

(1993) 06 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 672 of 1992

Brijraj Singh and Another

APPELLANT

Vs

Principal, Tatya Tope State Physical Education College,
Shivpuri and Others

RESPONDENT

Date of Decision : 21-06-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 151

Citation : AIR 1993 MP 243 : (1993) 2 MPJR 388

Hon'ble Judges : S.K. Dube, J;S.K. Chawla, J

Bench : Division Bench

Advocate : R.D. Jain, for the Appellant; A. Dudhawat, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chawla, J.

Cancellation of admissions of two students in an educational course of ten months" duration, nearly seven months after its commencement is under challenge in this writ petition.

The factual matrix of the petition is not in controversy. The two petitioners, who are students, got admission on 10-9-1991 in D.P.Ed. (Diploma in Physical Education) Course, to last for ten months, in Tatya Tope College of Physical Education, Shivpuri. They were allowed admissions on the basis of certificates showing that they were bona fide residents of Madhya Pradesh. Those certificates purported to be signed by Tehsildar, Shivpuri. The petitioners prosecuted the said course for about seven months, when on 8-4-1992 the Principal of the College passed two orders (Annexures P/3 and P/4) cancelling their admissions on the ground that the certificates of bona fide residence filed by them were not found to be signed by any revenue officer of Shivpuri and that they were not bona fide residents of Madhya Pradesh. These two orders are assailed in this petition as illegal with a prayer that they be quashed.

The case of the petitioners is that they are in fact bona fide residents of Madhya Pradesh. Thus, petitioner No. 1 Brijrajsingh's father is dead and the petitioner's elder brother Surendrasingh is his guardian who has lands in village Padoda in Madhya Pradesh vide copy of Khasra Annexure P/1. So also petitioner No. 2 Virendrasingh's father is dead and he is living under the guardianship of his maternal uncle Harisingh who has lands in village Bagoda, also in Madhya Pradesh, vide copy Khasra Annexure P2. The impugned orders by the Principal cancelling the admissions of the petitioners were passed in utter violation of principles of natural justice, without giving any kind of hearing to the petitioners, and hence, are invalid and deserve to be quashed.

In the return filed on behalf of all the three respondents, namely, Principal, Tatya Tope College of Physical Education, Shivpuri, Collector, Shivpuri and Director, Public Instructions, Government of M.P., Bhopal, it is said that the Principal sent the domicile certificate of students, including those of the two petitioners to Tehsildar Shivpuri for verification. The Tehsildar in his turn on 19-12-1991 wrote back to the Principal that the certificates of the two petitioners were not issued by his office and on inquiry it was found that both the petitioners were not bona fide residents of Madhya Pradesh (Annexure R/1). The Tehsildar on 5-3-1992 sent a copy of his report dated 19-12-1991 to the Collector, Shivpuri, vide Annexure R/2. The Collector, Shivpuri then on 3-4-1992 wrote a letter to the Principal stating that Tehsildar, Shivpuri in his inquiry had found that the domicile certificates filed by the petitioners were not signed by any revenue officer of Shivpuri, and requiring the Principal to take immediate action against the petitioners and to lodge an F.I.R. against them under intimation to him vide Annexure R/ 3. It was in these circumstances, that the Principal properly and validly cancelled the admissions of the petitioners by the impugned orders.

It may be mentioned here that this Court passed an interim order on 22-4-1992 directing that the petitioners shall be allowed to participate in the examination which was to commence on 24-4-1992. It was also directed that the examination shall be subject to the result of this petition and result of the petitioners would not be declared unless permitted by this Court. In these circumstances, the petitioners -have actually appeared in the examination of the Session 1991-92, but their result is withheld.

In the first place, it was contended by Shri R. D. Jain, learned counsel for the petitioners, that the condition that the students, to be eligible for admission, should have been bona fide residents of Madhya Pradesh was constitutionally invalid condition. Reliance was placed on a decision of the Supreme Court in *Union of India v. Sanjay Pant* in 1992 (2) SLR 648 : (AIR 1993 SCW 311). We find that this ground that the condition of students being bona fide residence of M.P. was unconstitutional has not been taken in the writ petition. That apart, reliance on the above decision was misplaced. That decision is under Article 16 of the Constitution of India, confined to state action in making discrimination in the sphere of public employment. In such a sphere, it was held in that decision that

the State in terms of Article 16 could not have discriminated on the ground of residence, namely, that the candidate could not be selected for regular post of Statistical Assistant in Andaman and Nicobar Administration on the ground that he did not have ten years continuous education in Andaman and Nicobar Islands and, therefore, was not a "local" candidate, except when such a requirement of residence was prescribed by law made by the Parliament.

In the present case, we are concerned with State action in the field of education and not of public employment, and to that Article 15 of the Constitution of India would be attracted. Under that Article, it is not open to the State to discriminate among the citizens on the ground inter alia of "place of birth". "Residence", it may be noted, is not one of the prohibited grounds of discrimination under that Article. "Place of birth" and "residence" are two different connotations, so that if the State in its action discriminates in any field, including educational field, on the ground of place of birth, that condition will have to be struck down as unconstitutional. But if the State in its action in educational or other fields, except in the field of public employment, to which Article 16 is attracted, discriminates on the ground of "residence, that may be within the parameters of the Constitution.

In *D.P. Joshi Vs. The State of Madhya Bharat and Another*, the Supreme Court by majority held that a rule requiring capitation fee from non M.B. students for admission to Medical College, Indore was valid and not violative of Articles 14 and 15 of the Constitution. It was held that the object of the rule was to help students, who were residents of Madhya Bharat, in the prosecution of their studies and it could not be disputed that this was quite a legitimate and laudable objective for a State to encourage education within its borders.

In a decision of our High Court in *Ku. Madhu Mittal Vs. State of Madhya Pradesh and Others*, the validity of a rule framed by M.P. Vyavasayik Pathyakram Pareeksha Mandal for admission to professional courses like Engineering and Medicine providing that benefit of reservation of certain percentage of seats would be confined to children and grandchildren of freedom fighters who are/ were bona fide residents of M.P., was examined. It was held in this decision that the said rule was not violative of Articles 14 and 15 of the Constitution because the condition about bona fide residence of a candidate in a particular State for admission is valid and within the parameters of the Constitution. It was further held that a State can make rules for admission to its educational institution for the benefit of the residents within the State. The State of M.P. was thus within its right to frame a rule for confining the benefit of reservation only to the children and grandchildren of such freedom fighters who are/ were bona fide residents of M.P.

The Supreme Court followed its own decision in *D.P. Joshi's* case (*supra*) in a subsequent case and upheld the condition of residence for a minimum period of ten years in the State of Mysore for being eligible for admission to a Medical College run by the Government (See *N. Vasundara Vs. State of Mysore* and

Another, Noticing the two decisions in D.P. Joshi's case (supra) and N. Vasundara's case (supra), the Supreme Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, observed that those decisions were of binding force and it was, therefore, not possible any longer to hold that residence requirement in a State for admission to MBBS course was irrational and irrelevant violating the mandate of equality contained in Article 14 of the Constitution. But considering the national importance of medical education, the Supreme Court in this decision held that reservation on the basis of residence requirement deserved to be confined to certain percentage and that wholesale reservation on the basis of residence requirement was not valid. It was held that in the admission to MBBS and BDS courses, reservation on the basis of residence requirement should not exceed the outer limit of 70 per cent of the total number of open seats.

One more thing needs to be noticed at this stage. As already seen, in D.P. Joshi's case (supra), the constitutional validity of rule requiring payment of capitation fee from non M. B. students was upheld. That decision is still an authority for the proposition that classification on the ground of residence in educational field is a justifiable classification under Articles 14 and 15(1) of the Constitution of India. The question that capitation fee is not permissible under the scheme of the Constitution was neither raised nor adverted to in that decision. It has now been held by the Supreme Court in the case of Miss. Mohini Jain Vs. State of Karnataka and others, that charging of capitation fee is illegal and violative of Article 14 of the Constitution. So also it has been held in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., that private unaided, recognised or affiliated educational institutions running professional courses may charge fee higher than that charged by Government institutions in similar courses, but such fee should not exceed the maximum limit fixed by the State. In any case, even such institutions cannot charge capitation fee. These decisions do not in any way impair the authority of the Supreme Court in D.P. Joshi's case (supra) so far as its ratio that reservation on the basis of residence requirement in educational field is valid is concerned. The observations in Mohini Jain's case (supra) in para 23 are pertinent and deserve to be quoted in extenso-

" D.P. Joshi Vs. The State of Madhya Bharat and Another, is an authority for the proposition that classification on the ground of residence is a justifiable classification under Articles 14 and 15(1) of the Constitution of India. The question that capitation fee as a consideration for admission is not permissible under the scheme of the Constitution was neither raised nor adverted to by this Court. The imposition of capitation fee was also not questioned on the ground of arbitrariness. The only question raised before the Court was that the Madhya Bharat students could not be exempted from the payment of the capitation fee. It is settled by this Court that classification on the ground of residence is a valid classification. Subsequently this Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, reiterated the legal position on this point. We are, therefore, of the view that D.P. Joshi Vs. The State of Madhya Bharat and

Another, does not give us any guidance on the points before us."

The upshot of the above discussion is that State action in making discrimination in the field of education on the basis of requirement of residence within a State is, speaking generally, not considered violative of Articles 14 and 15(1) of the Constitution of India. Intra-State discrimination between citizens residing within the same State by State action in the matter of admission to educational institutions has however been frowned upon and was struck down as violative of Article 14, see *Minor P. Rajendran Vs. State of Madras and Others*, and *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, Even such intra-State discrimination in favour of citizens of socially and educationally backward areas or Tribal areas or pockets may be and was upheld. See *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, and *Nookavarapu Kanakadurga Devi Vs. The Kakatiya Medical College and Others*, confining ourselves to admissions in MBBS and BDS courses, which are of national importance, the Supreme Court narrowed down the principle that Statewise discrimination of different parts of India on the basis of residencital requirement in the matter of admission to educational institutions by State action may be valid, by limiting it to 70 per cent of the total seats. We are concerned in the present case with Diploma in Physical Education courses. They cannot be compared to medical courses. Their importance does not transcend State limits; and moreover, there is not such dearth of seats in such courses. In these circumstances, reservation of D.P.Ed, courses for only those students residing within a State cannot be said to be violative either of Articles 14 and 15 of the Constitution. The first ground taken by the learned counsel for the petitioner, therefore, fails.

In the second place, it was argued by the learned counsel for the petitioners, that the impugned orders cancelling the admissions of the petitioners were made without giving any kind of hearing to the petitioners and were, therefore, violative of principle of natural justice and on that ground deserve to be quashed. We find that the decision taken in the impugned orders was punitive in nature and involved civil consequences in as much as the petitioners were deprived of the benefit of admission in the courses in which they had prosecuted their studies for seven out of ten months. Such a decision could not have been taken except in accordance with the principles of natural justice. One of the cardinal principles of natural justice is *audi alteram partem* requiring that the party affected should have been first heard before being condemned. It is an admitted position that the petitioners were not given any hearing before the impugned orders were passed cancelling their admissions. This has completely vitiated the impugned orders and they deserve to be quashed on that short ground. It will be proper, if the petitioners are given an opportunity to establish that they are bona fide residents of M.P. before Collector, Shivpuri, who shall decide afresh within a definite time-frame whether the petitioners are or are not bona fide residents of M.P.

For the foregoing reasons, this writ petition is allowed. The orders dated 8-4-1992 (Annexures P/3 and P/4) of the Principal, Tatya Tope College of Physical Education, Shivpuri, cancelling the admissions of the petitioners are quashed. The petitioners shall on 6-7-1993, appear before Collector, Shivpuri, and shall be allowed to adduce evidence in support of their case that they are bona fide residents of M.P. The Collector, Shivpuri shall within two months from the date of this order, complete his inquiry and shall give a fresh decision whether the petitioners are or are not bona fide residents of M.P. In the event of the Collector holding that the petitioners are bona fide residents of M.P., the result of the petitioners for the examination of D. P. Ed. of 1991-92 session shall be declared within fifteen days thereafter. In the event of the Collector holding that the petitioners are not bona fide residents of M.P., the admissions of the petitioners to the above course will stand cancelled and result of the examination of the petitioners shall not be declared. It is made clear that if the petitioners had knowingly filed false certificates of bona fide residence, that would not prevent the State from taking or continuing criminal action against them.

No order as to costs.