

(2019) 02 GAU CK 0082
In the Gauhati High Court
Case No : PIL NO. 49 Of 2016

Mizoram Chakma Students' Union, A Registered Body Having
Its Headquarter At Kamalanagar

APPELLANT

Vs

State Of Mizoram

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Mizoram (Selection Of Candidates for Higher Technical Courses) Rules, 2016 — Rule 5, 5(1), 5(2)
Mizoram [Selection Of Candidates for Higher Technical Course (Sixth Amendment)] Rules, 2015 — Rule 2, 5(1)
Mizoram had earlier framed the Mizoram (Selection Of Candidates for Higher Technical Courses) Rules, 1999 — Rule 5
Constitution Of India, 1950 — Article 14, 15(4), 16(4), 226, 341, 341(1), 341(2), 342, 342(1), 342(2)

Citation : (2019) 02 GAU CK 0082

Hon'ble Judges : A.S. Bopanna, CJ; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : M. Dutta, J.C. Lalnunsang

Final Decision : Allowed

Judgement

A.K. Goswami, J

1. Mizoram Chakma Students' Union, which is a registered union represented by its President as petitioner No. 1, and the President of Mizoram Chakma Students' Union as petitioner No. 2, espousing the cause of Chakma community, which is a recognized Scheduled Tribe in the State of Mizoram under the Constitution (Scheduled Tribes) Order, 1950, have preferred this application in the nature of Public Interest under Article 226 of the Constitution of India, essentially, challenging the Mizoram (Selection of Candidates for Higher Technical Courses) Rules, 2016 (for short, "2016 Rules"), issued under the Notification No. C.11011/1/2015-EDN (HTE), dated 20.04.2016, which was published in the Mizoram Gazette (Extra Ordinary) dated 22.04.2016.

2. The averments and the edifice on which the challenge is mounted and the submissions which were articulated indicate that the challenge is made with regard to the categorization of the children of other permanent residents of the State of Mizoram as Category-II instead of Category-I in Rule 5 of the 2016 Rules.

3. Vide Notification No. C.11011/1/93-EDN dated 02.06.1999, published in the Mizoram Gazette (Extra Ordinary), the Government of Mizoram had earlier framed the Mizoram (Selection of Candidates for Higher Technical Courses) Rules, 1999 (for short, "1999 Rules"). The State of Mizoram had no facilities for higher technical studies within the State at that point of time and, therefore, the Central Government had allotted seats to the State of Mizoram for higher technical studies in different institutions and the avowed object of the 1999 Rules was to have a fair selection of promising candidates by means of aptitude tests for limited seats available at its disposal. In the 1999 Rules, the method of selection of the applicants was laid down in Rule 5. We will revert to Rule 5 later and what is essential at this stage to take note is that Rule 5 and the Explanation below Rule 5(1) were substituted by the Mizoram [Selection of Candidates for Higher Technical Course (Sixth Amendment)] Rules, 2015 (for short, "Amendment Rules of 2015"). By the said Amendment Rules of 2015, children of other permanent residents of the State of Mizoram (other than the local permanent residents) were placed in Category-II as in the 2016 Rules. The Amendment Rules of 2015 was issued under Notification No. C.11011/1/2015-EDN (HTE) dated 24.03.2015 and the same was published in the Mizoram Gazette (Extra Ordinary) dated 23.04.2015. The aforesaid Notification dated 24.03.2015 was challenged by the present petitioners by filing a writ petition, which was registered as PIL 39/2015. However, the said PIL was closed by an order passed on 16.07.2015 holding that as the Notification challenged in the PIL had been withdrawn, the PIL had become infructuous.

4. The present PIL was filed before the Principal Seat of the Gauhati High Court at Guwahati. In the month of April, 2017, it was transferred to the Permanent Bench at Aizawl wherein the same was registered as WP(C) PIL No. 16/2017. While the petition was pending before the Principal Seat at Guwahati, the respondents had filed an affidavit-in-opposition on 14.03.2017. Subsequently, the respondents had again filed affidavit-in-opposition on 06.04.2018 when the petition was pending consideration before the Permanent Bench at Aizawl. The petition was dismissed for default by an order dated 02.05.2018. Thereafter, an application, being I.A. (Civil) 2793/2018, was filed for restoration of the petition and, by an order dated 08.09.2018, WP(C) PIL No. 16/2017 was restored to its original file and the interim stay order dated 24.06.2016 was also restored. By the said order dated 24.06.2016, the operation of Rule 5 of the Notification dated 20.04.2016 was stayed. After the petition was dismissed for default, and prior to its restoration, the State of Mizoram had filled up 75% of the seats in MBBS course as per the 2016 Rules. An application for vacating the said order dated 24.06.2016 was filed by the respondents and the same was registered as I.A.

(Civil) 3082/2018, and this court, by an order dated 28.08.2018, taking the view that the remaining vacant seats should not be allowed to go waste, allowed the State of Mizoram to complete the process of MBBS admission to the remaining vacant seats under the 2016 Rules providing that such admission shall be subject to final decision on the writ petition. While vacating the interim order dated 24.06.2016, the petition was directed to be listed for final hearing on 04.10.2018 and, accordingly, on 04.10.2018, PIL 49/2016 was listed before the Principal Seat on which date Mr. Lalnunsang, appearing for the State of Mizoram, had prayed for time.

5. With the above preface, at the outset, it will be apposite to extract Rule 5 as appearing in 1999 Rules, the Amendment Rules of 2015 and 2016 Rules hereinbelow:

"1999 Rules:

Method of Selection: 5.(1) All applicants shall be classified into three categories for the purpose of allotment of seats, viz -

- (a) Children of local permanent residents of the State of Mizoram, as Category-I;
- (b) Children of non-local permanent residents of the State of Mizoram as Category-II;
- (c) Children of Central/Other State Govt. employees not permanently serving in Mizoram, as Category-III.

Explanation: For the purpose of this sub-rule, the term "Local Permanent Residents" means those who are indigenous/people of the State of Mizoram and have been residing permanently in the State, and the term "Non-local Permanent Residents" means those who are non-indigenous people of the State of Mizoram but serving under the Government of Mizoram or Government Corporation or Autonomous Bodies under the State Government, or other recognized organizations under the State Government who are regular employees of such organization and in whose case, it can safely be inferred that they would reside permanently in Mizoram.

(2) to be eligible to be considered under the Category-II and the Category-III, a Government servant should have completed at least two years of service in Mizoram and posted in the offices of the State Government whether located within the State or not.

(3) On the basis of marks obtained in the Selection Examination, selection shall be made in order of merit from amongst eligible candidates from Category-I first. In case sufficient number of eligible candidates are not available from Category-I, the remaining seats shall be filled in, in order of merit, by the eligible candidates from Category-II and Category-III likewise.

Amendment Rules of 2015:

Rule 2. Amendment of Rule 5(1) (Method of Selection):

Rule 5(1) shall be substituted by the following provisions -

- (a) Children of local permanent residents of the State of Mizoram, as Category-I;
- (b) Children of other permanent residents of the State of Mizoram as Category-II.
- (c) Children of Central/Other State Government employees not permanently serving in Mizoram as Category-III.

3. Amendment of Rule 5(1) (Explanation below Rule 5.1):

An explanation provided below Rule 5.1 shall be substituted by the following proviso:-

Explanation: For the purpose of this sub-rule.

(a) The term "Local permanent Residents" means those who are indigenous (Zo-ethnic people who are native inhabitants) people of the State of Mizoram and have been residing permanently in the State.

(b) The term "Other Permanent Residents" means those who are Non-indigenous (Non-Zo-ethnic people who are non-native inhabitants) people of the State of Mizoram and those who are serving under the Government of Mizoram or Government Corporation of Autonomous Bodies under the State of Mizoram, or other recognized organizations and in whose case, it can safely be inferred that they would reside permanently in Mizoram.

2016 Rules:

5(1) All applicants shall be classified into three categories for the purpose of allotment of seats, viz. -

- (a) Children of permanent residents of the State of Mizoram as Category-I.
- (b) Children of other permanent residents of the State of Mizoram as Category-II.
- (c) Children of Central/Other State Government employees not permanently serving in Mizoram, as Category-III.

Explanation: For the purpose of this sub-rule:

(a) The term "permanent residents" means those who are Zo-ethnic people of the State of Mizoram and have been residing permanently in the State.

(b) The term "other permanent residents" means those who are (i) children of non-Zo-ethnic people of the State of Mizoram and have been residing permanently in the State. (ii) Children of parents who are serving under the Government of Mizoram or Government corporation or Autonomous Bodies under the State Government who are regular employees of such organization and in whose case it can safely be inferred that they would reside permanently in Mizoram including children of deceased employees of the State Government

whose families are living in Mizoram.

(c) To be eligible to be considered under Category-III, either of the parents of the candidate(s) should have been residing and posted in Mizoram for at least three years.

(2) Percentage of seats for Category I, II and III 95% of the total seats shall be reserved for Category-I, 4% of the total seats shall be reserved for Category-II and 1% of the total seats shall be reserved for Category-III. Determination of percentage for each Category has been made on the basis of average result of STEE (State Technical Entrance Examination) for the last 5 (five) years.

The disciplines in which seats are to be allotted to Category-I, II and III will be decided by the Selection Board by preparing seat matrix.

Vacant seats, if any, due to unavailability of suitable candidates from amongst the Category-I, II and III shall be reverted back to Category-I."

6. We have heard Mr. M. Dutta, learned counsel, appearing for the petitioners. We have also heard Mr. Mr. J. C. Lalnunsang, learned Government Advocate, Mizoram, appearing for the respondents.

7. During the course of argument, Mr. Lalnunsang had relied on the affidavit that was filed on 06.04.2018 and, therefore, it will be appropriate to take note of the salient pleaded stand in the said affidavit. It is averred that the Notification dated 24.03.2015 had to be withdrawn perforce of circumstance as PIL 39/2015 was filed in the middle of the counseling process for admission to MBBS course and the court had passed an interim order because of which many students may not have been able to take admission because of constraint of time. It is stated that there are many illegal immigrants amongst the Chakmas and the instant petition is a handiwork of such elements to achieve political goals. The categorization was done depending upon the average number of students who had appeared in the STEE during the last six years and as Mizo/Zo-ethnic people comprise of the largest number of candidates, accordingly, larger share of seats was reserved for Mizo/Zo-ethnic students and the impugned Notification was issued to give proportionate opportunity to tribal and non-tribal population in accordance with their ability and level of performance in the entrance test by allocating certain percentage on the basis of their past appearance in the STEE. It is also pleaded that Chakmas are not indigenous people of the State of Mizoram as they originally came from Bangladesh and that except the Chakmas none had expressed any grievance in respect of the Notification dated 20.04.2016. It is also asserted, with reference Ms. Niva Chakma, that the Chakmas are getting better opportunity when they are placed in Category-II and if the Notification dated 20.04.2016 is interfered with, the more educationally backward classes of Mizoram will not have the opportunity to come at par with the mainstream citizens.

8. It is submitted by Mr. Dutta that the Chakmas are included as Scheduled Tribe

in the State of Mizoram under the Constitution (Scheduled Tribes) Order, 1950 (for short, "the 1950 Order") and, therefore, exclusion of Chakmas from Category-I on the ground that they are non-Zo-ethnic people of the State of Mizoram, is unsustainable inasmuch as the same amounts to sub-classification of tribes which are listed in the 1950 Order as they form one homogeneous group and the same cannot be tinkered with in any manner. He contends that classification could not have been made with regard to permanent residents placing Zo-ethnic people of the State of Mizoram in one category and placing the non-Zo-ethnic people in another. Though the term, "Zo-Ethnic" is not defined under the 1950 Order or under the 2016 Rules, it is submitted by him with reference to 1950 Order that the term refers to Mizo tribe. It is further contended by him that by placing the Chakmas, who have the lowest literacy rate amongst the Scheduled Tribes of Mizoram in Category-II, Chakma students are made to compete with children of parents who are regular employees of the Government or Government Corporation, etc., who are distinctly in an advantageous position, for only 4% of the allotted seats while reserving 95% of the seats only for Zo-ethnic people of the State of Mizoram. Having withdrawn the Notification dated 24.03.2015, the State respondents acted illegally and arbitrarily and abused the process of court in issuing the Notification dated 20.04.2016 retaining the same Notification dated 24.03.2015 except deleting the words "indigenous" and "non-indigenous" therefrom, he contends. In support of his submissions, Mr. Dutta places reliance on the judgements of the Supreme Court in the cases of *State of Maharashtra vs. Milind and Others*, reported in (2001) 1 SCC 4, and *E.V. Chhinnaiah vs. State of A.P. and Others*, *Malamahanadu Registered Socety vs. State of A.P. and Others*, *Mallela Venkata Rao and Others vs. State of A.P., and Others* and *Kota Samanth vs. State of A.P. and Others*, reported in (2005) 1 SCC 394.

9. Mr. Lalnunsang, abiding by the stand taken in the affidavit-in-opposition dated 06.04.2018, has submitted that the categorization in the impugned Rule was made keeping in view the welfare of every tribal as well as non-tribal residents of the State of Mizoram and the percentage of allotment of seats in each category was worked out on the basis of the records of the past appearance of candidates, in each category, during the last six years in State Technical Entrance Examination (STEE). He submitted that such consideration is a relevant consideration and it cannot be countenanced that the Rule is arbitrary or discriminatory. As the Zo-ethnic people comprised the largest number of candidates in the STEE over the period of last six years, accordingly, 95% of the seats were reserved for the candidates from Zo-ethnic people. In order to buttress his contention that no prejudice is caused to the Chakma people by placing them in Category-II, Mr. Lalnunsang has referred to the case of one Ms. Niva Chakma, who secured 21st rank in STEE in Category-II and was, otherwise eligible for B.Sc. Nursing course in Mizoram College of Nursing, which was her preferred choice. However, in compliance of the direction of this court to resume the suspended counseling, when result was re-declared by placing the Chakmas

in Category-I, Niva Chakma secured 938 rank in Category-I and she was not entitled to a seat in B.Sc. Nursing course because of such ranking. He emphasized that the impugned categorization will help in uplifting the more backward tribes like Chakmas and, therefore, the instant petition deserves to be dismissed. In support of his contentions, Mr. Lalnunsang has placed reliance on the judgements of the Supreme Court in the cases of Kumari Chitra Ghosh and Another vs. Union of India and Others, reported in 1969(2) SCC 228 and Kumari N. Vasundara vs. State of Mysore and Another, reported in 1971(2) SCC 22.

10. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

11. Annexure-8 of the petition, which is a copy of Census of India, 2001, published by the Registrar General of India, demonstrates that according to the census of 2001 the population of Mizoram was 8,88,573 and 94.57% of the total population of the State of Mizoram are Scheduled Tribes (STs) comprising of 14 communities. Mizo (Lushai) tribe is the major community which constitutes 77% of the total ST population followed by Chakma which constitutes 8.5% of the total ST population. Chakmas are primarily based in rural areas and 0.8% of them reside in urban areas. Chakmas have the lowest literacy rate at 45.3% while the Mizo (Lushai) tribe is having literacy rate of 95.6%. The territory comprising the present day State of Mizoram was part of the State of Assam and, among others, Chakmas and any Mizo (Lushai) tribes were included in the 1950 Order. After the State of Mizoram was inaugurated on 20.02.1987, any Mizo (Lushai) tribes and Chakmas, amongst others, were included as Scheduled Tribe for the State of Mizoram in the 1950 Order.

12. The name of the State "Mizoram" comprises of three words: (i) Mi, (ii) Zo, and (iii) Ram. "Mi" means people; "Zo" means those who live in the hilly areas and (iii) "Ram" means land. In other words, "Mizoram" means land of the people of hilly areas. Who are "Zo-ethnic people", an expression that finds place in Rule 5 of the 2016 Rules, is not defined in the Rules. Learned counsel for the petitioners, having regard to the expression "Mizo" appearing in 1950 Order, sought to contend that the expression refers to people belonging to Mizo tribe.

13. In paragraph 9 of the writ petition, it is averred that Zo-ethnic people appears to mean the "majority tribal people". In the affidavit filed by the State respondents, the statement is not denied. Thus, "Zo-ethnic people" would mean the people belonging to Mizo tribe. That the Chakmas fall in the category of non-Zo-ethnic permanent residents is not in dispute. In paragraph 15 of the affidavit filed by the respondents, it is stated that the largest number of candidates in the STEE comprise of Mizo/Zo-ethnic students. The same would unequivocally demonstrate that "Zo-ethnic people" refers to Mizo tribe.

14. Rule 5(2) of the 2016 Rules indicates that determination of percentage of each category had been made on the basis of average result of STEE during the last five years. However, in the affidavit filed by the respondents, consistently

stand has been taken in paragraphs 15 and 20 that the categorization had been done for better convenience of seat distribution on proportionate basis depending upon the average number of students who had appeared in the STEE.

15. Under Articles 341(1) and 342(1) of the Constitution of India, the President may, with respect to any State or Union Territory, after consultation with the Governor, by public notification, specify the castes, races and tribes, or part or groups within the castes, races or tribes, which shall for the purpose of the Constitution, be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory, as the case may be. Clause (2) of Articles 341(2) and 342(2) provides that a notification issued under Clause (1) cannot be varied by any subsequent notification except by law made by the Parliament. The avowed object of the said Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to the social and educational backwardness from which they had been suffering for long. Exercising such powers vested in him, the President had issued The Constitution (Scheduled Castes) Order, 1950 and the 1950 Order. Under Clause (2) of Articles 341 and 342, a notification issued by the President cannot be varied by any subsequent notification except by law made by the Parliament of India. Therefore, save and except the Parliament of India, no other authority is empowered or competent to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under Articles 341 and 342.

16. In *Milind* (supra), the Hon'ble Supreme Court had observed that the Parliament alone is competent by law to include in or exclude from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under Clause (1) of the said Articles. Whether a particular caste or tribe is a Scheduled Caste or a Scheduled Tribe, as the case may be, within the meaning of the entries contained in the Presidential Order issued under Clause (1) of Articles 341 and 342 is to be determined looking to them as they are. In *E.V. Chinniah* (supra), the Hon'ble Supreme Court held that the Scheduled Castes list prepared by the President under Article 341(1) forms one class of homogenous group for the purpose of the Constitution and, therefore, sub-classification or micro-classification of the Scheduled Castes or Scheduled Tribes would violate Article 14 of the Constitution.

17. The question that has arisen for consideration is whether for the purpose of allotment of seats, categorization, as contemplated in Category I and Category II could have been legally made. The facts in *E.V. Chinniah* (supra) were that the State of Andhra Pradesh had appointed a Commission to identify the groups amongst the Scheduled Castes found in the list, prepared by the President under Article 341 of the Constitution of India, who had failed to secure the benefit of reservation provided for Scheduled Castes in the State in the matter of admission to professional colleges and appointment to services in the State. Accepting the report of the Commission, the State, by an Ordinance divided 57 Castes

enumerated in the Presidential list into four different groups, namely, (A), (B), (C) and (D) based on their inter-se backwardness and fixed separate quotas for reservation for each of these groups. Accordingly, 15% reservation for the Scheduled Classes in the State of Andhra Pradesh for admission to higher educational institutions and in the services of the State under Articles 15(4) and 16(4) of the Constitution of India was apportioned amongst the four groups, namely, (A), (B), (C) and (D) by allotting 1%, 7%, 6% and 1%, respectively. In the aforesaid factual matrix, the Hon'ble Supreme Court held that the Constitution intended all the castes, including sub-castes, races and tribes mentioned in the Presidential list to be members of one group for the purpose of the Constitution and this group could not be sub-divided for any purpose. The arguments advanced that to fulfill the Constitutional obligation to provide opportunity to the weaker castes it is permissible to make classification within the classes was repelled by the Hon'ble Supreme Court. As a sequitur thereof, it was also held that sub-classification or micro-classification of the Scheduled Castes or Scheduled Tribes would violate Article 14 of the Constitution. It was also held that if benefits of reservation are not percolating to the members of the Scheduled Castes equitably, measures should be taken to see that they are given adequate training so as to enable them to compete with the others, but that would not justify to make further classification by way of micro-classification. It was further held that a uniform yardstick must be adopted for giving benefits to the members of the Scheduled Castes for the purpose of the Constitution and, accordingly, the impugned legislation was struck down as ultra vires the Constitution.

18. In the instant case, the categorization under Rule 5(1) of the 2016 Rules professes to be on the basis of permanent residency, but permanent residents have been sub-divided into two groups, namely, (i) permanent residents and (ii) other permanent residents. The "permanent residents" mean only those who are Zo-ethnic people of the State of Mizoram or, in other words, people belonging to Mizo tribe. The "other permanent residents" mean those who are non-Zo-ethnic people. The categorization outwardly does not reflect that any attempt is made to make classification within the listed Scheduled Tribes mentioned in the Presidential list. However, there is no gainsaying the fact that Mizos and Chakmas are Scheduled Tribes under the Constitutional (Scheduled Tribes) Order, 1950. The objective of classification under Rule 5 is stated to be to reserve percentage of seats for the purpose of admission in higher educational institutions. If that be the objective, the Scheduled Tribes, who figure in the Constitutional (Scheduled Tribes) Order, 1950, and who are permanent residents of the State of Mizoram, could not have been placed in two different categories of permanent residents. Any attempt to differentiate the members of the Scheduled Tribes who figure in the Presidential list under the Constitutional (Scheduled Tribes) Order, 1950, by any parameters, such as, permanent residency, etc., would amount to fiddling and tinkering with the Presidential list which is not permissible in law. Benefit of reservation has to be uniformly applied to all the

Scheduled Tribes listed under the Constitutional (Scheduled Tribes) Order, 1950, and it cannot be countenanced that one tribe would get higher percentage of reservation and another lower. In that backdrop, the basis of categorization, whether it was on the basis of performance in the STEE for the last five years, or on the basis of appearance of students in the STEE in the last five years, carries no significance. Moreover, under Rule 5(1) of the 2016 Rules, Chakmas and other non-Zo-ethnic children are made to compete with children of regular employees of the Government, who may belong to General Category. That itself cuts at the root of the professed stand of the Government that the non-Zo-ethnic people were placed in Category-II in order to sub-serve their interest. One swallow does not make the summer. The case of Ms. Niva Chakma has to be seen in that light. If non-Zo-ethnic permanent residents are suffering from greater disabilities, opportunities should be created for their upliftment and development. The very idea that non-Zo-ethnic permanent residents would vie for only 4% of seats along with the regular employees of the Government while the more advanced Zo-ethnic community will have the benefit of 95% seats is a step backward which will, over a period of time, further widen the gulf between these two groups and push down the non-Zo-ethnic people in the social ladder.

19. In view of the above discussion, we are of the opinion that the impugned Rule placing children of non-Zo-ethnic people of the State of Mizoram in Category-II cannot be sustained. It is further observed that they have to be placed along with Zo-ethnic people of the State of Mizoram. Correspondingly, liberty is granted to the State of Mizoram to re-fix the percentage of seats to be reserved for the categories of candidates as finding mention in Rule 5. Having regard to the fact that more than 2(two) years had elapsed, we do not consider it appropriate to interfere with the admission taken under the impugned Rule.

20. The writ petition is allowed to the extent as indicated above.