
(1998) 05 GAU CK 0034
In the Gauhati High Court
Case No : Writ Appeal No. 535 of 1996

State of Nagaland

APPELLANT

Vs

Ms. Neilatuou Suokhrie

RESPONDENT

Date of Decision : 13-05-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(2), 16(4), 335

Citation : (1998) 2 GLT 112

Hon'ble Judges : V.D. Gyani, Acting C.J.; N.S. Singh, J

Bench : Division Bench

Advocate : D.K. Misra and N. Sinha, for the Appellant; B.K. Sharma, for the Respondent

Judgement

V.D. Gyani, Actg. C.J.

1. This writ appeal preferred by the State of Nagaland arises out of judgment dated 17.9.96 passed by a learned Single Judge of this Court in Civil Rule No. 96(K) of 1996, thereby holding Rule 5.2 of the Nagaland Technical/Professional Degree Courses (Selection of Candidates) Rules, 1995 (for short the Rules), providing for order of preference for nomination of candidates "as in clear violation of the law settled by the Apex Court" and quashing the same.

2. Mr. Mishra, learned Counsel appearing for the Appellant State, clarifying the State-stand, submitted that since a question of principle is involved, the State is keen to have an authoritative pronouncement on the point of the validity of Rule 5-2 of the Rules. It is not so much the individual who is otherwise benefited by the order, as compared to those many more sons of the soil, who as a result of quashing of the said Rule 5-2 are likely to be adversely affected by such quashment.

3. We propose to first deal with this point as raised by the learned Counsel, as indeed it is this thematic point by which, the Appellant State is aggrieved and indeed is the main thrust of the Mishra's argument.

4. The writ Petitioner Respondent is naturally interested in her own case. Her father Rev. Haizotuo Angami is originally from Sri Nagar and in July, 1956 Petitioner's father settled in Kohima and in 1958 he became a member of Kohima village by paying Rs. 5/- as registration fee. In the same year he was converted to Christianity and got his baptism from Kohima village Baptist Church by Late Rev. Kevizelie. Writ Petitioner's father was formally adopted by Late Thepfurielie of Kohima village, L. Khel in the year 1962. Having become a member of Kohima village, his name was changed to Haizotuo Angami from S.L. Munshi and since then the name of Haizotuo Angami has been used for all purposes. After the adoption writ Petitioner's father has completed severed his ties with the family of his origin in Kashmir and becomes the son of the adopter Thepfurielie as per Angami custom. It was also stated that Petitioner's father had served as a teacher in Kohima Govt. Higher School had also served as Head Assistant, Kohima C.D. Block, was also a U.D. Assistant in Maleria Department and had also got elected as General Secretary of the then Naga Hills Tuensang Area (NATA) Govt. Employees' Union in 1962. In the year 1966 Petitioner's father was married to Mrs. Keduolhovin, Petitioner's mother, of L. Khel and they have nine children. One of the Petitioner's brother viz. Keviklolie Suikhrie was allotted a seat to undergo B.Sc. Agri from Nagaland quota as a bona fide local and now after completing the course is in service. Petitioner and another of his brother is receiving Govt. Scholarships as a local students for pursuing their studies.

5. The writ Petitioner approached this Court, challenging Rule 5 of the Rules and her placement in Group-B of the said Rule, and the Cabinet decision of not allotting M.B.B.S. seat, to children of Non-Naga father, and also praying for fixation of quota for various groups or categories of candidates and holding of fresh entrance test or examination after fixation of quota. She also prayed for direction to consider her candidature as a local hailing from Nagaland. As for Petitioner's educational qualification she completed her Pre-University course from Kohima Science College in 1995 securing 1st Division and was placed in 33rd position in the merit list. Thereafter the Petitioner applied to undergo Technical Degree Course for the Sessions 1995-96 from Nagaland quota. In her application for such technical course the first preference was given to MBBS Course, second preference to BDS and third preference to B.Sc. Nursing courses. The Joint Entrance Examination for that purpose was held in June, 1995 and the Petitioner was placed in serial No. 33 in the select list prepared according to merit.

6. Having set forth the factual background, let us now examine Rule 5-2 which reads as follows:

5.2 For the purpose of nomination of candidates the order of preference shall be as under:

Group-A - Local candidates hailing from the State of Nagaland.

Group-B - Indigenous non-Naga local residents (Nepalies/Our Khas settled in the erstwhile Naga Hills District prior to 31st December 1940) declared vide Home Department (P and AR) No. GAB-8/2/73 as published in the Nagaland Gazette Part-II dated 31.12.1975 ;

Group-C - Children of Nagaland State Government Servants. (Not covered under Group A and B).

Group-D - Children of Central Government servants working in Nagaland for a period of not less than 2 (two) calendar years/All India Services of Nagaland Cadre.

Group-E - Others (Not covered by Group A to D above).

7. There lies a basic fallacy, of approach to the Rules. The learned Judge having referred to and quoted from paragraph 121(6)(a)(b) and (c), of Indira Sawhney's Case (AIR 1993 SC 477) which deals with extent of reservation under Article 16(4) of the Constitution, in the matter of public employment, has held Rule 5-2 of the Rules as unconstitutional. On a cursory reading of Rule 5-2 (see paragraph 6 of the impugned judgment) solely on the ground that it does not indicate the percentage of seats reserved in each category. The conclusion reached by the learned Judge is rather hasty and based on total misreading of the Rule as such the Rule (5-2) does not either provide for or create any category, nor speaks of any reservation. All that it professes to deal with is the order of preference in the matter of nomination of candidates for admission to Technical and Professional courses, subject of course to fulfilment conditions as spelt out by other provisions of the Rules.

8. There is no Medical or Engineering College in the State of Nagaland, which is still in its developmental stage. The State has been allotted certain number of seats in other professional colleges, in the Country. Who should be nominated. What should be the criteria for nomination? For admission to professional college either engineering or medical, we are concerned with admission to medical college. Applying Indira Swahney's case which primarily relates to prospective discrimination, in the matter of public employment, to a case which relates to medical college admission is rather inept. It is true that non-arbitrariness is a part of Article 16 of the Constitution, which is an extension of Article 14, which guarantees equality before law to all persons, and Article 16(2) protects citizens against discrimination while 16(4) is not an exception but gives a permissible basis to the State for making provisions for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. The main object of Article 16 is to create a Constitutional right to equality of opportunity and employment in public services under the State Indira Swahney deals with this aspect of the matter with particular reference to Article 16(4) of the Constitution. Article 14 is to be understood in the light of directive principles as pointed out in Indira Sawhney (Supra).

9. What we are primarily concerned with is Article 14 in relation to Rules of admission to professional colleges. It remains to be seen whether Rule 5-2 in the matter of nomination which prescribes the order, of preference, offends Article 14?

10. Rule 5-2 as it stands provide for preference based on residence or domicile. The Supreme Court has upheld this preference in *Anant Madaan and others Vs. State of Haryana and others*, The sons of the soil shall be given first preference, in the matter of nomination of candidates to professional colleges. This exercise of preference is subject to passing of entrance examination and on fulfilment of other conditions of eligibility as contained in Rule 4. The procedure for selection is provided under Rule 5. Rule 5-1 reads as follows:

5.1 The selection of candidates for nomination against the available seats shall be made by the STATE COMMON SELECTION BOARD on the basis of the Merit List prepared by the Board of Joint Entrance Examination subject to the admission criteria laid down by the Institution to which the candidate is nominated.

11. It would be seen from the above that selection of candidates for nomination, is based on merit list, to be prepared by the Board of Joint Entrance Examination. This selection is further subject to Rules on criteria laid down by the Institution, to which the candidates is nominated.

12. A preference to a local candidate based on merit list, further subject to Rules of the institution concerned cannot be said to be arbitrary. It should also not be lost sight of, that it is in relation to nomination of candidates for admission to professional courses. It is not as if the State is interfering with the rights of those who have been selected on the basis of an All India Entrance Test, which is now in vogue. Those who pass through the All India Entrance Test, and claim admission on the basis of their position or placement in the merit list, are not at all affected by the Rule 5-2. The question of giving preference in the matter of nomination crops up only when someone approaches the State Government for his or her nomination and in that case if the State used preference to one who is a local candidate hailing from the State of Nagaland. The rule cannot be faulted with on any legitimate ground or alleged discrimination or arbitrariness.

13. Article 14 vis-a-vis admission to medical Course along with *Indira Sawhney's* case came to be considered in *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, wherein the Apex Court explaining *Indira Sawhney's* case so heavily relied upon by the learned Single Judge held as follows:

It may be noticed that the observations were made with respect to Article 16(4) which provision was held qualified by Articles 335 which requires that while taking into consideration the claims of the Scheduled Castes and Scheduled Tribes the State shall keep in mind the requirement of maintenance of efficiency of administration. The said consideration was held relevant even while providing for reservation in favour of other backward classes. While making the above

observations, the Court was speaking of posts in research and development organisations, in specialities. Moreover, MS or MD are not super-specialities in any event, this Court did not say that they were not permissible ; the Government was asked to consider the advisability of providing for reservations in those posts having regard to the nature and level of those posts.

14. The approach of the learned Single Judge appears to be based on an assumption that Rule 5-2 is anti-meritarian, but this is not correct if read along with Rule 5 and 5(i) of the Rules.

15. Rule 4 laid down the conditions of eligibility and Rule 5-1 provides for a merit list to be prepared by the State Common Selection Board of Joint Entrance Examination. Both these Rules are quoted below:

4. Eligibility:

A candidate shall be eligible to appear in the Entrance Examination provided

(a) The candidate has passed/appeared the H.S. (10+2) P.U. or equivalent examinations from any Board/University recognised by the Government of India with the subjects in which he/she desires to appear at the Joint Entrance Examination.

(b) The candidate is within the age group of 17 to 22 years on the 31st March of the Nomination year (upper age relaxable 3 years for SC/ST).

(c) The candidate is physically and mentally sound to undergo the course of study.

(d) The candidate bears a good moral character.

(e) Those candidates who were selected earlier and undergoing Technical/Allied courses shall not be eligible to appear the Entrance Examination, nor shall they be eligible for consideration of selection.

5.1 The selection of candidates for nomination against the available seats shall be made by the State Common Selection Board on the basis of the Merit List prepared by the Board of Joint Entrance Examination subject to the admission criteria laid down by the Institution to which the candidate is nominated.

16. In order to consider the question as to the reasonableness of the preferential order as laid down under Rule 5-2, it is necessary to take into account the objective the Rule seeks to achieve. As rightly argued by the learned Counsel for the Appellant State there is dearth of qualified and trained Doctors in the State. There is no local college to cater to the needs of the Tribal community spread over the State. It is imperative that more and more local talent is encouraged. It does not in any manner interfere with as already pointed out above those candidates selected on the basis of merit who do not seek nomination for admission from the State Government. It is only when someone approaches for nomination that the Rule comes into play and there is a rational behind the

preferential order of nomination in giving priority to local candidates over those non-Nagas serving in the State along with Nagaland State Government servants and Central Government servants having served in the State for a specified period. It cannot be said by my stretch of logic that preferential order of nomination as contained in Rule 5(2) is totally irrelevant to the object the Rule seeks to achieve. There is a definite nexus behind the object sought to be achieved and the preference as given in Rule 5(2). The Supreme Court in *Sanjay Ahlawar v. Maharshi Dayananda University* (1995) 2 SCC 762 while dealing with weightage of 10 extra marks to graduates to only existing medical college in the State of Haryana, namely, Rohtak Medical College so as to make their services available to the State in view of dearth of qualified medical personnel and medicare facilities in the State, has held that the weightage given to the local talents is not violative of Article 14 of the Constitution. The Cabinet decision dated 18.9.95, Annexure-H as quoted by the learned single judge in the impugned judgment *ex facie* suffers from inherent infirmity of non-compliance of Article 16 of the Constitution. But keeping it aside for a while even this decision can only be prospective in its operation and application, it can only apply to Entrance Examination to be held by State Common Selection Board, subsequent to the Cabinet decision, it cannot be given retrospective effect. The law on the point is well settled. The Privy Council as back as 1905 in *Colonia Sugar Refining Co. v. Irving* (1905) AC 369 (PC) wherein Lord Macnaghten observed:

To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right, is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.

The same has been followed by the Supreme Court in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, laying down the principle:

The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.

17. In view of the foregoing discussion, the conclusion, arrived at by the learned single judge that the Rule 5.2 is unconstitutional cannot be subscribed to, and sustained in law, it is liable to be quashed and accordingly quashed. The appeal stands allowed to the extent as indicated above.

18. Mr. Sharma, learned Counsel appearing for the Respondents referring to the Customary Laws and Practices of the Angami Nagas of Nagaland as prepared under the auspices of the Law Research Institute, Eastern Region, of this Court submitted that adoption is a recognised Institution among the Angamis and is

frequent in practice. It is not a case where the Respondents were adopted for the purpose of seeking admission to Medical Course. As already noted above, it was her father who was adopted by late Thepfurielie of Kohima village as back as in the year 1962. He became a member of Kohima Village, his name was changed to Haizotuo Angami and since then he is living as an Angami Naga having completely severed his ties with the family of his origin in Kashmir and became the son of the adopter Thepfurielie. He served as a teacher in Kohima Govt. H.S. School. He was also the General Secretary of the Naga Hills Tuensang Area, he was married to a Naga lady Ms. Keduolhovin, the writ Petitioner-Respondent's mother of L. Khel and nine children were born. One of her brothers was allotted a seat to undergo B.Sc. Agriculture Course from the Nagaland quota as a bonafide local and after successful completion of the course he is in Nagaland State Government Service. Her other brothers are receiving Government Scholarships for prosecution of higher studies. As already noted above, the writ Petitioner-Respondents completed her P.U. course from Kohima Science College securing First Division and placed in 3rd position in order of merit. She applied for being nominated to professional course in Medicine, her first preference is MBBS, 2nd preference was EDS and third preference was B.Sc. Nursing course. The Joint Entrance Examination under Rule 5.1 was held in June 1995 and she was placed in S1. No. 33 in the select list prepared by the Board. Now it cannot by any stretch of imagination be said that way back in 1962 her father was adopted solely with a view to pave way the writ Petitioner's admission to MBBS Course. She has born and brought up as Naga child and going through the Chapter on adoption, as contained in above Study there remains tip doubt that she falls in Group A of Rule 5-2 of the Rules. She is therefore, entitled for consideration of her case as a local candidate belonging to Group A for being nominated to the professional course, namely MBBS. Her petition and prayer deserve to be allowed, it is accordingly allowed. The Respondents are directed to consider her case for being nominated to the MBBS Course, as a candidate falling within the purview of Rule 5-2 of the Rules without any further loss of time. The appeal preferred by the State is allowed to the extent already indicated above and subject to the direction as made above. There shall be no order as to costs.