

(1952) 09 MP CK 0016

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Cases No's. 18 and 20 of 1952

Rustom E. Mody Parsi and Others

APPELLANT

Vs

State of Madhya Bharat and Another

RESPONDENT

Date of Decision : 08-09-1952

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 162, 29

Citation : (1952) 09 MP CK 0016

Hon'ble Judges : Shinde, C.J.;Nevaskar, J

Bench : Division Bench

Advocate : M.B. Rege, in No. 20 of 1952 and S. Samvatsar, in No. 18 of 1952, for the Appellant; K.A. Chitale, General, for the Respondent

Judgement

Nevaskar, J.—This and another petition viz. Miscellaneous Case No. 18 of 1952 are submitted by(sic) students of the Mahatma Gandhi Memorial Medical College, Indore against the State Madhya Bharat for issue of a writ of "Man(sic) or Prohibition or direction or Orders" as may appear in the opinion of this Court be dee(sic) proper. Both this case and Civil Misc. Case No. 18 of 1952 are being disposed of by this(sic) as both involve practically the same question.

2. In the present petition the petition Rustam E. Mody and Rajendra P. Bhagi forth that they are the students of the (sic) named Medical College at Indore studying the 4th year class. In this College capitation was required to be paid by non-local student under the rules of the institution. Recently (sic) has been a change in the rules and under present rules Madhya Bharat students exempted from payment of capitation fees (sic) are Rs. 1300/- in the case of nominees if other States e.g. Rajasthan, Jammu and Kashmir and Rs. 1500/- from other non-Madhya Bharat students. This College admitted students from all over India. The Petitioners contend (sic) after Indian Constitution came into force Petitioners became entitled to the fundamen(sic) right of "equality in the eyes of law" and no distinction could be made by reason of Article 15 of the Constitution on the ground of (sic)dence. They, therefore, contend that the imposition of capitation

fees from Petitioners who was non-Madhya Bharat students is not war(sic) by the Constitution and is void.

3. They further alleged that this imposition contrary to the claim made (in the Calendar 1952) that the admission will be strictly in (sic) of merit and without any Provincial bar or restriction. It is further set forth that on a (sic)sentation made by non-Madhya Bharat student the Hon"ble the Minister in charge of Health (sic) assurance of sympathetic consideration and 19-5-1952 actually in the news item of All The Radio the abolition of capitation fees Madhya Bharat Government was broadcast(sic) news was further confirmed by a letter (sic) from the Secretary to the Government of the Ministry of Health and Education and also a telegraphic reply received by the Under (sic)tary to the Government of Jammu and Kashmir the Secretary to Madhya Bharat Government.

4. In the return filed by the Government with an affidavit it is contended firstly that position of capitation fees on the Petitioner not contrary to Article 15 on the ground that no discrimination such as prohibited by Article 15 is evolved in the process and neither this Article 29 bars distinctions on the ground of (sic)lence. It is further contended that the system of imposition of capitation fees is in continuation of an arrangement which had been made between participating States and Mahatma Gandhi Memorial Medical College, General Coun(sic) and society which used to conduct the College until its transfer to the State of Madhya Bharat on the same terms and conditions. As for radio news regarding abolition of capitation as also other materials relied on for the purpose it is contended that they were results of a mistaken and premature release of a con(sic)plated step. On an over-all consideration of matter the Government resolved that in view a deficit budget no relief could be granted in direction. This was in exercise of the right Government to review the executive action is "intra vires".

5. In the other petition submitted by Sumitra Devi there are further special allegations peculiar to herself viz.: That she is a bona fide resistant of Madhya Bharat and hence under the(sic) framed by Government and notified in the calendar she is entitled to be admitted to the allege without payment of capitation fees.

Besides this an attempt was also made to set with the legal basis of her right viz. to be educated in the College in question without pay(sic) of capitation fees (probably on the ground residence). It is also contended that the de(sic) of fees on the ground of non-residence in Madhya Bharat is based on the "principal (sic)ey)" of discrimination between "one citizen and the others" and is a violation of Fundamental Rights guaranteed by the Constitution and (sic)ds against the principle of equality before (sic)

6. A writ of prohibition or direction is, there(sic) claimed restraining Madhya Bharat Government and the Principal of the College from (sic)ding capitation fees and removing her (sic) from the roll and preventing her from (sic) the College.

7. To this a return was submitted on behalf the Principal of the Collage and the Madhya Bharat Government. They repeated the conten(sic) in the return filed by them in the (sic) petition and some others principal amongst (sic) are that there is no discrimination made one citizen and another contrary to the (sic) of the Constitution nor does this vio-(sic) principle of equality before law; that Government of Madhya Bharat has taken this institution from the previous authority of the institution subject to the condition they will continue as before to reserve the(sic) various participating units which had (sic) to the establishment of the College(sic) words in the rules providing for exemp-(sic) the fees for Madhya Bharat students (sic)dated to this scheme of allocation of (sic) were not to be general in import.

It is claimed to be a clarification in exer-(sic) executive power and is final and con-(sic) does this involve an invasion of any (sic) of the Petitioner. In the return it is (sic) that the Petitioner Sumitra Devi had at first competed for one of the seats "reserved for Madhya Bharat". She failed to qualify. She later secured nomination from the State of Rajasthan representing that she belonged to Udaipur and was domiciled in Rajasthan. She entered into a bond with Rajasthan Government to bear capitation fees. She has thus by her conduct disentitled herself from praying for a high prerogative writ like the one she craves for.

8. It will be convenient to consider the general grounds on the basis of which all of the Petitioners have claimed the writ viz. (1) that the demand of fees on the ground of non-residence by the institution and the Government which runs the same is based on the policy of discrimination between one citizen and another and it involves violation of fundamental rights guaranteed by the Constitution (2) that the demand also offends against the principle of equality before law.

9. Messrs. Rege and Samvastar who appeared in the 1st and 2nd case respectively have clarified that they based their fundamental right not on Article 29(2) but on Article 15(1). I am unable to sec how either of these articles can, help the Petitioners. Article 15(1) lays down:

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, "place of birth" or any of them.

As will appear from Article 5 to 8 that right of citizenship is granted and no distinction is made on the ground of religion, race, caste, sex or place of birth of the person concerned provided he satisfies requisite conditions. Discrimination on the ground of place of birth means discrimination because a person is born at particular place.

10. If this significance is borne in mind, it is clear that a distinction if made by a State, on the ground of residence in the matter of imparting education cannot mean a discrimination on the ground of place of birth. The right granted under Article 15 is a sort of a negative right, and arises only on a discrimination being made on one or more of the five grounds mentioned therein. If discrimination is made on any other, ground it will not mean violation of the Fundamental Right

under Article 15 and no right, therefore, arises thereunder although it may or may not involve violation of any other right fundamental if it arises under any, other article in Part III or general right under ordinary law of land.

11. It cannot be contended that the Constitution confers upon a citizen any positive right, as fundamental to be admitted to any educational institution. All that a State can do is to aim at, at some point of time in future, bringing about state of things in which each individual will get education of his choice but all that it at present can do is to open and maintain such kinds of institutions for education as its finances can support and to act in such a manner that its action does not transgress any of the provisions of the Constitution. This is made further clear by reference to Article 29(2) of the Constitution which is directly intended for the purpose of educational institutions. It lays down that:

No citizen shall be denied admission into any educational institution maintained by the State funds on grounds only of religion, race, caste, language or any of them.

12. Therefore the fundamental right bearing on the subject of admission to an educational institution run or aided by State funds will only arise on a denial of admission on the grounds of religion, race, caste, language or any of them. Hence if denial of admission proceeds on any other ground no right arises.

13. Analysing the facts of these cases, it is clear that in the present cases:

(I) There is no denial of admission. The students were all admitted and studying.

(II) There is a rule made by which residence of Madhya Bharat are exempted from certain fees.

Therefore neither Article 29(2) nor Article 15(1) will apply.

14. As I view at the matter, it becomes clear to me that so far as the students who are nonresidents of Madhya Bharat are concerned, there is no fundamental right belonging to them as citizens of India that has been violated by making a provision that they are not exempted from payment of capitation fees. Nor does this violate Article 14 of the Constitution regarding equality before law, or equal protection of the laws.

15. Before considering the applicability of the principles underlying this article to the facts of the present case it is necessary to know what is the significance of these two terms viz. equality before law and equal protection of the laws. Historically, these phrases are apparently taken from constitutional conception of Briton and United States of America respectively and therefore it is to the standard works on constitutional subjects of these countries we must have a recourse in order to understand the true import and limitations of these phrases. According to Prof. Dicey equality before law means equal subjection of all classes to the ordinary law of the land administered by ordinary Courts. In this sense, it excludes the idea of any exemption of officials or others from the duty of

obedience to the law which governs other citizens from the jurisdiction of ordinary tribunals.

The principle of equality before law is not violated by the existence of special laws providing for special groups of subject e.g. soldiers, lawyers, doctors etc. Such laws may not affect the rest of the public but affect the members of particular calling. But in enforcement of these laws and in enforcement of ordinary laws no distinction can be made between one person and another. This principle comes into play not in any controversy regarding legality of any law enacted by the State. It comes into play really in its enforcement.

16. Rajamannar C.J. in *V.G. Row Vs. The State of Madras*, . Paras 83 and 84 sums up this exposition of Professor Dicey thus:

So when Professor Dicey speaks of the principle being essential part of the (British) Constitution, he means the law of the land shall be enforced equally without any distinction being made on any ground whatever.

17-18. As regards the phrase equal protection of the laws, the same learned Judge Rajamannar C.J. of Madras High Court says in the same case:

The other concept of "the equal protection of the laws" undoubtedly comes from the 14th Amendment to the United States Constitution. Ordinarily, one should expect therefore, a great deal of light to be thrown on meaning of the phrase by the decisions of the S.C. of the United States. Unfortunately, however, this phrase occurs along with another phrase "due process of law" and in pronouncing on the validity of State laws, Courts in America have referred to both provisions leaving it (sic) which provision was deemed the most (sic) nent and potent in the premises. A Willoughby, Students" Edition page 823) the famous passage from the judgment Field J. in *-Barbier v. Connolly*" (1883) US 27 (B), which is given in extenso in judgment of one of my brothers, that (sic) Judge was expatiating on the 14th Amen(sic) which contains both the provisions of due (sic) cess and equal protection.

Taft C.J. in his opinion in the leading of *"Truax v. Corrigan"* (1921) 257 US (C), conceded that the two provisions (sic) lapped and that a violation of one may evolve at times the violation of the other pointed out that the spheres of the protection they offer are not conterminous. The due (sic) cess clause might end to secure equality of in the sense that it makes a required minimum of protection for every one's right of life, (sic) and property which the Congress or the (sic) lature may not withhold. The learned(sic) Justice then observes:

But the framers and adopters of this (sic) ment were not content to depend on a minimum secured by the due process or upon the spirit of equality which might be insisted on by local public opinion therefore embodied that spirit in a (sic) guarantee. The guarantee was aimed at favour and individual or class privilege, or one hand, and at hostile discrimination expression of inequality, on the other sought an equality of treatment of all (sic) even though all enjoyed the

protection of process. Thus the guarantee was intended to secure equality of protection not only all but against all similarly situated.

In short equal protection clause says learned Judge embodies a protection discrimination or favour of any per class of persons as much as against any person or class or to borrow the expression used in "Yick Wo v. Hopkins" (1885) 118 US 358 "equal protection of the laws is a protection equal laws." It requires that persons, subject to a piece of legislature shall be treated both in privileges conferred and liabilities posed. It prevents any person or class of sons being singled out as a special subject of discriminatory and hostile legislation.

19. In *Kathi Raning Rawat Vs. The State of Saurashtra*, , Mukherjea J.(sic) served:

A Legislature for the purpose of dealing the complex problem that arise out of (sic) finite variety of human relation, cannot proceed upon some sort of selection or (sic)fication of persons upon whom the legislation is to operate. The consequence of such (sic)cation would undoubtedly be to different the persons belonging to that class (sic)others, but that by itself would not make legislation obnoxious to the equal protected class. Equality prescribed by the Constitution would not be violated if the statute operate equally on all persons who are included in group and the classification is not arbitrary capricious, but bears a reasonable relation the objective which the legislation has in (sic)The Legislature is given the utmost latitude making the classification and it is only there is a palpable abuse of power and differences made have no rational relation the objectives of the regulation, that ne(sic) of judicial interference arises.

Further to quote Das J. in the same case:

What is necessary is that there must be a (sic)nexus between the basis of classification and the object of the Act.

20. This principle has been explained by P. Mukharji J. in *S.B. Trading Co. Ltd. Vs. Shyamlal Ramchandra*,

No legislation in any practical sense is possible without some kind of classification and some kind of discrimination. The very nature and purpose of every legislation depend on the Choice of some subject or others to the exclusion of the rest and some arena for its operation. This selective quality is inherent and implicit in every legislation. The constitutional guarantee of "equality before the law" or of "equal protection of the laws" cannot, therefore, be understood and construed in such a manner as to make legislation impossible for all practical purposes. Not all classification or discrimination is a breach of the constitutional guarantee of Article 14 of the Constitution.

Equality before the law or equal protection of the laws, therefore, means that the law being (sic) its application should be universal in (sic) case which (sic) the description in legislation. That other more desirable ob-(sic) which do (sic) such legislative (sic) out of the operation of (sic) legislation is, in my view, a matter of

legislative policy and not a consideration which affects the constitutional doctrine of equality before the laws or of equal protection of the objects of legislation must, in the nature of things, be left as wide as possible to the law making authorities.

But the line is drawn so as to ensure that, other things being equal, the same and similarly circumstanced persons who are the subjects of the legislation, should be equal before such law and there should be as between them, Equal protection of the laws. If not, it is only then that such law is discriminatory in the (sic)pse of being an infringement of the guarantee of Article 14 of the Constitution. It is in (sic) sense that the constitutional doctrine of equality before the law" or of "equal protection the laws" should be understood and it can not be over emphasised that in applying this doctrine no narrow dogmatic constitutional (sic) should hamper the true exposition of the Constitution as a living practical instrument of Government men and affairs.

21. From these observations of the learned both of this and other countries it is that looked at from the point of "equality law" and "equal protection of law, it can said that the State of Madhya Bharat in (sic)fees from the students residing out Madhya Bharat have resorted to a classification which is prohibited by the Constitution and(sic) on unreasonable grounds. After all Madhya Bharat State will be expected to provide (sic) of Madhya Bharat in the first in (sic) as will appear from the fact that education in a State subject barring certain exception Entry No. 11 of List II State List is education of Article 162 of the Constitution provides the executive power of the State shall ex-(sic) in such matters in respect of which the (sic) of a State has power to make laws.(sic) now be contended that while exercising power and providing for education out of (sic) of the State, it is bound to make a (sic) similarly for residents and non-residents alike? There is no law that compels it to do so. The inhibition on the subject is directed towards discrimination on the ground of religion, race, caste or language or any of them as regards admission to educational institutions. It is obvious that a State can make law limiting admissions to the residents of the State itself and this would not be obnoxious. Nor will this classification violate the letter and the spirit of Article 14 as the classification is based on reasonable grounds relevant to the object of legislation and cannot be styled as arbitrary or capricious having no relation to the object sought to be achieved.

If a State can make law denying admission on the ground of non-residence in its educational institution it can certainly make law on the ground of exempting its residents from paying capitation fees. This exemption of its residents from payment will be deemed to be based on reasonable grounds because it is the finances of the State that bear the burden of running the institution. It is not unfair to charge those who come from outside the State to receive benefit of the institution ran by the state to pay special fees from which the Madhya Bharat students are exempt. It would be different if any act of the State runs counter to the fundamental inhibition contained in Part III and to discriminate on the

grounds or non-residence in the matter of education is not one of them.

I therefore hold in the cases of Rustamji E. Mody and Rajendra P. Bhagi that they have failed to show that they possess any right as regards their being exempted from payment of capitation fees and since there is no right no question of its violation arises. In this view of the matter it is not relevant to consider whether the State of Madhya Bharat had through its officers declared the abolition of capitation fees for all students who are citizens of India and what if any would be the implications of its subsequent statement that this was a premature declaration of a contemplated step and that on over-all consideration of financial implications of the scheme and the present state of her finances this was not thought feasible.

22. Petition therefore in Miscellaneous Case No. 20 of 1952 of the aforesaid two students is dismissed.

23. I will now consider the case of Sumitra Devi (Misc. Case No. 18 of 1952) in the light of principles discussed above. No doubt Sumitra Devi is a Madhya Bharat student and if Madhya Bharat students are exempt from capitation fees by the rule of the institution then she cannot be discriminated as in that case discrimination would be arbitrary and based on no ground whatever. In her case the position taken on behalf of the State is:

Firstly, since she has secured admission as nominee of Rajasthan Government she cannot claim the exemption though she be a student who is a resident of Madhya Bharat.

Secondly, when the calendar mentions that Madhya Bharat students are exempt from capitation fees it really meant to apply to the students of Madhya Bharat who occupy the seats allocated to Madhya Bharat in the system of allocation of seats which existed before the College was taken over and subject to the terms and conditions by which the prior institution was bound.

24. From the affidavit filed, the certificate granted by the District Magistrate, Indore and the return together with the affidavit filed by one of the Secretaries of the Government it cannot be disputed that Sumitra Devi is a student who is resident of Madhya Bharat. Now three questions arise accepting this to be a fact:

Firstly, can the State of Madhya Bharat say that the term bona fide residents of Madhya Bharat" should be taken to be correlated to the scheme for allocation of seats and was not intended to be of general import.

Secondly, how far the fact of her being nominated as nominee Rajasthan affect the matter, and

Lastly, will the discrimination involve invasion on any of her fundamental right? I shall consider these questions hereafter.

25. The Rule framed by Madhya Bharat Government on the subject of capitation fees for the College in question is as follows:(Ex. (6/1)

For all students who are bona fide residents" of Madhya Bharat no capitation fees should be charged. But for other non-Madhya Bharat students the capitation fee should be retained as of (sic) Rs. 1320/- for nominees and Rs. 1500/- for others.

26. It will be clear from the phraseology used that the classification is sought to be made on the basis of residence and certain privilege is conferred on those students who are residents of Madhya Bharat. Then a further classification is made between the non-Madhya Bharat students viz. those who are nominees of participating States and others and a special concession is made in favour of the former by requiring them to pay only Rs. 1300/- in place of Rs. 1500/-.

27. Now Sumitra Devi is both a resident of Madhya Bharat and also a nominee of other State and naturally she will be entitled to claim the privilege available to her as a resident of Madhya Bharat. It is not for this State to consider what will be the effect of this on her agreement with the State of Rajasthan.

28. I shall now consider how far I can give effect to an attempt on behalf of the State to limit the meaning of the phrase "bona fide residents of the State of Madhya Bharat" and to construe it in the context of what is styled as the accepted scheme for the allocation of seats to the various participating States.

29. It has further been contended in this behalf on behalf of the Government that the clarification of the Rule framed, by the State in exercise of its executive power is final and conclusive as to its true meaning.

30. As regards the construction it is plain that from the phraseology used both in the Rule (Ex. 6/1) and the purport of it in the calendar that no such limitation can be placed on its construction whatever may be in the mind of the framers of the Rule. The phraseology has reference to classification sought to be made on the ground of Residence in the State and this classification cannot be abridged on any ground based on supposed intention. It is in fact against such an attempt that the guarantee under Article 14 is directed; I might in this connection quote from - Commissioner of Police, Bombay Vs. Gordhandas Bhanji, with advantage:

Public order, publicly made, in exercise of statutory authority cannot be construed in the light of explanation subsequently given by officer (authority) making the order of what he meant or what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

31. This observation was made by the Supreme Court in connection with a case u/s 45, Specific Relief Act. The facts of that case were the Plaintiff therein applied for permission to be a Cinema house in Andheri which formed a (sic) of Greater Bombay. The Commissioner of Police who had powers to grant sanction first refused (sic) later granted permission on the basis of recommendation of the Cinema Advisory Board set by the Government for the purpose. On

representations being made against this by the resident of the locality the Police Commissioner convert the following order to the proprietor of the Cinema House:

I am directed by Government to inform that the permission to erect a Cinema house at the above site granted to you under office letter dated 16-7-1947 is hereby cancelled.

The Commissioner of Police was entitled to (sic)eel the permission granted by him in his right under the executive powers vested in by law. When the matter came for consideration before the High Court an affidavit was give (sic) the Commissioner to show that the order real(sic) above was really the order of the cancel(sic) made by him in his aforesaid right and it is(sic) this connection that the above quoted rem(sic) were made by their Lordships of the Supreme Court.

32. Under Article 162 of the Constitution it is provided that subject to the provisions of the Constitution, the executive power of a State shall (sic) to the matters with respect to which the legislature of the State has power to make laws.

33. Entry No. 11 in the State list refers to (sic)cation. Therefore the State is empowered to decision as to its action in imposing fees as well as carrying it out and also can make such for the purpose as is thought proper and is doing it will be acting lawfully. In this con(sic) it may be useful to refer to certain American (sic)rities dealing with the scope of equal prot(sic) Clause of 14th Amendment. In - "Carter v. (sic) of Texas" 177 US 442 (H) Justice Gray who (sic)vered the opinion of the Court held thus:

The rules of law which must govern this (sic) are clearly established by previous decision this Court.

Whenever by any action of a state, when through its legislature, through its courts through its executive or administrative of all persons of African race are excluded because of their race or colour, from servi(sic) grand jurors in the criminal prosecution person of the African race, the equal pro(sic) of the laws is denied to him, contrary to Fourteenth Amendment of the Constitution the United States. "Strauder v. West Vi(sic) (1880) 100 US 303 (I); - "Neal v. Delaware" 103 US 370 (J); - "Gibson v. Mississippi" 162 US 565 (K).

34. This observation was made in con(sic) with a case where a Negro was convicted State Court of Texas for an offence. The action took objection that his conviction was illegally cause the grand jurors who were empanelled selected by the jury Commissioner in such a (sic)ner as to exclude Negroes or coloured people serving as jutors. The conviction was set on the ground of denial of equal protection. The action of the jury commissioner was an executive act and not legislative.

35. In - Home Telegraph Co. v. City of Los Angiles" (1912) 227 US 278 at p. 288 (L), Chief Justice White says:

Under these circumstances it may not be doubted that there was a state officer, under an assertion of power from the state, is doing an act Which could only be done upon the predicate that there was such power, the inquiry as to the repugnancy of the act to the 14th Amendment cannot be avoided by insisting that there is a (sic) of power.

36. From this it is clear that even an action which is either executive or being an executive it is outside the scope of lawful authority of officer of a state if it is contrary to the 14th Amendment was held by the United States" Courts be within the protection afforded by the said Amendment. From these authorities and the observations of the Supreme Court referred to above is clear that in the first place it is not open in the state to say that the term bona fide residents of Madhya Bharat used in the Rule governing the education should be taken to be correlated to the (sic) of allocation of the seats and should not be taken to be of (sic) import and secondly (sic) even if it be executive or legislative within the competency of the executive body will discriminatory be within, the protection afforded of Article 14 of the Constitution as in that case it and involve an invasion of a fundamental right guaranteed by the Constitution.

37. It is possible that the Government may thereafter change the rule but with that contin(sic) I am not here concerned. I must consider the state of affairs as it exists to-day and to see whether the action of the Government involves (sic)sion of her fundamental right and she has not entitled herself to a high prerogative writ by conduct. Now since the Government want me construe the rule in such a manner as to ex-(sic) a person from an apparent classification made under the rule this cannot but be a discrimination violating the equal protection clause.

38. If a person is entitled to a certain advantage as belonging to a certain group then any (sic)fiable attempt to vary the scope of that(sic) as to exclude that person comes equally with the pervue of equal protection clause. I take attempt of distinction in this case to be un(sic) because the wordings of the resolution even distantly suggest a possibility of such distinction. From the foregoing discussion it is (sic)that Sumitra Devi being a resident of a Madhya Bharat cannot be discriminated against application of the rule which exempted Madhya Bharat students from payment of capitation fees and an attempt at classifying her differently being unjustifiable results in the invasion (sic)right under Article 14.

(sic)it is to be seen whether her conduct two(sic) back when she could not get admission as a Madhya Bharat student in securing admission as (sic) of Rajasthan is such as to disentitle the protection sought for in these proceeded.

39. The State has in this connection filed a copy for application dated 17-6-1950 Ex. 25 sub-(sic) by her to the Rajasthan Government where(sic) says:

Father owns property in Udaipur State and have been residents of that State for the centuries. We own there ancestral pro(sic) and some Jagir also.

She describes her father as resident of Ramduara Chowk of Udaipur State. We

have no material to say that the applicant's father did not own any property and Jagir as alleged and that her father could not be styled as resident within the meaning of the phrase as understood in Rajasthan.

40. Then that application was for securing admission in Sawai Mansingh Medical College with a prayer for Scholarship which ultimately did not materialise. From, the correspondence on record it appears that Sumitra Devi wanted an admission in the Mahatma Gandhi Memorial Medical College in question. Rajasthan Government had certain reserved seats for this College. It therefore permitted her to take advantage of one of these seats which could not be filled by them on her father executing a bond for payment of all college dues and expenses. There is nothing in this conduct as should disentitle her to the protection afforded by the Constitution. Moreover I have held that the discrimination made in this case affects her fundamental right under Article 14, no question of conduct arises.

41. I, therefore, declare that Sumitra Devi is entitled to continue her studies in the College without payment of capitation fees and order that she should not be prevented from doing so on the ground of non-payment of capitation fees.

42. The result is that in Civil Misc. Case No. 20 of 1952 the petition of Rustem E. Mody and Rajendra P. Bhagi is disallowed with costs whereas in Civil Misc. Case No. 18 of 1952 the petition of Sumitra Devi is allowed with costs. Counsel's fee be taxed as Rs. 50/-.

Shinde, C.J.

43. I agree and have nothing to add.