
(2003) 07 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22530 of 2000

Kum. J.C. Priyadarshini

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Constitution of India, 1950 — Article 317D, 371, 371A

Citation : (2003) 5 ALD 442

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Nooty Rama Mohana Rao, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner appeared for Engineering, Medical and Agricultural Common Entrance Test, 2000 (EAMCET 2000) and she obtained the rank of 16956. She belongs to Scheduled Caste and her father is an Ex-Serviceman, who was discharged from Indian Air Force in the year 1993. She claimed reservation under both. As per rules, the first phase of counseling was held on 16.9.2000 when she was considered against Ex-Servicemen quota. She alleges that though seats were available in SRKR College, Bhimavaram, which, according to her, is one of the best Colleges, the 3rd respondent rejected her candidature on the ground that she is not a local candidate with reference to Andhra University local area, presumably, for the reason that the petitioner, admittedly, studied from VIII to X Classes at Chennai. The petitioner's father submitted a detailed representation requesting to consider her daughter to be a local candidate of Andhra University local area as she comes within the definition of local candidate as per para 2(1) of the Notification/EAMCET application form. Be that as it is, again the second phase of counseling was conducted on 5.10.2000. This time, the petitioner was offered a seat in Godavari Institute of Engineering, Rajahmundry in B.E. (Electronics & Communication Engineering). The petitioner accepted the seat and she was admitted during the academic year 2000-01.

Again, the counseling was conducted from 9.11.2000 to 9.12.2000 for rank holders (women) with ranks 15001 to 17000 of all categories. But, the petitioner was not considered as a local candidate. Therefore, the present Writ Petition is filed praying this Court to issue writ of mandamus declaring the action of the respondents in not treating the petitioner as local candidate as contrary to A.P. Educational Institutions (Regulation of Admissions) Order, 1974 ("the Presidential Order" for brevity) and to direct the respondents to consider the claim of the petitioner as local candidate and grant her admission in accordance with her option to a College and course to which she would be eligible as a local candidate of Andhra University local area.

2. This Court passed orders on 21.11.2000 directing the respondents to reserve one seat to the petitioner in Gandhi Institute of Technology and Medicine (GITAM), Visakhapatnam. During the pendency of the Writ Petition, the petitioner has completed two years course of study and she is, as submitted by the learned counsel for the petitioner, in the third year. Learned counsel for the petitioner Sri S.Shiva places reliance on paragraph 4(1)(b) of the Presidential Order in support of the contention that the residence in relation to a minor girl/boy must be with reference to the residence of the parents. A minor has no choice of choosing a residence and would be compelled to move around with the parents wherever they go. Therefore, he contends that if parents are residents of Andhra University area, wherever the petitioner has studied during the last ten years ending up with the qualifying examination i.e. Intermediate, he or she must be treated as local candidate. He placed reliance on the judgments of the Supreme Court in Meenakshi Malik Vs. University of Delhi and Others, Chairman, University of Health Sciences and Anr. v K. Tulasiram and Anr. 1996 (3) ALD 1031 (D.B.) The learned counsel also distinguished the Full Bench judgment of this Court in Bathina Rajya Shilpa and Vs. NTR University of Health Sciences, Vijayawada and Others, which is directly on the point.

3. Paragraph 4(1) of the Presidential Order reads as under:

4. Local Candidate:- (1) A candidate for admission to any course of study shall be regarded as a local candidate in relation to a local area-

(a) if he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared in the relevant qualifying examination; or

(b) where, during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, he has not studied in any educational institution, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination in which he appeared or, as the case may be, first appeared.

4. The Full Bench in *Bathina Rajya Shilpa* (supra), after referring to paragraph 4(1) and also referring to G.O. P.No. 646 dated 10.7.1979, which was issued pursuant to paragraph 8 of the Presidential Order, interpreted the term "local candidate" in the following manner:

"On an analysis of the above, it is clear that a candidate for the purpose of admission in any institution shall be regarded as a local candidate in relation to a local area under sub-paragraph (1) of Para 4 if he or she fulfils either clause (a) of clause (b) of sub-paragraph (1). Clause (b) is applicable only to candidates who have not studied in any educational institutions but have resided in the local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination in which he or she appeared or first appeared. Since the petitioner has studied in educational institutions, she doesn't come under that clause.

In order to be treated as local candidate in relation to a local area under clause (a) one must have studied in an educational institution or educational institutions in the local area for a period of not less than four consecutive academic years ending with the academic year in which he or she first appeared in the relevant qualifying examination.

.....

However, a candidate who is not regarded as a local candidate under para 4(1) can be treated as a local candidate under sub-paragraph (2) if she/she fulfils either Clause (a) or Clause (b). Again clause (b) is applicable only to candidates who have not studied in educational institutions but have resided in the State for a period of not less than seven consecutive academic years immediately preceding the date of commencement of the relevant qualifying examination in which he or she appeared or first appeared. Since the petitioner has studied in educational institutions, she doesn't come under that clause.

In order to be treated as local candidate under clause (a) of sub-paragraph (2) of Paragraph 4 one must have studied in an educational institution or educational institution in the State for a period of not less than seven consecutive academic years ending with the academic year in which he or she first appeared in the relevant qualifying examination and such candidates will be regarded as a local candidate in relation to (1) such local area where he has studied for the maximum period out of the said period of seven years or (2) where the periods of his or her study in two or more local areas are equal, such local area where the candidate has studied last in such equal periods. Admittedly, the appellant has not fulfilled this clause also as she had not studied for seven consecutive academic years in the State of Andhra Pradesh ending with the relevant qualifying examination of Intermediate. She had studied only for five years in the State out of the seven consecutive years ending with the qualifying examination and she studied the qualifying examination in Gujarat State. In order to be treated as a local candidate under 4(2), it is essential that she must have

studied seven consecutive academic years ending with the relevant qualifying examination in the State.

Therefore, it is clear that the petitioner has not fulfilled the criteria laid down under para 4 of the Presidential Order in order to be treated as a local candidate either in terms of para 4(1) or para 4(2). True, the petitioner did study in the State of Andhra Pradesh for a period of more than ten years right from Kindergarten to SSC and in spite of that she could not be treated as a local candidate in relation to any of the local areas of the State. Had she studied the qualifying examination in the State, the matter would have been different.

We do agree that a candidate who is a resident of the State of Andhra Pradesh and who had studied in educational institutions right from the kindergarten to SSC in the State except for the two years could not be treated as a local candidate in relation to any of the local areas whereas it may be possible that a candidate who do not belong to the State of Andhra Pradesh but who had studied 4 consecutive academic years in any local area of the State ending with the academic year in which he appeared or first appeared for the relevant qualifying examination could be regarded as a local candidate though he is not a resident of the State of Andhra Pradesh and studied only for four years in the State. But, having regard to the provisions of the Presidential Order and in the absence of any provision having been made in the Presidential Order governing such situation, no relief can be granted to the petitioner."

5. The learned counsel for the petitioner states that the petitioner cannot be treated as a local candidate with reference to paragraph 4(1)(a) of the Presidential Order as, admittedly, she did not study for four consecutive years ending with the academic year in which she appeared for the Intermediate examination. He, however, contends that as per paragraph 4(1)(b), the petitioner must be deemed to be a local candidate with reference to Andhra University local area.

6. Before examining this, it is necessary to notice a few admitted facts.

7. The petitioner was born in the year 1983. By that time, her father was discharged from Indian Air Force. She studied from I Class to III Class in Rajahmundry for a period of three years. Later, she studied IV Class to VII Class at Raja Rajeswari Public School, Kakinada. Thus, in so far as her school education is concerned, she has studied in Andhra University local area for a period of seven years continuously. Here there was a break. She studied from VIII Class to X Class at Shrine Vailankanni Senior Secondary School, T.Nagar Chennai. After completing X Class with CBSE pattern, she joined Intermediate course at Nehru Niketan Junior College, Tenali, where she passed the qualifying examination.

8. As interpreted by the Full Bench in Bathini RajyaShilpa (supra), clause (b) of sub-paragraph (1) of paragraph 4 of the Presidential Order is applicable only in relation to those persons who cannot be treated as local candidates under paragraph 4(1)(a). Clause (b) of sub-paragraph (1) of paragraph 4 is applicable

only to candidates who have not studied in any educational institution, but have resided in the local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination in which he or she first appeared. Clause (b) is also applicable only to candidates who have not studied in any educational institution, but have resided in the State for a period of not less than seven consecutive academic years immediately preceding the date of commencement of the relevant qualifying examination in which he or she appeared or first appeared. The petitioner, in order to fall under paragraph 4(1)(b) of the Presidential Order, must be able to show that seven years prior to March, 2000 when she completed Intermediate, she was residing in the State/local area. In paragraph 6 of the affidavit filed by the father on behalf of the minor petitioner, it is admitted that for a period of three years from May, 1995 till June, 1998, he was not resident in the State of Andhra Pradesh. As a necessary corollary, the petitioner could not have been resident as she, admittedly, had studied Classes VIII to X in Chennai. This is not denied by the learned counsel for the petitioner. However, he submits that as the father of the petitioner was compelled to go to Chennai in connection with his job in Andhra Bank for the period from June, 1998 to March, 2000, the petitioner should be treated as resident of Andhra Pradesh during that period also. Strong reliance is placed on the judgment of the Supreme Court in Meenakshi Malik (supra). I am afraid, I cannot agree with that contention.

9. In Meenakshi Malik, the petitioner had to accompany her father, who was posted on deputation to Nizeria. After the completion of deputation in April, 1994, the petitioner, with the permission of the Central Board of Second Education, took admission in Class XII. Though the Supreme Court observed that the condition requiring last two years of education should be in Delhi is unreasonable in so far as the students whose parents are transferred to foreign countries, as a general principle, the Supreme Court did not lay down that even in such cases where the student, along with parents, resides in a foreign country, should be treated as residing in India. It may be mentioned that citizenship of the country cannot be equated with the residence in a country. A person, by reason of his avocation or viscidudes of life, may be compelled to live in a foreign country, but, he would not stand to lose the citizenship of his mother land. A person who is residing in a foreign country cannot be deemed to be residing in India or in a State. To my mind, what paragraph 4(1)(b) of the Presidential Order requires is the actual residence and not a deemed residence. A candidate who "has resided in the local area for a period not less than four years immediately preceding the date of commencement of the relevant qualifying examination" can alone be considered as local candidate under paragraph 4(1)(b). Admittedly, the petitioner was in Tenali within the Andhra University local area for a period of two years only immediately preceding the relevant qualifying examination and, therefore, she does not fall within the definition of paragraph 4(1)(b). The interpretation of paragraph 4 by the Full Bench also supports the view.

10. The other decision relied on by the learned counsel for the petitioner is of no

assistance. In the said case, the student, except for a period of two years, had entire education including Intermediate education in Andhra Pradesh. He had studied IX and X standards in State of Haryana. This Court, however, on the facts of the said case, came to the conclusion that in spite of a student studying for a period of two years in Haryana, he or she must be treated as a local candidate for the purpose of paragraph 4(1)(b). Be it noted that under paragraph 4(1)(b) the residence for a period of four years consecutively preceding the date of commencement of the relevant qualifying examination alone is the criteria. Admittedly, the petitioner does not satisfy the requirement and, therefore, she is not a local candidate.

11. Art. 371D, in relation to State of Andhra Pradesh, was intended to ensure equitable distribution of opportunities especially in the matter of education and/or services. The provision was inserted by Constitution (Thirty second amendment) Act, 1973 with effect from 1.7.1974. Clause (1) of Art. 371 confers power on the President of India to make orders having regard to the requirement of the State for providing equitable opportunities and facilities for the people belonging to different parts of the State. The Presidential Order, which was made in exercise of the power under Clauses (1) and (2) of Art. 371D of the Constitution of India, is organic law and it should receive purposeful interpretation rather than literal interpretation. Any interpretation of Presidential Order must ensure equitable opportunities and facilities for the people of the State. If a citizen of Andhra Pradesh who is not resident for a period of four years preceding the last date of qualifying examination also is considered a local candidate, it would defeat the very purpose of the Presidential Order and Art. 371A. This Court should adopt such interpretation which would ensure fulfillment of the object of the instrument than subverting such object. The Full Bench in *Bathina Rajya Shilpa* (supra), on consideration of the entire Presidential Order has interpreted paragraph 4 in its entirety and, therefore, the Full Bench judgment is binding on this Court. The decision in *Tulasiram* (supra) must be understood in the light of the latter Full Bench judgment.

12. The Writ Petition, for the above reasons, is dismissed. No order as to costs.