

(2011) 11 UK CK 0069
In the Uttarakhand High Court
Case No : Special Appeal No. 152 of 2011

District Magistrate, Udham Singh Nagar and others	APPELLANT
Vs	
Amit Dixit and others	RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(2), 16, 16(2)

Citation : (2011) 11 UK CK 0069

Hon'ble Judges : Barin Ghosh, C.J;U.C. Dhyani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—By the judgment and order under appeal, writ petition of respondent No. 1 has been allowed by quashing the order dated 1st February, 2011, by which, appellant No. 2 Sub Divisional Magistrate, Rudrapur, Udham Singh Nagar, rejected the application of respondent No. 1 seeking a residence certificate; and directing the said appellant to issue a domicile certificate to respondent No. 1 forthwith.

2. Respondent No. 1 responded to an advertisement for admission to MBBS Course commencing from the academic year 2008-2009. The advertisement held out that some of the advertised seats are available exclusively for those, who are residents/domiciled in the State of Uttarakhand. Respondent No. 1, while responding to the said advertisement, held out that he is a domicile/resident of the State of Uttarakhand. Response to the said advertisement gave an admission to respondent No. 1 in a seat, which was meant for a resident/person domiciled of the State of Uttarakhand. At the time of responding to the said advertisement, it was held out by respondent No. 1 that the fact that he is a resident of the State of Uttarakhand would be evidenced from Domicile Certificate bearing No. 2403 dated 13th July, 2008 issued by appellant No. 2 in his favour. On the strength of the said certificate, respondent No. 1 obtained the said admission. After respondent No. 1 was admitted, all the certificates filed by him in support

of his claims, made in his response to the advertisement, were verified. In course of such verification, Government Medical College, Haldwani, where respondent No. 1 was admitted, was informed by appellant No. 1, by a communication dated 8th October, 2008, that no Domicile Certificate bearing No. 2403 dated 13th July, 2008 was issued by appellant No. 2 in favour of respondent No. 1. In view of the said communication, the admission of respondent No. 1 was cancelled by the Government Medical College, Haldwani, by an order dated 14th October, 2010 for want of domicile certificate.

3. Cancellation of the admission of respondent No. 1, vide order dated 14th October, 2010, was assailed by respondent No. 1 in Writ Petition No. 1855 of 2010 (M/S). In the said writ petition, it was contended by respondent No. 1 that Domicile Certificate bearing No. 2821 was issued in his favour, while it was contended in the counter affidavit filed by the appellants that respondent No. 1 held out to the College to have been granted Domicile Certificate bearing No. 2403 dated 13th July, 2008, which was issued to one Km. Supriya Kulshresth. While dealing with the writ petition, this Court did not go into the question, whether Domicile Certificate bearing No. 2403 dated 13th July, 2008 was issued in favour of respondent No. 1 or Domicile Certificate bearing No. 2821 was issued in his favour. The Court, however, noticed that Up Zila Adhikari, Rudrapur, could issue domicile certificate in favour of respondent No. 1. It, accordingly, granted liberty to respondent No. 1 to apply afresh to Up Zila Adhikari, Rudrapur, to obtain domicile certificate and directed appellant No. 2 to make an inquiry whether respondent No. 1 is a domicile of Uttarakhand.

4. Respondent No. 1, thereupon, applied for a certificate in terms of the liberty granted by this Court by its order dated 15th November, 2010, which application was rejected by an order dated 1st February, 2011, which was assailed in the second writ petition.

5. In the second writ petition, it was contended by respondent No. 1 that he had applied for domicile certificate, which was numbered as 2821, but, due to inadvertence/negligence on the part of the appellants, in the domicile certificate, serial number was wrongly given as 2403. It was contended in the said writ petition that the father of respondent No. 1 entered into an agreement dated 15th June, 1995 with Sri Hari Ram for purchase of a plot of land situated at Kiccha, Udham Singh Nagar. It was also stated that Sri Hari Ram executed a sale deed in favour of the father of respondent No. 1 on 21st August, 2009, and consequentially, the father of respondent No. 1 constructed a residential house over the said land. It was stated that the Municipal Board, Kiccha, issued a certificate to the effect that it has made assessment of the said residential house for the purpose of collecting house tax. It was also stated that ration cards have also been issued to the family of respondent No. 1. It was contended in the writ petition that the said state of affairs would demonstrate that the family of respondent No. 1 is settled in the State of Uttarakhand since 1995. It was also stated in the said writ petition that, in support of his application pursuant to the

liberty granted by this Court by its order dated 15th November, 2010, respondent No. 1 had relied upon those documents. It was the specific contention of respondent No. 1 in the said writ petition that his family is settled in the State of Uttarakhand since 1995 and that the same would be evidenced from the agreement dated 15th June, 1995; sale deed dated 21st August, 2009; assessment order and the ration cards.

6. In the counter affidavit, it was contended that the evidence of residence, relied upon by respondent No. 1, did not demonstrate residence of respondent No. 1 and his family in the State of Uttarakhand for a period of 15 years from the date of making of the application seeking residence certificate. It was contended that, apart from the agreement for sale, all other evidence, namely the sale deed, tax assessment records and ration cards; were of 2009. It was contended that, in such circumstances, the order dated 1st February, 2011 was issued. At the same time, it was contended that, pursuant to the Government Order dated 20th November, 2001, a person can obtain a domicile/residence certificate by establishing that he is a resident of the State of Uttarakhand for a period of 15 years. It was contended that the agreement for sale is not stamped and, accordingly, the same cannot be taken note of.

7. In the rejoinder affidavit, it was stated by respondent No. 1 that he is bonafidely residing in Kiccha, district Udham Singh Nagar, as his father has constructed a house there and, as per the said Government Order dated 20th November, 2001, respondent No. 1 is entitled to get domicile certificate.

8. At this juncture, it is appropriate to note that, in the impugned order dated 1st February, 2011, it was indicated that the name of the father of respondent No. 1 did not feature in the voter list of the locality for the year 1995. In the rejoinder affidavit, it was contended that respondent No. 1 had only submitted a ration card; certificate issued by Municipal Board, Kiccha; agreement for sale along with registered deed of sale; and no other paper for residential proof, but the appellants looked into the list of the voters, which suggests ill-intention on their part.

9. Therefore, in the writ petition, there was no challenge to the decision of the Government dated 20th November, 2001 that 15 years" residence proof is a requirement for obtaining a residence certificate. It was the contention of respondent No. 1 that he is a resident of the State of Uttarakhand for 15 years and the same would be evidenced from the documents relied upon by him, namely, the agreement for sale dated 15th June, 1995; sale deed dated 21st August, 2009; municipal assessment order of 2009; and ration card issued in 2009.

10. From the case made out, therefore, respondent No. 1 purported to hold out that he is a resident of the State of Uttarakhand for a period in excess of 15 years and that is established by the agreement for sale dated 15th June, 1995, since the other documents, namely the sale deed, assessment order and ration

card are all of 2009. There was no whisper in the writ petition or in the rejoinder affidavit that, after the agreement for sale was executed, respondent No. 1 and his family started residing in the State of Uttarakhand. On the other hand, it was the positive assertion on the part of respondent No. 1 that he is a resident of the State of Uttarakhand since the father of respondent No. 1 has constructed a house in the State of Uttarakhand and, since then, they are residing there. The land, upon which the house has been constructed, was purchased in 2009. The municipal authority assessed the house for collecting house tax since 2009 and the ration card was also issued in the year 2009. Therefore, while there was no challenge thrown to the insistence on the part of the State of Uttarakhand, as contained in the Government Order dated 20th November, 2001, that in order to obtain a residence certificate, a person is required to establish that he is residing in the State of Uttarakhand for 15 years; respondent No. 1 failed to establish that he was residing in the State of Uttarakhand prior to 2009. The agreement for sale of 1995, even if is a piece of evidence, is not, nor can be treated to be proof of residence of respondent No. 1 or his family in the State of Uttarakhand.

11. The writ petition has been allowed by the judgment and order under appeal by relying upon two judgments of this Court, where it had been held that there is nothing like a "provincial domicile" in India and, therefore, refusing domicile certificate to a person on the ground that he is not a domicile of Uttarakhand, is a total misconception of law and is illegal. It was held that, if the certificate in question is not domicile certificate, but is permanent residence certificate, imposition of 15 years condition is totally unreasonable. It was stated that Constitution of India provides a requirement of 5 years for grant of citizenship of the country and, therefore, it is not acceptable that the State authority should impose a condition of 15 years of prior stay in the State of Uttarakhand in order to grant a permanent residence certificate. The fact remains that there is no finding that respondent No. 1 has, at least, proved that he is a resident of the State of Uttarakhand for 5 years prior to applying for the certificate in question. As aforesaid, respondent No. 1 failed to bring to the notice of this Court any document, on the basis whereof, one can come to a reasonable conclusion that he or his family was residing in the State of Uttarakhand for a period of 5 years prior to applying for a residence/domicile certificate.

12. While Sub-Article (2) of Article 15 of the Constitution of India prohibits discrimination on the ground of, amongst others, place of birth, Sub-Article (2) of Article 16 prohibits discrimination, amongst others, on the ground of place of birth as well as residence. Article 15 is a general provision, whereas Article 16 is applicable to public employments. The judgments of this Court, referred to in the judgment under appeal, were concerned with matters of public employments. The said judgments, amongst others, relied upon the judgment of the Hon'ble Supreme Court rendered in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . In that case, the question was, "whether, consistently with the constitutional values, admissions to a medical college or any other institution of higher learning situate in a State can be confined to those who have

their "domicile" within the State or who are resident within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess "domicile" or residential qualification within the State, irrespective of merit." The Hon"ble Court answered the said question by holding that residence and place of birth are two distinct conceptions with different connotations, both in law and in fact, and the only provision of the Constitution, on the touchstone of which residence requirement can be required to be tested, is Article 14. It held that, in India, there is no concept of domicile of a State and that a citizen of India has only one domicile, namely, domicile in the territory of India. The Hon"ble Court, then, held that the word "domicile", used in rules regulating admissions to medical colleges framed by some of the States, was to denote, in loose sense, permanent residence and not in the technical sense in which it is used in private international law. It, then, held that it is permissible to reserve seats on residence requirement within the State, but such reservation should, in no event, exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made, with a direction upon the Indian Medical Council to consider periodically whether to reduce the said outer limit. What will be the minimum required period of residence, however, was not indicated in the said judgment.

13. The judgment, under appeal, is of the view that, since residence of 5 years in India entitles grant of citizenship, there is no just reason why the State should impose residence requirement of 15 years. As aforesaid, respondent No. 1 failed to establish his residence in the State of Uttarakhand for a period of 5 years. Since the period of residence requirement, as was imposed by the Government Order dated 20th November, 2001, was not the subject matter of the writ petition and since no argument in relation thereto was advanced before us, we have not decided whether the said requirement is just or unjust.

14. We, accordingly, allow the appeal and set aside the judgment and order under appeal. There shall be no order as to costs.