
(1997) 05 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 828 of 1997

Lt. Col. Ravinder Singh Bhagwan Singh Thakur and another	APPELLANT
Vs	
The District Magistrate and others	RESPONDENT

Date of Decision : 07-05-1997

Acts Referred:

Admission to M.B.B.S. Course Rules, 1992 — Rule 2, 3.3.1, 5.2.1, 5.2.1.2, 5.2.2.3.2
Constitution of India, 1950 — Article 14, 15(1), 226, 63

Citation : (1998) 2 BomCR 339 : (1997) 3 MhLj 514

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Advocate : S.C. Bora, for the Appellant; V.S. Panpatte, Advocate and V.D. Sepkal, A.G.P., for the Respondent

Judgement

B.H. Marlapalle, JJ.—Heard the learned Counsel representing the respective parties.

2. Rule, made returnable forthwith with the consent of all the parties.

3. This writ petition filed under Article 226 of the Constitution of India, impugnes the validity, legality and propriety of -

(a) The order passed by learned District Magistrate, Aurangabad on 21st February 1997, rejecting the application filed by the petitioner No. 1 for grant of certificate of domicile of Maharashtra ;

(b) Order passed by the Dean, Government Medical College and Hospital, Aurangabad on 27-2-1997 cancelling the admission of the petitioner No. 2- Nandita to First M.B.B.S. course, 1996-97 under Defence-2 category in view of the order passed by the learned District Magistrate, Aurangabad referred to above;

(c) The Rules for determination of domicile contained in Resolution No. 1586/34 dated 27th September, 1950 of Government of Bombay (Political and Services

Department) as unconstitutional and particularly violative of Articles 14 and 15 of the Constitution of India ; and

(d) Rules for selection to M.B.B.S. course, 1996-97 and particularly Rule 5.2. 1.2 requiring the candidate who is seeking admission under Defence category i.e. parent must be a domicile of Maharashtra State and to produce Domicile Certificate issued by the District Magistrate as per Rule 5.2.1.2(c).

4. The petitioner No. 1 was born on 10th August, 1950 at Bakloh Cantonment in District Chamba in the State of Himachal Pradesh, while his late father was serving in the Indian Army and after completion of his graduation, the petitioner joined the Indian Army on 29th April, 1973. After serving at various places, such as Samba (Jammu & Kashmir); Mirthal (Punjab); Subatoo (Himachal Pradesh); Sikkim, Shahjahanpur (Uttar Pradesh); Rangia (Assam); Baribrahmana (Jamrnu and Kashmir); Bakloh (Himachal Pradesh) Telia-mura (Tripura); Kohima (Nagaland); the petitioner came to be transferred to Mumbai (Maharashtra) in September 1991 and thereafter in December 1993 he has been transferred to Aurangabad where he is presently serving. It is, thus, clear that the petitioner No. 1 who stays in Maharashtra, as an Army Officer, has been in the State from September 1991 onward only; whereas the petitioner No. 2 is the daughter of the petitioner No. 1 and she passed her S.S.C. examination from Maharashtra State Board of Secondary Education, Mumbai in the year 1994 and subsequently passed her H.S.C. examination from Maharashtra State Board of Higher Secondary Education, Aurangabad in the year 1996. In the meanwhile, the petitioner No. 1 purchased a plot bearing No. 20 situated at Survey No. 51/1 of Bhavsingpura, Aurangabad and constructed a house with a view to settle down at Aurangabad permanently. It appears from the record that the plot was purchased some times in the year 1994 and after obtaining loan from H.D.F.C. the house construction was over in 1996. The petitioner No. 2 secured 85% marks in Biology group in XII (Science) i.e. H.S.C. examination and hence applied for admission to first M.B.B.S. course under Defence Quota prescribed under the Rules for Selection to M.B.B.S./B.D.S./B.A.M.S./B.H.M.S. courses 1996-97. The relevant rules applicable to the children of defence personnel for admission to the M.B.B.S. and allied courses, read as under :-

"5.2.0.---CHILDREN OF DEFENCE PERSONNEL:

5.2.1.---A specified number of seats subject to a maximum of five seats in Government Medical, Dental, Ayurvedic, Private Aided Ayurved colleges are reserved for children of Defence Service Personnel and Ex-Defence Personnel, including those permanently disabled or killed in action. The ratio of these seats between Ex-Defence and Defence Personnel will be "3:2". Selection against these seats so reserved shall be exclusive of the applicants selected on merit. For selection against these seals following conditions shall apply;

5.2.1.1.---To be eligible for such a seat, an applicant must be a son/daughter of a person who has been a member of the Armed Forces of India and who has put

in at least 5 years" active service and has been subject to Indian Army Act, Indian Navy Act or Indian Air Force Act; and includes an ex-serviceman who has retired from such service or was permanently disabled/killed in action.

5.2.1.1.C.---An applicant claiming a seat under Defence category will be required to produce a certificate from an appropriate Authority, Commandant or equivalent rank officer/Zilla Sainik Board - certifying that the applicant fulfills the Rule 5.2.1.1 above.

5.2.1.1.E.---However, the condition of minimum active service for five years will stand relaxed in case of a Defence Service person who has been permanently disabled or killed in action.

5.2.1.1.E.C.---Above exception is admissible subject to production of a certificate from Zilla Sainik Board certifying permanent disability/death of such defence Service Person.

5.2.1.2.---To be eligible for a seat in Defence category the parent of such an applicant - who was/is a member of the Armed Forces - must be a domicile of Maharashtra State. In addition to this, the applicant must have, passed qualifying examination and S.S.C. examination from the recognised School/ College situated in the State of Maharashtra. However, this condition is not applicable to Def- 3 below.

5.2.1.2.C.---The applicant will be required to produce a Domicile Certificate in respect of his/her parent issued by District/Metropolitan Magistrate.

5.2.2.---BREAK UP---Out of the seats so reserved for particular University area, the seats will be distributed in following sub-categories :

5.2.2.1.---Def. 1.---For a son/daughter of an ex-Defence Service personnel.

5.2.2.2.---Def. 2.---For a son/daughter of Active Defence service personnel.

5.2.2.3.---Def. 3.---For a son/daughter of Active Defence service personnel transferred to Maharashtra State from a State outside Maharashtra.

5.2.2.3.0.---In the event of non-availability of in any of the above category, the vacancies remained unfilled will be filled in by inter-se merit of the candidates from remaining two categories.

5.2.2.3.1.---For selection against Def-3 category, an application must be able to satisfy that while the parent was duty-bound to move out of Maharashtra State by virtue of parent's bona fide transfer in public interest, the applicant had to continue his studies for H.S.C. (or equivalent) examination, as he could not shift to Maharashtra State in the middle of the academic term.

For seats reserved against Def-3 category, following conditions will apply :--

5.2.2.3.2.---The concerned Defence Service Person ought to have been transferred in public interest on or after 1st July, 1995, reported on duty within

one month of transfer order and ought to have served for at least three months in Maharashtra State prior to the date of application by his child.

5.2.2.3.3.---The concerned Defence Service person ought to be still working on the date of application, at the place within the jurisdiction of the concerned University area, under which the applicant is seeking a seat; and

5.2.2.3.4.---The applicant ought to have appeared and passed the qualifying examination within a period of four months prior to the date of his/her application for admission. (It may be noted that an applicant who has appeared for H.S.C. or equivalent examination earlier than this period is NOT eligible for a seat against Def-3 category).

5.2.2.3.E.---For these seats the condition at rule 3.3.1. and 5.2.1.2. stand relaxed.

5.2.2.3.C.---The applicant is required to attach necessary and sufficient proof to fulfill the conditions prescribed at rule 5.2.2.3.2.; 5.2.2.3.3. and 5.2.2.3.4.

5.2.3.---The break up stated above is explained in the table for different reservation strengths :

TOTAL SEATS IN DEFENCE QUOTA DISTRIBUTION TO

Def-1 Def-2 Def-3

5 3 1 1

4 2 1 1

3 2 1 0

2 1 1 0

1 1 0 0

5. In pursuance of the above Rules, the petitioner No. 2 had applied for admission to first M.B.B.S, course against a reserved seat for Children of Defence Personnel under Defence-2 category i.e. for a son/daughter of Active Defence Service Personnel. For admissions against the reserved quota for Defence-1 and Defence-2 categories, there are two more conditions which are required to be fulfilled, as set out under the Rule 5.2.1.2, as reproduced hereinabove ; and this two conditions are : --

(a) The parent of such an applicant must be a domicile of Maharashtra State; and

(b) The applicant must have passed the qualifying examination and S.S.C, examination from the recognised School/College situated in the State of Maharashtra.

6. In keeping with these requirement, it is, no doubt, that the petitioner No. 2 has passed the qualifying examination as well as S.S.C. examination from

recognised/School/College situated in the State of Maharashtra and hence he fulfilled the second condition. To fulfill the first condition of domicile, it appears that the petitioner No. 1 had applied for Domicile Certificate to the Taluqa Executive Magistrate, Aurangabad and, who in turn, issued such a certificate on 28-6-96 in favour of the petitioner No. 1. Thus, the petitioner No. 2 met both the conditions required for admission under Defence-2 category and, accordingly, she was placed at Sr. No. 1 in the Merit List of Defence-2 category and the Designated Authority, namely, the respondent No. 2 was pleased to allot a seat to the petitioner No. 2 at Government Medical College, Aurangabad on 3rd October, 1996. Accordingly, the petitioner No. 2 deposited the fees on 3-10-1996 and started attending regular classes from 6th October, 1996. However, the petitioner No. 1 received a notice dated 20-11-1996, issued by the District Magistrate, Aurangabad presumably on the complaint filed by the respondent No. 4, who was also seeking admission to first M.B.B.S. course under Defence-2 category and was perhaps listed at Sr. No. 2 in the Merit list prepared by the respondent No. 2 for admission to the said category. The notice was replied on 30th November, 1996 by the petitioner No. 1 and by an order dated 1-1-1997 the District Magistrate was pleased to cancel the Domicile Certificate dated 28-6-1996 issued in favour of the petitioner No. 1. Consequently the respondent No. 2 by an order dated 24-1-1997 cancelled the admission of the petitioner No. 2 to first M.B.B.S. course, 1996-97. The Writ Petition No. 375/1997 came to be filed before this Court by the petitioners and the same was disposed of by directing the District Magistrate, Aurangabad to consider the application of the petitioner No. 1 for grant of Domicile Certificate in as much as a statement was made by the learned Asst. Government Pleader before this Court that the Domicile Certificate issued earlier was by the Naib Tahsildar who was not competent to issue the same and, in the meanwhile, the authorities were directed to continue the admission of the petitioner No. 2 till the consideration of application of the petitioner No. 1 for grant of Domicile Certificate by the District Magistrate, Aurangabad and, accordingly, the petitioner No. 2 continued her studies in the first M.B.B.S. course under respondent No. 2. Subsequently, the petitioner No. 1 appeared before the District Magistrate, Aurangabad and submitted all the details. After hearing the petitioner No. 1 and examining the documents on record, the District Magistrate by his order dated 21-2-1997 was pleased to reject the application of the petitioner No. 1 for grant of Domicile Certificate and consequently by order dated 27-2-1997 the respondent No. 2 cancelled the admission of the petitioner No. 2 for M.B.B.S. course, 1996-97 from Defence-2 category.

7. The first question for our consideration/decision is whether the order passed by the District Magistrate, Aurangabad on 21-2-1997 rejecting the Domicile Certificate in favour of the petitioner No. 1 is erroneous. To decide the first issue, it is necessary to consider the provisions as set out in Resolution No. 1586/34 dated 27th September, 1950 of the Government of Bombay and Part III of the said Resolution is relevant for the present purpose. Clauses 4, 5 and 6 of the said

Resolution (Part 111) are reproduced hereinbelow :--

"4. When the domicile claimed is of recent origin the claim should be scrutinised with special care. The fact that the applicant owns a residence in the State of Bombay is not by any means a conclusive proof that he is domiciled therein. It should be considered along with other circumstances of his case.

5. The fact that a candidate was born and educated in the State of Bombay and that he and his parents through whom he claims his domicile have resided in the said State for a period of not less than 10 years immediately preceding the date of application (necessary breaks being allowed) strongly support a claim to a domicile in the State of Bombay but other relevant circumstances including the fact whether the candidate's mother tongue is one of the regional languages or dialects of the State of Bombay must also be taken into account.

6. Residence in the State of (Bombay) Maharashtra for any number of years for a temporary purpose such as service, trade, profession etc. shall not by itself be regarded as establishing a claim of domicile."

8. In the impugned order dated 21-2-1997, the District Magistrate, Aurangabad has observed that the petitioner No. 1 was born at Bakloh Dist. Chamba in the State of Himachal Pradesh and he, therefore, acquired the domicile of the State of Himachal Pradesh. The petitioner No. 1 did not submit a declaration renouncing the domicile of former i.e. State of Himachal Pradesh to the Secretary of Home Department and simply submitted a letter addressed to the Cantonment Executive officer, Bakloh Dist. Chamba dated 15-10-1996 which ultimately implied that the petitioner No. 1 had renounced his former domicile. The petitioners stay in the State of Maharashtra is limited for the purpose of service i.e. only five years from 1991 to 1996 and the petitioner No. 1 did not produce any documentary evidence to show that he had stayed in the State of Maharashtra for ten years or more than ten years. The mere acquisition of plot or construction of a house at Aurangabad is not a conclusive proof of the petitioner's domicile in Maharashtra and because the petitioner's stay in Maharashtra is only of temporary nature, his claim regarding his intention to settle down permanently in Maharashtra cannot be relied upon. The learned District Magistrate held that the petitioner No. 1 did not satisfy the conditions set out in clauses 4, 5 and 6 of the Government Resolution as reproduced hereinabove and the application dated 27-6-1996 made by the petitioner No. 1 was rejected. Accordingly, it is held that the petitioner No. 1 is not a domicile in the State of Maharashtra and, therefore, the first condition of Rule 5.2.1.2. is not satisfied for admission of the petitioner No. 2.

9. Shri S.C. Bora, the learned Counsel for the petitioners submitted that the District Magistrate ought to have accepted the claim of the petitioner No. 1 that he has constructed a house at Aurangabad with an intention to permanently settle down at Aurangabad and that the wife of the petitioner No. 1 is working at Aurangabad and though the petitioner No. 1 is required to move from one place

to another due to the nature of his service, his intention to settle down at Aurangabad permanently qualified him to be treated as domicile of Maharashtra, even though his stay in the State of Maharashtra is not for a period of ten years or more. It is to be noted that the District Magistrate, Aurangabad has applied his mind to the Resolution and has rightly come to the conclusion that the petitioner No. 1 having been born in the State of Himachal Pradesh is not entitled for a domicile certificate being issued as he has not stayed in the Maharashtra State continuously for a period of ten years or more. He has further rightly observed that the mere fact of building a house with an intention to settle down at Aurangabad is not sufficient for being a domicile of Maharashtra. As observed in para 4 of the above-mentioned order, the fact that the petitioner No. 1 owns a residence in Aurangabad is not by any means a conclusive proof that he is a domicile of Aurangabad (Maharashtra). For being a domicile of Aurangabad, in terms of para 5 of the said Resolution, one has to be a resident of Aurangabad or anywhere in Maharashtra for a period not less than ten years immediately preceding the date of application (necessary breaks being allowed). This condition admittedly, is not fulfilled in the case of the petitioner No. 1 and hence the challenge, to the said order on first count, thus, fails.

10. The second challenge to the order passed by the District Magistrate is on the ground that the terms, "Domicile" and "residence" are different and one has no connection with the other. While the Government of Maharashtra has been following the Resolution of 1950 for issuing Domicile Certificate, no rules have been framed for deciding "residence" or a citizen being resident of Maharashtra. Unless the rules are framed by the Government laying down the criteria to decide a person being a resident of Maharashtra, the order passed by the District Magistrate cannot be supported as it suffers from infirmities on this count. However as observed hereinabove, the resolution of 1950 as construed in harmony and in keeping with the purpose for which it has been brought into effect, clearly indicates that for issuing the domicile certificate, residence is a first step and if a citizen is a residence of Maharashtra for not less than 10 years prior to the date of filing such an application is one of the conditions for granting Domicile Certificate. It is, therefore, clear that for deciding whether the petitioner No. 1 was a domicile of Maharashtra, it was required as a first step to decide whether the petitioner No. 1 was a resident of Maharashtra for a period not less than ten years prior to his application submitted to the Taluka Executive Magistrate, Aurangabad. Viewed in this manner, the contention that in the absence of Rules for deciding whether the citizen is a resident of Maharashtra, the decision on domicile cannot be legal, have no force in the eyes of law. Admittedly, in the present case, prior to the date of filing the application for Domicile Certificate, the petitioner No. 1 has been a resident of Maharashtra for five years and reading the Resolution of 1950 and more particularly the paragraphs reproduced hereinabove, it is clear that the word "domicile" has to be taken under the ordinary meaning of residence of Maharashtra for a period not less than ten years prior to the date of filing of application. Thus, the second

ground also fails.

11. Once the challenge to the Order passed by the District Magistrate, Aurangabad on 21 -2-1997 rejecting the application of the petitioner No. 1 for Domicile Certificate is upheld, admittedly, the order passed by the respondent No. 2 on 27-2-1997 cancelling the admission of petitioner No. 2 cannot be faulted with. We have been informed that after the said order was passed on 27-2-97, the petitioner No. 2 is no more a student of M.B.B.S. course, 1996-97 and the respondent No. 4 has been admitted in her place to the said Course.

12. It is the next contention of the petitioners that the rules for determination of domicile contained in Resolution No. 1585/34 dated 27th September, 1950 of Government of Bombay are unconstitutional and violative of Articles 14 and 15 of the Constitution of India. The main thrust of the petitioners, in this respect, has been on the word "Domicile" rather than "Resident". Relying upon the judgment of the Supreme Court in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , it is the contention of the petitioners that the Supreme Court has already warned the State Government/s from using the domicile requirement as a condition of eligibility for admission to medical courses and despite the said warning, the rules for admission for the year 1996-97 continues such practice. The Supreme Court of India in the case of D.P. Joshi Vs. The State of Madhya Bharat and Another, , had an occasion to deal with the words "Domicile" as well as "residence". Their Lordships of the Apex Court (Constitution Bench) in para 11 of the said judgment have observed as under :--

"11. It was also urged on behalf of the respondent that the word "Domicile" in the rule might be construed not in its technical-legal sense, but in a popular sense as meaning "Residence" and the following passage in Wharton's Law Lexicon, 14th Edition Page 344 was quoted as supporting such a construction :

By the term "Domicile" in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy, or commorancy, is some times called his domicile."

In *Memullen v. Wadsworth*, 1889 (14) A.C. 631 (F), it was observed by the Judicial Committee that "the word "Domicile" in Art. 63 (of the Civil Code of Lower Canada) was issued in the sense of residence, and did not refer to intentional domicile." What has to be considered is whether in the present context "Domicile" was used in the sense of residence. The rule requiring the payment of a capitation fee and providing for exemption therefrom refers only to "bona fide" residents within the State. There is no reference to domicile in the rule itself, but in the Explanation which follows cls. (a) and (b) refer to domicile, and they occur as part of the definition of "bona fide resident".

In *Corpus Juris Secundum* Volume 28, page 5, it is stated :---

"The term "bona fide residence" means the residence with domiciliary intent."

There is, therefore, considerable force in the contention of the respondent that

when the rule-making authorities referred to domicile in els. (a) and (b) they were thinking really of residence. In this view also, the contention that the rule is repugnant to Art. 15(1) must fail."

The challenge of the petitioners on the third point also has been answered by the above enunciation of the Constitutional Bench of the Apex Court and hence the said challenge must be over ruled.

13. The last but most important challenge of the petitioners is regarding the validity of Rule 5.2.1.2. in as much as, the said rule requires, inter alia, a Domicile Certificate issued by the Competent Authority certifying that the applicant's father is a domicile of Maharashtra. The said challenge is twofold. The first challenge is on the basis that it amounts to discrimination and, thus, violating Article 14 of the Constitution of India and the second challenge is mainly relying upon the observations of the Supreme Court in the case of Pradeep Jain (*supra*). In support of the second challenge, it is the contention of the petitioners that the Supreme Court has deprecated the requirement of domicile of a State and the Apex Court has held that an applicant is a domicile of India and not in any State as such. Reliance has been place in this regard in the observations of the Supreme Court in para 8 of the said judgment.

14. The requirement of Domicile Certificate to be submitted by the applicant for seeking admission to M.B.B.S. course is not in respect of only Defence-1 and Defence-2 categories. Even in some other category also, the requirement of Domicile Certificate has been stipulated and the same is clear from the rules reproduced below :--

"3.3.3.2.---The applicants who have passed S.S.C. (or equivalent) and/or H.S.C. (or equivalent) examination from an Institution situated outside Maharashtra but within the territory of India and whose parents are domicile of Maharashtra State will be eligible for admission in relaxation of rule 3.3.1. and/or 3.3.2."

"5.4.1.1.---The applicant must be a domicile of place situated in the disputed border areas as specified in the list at Annexure-C."

15. The contention of the petitioners that only defence-1 and defence-2 categories applicants are required to submit Domicile Certificate and no such condition is required to be fulfilled by any other category candidate, is actually wrong.

16. The constitutional validity of condition regarding domicile/residence has been considered by the Supreme Court in D.P. Joshi's case, AIR 1955 S.C. 3349 followed by decision in the case of N. Vasundara Vs. State of Mysore and Another, as well as Pradeep Jain's case (*supra*). The Supreme Court has held that reasonable classification prescribed for admissions to Medical Colleges does not violate Articles 14 as well as 15(1) of the Constitution. In the case of D.P. Joshi, the Supreme Court was dealing with the rules prescribed by the Madhya Bharat State for admissions to Medical Colleges. The relevant original rule by the

date when the College was taken over by the State from private management, was that Madhya Bharat students were exempted from paying capitation fees and on the State taking over the said College, the Rule was substituted by the following new rule, "for all students who are bona fide residents of Madhya Bharat, no capitation fee should be charged. But for other non Madhya Bharat students, the capitation fee should be retained as at present at Rs. 1,300/- for nominees and at Rs. 1,500/- for others."

"Bona fide resident" for the purposes of the above rule was defined as :--

"(a) a citizen of India whose original domicile is in Madhya Bharat, provided he has not acquired a domicile elsewhere, or

(b) a citizen of India, whose original domicile is not in Madhya Bharat but who has acquired a domicile in Madhya Bharat and has resided there for not less than five years at the date, on which he applies for admission, or

(c) a person who migrated from Pakistan before 30-9-1948 and intends to reside in Madhya Bharat permanently, or

(d) a person or class of persons or citizens of an area or territory adjacent to Madhya Bharat or to India in respect of whom or which a Declaration of Eligibility has been made by the Madhya Bharat Government."

The above quoted rule was in force when the petitioner in that case, had sought admission in the Medical College. Subsequently, the said rule was, again, said to have been modified as under :--

"Only those students who are bona fide residents of Madhya Bharat, have been selected for being admitted in accordance with the allocation scheme and the rules of admission to the seats specifically reserved for the residents of Madhya Bharat, are exempted from payment of capitation fees. All other students admitted to seats other than those reserved for Madhya Bharat students shall be liable to pay capitation fees, as prescribed."

17. While examining the validity of the above Rules, their Lordships of the Apex Court in para 10, 14 and 15 have observed as under :--

"10. Under the Constitution, the power to legislate on succession, marriage and minority has been conferred under Entry 5 in the Concurrent List on both the Union and the State Legislatures, and it is therefore quite conceivable that until the Centre intervenes and enacts a uniform Code for the whole of India, each State might have its own laws on those subjects, and thus there could be different domiciles for different States. We do not therefore see any force in the contention that there cannot be a domicile of Madhya Bharat under the Constitution.

14. It is next contended for the petitioner that the imposition of capitation fee on some of the students and not on others is discriminatory, and is in contravention of Art. 14 of the Constitution, and therefore, void. The impugned rule divides, as

already stated, self-nominees into two groups, those who are "bona fide" residents of Madhya Bharat and those who are not, and while it imposes a capitation fee on the latter, it exempts the former from the payment thereof. It thus proceeds on a classification based on residence within the State, and the only point for decision is whether the ground of classification has a fair and substantial relation to the purpose of the law, or whether it is purely arbitrary and fanciful.

15. 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 Art. 41). The State has to contribute for the upkeep and the running of its educational institutions. We are in this petition concerned with a Medical College, and it is well-known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it would so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State? A concession given to the residents of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the College, settle down as doctors and serve the needs of the locality.

The classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation, and is in consequence not open to attack. It has been held in *The State of Punjab Vs. Ajaib Singh and Another*, that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern primarily of the State. The contention, therefore, that the rule imposing capitation fee is in contravention of Art. 14 must be rejected."

18. In another case i.e. *Ku. Vasundhara's case* (supra), the Supreme Court held that the condition of residence for a minimum period of ten years in the State of Mysore in addition to condition of being a domicile in that State for admission to MBBS course in Government Medical Colleges, did not violate Article 14 of the Constitution.

19. The petitioners have placed a strong reliance on the judgment of the Supreme Court in *Pradeep Jain's case* (supra), in support of their claim, However in the said judgement, the Apex Court has finally inter alia, held as under :-

(a) This Court has also by its decisions in *D.P. Joshi's case* and *Ku. Vasundhara's case* (supra) sustained the constitutional validity of reservation based on residence requirement within a State for the purpose of admission to Medical Colleges. These decisions all of which relate to admission to MBBS course are

binding upon us and, it is, therefore, not possible for us to hold, in the face of these decisions, that residence requirement in a State for admission to MBBS course is irrational and irrelevant and cannot be introduced as a condition for admission without violating the mandate of equality of opportunity contained in Art. 14. We must proceed on the basis that at least so far as admission to MBBS course is concerned, residence requirement in a State can be introduced as a condition for admission to MBBS course.

(b) We are, therefore, of the view that a certain percentage of reservation on the basis of residence requirements may legitimately be made in order to equalise opportunity for medical admission on a broader basis and to bring out about real and not formal, actual and not merely legal equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or Pre-Medical examination of the same University or clearing the qualifying examination from the school system of the educational hinterland of the Medical Colleges in the State and for this purpose, there should not be distinction between schools affiliated to State Board and schools affiliated to the Central Board of Secondary Education.

(c) So far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference.

20. It is, thus, abundantly clear that the Supreme Court of India, time and again, has upheld the Constitutional validity of requirement of residence for admission to MBBS courses and hence the challenge of the petitioners to Rule 5.2.1.2 must fail.

21. Even the order passed by the Collector on 21.2.1997 is based on the fact that the petitioner No. 1 was born in Himachal Pradesh as well as the petitioner No. 2 was born outside Maharashtra State and prior to 1991 at no point of time, the petitioners were residing in the State of Maharashtra. The order rejecting the domicile certificate is based on the resolution of the State of Bombay (Maharashtra) which primarily considers the requirement of residence for not less than ten years prior to the date of application for granting domicile licence and while relying upon the said resolution, the District Magistrate has rightly considered in the facts and circumstances of this case, the primary requirement of residence of 10 years or more in the State of Maharashtra as it was not met in the present case, he has rejected the application for granting Domicile Certificate. The said order does not suffer from any infirmity apparent on the face of the record and even if it is accepted that the concept of residence is different from domicile as contended by the petitioners, the said issue, in the instant case, is irrelevant, in as much as only the condition of residence for a period of ten years or more is the main requirement in the instant case for issuing Domicile Certificate.

22. In the result, the petition fails. Rule is discharged with no order as to costs.

23. Petition dismissed.