

(1995) 06 GAU CK 0026

In the Gauhati High Court

Case No : Civil Rules No's. 2684 of 1994 and 3852 of 1994

Shri Saikat Mallik

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-06-1995

Acts Referred:

Assam Regional Dental College (Regulation of Admission of under graduate Students)
Rules, 1994 — Rule 3
Constitution of India, 1950 — Article 14, 226

Citation : AIR 1995 Guw 126

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B.K. Sarma and M.K. Choudhury, for the Appellant; G.A., for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—There is a set of Rules called, the Medical Colleges of Assam/ Regional Dental College (Regulation of Admission of Under-graduates Students) Rules, 1994.

2. In pursuance of that Rules, an advertisement was called for admission to the Medical Colleges of Assam that advertisement was appeared in the Assam Tribune on June 11, 1994 and other dailies. Thereafter, an application form was issued by the authority and in page 4 of that application, form, there is a column regarding permanent residential certificate of parents in the State of Assam. That column is quoted below:--

THIS IS TO CERTIFY THAT Shri/Smt.
_____ Father/ Mother of (Name of
parent)Shri/Smt. _____ aged
_____ (Name of applicant)Years has been residing
continuously on a mutated plot of land in his/her name under Dag No.
_____ P.P. No. _____ of Village/Town _____ Holding No.

_____ Ward No. _____ Municipality _____ Village
 _____ Mouza _____ Sub-Division _____
 District _____ since birth (date) _____
 _____ Sig. of Parent. Sig. of
 President/ A.P./ Sig. of Local Circle Officer. Ward Commissioner/ Chairman
 Municipality Name.....Name..... Office Seal Office Seal Sl. No. _____
 _____ Counter
 signed SDO (Civil/Deputy Commissioner Office Seal"

3. A bare reading of that paragraph will show that the requirement is that the parent must be residing continuously on a mutated plot of land in his/her name under Dag No. since birth. It is the legality and validity of this paragraph which is challenged in this writ application.

4. I have heard Shri M. K. Choudhury, learned Advocate for the petitioner and Dr. Todi, learned Advocate for the respondents in both the Civil Rules. No affidavit-in-opposition has been filed on record has been produced. Shri Choudhury, learned Advocate appearing for the petitioner submits as follows:

(i) That the existing clause is violative and against the Preamble to the Constitution and sovereign Socialist Secular Democratic Republic and to secure to all its citizens Justice, Social, Economic and political. This clause is thus unconstitutional being violative of the preamble.

(ii) The impugned clause brings to the existence to two distinct clause of citizens, those having landed property and those not having it. This clause is not maintainable and hit by the Article 14 of the Constitution of India.

(iii) That this clause in the form has been inserted in violation of the Rules framed for admission inasmuch as the Rules do not make any provision for insertion of it. The only provision in Rule 3(b)(i) is as follows :

"His/Her parents must be a permanent resident of the State of Assam as per criteria adopted for the purpose, from time to time, and he/she shall have to furnish a certificate to that effect on the body of the Application Form."

4A. Shri Choudhury further submits that on the basis of this Rule 3(b)(ii), this clause cannot be inserted. He makes that this clause is going to the extreme and even a bona fide assessee person may not have a plot of land in his/her name and this clause quoted above is absolutely without authority of law. There is no necessity to consider that aspect of the matter as this clause is absolutely arbitrary, capricious and whimsical one. It cannot be accepted that a person shall be residing continuously on a mutated plot of land in his or her name since date of birth. That is an impossibility. Shri Choudhury fairly submits that he is not challenging the legality and validity of Rule 3. What is challenged is that in compliance with the Rule 3, this particular clause cannot be inserted in the application form and that clause is beyond the power given by the Rules.

5. Accordingly, that part of the application form shall stand quashed. The

authority may adopt any other necessary form or clause to fulfill the provisions of Rule 3. No doubt it is always true that the authority has the power to adopt the necessary regulatory measures to comply with the provisions of the Act or Rule. In the form of adopting regulatory measure, it cannot have something else which is absurd and oppressive on the face of it.

6. Accordingly, both these writ applications are allowed. In terms of the interim order, the petitioner has been admitted in the College and he is prosecuting his study there. In that view of the matter, the petitioner shall be allowed to prosecute study in the Medical College in accordance with law and Rules.

7. Send a copy of this order to the Secretary, Health and Family Welfare, Govt. of Assam to do the needful to delete the clause and insert appropriate clause in lieu of it.

8. Both the writ applications are accordingly disposed of.