained in the said examination. It is also clear that 50% of the seats are All India Quota Seats in which every candidate is entitled to compete for the purpose of securing admission. For the remaining 50% seats, it is left open for the State Government and Government agency to make admission in such colleges, universities and institutions by following score obtained by the students" in the NEET examination.

**13.** It is not in dispute that prior to introduction of seats, issue of institutional preference fell for consideration many a times before the Hon"ble Supreme Court. The issue of institutional preference at the first instance fell for consideration in the case of D. N. Chanchala and Ors. v/s. State of Mysore and Others reported in (1971) 2 SCC 293. In the said judgment, the Hon"ble Supreme Court considered whether University wise distribution of seats amounts to discrimination and whether such preference will constitute reservation within the meaning of Article 15(4) of the Constitution of India. In the aforesaid decision, the Hon"ble Supreme Court has



approved the decision of the Government and held that the Government is entitled to lay down sources from which selection for admission would be made. It is held in the said judgment that a provision laying down such source is not a reservation. A preference to one attached to one university in its own institutions for post graduate or technical training is not uncommon and such a system for that reason alone is not to be condemned as discriminatory, particularly, when admission to such a university is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. It is also held that so long as there is no discrimination within each of such sources, such preferences cannot be held to be illegal. Such classification has a reasonable nexus with object of the rules viz. to cater to the needs of candidates who would naturally look to their own university to advance their training in technical, and medical studies. Paragraph No.22 of the said judgment read as under : " 22. The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centers for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the universities are set up for satisfying the educational needs of different areas where they are set up and medical colleges are established in those areas, it can safely be presumed that, they also were so set up to satisfy the needs for medical training of those attached to those universities. In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of district wise or unit wise selection as any student from any part of the state can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders upto 20 per cent of the total available seats in any one of these colleges, i.e., those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is, therefore, impossible to say that the basis of selection adopted in those rules would defeat the object of the rules as was said in *Rajendran's case*, 1968 2 SCR 786 = (AIR 1968 SC 1012) or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held

by them. A preference to one attached to one university in its own institutions for postgraduate or technical training is not uncommon. Rules giving such a preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with those which were held invalid in the aforesaid two decisions. Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is, no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged. (see *Chitra Ghosh v. Union of India*). In our view, the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14."

**14.** In the case of *Dr. Pradeep Jain and others v/s. Union of India and others* reported in (1984) 3 SCC 654, Hon'ble Supreme Court has approved institutional preference. In the said judgment, it is held that candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from other universities. It is held that such classification has a reasonable nexus with the object, sought to be achieved, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies etc. It is held that such rules cannot be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14 of the Constitution of India.

**15.** Further in the case of *Gujarat University v/s. Rajiv Gopinath Bhatt and others* reported in AIR 1996 SC 2066, the Hon'ble Supreme Court has held that if a rule has been framed that out of the merit list prepared, preference is to be given for admission in the super specialty courses to the students of the university, per se, it cannot be held to be arbitrary or violative of Article 14 of the Constitution of India.

**16.** Further in the case of *Saurabh Chaudri v/s. Union of India* reported in (2013) 11 SCC 146, again same question fell for consideration before the Hon'ble Supreme Court viz. whether institutional preference is violative of Article 14 of the

Constitution of India. In the said judgment, the Hon"ble Supreme Court while negating the plea of breach of Article 14 of the Constitution of India approved the view taken in the case of D.N.Chanchala (supra) and Dr.Pradeep Jain (supra). Paragraph Nos.70, 71 and 72 of the said judgment read as under :"

70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India. 71. However, the test to uphold the validity of a statute on equality must be judged on the touchstone of reasonableness. It was noticed in Dr. Pradeep Jain's case (supra) that reservation to the extent of 50% was held to be reasonable. Although subsequently in Dr. Dinesh Kumar's case (supra) it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time have produced a large number of PostGraduate doctors. Our Constitution is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding. 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's case (supra) should be reiterated in preference to Dr. Dinesh Kumar's case (supra). Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest."

**17.** Further in the judgment in the case of Vishal Goyal v/s. State of Karnataka reported in (2014) 11 SCC 456, the Hon"ble Supreme Court approved the view taken in the Dr. Pradeep Jain" s case. Paragraph No.14 of the said judgment read as under :"

14. We now come to the argument of Mr. Mariarputham that the scheme formulated by this Court in Dr. Dinesh Kumar and others v. Motilal Nehru Medical College, Allahabad and others AIR 1986 SC 1877 (supra) pursuant to the judgment in Dr. Pradeep Jain's case AIR 1984 SC 1420 (supra) is confined to medical and dental colleges or institutions run by the Union of India or a State Government or a Municipal or other local authority and does not apply to private medical and dental colleges or institutions. Paragraph (1) of the scheme on which Mr. Mariarputham relied on is extracted hereinbelow: "(1) In the first place, the Scheme has necessarily to be confined to medical colleges or institutions run by the Union of India or a State Government or a municipal or other local authority. It cannot apply to private medical colleges or institutions unless they are instrumentality or agency of the State or opt to join the Scheme by making 15 per cent. of the total number of seats for the MBBS/BDS course and 25 per cent. of the total number of seats for the postgraduate course, available for admission on the basis of All India Entrance Examination. Those medical colleges or institutions which we have already excepted from the operation of the judgment dated June 22, 1984 will continue to remain outside the scope of the Scheme." This Court has, thus, said in the aforesaid paragraph (1) of the scheme that the scheme cannot apply to private medical and

dental colleges or institutions unless they are instrumentalities or agencies of the State or opt to join the scheme. The reason for this is that private medical and dental colleges or institutions not being State or its instrumentalities or its agencies were not subject to the equality clauses in Article 14 of the Constitution, but the moment some seats in the private medical and dental colleges or institutions come to the State quota, which have to be filled up by the State or its instrumentality or its agency which are subject to the equality clauses in Article 14 of the Constitution, the principles laid down by this Court in Dr. Pradeep Jain's case (AIR 1984 SC 1420) (supra) will have to be followed while granting admissions to the seats allotted to the State Quota in post graduate medical and dental courses even in private colleges."

**18.** Though institutional preference is approved in the judgments referred herein above, vires of impugned Rules is attacked mainly on the ground that after introduction of NEET, it is not open to make institutional preference. It is contention on behalf of the petitioner that the very object of introduction of NEET is to prefer candidates for post graduate medical course on merit alone and as such, if institutional preference is allowed, it will defeat the very object of holding such test i.e. NEET. Institutional preference / universities are not reservation within the meaning of Article 15(4) of the Constitution of India. Prior to introduction of NEET, every University was conducting separate test for the purpose of grant of admissions to post graduate courses. In view of amendment by inserting provision under Section 10D in the Medical Council Act, 1956 and consequential amendment to the Post Graduate Education Regulations, 2000, admission to Post Graduate Courses are made solely on the basis of score secured by the candidates seeking admission based on Centralized examination i.e. NEET. Even after introduction of NEET, admissions to the extent of 50% seats go to All India Quota, in which, the candidates including the petitioners can compete for securing admission, in such quota. Only remaining seats are to be filled by the Government or Government agency, universities and institutions by using NEET - PG score. The only obligation by virtue of introduction of NEET is that, once centralized admission test is conducted, the State, its agencies, universities and institutions cannot hold any separate test for the purpose of admission to PostGraduate and PG and Diploma Courses. Such seats are to be filled up by the State agencies, universities/institutions for preparing merit list as per the score obtained by the applicants in NEET examination. Such obligation cast upon the State and its instrumentalities by virtue of conducting of NEET, will not have any bearing on the institutional preference, prescribed in the rules of admission of university.

**19.** In view of series of judgments of the Hon"ble Supreme Court which are referred to, the Hon"ble Supreme Court has disapproved admissions based on residence / domicile criteria, but at the same time approved institutional preference by citing various reasons. The very same reasons which are considered for approving quota /

preference, will continue to operate even after introduction of NEET. In that view of the matter, we do not find any merit in the contention of learned counsel for the petitioner that if institutional preference is allowed, then it will defeat the object of holding NEET examination. Although it is pleaded that in view of changed circumstances, it requires reconsideration, but in view of binding judgments of the Hon'ble Supreme Court on the subject, we are compelled to reject such contention and reject the petition by following judgments already referred to. We also do not find any merit in the contention of the learned counsel for the petitioner that the impugned rules which are framed by 3rd respondent are arbitrary and / or breach of rights guaranteed under Article 14 of the Constitution of India so as to declare said rules as illegal.

**20.** For the aforesaid reasons, we do not find any merit in this petition. Accordingly, this Special Civil Application is dismissed. No order as to costs.