Ahmedabad Municipal Corporation And ... vs Nilaybhai R. Thakore And Another on 13 October, 1999

Bench: N. Santosh Hegde, V.N. Khare

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           CASE NO.:
Appeal (civil)  5989 of 1999

PETITIONER:
Ahmedabad Municipal Corporation and Another

RESPONDENT:
Nilaybhai R. Thakore and Another

DATE OF JUDGMENT: 13/10/1999

BENCH:
N. Santosh Hegde & V.N. Khare

JUDGMENT:
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JUDGMENT 1999 Supp(3) SCR 647 The Judgment was delivered by SANTOSH HEGDE, J.

SANTOSH HEGDE, J. -

Leave granted

2. Heard learned counsel for the parties

3. Before the High Court of Gujarat, the respondents herein challenged the constitutional validity of Rule 6(i) and Rule 7 of the Rules for Admission to Smt. N. H. L. Municipal Medical College on the ground that the said rules which define "the local students" are unreasonable, illegal, illogical, irrational and violative of Articles 14 and 15 of the Constitution of India. They further prayed for a writ of mandamus or a writ in the like nature directing the respondents to consider the case of the students who are residing in the limits of the Ahmedabad Municipal Corporation and who have passed the qualifying examination from the school(s) situated within the limits of the Ahmedabad Urban Development Area (hereinafter referred to as "AUDA") for admission in the Medical College referred to above as local students. The cause for filing the said writ petition was that Rules 6 and 7 of the said rules prevented the students who are residents of Ahmedabad city but who had acquired their qualification for admission from the educational institutions situated within AUDA from being treated as "local students"

4. The respondents in their counter-affidavit in the writ petition had contended that the Medical College in question was managed and administered by the Ahmedabad Municipal Corporation and was also financed from the municipal funds. Therefore, it was competent for the Municipal Corporation to define the source of admission in respect of the College administered and managed

by it. It contended that in view of the law laid down by this Court in numerous judgments, it had made provisions for admission to 15% of the seats available in the said colleges to be reserved for all-India candidates. The rule confining admission to the students who have studied in educational institutions within the Ahmedabad Municipal Corporation was a reasonable rule inasmuch as the Municipal Corporation which manages the Medical College was responsible for providing medical education to the said students

5. The High Court of Gujarat vide its judgment dated 12-5-1999 allowed the said writ petition following the judgments of this Court in the cases of Mohan Bir Singh Chawla v. Punjab University (1997 (2) SCC 171), P. Rajendran v. State of Madras 1968 AIR(SC) 1012), Pradeep Jain (Dr) v. Union of India (1984 (3) SCC 654 : 1984 (3) SCR 942) and two other judgments of its own Court holding that the object of the admission rules is to secure the best available students and the classification on the basis of the students having passed their SSC/New SSC Examination and the qualifying examination from the institutions within the local limits of Ahmedabad has no reasonable nexus with the object sought to be achieved by the admission rules for selecting the best candidates for admission to the Medical College. Such a classification on the basis of attending the school or college within and outside the corporation limits is not a reasonable classification in the context of admission to the Medical College. It further held that the classification is not on the basis of residence nor in respect of students of a particular university, therefore, distinguishing the judgments of this Court in Sanjay Ahlawat v. Maharishi Dayanand University (1995 (2) SCC 762) and Jagadish Saran (Dr) v. Union of India (1980 (2) SCC 768) held the impugned rules as being violative of Article 14 of the Constitution of India and, accordingly, struck down the same

6. It is argued before us by Mr. K. N. Raval, learned Additional Solicitor General on behalf of the appellants that the Medical College in question was established and is being managed by the Ahmedabad Municipal Corporation from out of its own funds and the rules in question were framed nearly three decades ago and in consonance with the directions issued by this Court, in the case of Dr Pradeep Jain (1984 (3) SCC 654 : 1984 (3) SCR

942) 15% of the seats have already been reserved for all-India candidates. Therefore, having made such reservation, it is open to the Municipal Corporation under the powers vested in it under Section 66(21) of the Bombay Provincial Municipal Corporations Act, 1949 to frame the impugned rules which is done to fulfil its obligations towards the students who have studied in the educational institutions situated in the Ahmedabad Municipal Corporation limits

7. Mr. P. H. Parekh, learned counsel representing the respondents per contra argued that the rules have made an artificial distinction based on the institution in which the students have studied which classification being arbitrary is opposed to Article 14 of the Constitution of India. Hence the High Court was justified in declaring the impugned rules as ultra vires the Constitution

8. So far as the constitutionality of various rules pertaining to admissions to undergraduate courses in educational institutions is concerned, it is now well settled in view of a large number of judgments of this Court in D. P. Joshi v. State of M.B. 1955 AIR(SC) 334 : 1955 (1) SCR 1215), D. N. Chanchala v. State of Mysore (1971 (2) SCC 293 : 1971 Supp SCR 608, Jagadish Saran (1980 (2) SCC 768) and

Dr. Pradeep Jain (1984 (3) SCC 654 : 1984 (3) SCR 942) wherein it is held that so far as undergraduate courses are concerned, the reservations based on domicile, university or institution are permissible provided the said reservations are not wholesale

9. With regard to postgraduate and superspecialities, this Court has prohibited any reservation whatsoever as in the cases of State of Rajasthan v. Dr. Ashok Kumar Gupta (1989 (1) SCC 93), Dinesh Kumar (Dr) v. Motilal Nehru Medical College 1986 (3) SCC 727 : 1986 (3) SCR 345), Municipal Corpn. of Greater Bombay v. Thukral Anjali Deokumar 1989 (2) SCC 249), P. K. Goel v. U.P. Medical Council (1992 (3) SCC 232) and Gujarat University v. Rajiv Gopinath Bhatt (1996 (4) SCC 60)

10. But the question in this case is slightly different from the law laid down in the above-cited cases. Under Rule 7 of the impugned rules, "a local student" is defined as a student who has passed SSC/New SSC Examination and the qualifying examination from any of the high schools or colleges situated within the Ahmedabad municipal limits. As per this rule, it is only those students who qualify from educational institutions situated within the municipal limits who will be eligible to be treated as local students. While the permanent resident students of Ahmedabad city who for fortuitous reasons, as stated above, happen to acquire qualification from educational institutions situated just outside the municipal limits, namely, AUDA, will not be eligible for being treated as local students. The object of the rule is to provide medical education to the students of Ahmedabad who have acquired the necessary qualification, their selection being based on merit. If that be the object, can it be said that a classification based only on the location of the educational institution within or outside the municipal area is a reasonable classification ? In our opinion, the answer should be in the negative. In the counter-affidavit filed on behalf of the Ahmedabad Municipality in the writ petition, it is stated that the Medical College in question was established to cater to the needs of the students of Ahmedabad city. If that be the object, in our opinion, the same would be defeated by restricting the definition of "local student" to those students who have acquired their qualification from institutions situated within the Ahmedabad municipal area, because as has happened in this case, the actual resident students of the Municipality whose parents would have contributed towards the revenue of the Ahmedabad Municipality who for reasons beyond their control or otherwise, had acquired their qualification from institutions situated just outside the Ahmedabad municipal area i.e. within AUDA, would be denied the benefit of admission to the College which is run by the Ahmedabad Municipality. In our opinion, confining the definition of "local student" to only those students who acquired the qualification from educational institutions situated within the local area creates an artificial distinction from amongst the students who are residents of Ahmedabad city and those who may not be the residents of Ahmedabad city but who have studied in educational institutions situated in the Ahmedabad Municipal Corporation limits. We do not find any nexus in this type of classification with the object to be achieved. Let us test the logic of this rule with reference to a permanent resident of Ahmedabad who resides within the Ahmedabad municipal limits but is employed within AUDA. Can the Municipality refuse the benefit of its services to such a resident of the city only on the ground that he is employed in AUDA ? The answer again can only be NO. Similarly, if the object of the rule is to provide medical education to the students of Ahmedabad because of its municipal obligations then a differentia within the class of students of Ahmedabad on the basis of their acquiring qualifications from schools within the

Ahmedabad municipal limits or within the limits of AUDA would be arbitrary and violative of Article 14

11. By this conclusion of ours we do not mean that a student who claims to be an original resident of Ahmedabad studying anywhere in the State of Gujarat or outside can claim the benefit of a "local student" because that case does not fall within the classification discussed by us hereinabove

12. Therefore, we are of the opinion that the High Court was justified in coming to the conclusion that the classification made under Rule 7 of the impugned rules amounts to an arbitrary classification, hence, cannot be sustained in law

13. Though the High Court was right in coming to the conclusion that the rule in question does suffer from an element of arbitrariness, we are of the opinion that the remedy does not lie in striking down the impugned rules the existence of which is necessary in the larger interest of the institution as well as the populace of the Ahmedabad Municipal Corporation. The striking down of the rule would mean opening the doors of the institution for admission to all the eligible candidates in the country which would definitely be opposed to the very object of the establishment of the institution by a local body. It is very rarely that a local body considers it as its duty to provide higher and professional education. In this case, the Municipality of Ahmedabad should be complimented for providing medical education to its resident students for the last 30 years or more. It has complied with its constitutional obligation by providing 15% of the seats available to all-India merit students. Its desire to provide as many seats as possible to its students is a natural and genuine desire emanating from its municipal obligations which deserves to be upheld to the extent possible. Therefore, with a view to protect the laudable object of the Municipality, we deem it necessary to give the impugned rule a reasonable and practical interpretation and uphold its validity

14. Before proceeding to interpret Rule 7 in the manner which we think is the correct interpretation, we have to bear in mind that it is not the jurisdiction of the court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the rule in question is only a subordinate legislation and by declaring the rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipality had enacted this rule. We, therefore, think it appropriate to rely upon the famous and oft-quoted principle relied on by Lord Denning in the case of Seaford Court Estates Ltd. v. Asher ([1949] 2 K.B. 481 (CA)) wherein he held "[W]hen a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, ... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

This statement of law made by Lord Denning has been consistently followed by this Court starting in the case of M. Pentiah v. Muddala Veeramallappa 1961 AIR(SC) 1107) and followed as recently as in the case of S. Gopal Reddy v. State of A.P. (1996 (4) SCC 596, 608 : 1996 SCC(Cri) 792 : 1996

AIR(SC) 2184, 2188) (SCC at 608 : AIR at p. 2188). Thus, following the above rule of interpretation and with a view to iron out the creases in the impugned rule which offends Article 14, we interpret Rule 7 as follows "Local student means a student who has passed HSC (sic SSC)/New SSC Examination and the qualifying examination from any of the high schools or colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of the Ahmedabad Municipality who acquires the above qualifications from any of the high schools or colleges situated within the Ahmedabad Urban Development Area."

15. For the reasons stated above, this appeal is allowed, setting aside the judgment and order of the High Court of Gujarat in SCA No. 3360 of 1999, the validity of Rule 6 is upheld as it stands and the validity of Rule 7 is upheld as interpreted hereinabove