

(2000) 09 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule (PIL) 239 of 1994

Bhanu Choudhury

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 16, 16(4)
Mizoram (Selection of Candidates for Higher Technical Courses) Rules, 1993 — Rule 5
Mizoram (Selection Candidates for Higher Technical Court) Rules, 1999 — Rule 5(3), 8

Citation : (2000) 3 GLT 301

Hon'ble Judges : Brijesh Kumar, C.J;D. Biswas, J

Bench : Division Bench

Advocate : Mr. N.M. Lahiri and Mr. N. Choudhury, for the Appellant; Mr. M. Singh and Mr. K.K. Mahanta, for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—This petition has been preferred challenging the vires of the Mizoram (Selection of Candidates for Higher Technical Courses) Rules, 1993, published on 6.7.1993 in the Mizoram Gazette Extraordinary.

2. We have heard Shri N.M. Lahiri, learned Senior Advocate for the petitioner and Shri M. Singh, learned Govt. Advocate for the State of Mizoram. Shri K.K. Mahanta has been heard for Central Government.

3. In view of the fact that facilities for higher technical studies in the State of Mizoram are not available, the Central Government made provision for allotment of seats for the State in different institutions of India for higher and technical education. The Notification dated 6.7.1993 notifying the rules states by way of preamble as follows :

"No. C. 11011/1/93-EDN the 5th July, 1993:

Whereas, the State of Mizoram has no facilities for Higher Technical Studies within the State, and whereas, the seats allotted to the State of Mizoram for

Higher Technical Studies by the Central Government is insufficient to meet the requirement of technical manpower of the State.

Now, therefore, the Governor of Mizoram is pleased to make rules to ensure fair and just selection of candidates for Higher Technical Studies in respect of Degree Courses of various disciplines in. Engineering, Medical, Agriculture, AH and Veterinary etc., as follows:

1. These rules may be called the Mizoram (Selection of Candidates for Higher Technical Courses) Rules, 1993.

They shall come into force from the date of their publication in the Mizoram Gazette.

2. In these rules, unless the context otherwise requires,

(a) "Governor" means the governor of Mizoram.

(b) "Local permanent resident" in the context for the purpose of these Rules means candidates, whose parents are indigenous people of the State (Mizoram) and have been residing permanently in the State ;

(c) "Non-Local Permanent Resident" means statutes whose parents are non-indigenous people of the State but serving under the State Government or Government Corporation or Autonomous Bodies under the State Government who are not on contract service, contingency staff, or work charged staff, muster roll and who are regular employee of the State Government and in whose case, it can safely be inferred that they would reside permanently in Mizoram;

(d) "Qualifying Examination" means the entrance examinations under Rule 4 ;

(e) "Selection Board" means Selection Board constitutes in accordance with the provision of rule to select candidates."

4. The Rules of 1993 provide for the qualification etc. for applying for selection in different courses and Rule 5 classifies the candidates in the following manner :

"5. The following methods shall be adopted for selection of the candidates :

(a) The candidates shall be classified into three categories for the purpose of allotment of seats viz : -

(i) Children of the local permanent resident of the Mizoram State as Category I.

(ii) Children of the non-local permanent resident of the Mizoram State Category II.

(iii) Children of Central/other State Govt. employees not permanently serving in Mizoram as category III.

(b) Preference shall be given to those candidates who possess working knowledge of Mizo language,

(c) On the basis of percentage of marks obtained in the RU. Sc/ Class XII and HSLC or equivalent examination and personal interview, selection will be made in order of merit from among eligible candidates from Category I. In case sufficient number of eligible candidates are not available from the Category I, the remaining seats shall be filled in, in order of merit by the eligible candidates from category II and so on."

5. Categories I, II and III are exclusive of each other namely, if number of candidates commensurating the number of seats are available in Category I i.e., from the children of local permanent residents of Mizoram State, candidates of Category II and III would be excluded from consideration. Similarly, candidates of Category III would not be entitled for consideration in case candidates are available from Category I and II. The seats to the candidates in Category III shall go only in case none is available from Category I and II irrespective of merits of the candidates. The term "Local Permanent Resident" and "Non-local permanent resident" has been defined in Rules 2(b) and (c) as quoted above.

6. Learned counsel for the petitioner submits that the manner in which reservation has been made in favour of those belonging to the State of Mizoram is not in accordance with law, inasmuch as, in case of availability of candidates of "Local Permanent resident" it will amount to total reservation, namely, cent per cent reservation in their favour leaving no seat for any other category. It is submitted that looking to the background in which the Rules have been framed, namely, non-availability of facility of higher technical education in Mizoram and the requirement of highly qualified persons from the State, it is no doubt permissible to have reservation, but it cannot be in total exclusion of others. Some reasonable percentage of seats have to be available for the candidates of all the three categories, the lion share though may go to the candidates of the first category.

7. An affidavit dated 22.2.2000 has been filed in opposition sworn by the Deputy Secretary, Higher and Technical Education, Art and Culture, Government of Mizoram. It has been averred in the affidavit that there is one diploma level Institution offering courses in Civil, Mechanical and Electrical streams only. The State is at present in great need of technical manpower in different spheres for the development of the State. In many departments, posts of technical nature are lying vacant. Under these circumstances, the Rules in question have been framed. It has been averred in the affidavit that the petitioner cannot be aggrieved by the Rules as a resident of Cachar district in the State of Assam. It is also indicated that later on the Government has amended the Rules of 1993 by Notification dated 7.6.1999. A copy of which has been filed as Annexure-I to the affidavit-in-opposition. These Rules have been described as Mizoram (Selection of Candidates for Higher Technical Courses) Rules, 1999 notified on 7.6.99. The classification of candidates has been indicated in Rule 5 of the Rules of 1999, which is quoted below :

"5. (1) All applicants shall be classified into three categories for the purpose of

allotment of seats viz. -

- (a) Children of local permanent residents of the State of Mizoram, as Category-I;
- (b) Children of non-local permanent residents of the State of Mizoram as category-II.
- (c) Children of Central/Other State Govt. employees not permanently serving in Mizoram, as Category-III.

Explanation : For the purpose of this sub-rule, the term "Local Permanent Residents" means those who are indigenous people of the State of Mizoram and have been residing permanently in the State, and the term "Non-Local Permanent Residents" means those who are non-indigenous people of the State of Mizoram but serving under the Government of Mizoram or Government corporation or Autonomous Bodies under the State Government, or other recognised organisations under the State Government, or other recognised organisation under the State Government who are regular employees of such organisation and in whose case, it can safely be inferred that they would reside permanently in Mizoram.

(2) To be eligible to be considered under the Category -II and the category-III, a Government servant should have completed at least two years of service in Mizoram and posted in the Offices of the State Government whether located within the State or not.

(3) On the basis of marks obtained in the Selection Examination, Selection shall be made in order of merit from amongst eligible candidates from Category-I first. In case sufficient number of eligible candidates are not available from category-I, the remaining seats shall be filled in, in order of merit by the eligible candidates from Category-II and Category-III likewise.

8. As a matter of fact, the Rules of 1999 are in substance and virtually the same as issued in the year 1993 impugned in the writ petition. The preamble of the Rules is also the same as has been indicated while quoting the Rules of 1993. For the purpose of point involved in the present petition, the petition remains the same under Rules of 1999 as stood in the Rules of 1993. The Rule 8 of the Rules of 1999 repeals the Rules of 1993 on commencement of Rules of 1999. The Rules of 1999 has been brought on record and there is no dispute on the point that the position as it release to candidates of 3 categories i.e. Category-I, II and III and the method of reservation of seats in their favour is the same. Therefore, the argument and points raised in respect of 1993 Rules hold good for testing the validity of 1999 Rules. As matter of fact, the argument have been advanced by the parties as contained in the Rules of 1999 in the background of the Rules of 1993. Local permanent residents have been defined in Explanation to Rule 5 quoted above. As regards the term non-local permanent resident the candidates of Category I namely, children of local permanent resident excluding all candidates of Categories II and III in case candidates equal to the number of

vacancies are available in Category I short fall, if any, in Category I is to be made up from Category II and III. The candidates of Category III are to be considered only if the number of candidates in category II fails short of the seats available. For the purpose of Category I two factors are relevant, that they are permanently residing in Mizoram and of indigenous origin. Those who fall in Category II are though not indigenous people of the State of Mizoram, but they serve under the Government of Mizoram or Government Corporation or autonomous bodies under the State Government or other recognised organisation under the State Government as regular employees, in whose case it can safely be inferred that they may reside permanently in Mizoram. Insofar Category III is concerned, they would be children of Central Government or other State Government employees not permanently serving in Mizoram. Thus, for category II what is required is that there should be permanent employment, while in Category III they may not be permanently serving in Mizoram.

9. Learned counsel for the petitioner has not disputed that looking to the background in which Rules have been framed the reservation for the indigenous permanent residents may be made, but only objection which has been pressed before us is that it cannot be cent percent reservation, some seats have to be available to the people other than indigenous people.

10. In reference to the argument raised on, behalf of the petitioner as indicated above, a decision of the Supreme Court reported in Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and others, and connected petitions may be referred. The question which draws attention of the court was about reservation on a single post since it amounted to cent percent reservation. In that connection the court considered as to whether cent percent reservation was permissible under the law and while dealing with the question referred to a number of its own decisions rendered earlier, the observations made in para 33 of the judgment can beneficial be reproduced below :

"33. Articles 14, 15 and 16 including Articles 16(4), 16(4A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for th reserved classes and also for the other members of the community who do not belong to reserved classes. Such view has been indicated in the Constitution Bench decision of this court in M.R. Balaji and Others Vs. State of Mysore, T. Devadasan Vs. The Union of India (UOI) and Another, and Sabharwal's case (1995 SCW 1371). Even in Indra Sawheny's case (AIR 1992 SCW 3682) the same view has been held by indicating that only a limited reservation not exceeding 50% is permissible. It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of citizens. The special provision under Article 15(4) must, therefore, strike a

balance between several relevant considerations and proceed objectively. In this connection reference may be made to the decisions of this Court in C.A. Rajendran Vs. Union of India (UOI) and Others, It has been indicated in Indra Sawheny's case (supra) that clause (4) of Article 16 is not in the nature of an exception to clauses (1) and (2) of Article 16 but an instance of classification permitted by clause (1). It has been indicated in the said decision that clause (4) of Article 16 does not cover the area covered by clauses (1) and (2) of Article 16. In Indra Sawheny's case, this court has also indicated that the interest of the backward classes of citizens, the State cannot reserve all the appointments under the State or even a majority of them. The doctrine of equality of opportunity in Clause (1) of Article 16 is to be reconciled in favour of backward classes under Clause (4) of Article 16 in such a manner that the latter while serving the cause of backward classes shall unreasonably encroach upon the field of equality."

11. The question raised for consideration is regarding the extent to which reservation can be made to be precise whether it can be cent percent in any eventuality or not. It may either be a case under Article 15 or 16 would make no difference. A balance is to be struck reasonably between different classes. A law relating to reservation which totally eclipses the chance of consideration for any category is not permissible. As against the concept of total reservation, some other cases which have been referred in the judgment are Triloki Nath Tikku and Another Vs. State of Jammu and Kashmir and Others, C.A. Rajendran Vs. Union of India (UOI) and Others, C.A. Rajendran v. Union of India and Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, In the light of the law as has been indicated above, we may examine the provisions of the Rules which have been replaced by means of the Mizoram (Selection Candidates for Higher Technical Course) Rules, 1999. The children of local permanent residents of the State of Mizoram constitute Category I, In case such candidates to the extent of number of seats are available, no one else should be considered and should be a case of total reservation in favour of Category I. It is to be noticed that even the children of other permanent residents of the State of Mizoram, being of non-locals would also be a totally excluded category in case of availability of candidates of Category I. The main consideration for framing Rules is obviously that qualified persons may be available in the State of Mizoram and that probability is more in case of permanent residents belonging to the local origin namely, indigenous people. The more relevant factor for the purpose to be achieved seems to be permanent residence. Preamble of the Rules gives importance of having qualified people in the area namely, the State of Mizoram. Thus the dominant factor would be permanent residence and chance may become a little more, if a person belongs to the same place. But it is to be noticed that those who fall in Category II are children of regular employees of the State Government of Mizoram or other Government corporation and recognised organisation in respect of whom it is provided that it can safely be inferred that they will permanently reside in Mizoram. therefore, it is submitted

that much emphasis on a person being an indigenous person cannot be made to the extent that in a given situation it would totally skip the category "other permanent residents of Mizoram". The object sought to be achieved is availability of highly qualified persons in Mizoram. Therefore, permanent resident constitutes more important factor. In any case, total exclusion of those in respect of whom it can reasonably be inferred that they would be permanently residing in Mizoram, would be violative of their rights enshrined under Articles 15 and 16 of the constitution.

12. For the reasons indicated above, the impugned Rules of 1993 replaced by the rules of 1999 providing for total reservation in favour of candidates of Category I in case sufficient number of candidates are available, totally excluding Category II and III is not lawful. The State is to strike some reasonable balance which may cater their need looking to the special circumstances that the State does not have institutions for higher technical education. But at the same time it must also be kept in mind that other permanent residents being children of non-locals who are likely to remain there or children of other Central or State Government employees, they may though not be permanent residents but have to be there in connection with employment of their parents, are not totally excluded and ignored irrespective of their merit position.

13. In so far the argument raised about the maintainability of the writ petition at the instance of the writ petitioner is concerned, it may be noticed that the petitioner has given out himself to be an office bearer of Bharatya mazdoor Sangh and a Trade Unionist. He may though be residing in the neighboring place namely, Silchar in Assam, but it is indicated that the organisation has its number of members in the State of Mizoram who are working as employees of the recognised Government undertakings. As an activist and whole-time worker and trade unionist, the petition therefore can well be maintained to protect the interest of the members of the organisation in the State of Mizoram, whose children would also be affected by the impugned Rules. The residence of the petitioner, though is in Silchar may not have very important bearing in context with the controversy involved as it is indicated that he co-ordinates the work of his organisation in Tripura and Mizoram. Therefore, the petition cannot be thrown out on the ground that the petitioner cannot be thrown out on the ground that the petitioner himself resides in Silchar and not in the State of Mizoram since the filed of his activities extends to the State of Mizoram and also in view of the fact that number of members of the organisation are said to be residing in Mizoram in connection with their employment and the organisation would be legally entitled in taking ... the cause of education of children of its members. In case the members of the Sangh are posted in the State of Mizoram and children of such employee's are affected by the impugned legislation by reason of which their chances for consideration for higher education are totally blocked, it will be difficult to sustain the objection that the petition in the public interest would not be maintainable at the instance of the petitioner. Individual interest of the petitioner would obviously not be a criteria for maintainability of the writ petition,

not that will be necessary.

14. In the light of the discussion held in the body of the judgment, we find that the new Rules of 1999 to the extent as contained in sub-rule (3) of Rules 5 providing that selection shall be made from Category I first. In case sufficient number of candidates are not available from Category, I remaining seats shall be filled up from Category II and III and likewise, is held to be ultra vires and is struck down. It is, however, clarified that it would not affect the admissions which have already been made so far in pursuance of which children are already taken up their courses of study.

15. The petition stands allowed with no order as to cost.