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**(1973) 11 SHI CK 0011**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 30 of 1973**

Shri Triloki Nath

APPELLANT

Vs

The Principal, Medical College etc.

RESPONDENT

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**Date of Decision :** 30-11-1973

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

Hindu Adoptions and Maintenance Act, 1956 — Section 16, 9

**Citation :** (1973) 2 ILR HP 1099

**Hon'ble Judges :** R.S. Pathak, C.J.;C.R. Thakur, J

**Bench :** Division Bench

**Advocate :** Sushil Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.S. Pathak, C.J.—The Petitioner is aggrieved by the refusal of the Himachal Pradesh Medical College, Simla, to admit him to the M.B.B.S. course of studies and he prays for relief under Article 226 of the Constitution.

2. The Petitioner passed the pre-Medical examination from the Punjabi University held in April, 1972. He applied for admission to the Himachal Pradesh Medical College, Simla, in the course of studies leading to the M.B.B.S. degree and commencing in August, 1972. On the basis of the condition of eligibility set out in the Prospectus of the Medical College for the year 1972-73 the Petitioner could be said to have secured 67.66% marks in the pre-Medical examination. The Petitioner was not admitted to the Medical College. It appears that he was not admitted because the Selection Board of the Medical College was not satisfied that he was the son of a permanent resident of Himachal Pradesh. The Petitioner contends that he is entitled to an order quashing the decision of the Selection Board.

3. According to the Prospectus of the Medical College the field of eligibility for admission to the College is limited among other categories, to "children of

permanent residents of Himachal Pradesh". Note 4 to the provisions relating to admission defines who is a permanent resident of Himachal Pradesh.

4. In his application for admission the Petitioner described himself as the son of Shri Rattan Lal. It is his case that while his natural father was Shri Om Parkash he was adopted in the year 1965, when the Petitioner was 10 years of age, by his mother's brother, Shri Rattan Lal, in accordance with Hindu Adoption and Maintenance Act, 1956, and that all the formalities necessary in law for a valid adoption were completed. The Petitioner filed a copy of a registered document executed by Shri Rattan Lal in support of his case that he was the adopted son of Shri Rattan Lal.

5. The Selection Board sought the opinion of the Law Department of the Himachal Pradesh Government, and proceeding on the basis of that opinion it held that the adoption alleged by the Petitioner had not been proved. It does not appear to have been questioned by the Selection Board that Shri Rattan Lal was a permanent resident of Himachal Pradesh within the definition set out in Note 4. They appear to have proceeded entirely on the opinion received from the Law Department. That opinion was conveyed to the Medical College by the Secretary, Health and Family Planning Department, by a letter No. 19-6/71-H&FP(2) dated October 6, 1972. It discloses three reasons for holding that the Petitioner was not eligible for admission. They are (1) the educational certificates furnished by the candidate did not disclose that he was the adopted son of Shri Rattan Lal, (2) the document evidencing adoption filed by the Petitioner revealed that he had been given in adoption by his mother only and as his natural father was alive at that time she was not competent to do so u/s 9 of the Hindu Adoption and Maintenance Act, 1956, and (3) the prescribed form of Descriptive Roll required that the adoption deed in original duly registered in court in the year in which the adoption took place should be furnished and that requirement was not satisfied.

6. From the original record placed before us by the learned Advocate-General, who appears for the Respondents, it appears that the Selection Board proceeded entirely on the basis of the opinion of the Law Department. A further reason has been added in the return filed in this Court, and that is that the Petitioner did not produce a certificate of permanent residence in Himachal Pradesh. So far as that is concerned, it does not appear that the omission to produce such certificate was a ground for denying admission to the Petitioner. Apparently, having reached the conclusion that the Petitioner was not the adopted son of Shri Rattan Lal, the Selection Board considered it unnecessary to go into the further question whether Shri Rattan Lal was in fact a permanent resident of Himachal Pradesh and whether the Petitioner had produced a certificate to that effect. The learned Advocate-General has urged us to take note of the omission to produce that certificate and contends that the Petitioner, therefore, is not entitled to admission. We are here concerned with the validity of the reasons upon which the Selection Board has declined to admit the Petitioner. In a petition under Article 226 of the Constitution brought on the basis that there is an error

apparent on the face of the record, the validity of the impugned order must be examined in the light of the material already on the record. It is not open to the High Court to determine whether the order can be sustained on the basis of material which was not part of the record when the order was made. Accordingly, in my opinion, it would not be proper for us to enter into the question whether the Petitioner did or did not produce a certificate that Shri Rattan Lal was a permanent resident of Himachal Pradesh and, therefore, whether the Petitioner was properly refused admission. We must have regard to the fact that it was open to the Selection Board to permit the Petitioner to produce the certificate even at a later stage, and it could not be said by this Court that the discretion which belonged to the Selection Board in the matter would necessarily have been exercised against the Petitioner.

7. Turning to the reasons set out in the opinion of the Law Department, on the basis of which the Selection Board proceeded, it seems to us that two of the three reasons cannot be sustained.

8. The certified copy of the registered deed, which is contained in the original record, is before us. It recites clearly that the Petitioner was given in adoption by his parents and not by his mother alone.

9. The other consideration that the Petitioner had not filed an adoption deed registered in the year of adoption may be examined now. The prescribed application form declares on page 5 thereof that in a case where the Petitioner had been adopted "the adoption deed in original duly registered in the Court in the year in which the candidate was adopted by the legal guardian will only be valid". The Petitioner says that the requirement is invalid. We are of opinion that the Petitioner is right. There is no law requiring any one to execute and register a deed of adoption when an adoption is effected. The Hindu Adoption and Maintenance Act, 1956, does not require it. All that Section 16 of the Act declares is that if there is a registered deed of adoption the law will presume that all the necessary requirements for a valid adoption have been satisfied. Section 16 is a rule of evidence only. It cannot be construed as a mandatory provision requiring the execution and registration of an adoption deed. Now, in the absence of any mandate in law requiring such a document, it is not possible to say that all cases of adoption must necessarily imply the execution and registration of such a document. And if that is so, it is apparent that it would be unreasonable to insist upon the production of an adoption deed executed and registered in the year of adoption as proof that the Applicant for admission to the Medical College was indeed adopted as alleged by him. It could not have been anticipated in the year 1965 when the Petitioner is said to have been adopted that Himachal Pradesh would have a Medical College in the year 1972, that the Petitioner would apply to that College for admission and that one of the requirements he would be required to fulfil was the production of an adoption deed registered in the year of adoption. The gift of clairvoyance was not granted to the Petitioner or his natural or adoptive parents. It seems to us that the

requirement is wholly unreasonable. Moreover, if the requirement is recognised it would mean that those Applicants in whose case such a document was registered in the year of adoption are by that fortuitous circumstance placed in a position of advantage over those who are not so fortunately situated. We can see no intelligible basis for discriminating between the two classes of Applicants, and on the ground that the requirement contravenes Article 14 of the Constitution it must be held invalid.

10. It would seem, therefore, that two of the three considerations contained in the opinion given by the Law Department are invalid. The learned Advocate-General urges that the third consideration, namely that the educational certificates show the Petitioner as the son of Shri Om Parkash, and not as the son of Shri Rattan Lal, establishes that the adoption pleaded by the Petitioner cannot be relied on. Whether or not the Petitioner was adopted by Shri Rattan Lal is a mixed question of fact and law. It certainly involves the consideration of facts and it is not possible for this Court, in the exercise of its writ jurisdiction, to hold that if the Selection Board had been alive to the circumstance that two out of three considerations relied on by them were invalid they would have proceeded solely on the basis of the third. It is possible to predicate that the Selection Board might have enquired into the matter more closely and perhaps even afforded an opportunity to the Petitioner to prove upon evidence that he was indeed the adopted son of Shri Rattan Lal. It is quite possible that they were influenced by the consideration that there was no registered adoption deed executed in the year of adoption. They could also have been influenced by the opinion of the Law Department that the recital in the deed showed that the Petitioner had been given in adoption by his mother alone and that, therefore, the adoption was invalid. When the reasons contained in the opinion of the Law Department proceeded upon considerations both of fact and law, it is not open to this Court to isolate one of those facts from the rest of the material and hold that the Selection Board would have refused admission solely on the ground of that solitary fact. It must be noted that the decision of the Selection Board proceeded upon a cumulative appreciation of all the reasons contained in the opinion given by the Law Department.

11. In the circumstances, the decision of the Selection Board to refuse admission to the Petitioner must be quashed.

12. It is not possible to grant an order in favour of the Petitioner for the year 1972, for which he had applied. That year is over, and he can be considered now for admission only to the course of studies commencing in 1973.

13. Before concluding, we may note a submission made by the learned Advocate-General that the provisions of the Prospectus have no statutory force and, therefore, the Petitioner cannot maintain this writ petition. We have considered a similar contention in *Kumari Nisha Joshi v. The State of Himachal Pradesh and Anr.* C.W.P. No. 174 of 1972, and for the reasons given in that case we hold that the petition is maintainable here also.

14. The petition is allowed. The Respondents are directed to have the Petitioner's application for admission put up for reconsideration on the basis of the requirements in the Prospectus for 1972-73 and, if upon that the Petitioner is found entitled to admission, to admit him to the M.B.B.S. course of studies commencing in the year 1973. In case the existing strength of seats in the Medical College has already been filled up a seat shall be added for accommodating the Petitioner.

15. The Petitioner is entitled to his costs, which I assess at Rs. 150/-.

C.R. Thakur J.

16. I agree.