

Kumari N. Vasundara

Vs

State of Mysore and Another

Write Petition No. 606 of 1970

(J. M. Shelat, V. Bhargava, I. D. Dua JJ)

15.04.1971

JUDGEMENT

DUA, J. -

The only question raised in this writ petition under Article 32 of the Constitution relates to the constitutional validity of Rule 3 of the Rules for Selection of candidates for admission to the Pre-professional/B. Sc. Part 1 Course leading to M.B.B.S. in the Government Medical Colleges and for certain seats in the private Medical Colleges in the State of Mysore framed by that State on July 4, 1970 (hereinafter called "the Selection Rules").

2. The petitioner Kumari N. Vasundara claims to have passed the Pre-University Examination of the Bangalore University with physics, chemistry and biology as optional subjects 78% marks in these subjects. She applied for admission to the Pre-Professional Course leading to the M.B.B.S. in the Government Medical Colleges, but the Selection Committee, after interviewing her on September 14, 1970, rejected her application on the ground that she had not resided in the State of Mysore for a period of ten years prior to the date of her application as required by Rule 3 of the Selection Rules. It is not disputed that but for the condition requiring residence in Mysore State for a period of ten years prior to the date of her application she was otherwise eligible for admission under the Selection Rules in all other respects. Rule 3 reads as under :

"No person who is not a citizen of India and who is not domiciled and resident in the State of Mysore for not less than ten years at any time prior to the date of the application for a seat, shall be eligible to apply :

Provided that this provision shall not apply (a) in the case of persons applying for seats referred to in clauses (a), (b), (c), (d) and (e) of sub-rule (1) of Rule 4, (b) in the case of children of Central Government employees serving on duty in the State on the date of making the application and (c) in the case of children of Mysore Government employees including children of members of all India Services borne on the Mysore State Cadre who -

(i) are serving or have served outside the State of Mysore on deputation during the relevant period, and

(ii) are in the service of the State on the date of making the application or have retired from service not more than four years prior to the date of making the application."

3. Shri Datar, the learned counsel for the petitioner, challenged the constitutional validity of Rule 3 on two grounds. The first challenge is founded on the ground of violation of the right to equality guaranteed by Article 14 of the Constitution. According to his argument the impugned rule has, by imposing the condition of residence for a minimum period of ten years in the State of Mysore in addition to the condition of being domiciled in that State, created an artificial classification which suffers from unconstitutional discrimination, between the Indian citizens domiciled in the State of Mysore who have resided there for ten years or more and those who have resided there for less than ten years. The period of ten years of residence selected in this rule is not only arbitrary but is highly unreasonable, based on no rational or intelligible principle, said the counsel. Its unreasonableness was illustrated by submitting that students normally pass the Pre-University Examination at the age of 16 or 17 years. To expect such students to have resided in the State of Mysore for ten years in order to be eligible for admission to the Pre-Professional/B. Sc. Part I Course leading to M.B.B.S. would mean that the children of those Indian citizens having their domicile in the States of Mysore who happen, for compelling reasons, to reside in other State in the Indian Union before their children have completed ten years of residence in the State of Mysore would be deprived of the opportunity of having medical education in their own State of domicile. This argument was elaborated by submitting that if all other States in the Union were also to frame similar rules insisting on residence for ten or more years, then the children of those citizens, who are compelled by the necessity of earning their livelihood, to shift their residence from one State to another at short intervals, without completing ten years of residence in any one State, would never be able to get admission in any State. Fixing a period of ten years of residence in the State, according to Mr. Datar, is arbitrary and fanciful having no rational relationship or nexus with the object or purpose of framing the rules, namely, of selection the best talent or the most meritorious students for admission to the Medical Colleges.

4. The learned Attorney-General on behalf of the respondents submitted that by the impugned rule the State has attempted to select those students who are more likely to serve as doctors in the State after the pass out. In this connection our attention was drawn to the counter, affidavit filed by the State. The Attorney-General further contended that it was for the State to determine the sources from which to select candidates and the selection so made deserves to be upheld. In support of the validity of the rule he drew our attention to the decision of this Court in *Chitra Ghosh and Another v. Union of India and Others* (1969(2) SCC 228 : (1970) 1 SCR 413 : AIR 1970 SC 35 : (1970) 1 SCJ 240) and to a decision of the Mysore High Court in *K. Shivashankar v. University of Mysore and Others*. ((1970) 1 Mys LJ 475)

5. This Court in *Minor P. Rajendran v. State of Madras and Others* ((1968) 2 SCR 786) while dealing with the rules made by the State of Madras for the selection of candidates for admission to the first year integrated M.B.B.S. course, struck down, as violative of Article 14, the rule which allocated seats on district-wise basis. A bench of five Judges observed in that case :

"The question whether district-wise allocation is violative of Article 14 will depend on what is the object to be achieved in the matter of admission to medical colleges. Considering the fact that there is a larger number of candidates than seats available, selection has got to be made. The object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by

district. It cannot be and has not been denied that the object of selection is to secure the best possible talent from the two sources so that the country may have the best possible doctors. If that is the object, the argument on behalf of the petitioners/appellant is that that object cannot possibly be served by allocating seats district-wise. It is true that Article 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however that the classification by itself is, reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission professional colleges, the allocation of seats district-wise has no reasonable relation with the object to be achieved. If anything, such allocation will result in many cases in object being destroyed and if that is so, the classification, even if reasonable, would result in discrimination inasmuch as better qualified candidates from one district may be rejected while less qualified candidates from other district may be admitted from either of the two sources."

6. The argument that candidates coming from various districts would settle down in those districts to serve the people there was not accepted, because there was no material on the record giving facts and figures suggesting that candidates from a particular district would generally settle down in that district it was not even so stated in the affidavit filed on behalf of the State of Mysore in that case. The Court, however, took care to clarify the legal position by adding :

"We may add that we do not mean to say that territorial classification is always bad under all circumstances. But there is no doubt that district-wise classification which is being justified on a territorial basis in these cases is violative of Article 14 for no justification worth the name in support of the classification has been made out."

In Chitra Ghosh's case (supra) this Court said :

"The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the source from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In *Minor P. Rajendran v. State of Madras*, (1968) 2 SCR 786 - it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose."

The decision in *Minor P. Rajendran's case* (supra) was distinguished on the ground that in that case the classification made district-wise had been considered to possess no reasonable relation with the object sought to be achieved. It was also observed in *Chitra Ghosh's case* (supra) :

"It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very

nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification." According to this observation which merely re-affirms the settled law, if the sources are properly classified on reasonable basis, then Courts are not expected to interfere with the manner and method of making the classification. Reasonable basis of course must mean that the basis is not arbitrary or fanciful, but bears a just, rational and intelligible relation with the object sought to be achieved by the classification.

7. In *D. P. Joshi v. The State of Madhya Bharat and Another* ((1955) 1 SCR 1215 : AIR 1955 SC 334) this Court had, while upholding by majority the rules, made by the State of Madhya Bharat, for admission to the Mahatma Gandhi Memorial Medical College, Indore, charging capitation fee from non-Madhya Bharat students laid down that in those rules the word "domicile" was used in its popular sense conveying the idea of residence. Venkataramma Ayyar, J., speaking for the majority said :

"It was also urged on behalf of the respondent that the word 'domicile' in the rule might be construed not in its technical legal sense, but in a popular sense as meaning 'residence', and the following passage Wharton's Law Lexicon, 14th Edition, page 344, was quoted as supporting such a construction :

'By the term 'domicile', in its ordinary acceptance, is meant the place where a person lives or has his home. In this sense the the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile.'

In *Memullen v. Wadsworth*, (1889) 14 ACT 631, it was observed by the Judicial Committee that "the word 'domicile' in Article 63 (of the Civil Code of Lower Canada) was used in the sense of residence, and did not refer to international domicile." What has to be considered is whether in the present context 'domicile' was used in the sense of residence. The rule requiring the payment of a capitation fee and providing for exemption therefrom refers only to bona fide residents within the State. There is no reference to domicile in the rule itself, but in the Explanation which follows, clauses (a) and (b) refer to domicile, and they occur as part of the definition of 'bona fide resident'. In *Corpus Juris Secundum*, Volume 28, page 5 it is stated :

'The term 'bona fide residence' means the residence with domiciliary intent.'

There is therefore considerable force in the contention of the respondent that when the rule-making authorities referred to domicile in clauses (a) and (b) they were thinking really of residence. In this view also, the contention that the rule is repugnant to Article 15(1) must fail."

Under the impugned rule in that case no capitation fee was to be charged from the students who were bona fide residents of Madhya Bharat, and the expression "bona fide resident" for the purpose of the rule was defined as (to quote the relevant portion) :

"one who is -

- (a) a citizen of India whose original domicile is in Madhya Bharat provided he has not acquired a domicile elsewhere, or
- (b) a citizen of India, whose original domicile is not in Madhya Bharat but who has acquire a domicile in Madhya Bharat and has resided there for not less than 5 years at the date, on which he applies for admission or
- (c) a person who migrated from Pakistan before September 30, 1948 and intends to reside it Madhya Bharat permanently,
- ##(d) x x x x##

In our view the word "domicile" as used in Rule 3 in the present case is also used to convey the idea of intention to reside or remain in the State of Mysore. If classification based on residence does not impinge upon the principle of equality enshrined in Article 14 as held by this Court in the decision already cited which is binding upon us, then the further condition of the residence in the State being there for at least ten years would also seem to be equally valid unless it is shown by the petitioner that selection of the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia. The object of framing the impugned rule seem to be to attempt to impart medical education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the inhabitants of the State of Mysore. It is true that it is not possible to say with absolute certainty that all those admitted to the medical colleges would necessarily stay in Mysore State after qualifying as doctors, they have indeed a fundamental right as citizen to settle anywhere in India and they are also free, if they so desire and can manage, to go out of India for further studies or even otherwise. But these possibilities are permissible and inherent in our constitutional set-up and these considerations cannot adversely affect the constitutionality of the otherwise valid rule. The problem as noticed in Minor P. Rajendran's case (supra) and as revealed by a large number of cases which have recently come to this Court is that the number of candidates desirous of having medical education is very much larger than the number of seats available in medical colleges. The need and demand for doctors in our country is so great that young boys and girls feel that in medical profession they can both get gainful employment and serve the people. The State has therefore to formulate with reasonable foresight a just scheme of classification for imparting medical education to the available candidates which would serve the object and purpose of providing broad-based medical aid to the people of the State and to provide medical education to those who are best suited for such education. Proper classification inspired by this consideration and selection on merit from such classified groups therefore cannot be challenged on the ground of inequality violating Article 14. The impugned rule has not been shown by the petitioner to suffer from the vice of unreasonableness. The counter-affidavit filed by the State on the other hand discloses the purpose to be that of serving the interest of the residents of the State by providing medical aid for them.

8. The petitioner's argument that candidates whose parents have of necessity to remain out of Mysore State and who have also by compelling reasons to shift their residence frequently from one State to another without completing ten years in any one State would suffer because their parents cannot afford to arrange for their children's residence in Mysore State for ten years during the first 17 years of their age, merely suggests that their is a likelihood of some cases of hardship under the impugned rule. But cases of hardship are likely to arise in the working of almost any rule which

may be framed for selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional. For relief against hardship in the working of a valid rule the petitioner has to approach elsewhere because it relates to the policy underlying the rule. Redress for the grievance against the wide gap between the number of seats in the medical colleges and the number of candidates aspiring to become doctors for earning their own livelihood and for serving the needs of the country, is also to be sought elsewhere and not in this Court, which is only concerned with the constitutionality of the rule.

9. For the aforesaid reason fails and is dismissed but without costs.

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