

(1983) 11 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1760 of 1983

Ku. Madhu Mittal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 14-11-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Madhya Pradesh Admission to Engineering College Rules — Rule 1

Madhya Pradesh Vyavasayik Pathyakram Pravesh Pareeksha Mandal Rules — Rule 1.4

Citation : AIR 1984 MP 59 : (1984) ILR (MP) 71 : (1984) JLJ 105

Hon'ble Judges : K.N. Shukla, J; J.S. Verma, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Shukla, J.—This order shall also govern the disposal of Miscellaneous Petition No. 1987 of 1983 (Rahelamna George v. State of M. P.) and Miscellaneous Petition No. 2031 of 1983 (A. S. Ravi v. State of M. P.).

2. The petitioners in these petitions seek writs of mandamus to consider their cases for admission to Engineering Colleges in the category of Freedom Fighters.

3. The State of M. P. has constituted a Board called Vyavsayik Pathyakram Pravesh Pareeksha Mandal (respondent No. 2 hereinafter referred to as the Mandal) for holding entrance tests for admission to various professional courses like Engineering, Medical, etc. Rules for admission have been framed by the Mandal and conditions of eligibility for various categories (have been mentioned. In these petitions, we are concerned with Rule 1.4 (iii) of the Admission Rules. The relevant rule is reproduced below :--

FREEDOM FIGHTERS :

Some seats shall be reserved for children and grand-children of Freedom Fighters

who are bona fide residents of Madhya Pra-desh, in all courses except in some Regional Engineering Colleges outside M. P. The Board or an office of the Board duly authorised by the Board for the purpose shall determine eligibility of candidates, who can be deemed to be children, grand-children of Freedom Fighters.

Explanation:-- By grand-children is meant candidates whose father's father/mother or mother's father/mother is/was Freedom Fighters.

Clauses (i) to (xi) in the Note appended to this Rule lay down the requirements for defining a Freedom Fighter. Explanation 5 to this Rule is relevant and may be reproduced here:--

Explanation 5:-- If any person falls under any of the Clauses (i) to (xi) above and is included in the list of Freedom Fighter in any other State, such person shall be deemed to be a "Freedom Fighter" for the purpose of this provided he is a bona fide resident of Madhya Pradesh.

(Emphasis ours)

4. Petitioner Ku. Madhu Mittal (M. P. No. 1760 of 1983) has sought admission to Moulana Azad College of Technology, Bhopal (M. A. C. T.) which is a Regional Engineering College. Under Rule 4.1 (iii), (1.4(iiif) ?) 3 seats are reserved in M.A.C.T., Bhopal for children and, grand-children of Freedom Fighters from Madhya Pradesh.

5. Petitioner Ku. Madhu Mittal admittedly is the grand-daughter of Late Shri Banwarilal, who was a Freedom Fighter. He was a permanent resident of Aligarh in Uttar Pradesh. He expired in the year 1966. Petitioner claimed that even though Late Shri Banwarilal was not a bona fide resident of Madhya Pradesh, yet she was entitled to be admitted under the reserved category of Freedom Fighter. According to her, the condition in the Admission Rules that the Freedom Fighter should be a bona fide resident of Madhya Pradesh violates Articles 14 and 15 of the Constitution. This Rule has no reasonable nexus with the object of classification namely, to provide admission to the children and grand-children of the Freedom Fighters who suffered for the liberation of the country. It was urged that the Rule, which discriminates between the children of Freedom Fighters of Madhya Pradesh and Children of Freedom Fighters outside Madhya Pradesh, is repugnant to the fundamental rights guaranteed under Articles 14 and 15 of the Constitution.

6. In reply, respondents referred to the Rule, which requires that Freedom Fighters, whose children and grand-children seek the benefit of reservation under the Admission Rules, must be bona fide residents of Madhya Pradesh. It was denied that this Rule was in any manner discriminatory or violated Articles 14 and 15 of the Constitution. According to the respondents, the State had to look to the inconvenience suffered by the families of the Freedom Fighters of this State and, therefore, reservation had been provided for their children and grand-

children.

7. There was initially an attempt by the learned counsel for the petitioners to suggest that the requirement on bona fide residence in Explanation 5 to Rule 1.4 (iii) for admission to State Engineering Colleges referred to the candidate and not to the Freedom Fighter. However, this line of argument was not pursued and the contention was confined to the plea that the requirement of bona fide residence of the Freedom Fighter in Madhya Pradesh is unreasonable and has no nexus with the object of classification namely to provide admission to the children and grand-children of Freedom Fighters.

8. Reservations for particular categories of candidates *prima facie* militate against the guarantee of equal opportunity. Courts have been at pains to uphold such classification due to various historical and social factors. But surely this cannot be a permanent feature nor there is justification for enlarging the scope of reserved categories. Each candidate admitted in the reserved category deprives a more meritorious one of a fruitful professional career. It is a national loss.

9. The Supreme Court in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, in para 43 made the following observations :

"In our view it is not unreasonable to extend that principle to the children of political sufferers who in consequence of their participation in the emancipation struggle became unsettled in life; in some cases economically ruined, and were, therefore, not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage."

Obviously, the Supreme Court had in mind only such children and grand-children of political sufferers who could not, for the reasons mentioned therein, get the class of education which could place them in fair competition with the children of other persons who did not suffer such disadvantage. None of the petitioners in these petitions have pleaded that they fall within the category of handicapped persons as mentioned in the judgment of the Supreme-Court.

10. This Court in *Kumari Nivedita Jain Vs. State of Madhya Pradesh and Others*, had observed :--

"We may also point out that the freedom struggle ended on 15th Aug., 1947, 33 years before, and if this reservation is continued *ad infinitum*, at some stage it will become unreasonable and will have to be struck down. This is a matter which the Government will keep in mind in continuing the re-servation in future."

11. Now the question before us is whether the requirement in the Admission Rules about the bona fide residence of a Freedom Fighter can be called discriminatory. In *D.P. Joshi Vs. The State of Madhya Bharat and Another*, their Lordships of the Supreme Court held by majority that a rule requiring capitation fee from non Madhya Bharat students for admission to Medical College, Indore

was valid and did not infringe Articles 14 and 15 of the Constitution. In paragraph 15 of the Judgment, the following observations were made :--

"The object of the classification underlying the impugned Rule was clearly to help to some extent students who are residents of Madhya Bharat in the PROSECUTION of their studies and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy (Vide Article 41). The State has to contribute for the upkeep and running of its educational institutions." This statement of law was followed later by the Supreme Court in *N. Vasundara Vs. State of Mysore and Another*, . Thus, it is recognised that the condition about bona fide residence of a candidate in a particular State where admission is sought is valid and within the parameters of the Constitution. The reasoning is that a State, which lays down guidelines for admission to its educational institution, can make such rules for the benefit of the residents within the State. This being an accepted position, the State of M. P. was within its right to frame a rule for confining the benefit of reservation only to the children and grand-children of such Freedom Fighters who are/were bona fide residents of M. P.

12. Learned counsel for the petitioners contended that the rule is patently illogical, because it contemplates that the Freedom Fighter, whose children and grand-children seek admission, must be alive at the time of the application for admission to the specified professional courses. According to him, the following words in Explanation 5 "provided he is bona fide resident of M. P." refer to a person living on the date of the filing of the application for admission and since such a condition is contrary to the definition of the Freedom Fighters and the rule itself, it should be deemed to be unreasonable. This argument has no merit. If Clause (iii) of Rule 1.4 of the Rules of Admission is read as a whole, it is clear that reference in Explanation 5 to the clause refers not only to a living Freedom Fighter but also to those who were bona fide residents of Madhya Pradesh in connection with the freedom movement during the period from 1919 to 1946.

13. Another argument canvassed by the learned counsel is that the State of M. P. came into existence in 1956 only and there is no rule indicating whether the Freedom Fighters who belonged to the erstwhile State of M. P. before reorganisation could or could not get the benefit of reservation for their children and grand-children and, therefore, for this reason also this requirement of bona fide residence was unreasonable. This contention overlooks the possibility that such areas, which formed part of the erstwhile State of M. P. and now form part of another State, say Maharashtra, might be getting benefit under the rules of those States with which the areas have merged. Such arguments are only hypothetical in nature and cannot constitute a basis for striking down this part of the rule which lays down the condition of bona fide residence in M. P.

14. Learned counsel for the petitioners sought support from a judgment of the

Rajasthan High Court, Surendrakumar and Others Vs. State of Rajasthan and Others, . He invited our attention to para 14 which contains the following observations :--

"If the object of the Government was to allow facilities to those political sufferers who had suffered during the Independence Movement, we do not see any reason why the benefit was restricted to bona fide residents of Rajasthan only."

This was one of the several reasons advanced by the Court for striking down the rule for reservation of categories other than Scheduled Castes and Scheduled Tribes for admission to Medical Colleges in the State. We are sure learned counsel will not like us to follow that decision and strike down the reservation for candidates in the Freedom Fighters category. In fact, he very much wants us to uphold the reservations and at the same time strike down the condition which is inconvenient to the petitioners. We may further note that the above decision was not approved by the Supreme Court in D. N. Chanchala's case (supra). The decision in Surendra Kumar's case instead of assisting the petitioners goes against them.

15. As noted earlier, creation of reserved categories for different classes is discriminatory and unless there is a reasonable basis for such classification, the same is contrary to the spirit of the Constitution. Reservation is a concession. A candidate seeking to take advantage of such concession must fulfil all the conditions laid down under the Rule. It is not open to a person seeking benefit of a concession to say that a particular condition in the said Rule is unreasonable and he should be allowed to take advantage of the concession without fulfilling the requirements of the Rule. We, therefore; hold that the petitioners, who want to take advantage of the concession can do so only if they fulfil all the conditions mentioned therein. If they are unhappy with any condition, they are free to compete with others in fair and open competition without seeking shelter under any of the reserved categories. We do not find any merit in the arguments of the learned counsel for the petitioners. The petitions are liable to be dismissed.

16. iN Miscellaneous Petition No. 2031 of 1983, the ground for a writ of mandamus is the same but the facts are slightly different. Petitioner A. S. Ravi sought admission to Engineering College, Vidisha. Admit-tedly, his grandfather Hiralal is a Freedom Fighter and was a bona fide resident of the State of Bihar. About two years" back, he came to reside with his son (petitioner"s father) who is employed in the Bharat Heavy Electricals Limited, Bhopal. The said Shri Hiralal was sanctioned some pension on account of his participation in the freedom movement and he has now applied for transferring his pension papers to the office of the Accountant-General, Madhya Pradesh. On this basis it is claimed that Shri Hiralal is a bona fide resident of Madhya Pradesh and the petitioner qualifies for admission in the category of Freedom Fighters.

17. The term "bona fide resident" means residence with domiciliary intent (See N. Vasundara Vs. State of Mysore and Another, . Merely, because the petitioners"

grandfather has come to re-side with his son for the last two years who is employed in the Bharat Heavy Electricals Ltd., Bhopal will not mean that he is a bona fide resident of Madhya Pradesh within the meaning of Explanation 5 of Rule 1.4 (iii) of the Rules of Admission. Learned counsel was asked whether petitioner's father could be transferred to any other unit of the Bharat Heavy Electricals Ltd. outside M.P. He was unable to inform us about such a possibility. It may be relevant to refer to rules for admission to the State Engineering Colleges which lay down a domicile requirement. Explanation 1 defines bona fide resident in relation to a candidate. From the explanation, it can be gathered that the domicile requirement of a Freedom Fighter should not be different from that of a candidate and as such by analogy residence for two years with a son employed in a public undertaking in M. P. will not indicate the requisite domiciliary intent. The petitioner, therefore, was rightly not allowed admission in the Freedom Fighters category under Admission Rules.

18. In Miscellaneous Petition No. 1987 of 1983, petitioners 2 and 3 claimed to be admitted in the Freedom Fighters category on the ground that their grandfather (mother's father) was a Freedom Fighter in the State of Kerala. This fact was not disputed but for reasons already stated, the petitioners' grandfather being a resident of Kerala was not a bona fide resident of Madhya Pradesh, and therefore, these petitioners could not claim the benefit of reservation in the category of Freedom Fighters.

19. The petitions are dismissed. There will be no order as to costs.