
(2002) 02 JH CK 0103
In the Jharkhand High Court
Case No : Writ Petition (C) No. 650 of 2002

Asiya Shah

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 70
Constitution of India, 1950 — Article 14

Citation : (2002) 50 BLJR 1037

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : A.K. Sinha, for the Appellant; Pradip Modi (G.P.-1) and Bishwambhar Shastri (JC to GP), for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—In this writ application the petitioner Asiya Shah, has prayed for a direction upon the respondents to accept her admission in the M.B.B.S. course at the Rajendra Medical College. Ranchi for the Session starting from 2001. According to the petitioner she had been selected in the Jharkhand Combined Entrance Competitive Examination. 2001 (J.C.E.C.E.) and her application was duly forwarded for Counselling but even thereafter, the Principal of the said college refused admission on the ground that she does not fulfil the residential eligibility.

2. This case was heard at length and both Mr. Anil Kumar Sinha, Senior Advocate and Mr. Pradip Modi, learned G.P.I. argued and represented their respective clients.

3. According to the petitioner, she has born on 4th of August. 1982 at Jamshedpur and she completed her scholastic life in the Little Flower School at Telco Colony. Jamshedpur where she studied from K.G. to Class 12th. The petitioner states that in the mean time, she appeared in the Entrance Examination conducted by the Board and she was declared successful and was

placed 9th in the General Category. The petitioner states that she was also asked to appear before the Counselling Committee where all documents were verified and thereafter, the Committee advised her to report to the Principal. Rajendra Medical College. Ranchi for admission. But her admission was refused. The petitioner came to learn that the refusal was on account of the fact that the Principal did not accept the Residential Certificate submitted by her and issued by the S.D.O. Dhalbhum at Jamshedpur (Annexures 5 and 6) which certified that the petitioner had been a resident of Golmuri, East Singhbhum for more than ten years and that her father having joined TELCO on 04/11/1963 was still in service.

4. According to the learned Counsel for the State and as per the counter-affidavit of the Principal. Rajendra Medical College. Ranchi. only those candidates who were citizens of India and who satisfied the domicile criteria laid down under Sub-clause (i) to (vi) of Clause 14. 8 (Kha) of the Prospectus were entitled to take admission in the Medical College. According to him the residential certificate marked as Annexure-5. dated 04.12.2001 is a temporary certificate and it certifies that the father is an employee of TELCO and that the father is a resident of Golniuri for more than ten years. According to him this is not a "native certificate" nor a "domicile certificate."

5. On the contrary, the specified stand of the respondent Principal is that under the Prospectus, a candidate must satisfy the Provisions relating to Clause 14.8 thereof, which insists on production of Domicile/Native Certificate. A prospectus issued in relation to holding of the Jharkhand Combined Entrance Competitive Examination. 2001 can not be said to be a Rule. Regulation framed by the Government. Further stand of the respondent Principal is that the Government of Jharkhand provides 15% of its total seats in all the three Medical Colleges including the Rajendra Medical College. Ranchi to the Government of India under all India quota and against those seats, any person from any corner of India can be admitted irrespective of residential status. In other words, the Principal asserts that there are only 5% seats in each of the three Medical Colleges (5% + 5% + 5%). Therefore, the Principal indirectly has suggested that the remaining 85% seats can be made available only to person who satisfy the aforesaid criteria of being a domicile of the State of Jharkhand. This in my opinion is a totally unreasonable concept and contrary to the Judgment of the Hon"ble Supreme Court of India.

6. At paragraph-11 the Principal has stated that the petitioner is neither a "native" nor a "domicile" of Jharkhand and, therefore, she is not entitled to take admission in the Medical College of the State of Jharkhand.

7. At the very outset, let it be recorded as admitted by the learned Counsel appearing for the State that till date no policy or guideline relating to reservation has been framed by the Government of Jharkhand in relation to reservation of seats for residents of Jharkhand for their admission into Medical Colleges. In the absence of such reservation, relating to reservation of seats, this Court therefore, intends to proceed on the basis of the documents which are available

on record and also on the basis of some of the Judgments which have been cited by the parties in this case.

8. In order to appreciate the facts and circumstances involved in this case, it will be relevant to deal with the word "domicile". The word "domicile" has been dealt with in the Special and Ordinary Leave Rules of the Bihar Service Code. 1952 and Appendix-14 thereto says that a person can have only one domicile. In a Judgment reported in AIR 1984 SC 1420. the Hon"ble Supreme Court dealt with this matter extensively. At paragraph-8 their Lordships had held that on reading of the Constitution of India, the same recognises only one domicile namely "a domicile in India." Article 5 of the Constitution also makes it clear and refers only to one domicile namely "domicile in territory of India."

9. Article 5 of the Constitution of India reads as follows :

"At the commencement of this Constitution, every person who has his domicile in the territory of India and.

(a) who was born in the territory of India: or

(b) either of whose parent was born in the territory of India: or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement.

shall be a citizen of India."

10. In other words, a citizen of India is also a domicile of India.

11. The word "Domicile" has been defined in Black's Law Dictionary IVth Edition) in the following manner :

"...That place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. The permanent residence of a person or the place to which he intends to return even though may actually reside elsewhere. A (std) but only one domicile. The legal domicile of a person is important since it, rather than the actual residence, often controls the jurisdiction of the Taxing Authorities and determines where A person may exercise the privileges. The established, fixed, permanent or ordinary dwelling place or residence of a person, as distinguished from his temporary and transient, though actual, place of residence, it is his legal residence as distinguished from a place to which business or pleasure may temporarily call him,"

12. In the case of Schreiner v. Schreiner. (Tex. CIV. App. 502 S.W. 2d 840. 843) (referred to in Black's Law Dictionary. Vth Edition), it is stated that "Residence" signifies living in a particular locality while "Domicile" means living in that locality with intent to make it a fixed and permanent home.

13. "Domicile of Origin means the home of the parents. That which arisen from a man's birth and connections. The domicile of the parents at the time of birth, or

what is termed the "Domicile of Origin" constitutes the domicile of an infant, and continues until abandoned or until the acquisition of a new domicile in a different place.

14. "Domicile of Choice" on the other hand, are the fact of physical presence at a dwelling place and the intention to make that place home. (Black's Law Dictionary. Vth Edition).

15. Now in order, to properly appreciate the facts involved in this case, it would be necessary to refer to some paragraphs of the Judgment of the Hon'ble Supreme Court of India stated above (i.e. Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . In paragraph-8 their Lordships of the Supreme Court have held that it would not be right to say that a citizen of India is domiciled in one State or another forming part of the Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any change: he does not acquire a new domicile of choice. His domicile remains the same, namely. Indian domicile. Their Lordships have further held that it would be highly detrimental to the concept of the unity and integrity of India to think in terms of State domicile. Their Lordships have further stated that it is true that the word "domicile" in the Rules of some of the State Governments prescribing domiciliary requirement for admission to medical colleges situated within their territories is used not in its technical legal sense but in a popular sense as meaning residence and is intended to convey the idea of intention to reside permanently or indefinitely. Their Lordships have interpreted the Word "domicile" used in the Rules regulating admissions to medical colleges framed by some of the States in the same loose sense of permanent residence and not in the technical sense in which it is used in private international law. But their Lordships have cautioned against the use of the word "domicile" with reference to states forming part of the Union of India because it is a word which is likely to conjure up the notion of an independent State in a subtle and insidious manner the dormant sovereign impulses of different regions. Their Lordships have said that they thought it dangerous to use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. In the same paragraph, it has been said that,

"the concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in the long run tend to break up the unity and integrity of the country. We would, therefore, strongly urge upon the State Governments to exercise this wrong use of the expression "domicile" from the rules regulating admissions to their educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions."

16. Their Lordships have also taken note of the question as to whether such requirements are Constitutionally valid when tested on the touch stone of Article

14. In fact at Paragraph-10, their Lordships have held as follows :

"What is fundamental as an enduring value of our polity is guarantee to each of equal opportunity to unfold the full potential of his personality. Any one anywhere, humble or high agrestic or urban, man or woman, whatever be his language or religion, place or birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A. which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that can not be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India."

17. Let it be recorded that the State has not been able to satisfy this Court as to whether the State Government has taken a decision in relation to give preferential treatment to permanent residents of Jharkhand so as to correct the imbalance of handicap from which the students from this area may suffer and also so as to provide them equal opportunity considering the fact that they would not be able to compete with others who are more advantageously placed. The State has also not framed any regulation in relation to reservation based on such residence so as to remove the uneven level of development which may satisfy the test of Article 14. Their Lordships at paragraph-18 have held that there may be a case where a region is educationally backward or woefully deficient in medical services and in such a case there would be serious educational and health services disparity for that backward region which must be redressed by equality and service minded welfare State.

18. Yet another Judgment that needs to be taken note of is also a judgment of the Hon"ble Supreme Court in the case of The Dean, Goa Medical College, Bombolim, Goa and Anr. v. Dr. Sudhir Kumar Solanki and Anr., reported in 2002 (1) JLJR 37 SC. Their Lordships while construing the provisions of the Goa. Daman and Diu Reorganisation Act 1987 and with particular reference to the Section 57 thereof, have held that a liberal construction should be made in relation to the words used therein i.e. "technical institutions."

19. Under the Bihar Reorganisation Act. Section 70 is almost similar and reads as follows :

"...The Government of the State of Bihar or Jharkhand. as the case may be, shall, in respect of the institutions specified in the 10th Schedule to this Act. located in that State, continue to provide facilities to the people of the other State which shall not in any respect be less favourable to such people than what were being provided to them before the appointed day for such period and upon such terms and conditions as may be agreed upon between the two State Governments before the 1st day of December, 2001 or if no agreement is reached by the said date, as may be fixed by Order of the Central Government."

20. It is true that the word "institution" referred to in Section 70 are the institution referred to in the 10th Schedule. However, the 10th Schedule does not refer to a medical college although it refers to various other institutions including technical institutions. Their Lordships of the Supreme Court have said that the word "technical" which was appearing in the Goa. Daman & Diu Reorganisation Act also means "professional institutions and that a technical institute, as per dictionary meaning refers to mean a particular art. science or applied science or vocational training dealing with applied science. Their Lordships have also held that it can not possibly or legitimately be contended that medical college or studies in post graduate course does not involve applied science.

21. Drawing the same analogy the provisions of Section 70 of the Bihar Reorganisation Act. where the word "technical" has not been used but in its place "institutions" have been used cannot be said to exclude a "technical institution". In my opinion the word "Institutions" specified in the 10th Schedule of the Bihar Reorganisation Act includes "technical institutions". Since the Hon"ble Supreme Court in the aforementioned Judgment have held that it can not be contended that a medical college does not involve applied science. I am also of the opinion that technical institution includes a medical college. In other words, the word "institution" also includes a medical institution which is also a technical institution imparting medical education. Thus what was being provided by the Rajendra Medical College. Ranchi prior to the creation of the State of Jharkhand cannot be taken away after creation of the State till such time as the State Governments agree. In the instant case no such agreement seem to have been reached and, in that event it is for the Central Government to do the needful.

22. This apart the matter relating to admission in medical college, preferences to residents of the same State is permissible provided it is within reasonable limits. In the instant case as has already been mentioned, there is nothing on record to suggest that the State Government has framed any such policy relating to reservation of seats. In view of what has been stated above, and in view of the fact that the documents annexed to the Writ Petition show that the petitioner was born and brought up in unified Bihar (at Jamshedpur now in Jharkhand) and also in view of the fact that the family of the petitioner has been continuing to be residing at Jamshedpur right from the year 1947 as has been stated by the petitioner at paragraphs 4 and 5, it is held that the residential certificate submitted by the petitioner vide Annexure-5 fulfills the eligibility criteria. That apart, there is an incorrect interpretation made at paragraph-9 of the counter-affidavit to the effect that the said certificate relates to the father of the petitioner. On the contrary this certificate very much relates to the petitioner and merely adds that her father has also been working at TELCO since 04.11.1963.

23. In view of the premises aforesaid this Writ Petition is allowed and the respondents are directed to admit the petitioner in the M.B.B.S. Course for the Session starting from 2001 at the Rajendra Medical College. Ranchi forthwith.