

(2014) 08 GUJ CK 0115
In the Gujarat High Court

Case No : Special Civil Application Nos. 8364 and 8688 of 2014

Nina Punjabhai Vadhel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 1 GLR 676

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J.

Bench : Division Bench

Advocate : Ankur Y. Oza, for the Appellant

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—These two Special Civil Applications were heard analogously as common questions that arise for determination are (i) whether Rules 5(A)(ii) and 5(2) of the Gujarat Professional Medical Education Courses (Regulation of Admission and Payment of Fees) (Amendment) Rules, 2014, ("the Medical Admission Rules", hereafter) are illegal and ultra vires the Constitution of India insofar as it makes a student of Gujarat origin and domicile of Gujarat ineligible from getting admission in the professional courses such as M.B.B.S/ B.D.S. etc., and (ii) whether a direction should be given to the State of Gujarat to consider the question of effecting change in the eligibility criteria provided in Rule 5(2) of the Medical Admission Rules in conformity with the change in the eligibility criteria effected in Rule 5(2) of the Engineering and Technology (Regulation of Admission and Payment of Fees) Rules, 2013 ("the Engineering Admission Rules", hereafter) with respect to children of Defence and Armed Forces Personnel of Gujarat origin, declaring that different eligibility criteria for admission into Medical, Dental and Para Medical Courses after Standard XII is discriminatory, arbitrary, and violative of Art. 14 of the Constitution of India, and therefore, illegal and unconstitutional. The sum and substance of the grievance of the petitioners in these writ applications are that although they belong to the

State of Gujarat, in view of the fact that their respective fathers are in the defence service and transferable in their job throughout India, and by reason of such transfer, they have been compelled to study in Class XI and XII in schools situated outside the State of Gujarat, they cannot be held ineligible for admission in Medical and Paramedical Courses in the State of Gujarat, particularly when a person situated in the same position is eligible for admission in the Engineering Courses in the State of Gujarat.

2. So far as the question of striking down the provisions contained in the Rules for admission to M.B.B.S./B.D.S./B.P.T./B.A.M.S./B.H.M.S./ B.Sc. Nursing/B.P.O./B.O./B.O.T/B. Nat./B.A.S.L.P. in the institutions in the State of Gujarat is concerned, in the past, this very Division Bench has specifically held that the aforesaid provisions of Rule 5(2) are not ultra vires any of the provisions of the Constitution of India, by giving a detailed judgment in the case of Vishakha Vs. State of Gujarat and Another, and in the case of Sheetal Yeshwantkumar Parmar Vs. State of Gujarat and Another, .

3. In view of the above two decisions of this Bench, when these applications were sought to be moved, we pointed out to the learned Counsel for the petitioners that in view of the existence of two earlier judgments, these writ-applications should not be entertained. However, the grievance of the learned Advocates for the petitioners was that in those two matters, the attention of this Bench was not drawn to the fact that a person placed in similar situation is eligible for admission in Engineering Course in the State of Gujarat whereas he is not eligible for admission in Medical and Paramedical Courses, and it is for the State Government to explain what is the reason for such discrimination.

4. In view of the above submissions, we called upon the State- respondent to file affidavit only on the aforesaid question as to what was the basis of depriving the petitioners of the benefit of the Medical and Paramedical Courses whereas they are permitted to get admission in Engineering Courses in the State.

5. The respondent-State has, consequently, filed an affidavit-in-reply and the defence of the State may be summed up thus:

"(a) It is always permissible for the State Government to formulate different policies for admission to different disciplines, viz. Medical and Engineering, which are totally distinct owing to their different characteristics, and hence, they are not comparable. In other words, they are two different classes founded upon intelligible differentia having a rationale relation to the object sought to be achieved and merely because the children of persons doing Military Services for the Government of India are eligible for admission to undergraduate Engineering Course in the State, the Rules under challenge where such children are not eligible for admission to undergraduate Medical Course would not ipso facto become bad in law.

(b) Comparison of the Rules of eligibility framed for admission to Medical Course with the eligibility criteria provided in the Bachelor of Engineering and Technology

(Regulation of Admission and Payment of Fees) Rules, 2013 is misplaced inasmuch as both the streams and disciplines are distinct and placed with different circumstances and situations. Apart from this, one of the important factors which plays role in the admission to a particular discipline is demand and supply inasmuch as there is more demand for admissions in Medical Colleges as against the demand for admissions in the Engineering Colleges, with major difference in the availability of number of seats in both the courses.

(c) So far as Engineering seats are concerned, they are much more in number as compared to undergraduate Medical Courses. As against total 10,164 seats in Government Engineering Colleges in the State, there are hardly 1,080 seats for admission in Government Medical Colleges in the State. If the same formula as applicable to Engineering Course is adopted in case of undergraduate Medical Course, it may so happen that students from the State of Gujarat may be deprived of their chance to get Medical admission. Occurrence of such eventuality is practically impossible in case of Government Engineering Colleges, where even after accommodating the students from the State, there always remain surplus vacant seats.

(d) The main reason for two different parameters for admission to two different disciplines lies in the fact that in undergraduate Medical Course, outside students otherwise have an option to stand in competition by accommodating themselves in All India quota seats of 15% of the total number of available seats. This would be an option for such outside student in addition to the option for opting for admission to respective State Medical Colleges wherefrom they have passed the qualifying examination. As against the above, such an option is not available to outside students for the purpose of getting admission to undergraduate Engineering Courses, and therefore, it was thought fit to allow such outside students to compete with the students who have passed the qualifying examination either from the Gujarat Board or from the colleges affiliated to C.B.S.E. or I.S.C.E. as well as to students who are sons and daughters of I.P.S., I.A.S., and I.F.S. allotted to the State and serving outside the State, who have passed equivalent qualifying examination from other State Boards."

5.1. Subsequently, by filing a supplementary affidavit-in-reply, the State Government has given the positions of seats available in respect of undergraduate Paramedical Courses in the State in the year 2013-2014, which are quoted below:

"Position of seats available in respect of Undergraduate Paramedical Courses in the State for the year 2013-14

Position of seats available in respect of Undergraduate Engineering Courses in the State for the year 2013-14

6. After hearing the learned Counsel for the parties and after going through the above materials, we propose to restrict our scrutiny only to the explanation given by the State Government for different criteria for admission in Engineering

Colleges than that of Medical and Paramedical Courses as in the earlier two decisions mentioned above, we have otherwise held that the rules impugned in these writ applications relating to admission in Medical and Paramedical Courses are quite intra vires, and simply because the children of I.A.S, I.P.S., and I.F.S. officers posted outside Gujarat whose children have consequently studied outside the State of Gujarat are eligible for admission to medical course, that cannot be a ground for giving such privilege to the children of defence personnel, as pointed out by us in our earlier two judgments.

7. As pointed out by the Supreme Court in the case of Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, , from the very nature of things it is not possible to throw the admission open to students from all over the country and the Government cannot be denied the right to decide from what sources the admission will be made. According to the Supreme Court, that essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. The Supreme Court further observed that if the sources are properly classified whether on territorial, geographical or other reasonable basis, it is not for the Courts to interfere with the manner and method of making the classification.

8. At this stage, we may profitably refer to the following observations of the Supreme Court in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, :

".....The Court has also by its decisions in D.P. Joshi Vs. The State of Madhya Bharat and Another, and N. Vasundara Vs. State of Mysore and Another, sustained the constitutional validity of reservation based on residence requirement within a State for the purpose of admission to medical colleges. These decisions which all relate to admission to M.B.B.S. 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 M.B.B.S. 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 M.B.B.S. Course is concerned, residence requirement in a State can be introduced as a condition for admission to the M.B.B.S. Course."

(Emphasis supplied by us)

9. In view of the above observations of the Supreme Court, we find substance in the contention of Mr. Trivedi, the learned Advocate General appearing on behalf of the State of Gujarat that so far as the Rules relating to Medical and Paramedical Courses are concerned, the residence requirement in a State can be definitely introduced as essential criteria and in view of the vacancy position indicated by the State of Gujarat, there is valid justification for permitting students outside the State of Gujarat in appearing in the Engineering Courses

and in not permitting such students in Medical and Paramedical Courses. We, thus, find no merits in the additional contentions raised by the petitioners in these writ applications which were not advanced in the earlier two cases dealing with the same provisions of the Rules. These applications are, thus, devoid of any merit and are dismissed accordingly. No order as to costs.