Kumari N. Vasundara vs State Of Mysore & Anr on 15 April, 1971

Equivalent citations: 1971 AIR 1439, 1971 SCR 381, AIR 1971 SUPREME COURT 1439

Author: I.D. Dua

Bench: I.D. Dua, J.M. Shelat

PETITIONER:
KUMARI N. VASUNDARA

Vs.

RESPONDENT:
STATE OF MYSORE & ANR.

DATE OF JUDGMENT15/04/1971

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
SHELAT, J.M.
BHARGAVA, VISHISHTHA

CITATION:
1971 AIR 1439 1971 SCR 381
CITATOR INFO :
R 1984 SC1420 (8,16,19)

ACT:
Constitution of India, Art. 14-Equality-Rules for selection of candidates to Pre-Professional course in the Government Medical Colleges in the State of Mysore framed in 1970-Admission based on domicile arid residence for not less than 10 years prior to application-Reasonableness.

HEADNOTE:
Rule 3 of the rules for selection of candidates for admission to the pre-professional course leading to M.B.B.S. in the Government Medical Colleges in the State of Mysore provided that "no person who is not a citizen of India and who is not domiciled and resident in the State of Mysore for not less than ten years at any time prior to the date of the application for a seat, shall be eligible to apply".
The petitioner's application for admission was rejected on

the ground that she had not resided in the State for a period of ten years as required by r. 3. She challenged the constitutional validity of r. 3 on the ground of violation of right to equality guaranteed by Art. 14 of the Constitution. It was contended that the impugned rule, by imposing the condition of residence in addition to the condition of being domiciled in the State created an artificial classification which suffered from, unconstitutional discrimination. In support of the validity of the rule it was urged that by the rule the State only attempted to select those students who were more likely to serve as doctors in the State and it was for the State to determine the sources from which to select candidates.

Dismissing the petition,

HELD:The word "domicile" in r. 3 is used to convey the idea of intention to reside or remain in the State of Mysore. If classification based on residence does not impinge upon the principle of equality, as held by this Court in D. P. Joshi v. State of Madhya Bharat, then the further condition of residence in the State for at least ten years would also be equally valid unless it is shown that selection of the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia. The object of framing the impugned rule is to impart medical education to the best talent available, out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors the inhabitants of the State. The State has to formulate with reasonable foresight a just scheme of classification for imparting medical education to the available candidates which would serve the object and purpose of providing broad---based medical aid to the people of the State and to provide medical education to those who are best suited for such education. Prover classification inspired by this consideration and selection on merit from such classified groups, therefore, cannot be challenged on the ground of inequality violating Art. 14. The petitioner has not shown that they impugned rule suffer from the vice of unreasonableness. [388 D-389 C]

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There is likelihood of some casts of hardships under the impugned rule. But cases of hardships are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This would not render the rule unconsti-tutional. [389 E]

D.p. Joshi v. The State of Madhya Bharat and Anr., [1955] 1 S.C.R. 1215, relied on.

Chitra Ghosh & Anr. v. Union of India and Ors., [1970] 1 S.C.R. 413 and Minor P. Rajendran v. State of Madras & Ors., [1968] 2 S.C.R. 786, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 606 of 1970. Petition under Art. 32 of the Constitution of India for en- forcement of fundamental rights.

R. B. Datar, for the petitioner.

Niren De, Attorney-General and S. P. Nayar, for the respon- dents.

The Judgment of the Court was delivered by Dua, J.-The only question raised in this writ petition under Art. 32 of the Constitution relates to the constitutional validity of r. 3 of the Rules for Selection of candidates for admission to the Pre-Professional/B.Sc. Part 1 Course leading to M.B.B.S. in the Government Medical Colleges and for certain seats in the private Medical Colleges in the State of Mysore framed by that State on July 4, 1970 (hereinafter called "the Selection Rules"). The petitioner Kumari N. Vasundara claims to have passed the Pre-University Examination of the Bangalore University with physics, chemistry and biology as optional subjects securing 78% marks in these subjects. She applied for admission to the Pre-Professional Course leading to the M.B.B.S. in the Government Medical Colleges, but the Selection Committee, after interviewing her on September 14, 1970, rejected her application on the ground that she bad not resided in the State of Mysore for a period of ten years prior to the date of her application as required by r. 3 of the Selection Rules. It is not disputed that but for the condition requiring residence in Mysore State for a period of ten years prior to the date of her application she was otherwise eligible for admission under the Selection Rules in another respects. Rule 3 reads as under:

> domiciled and resident in the,State of Mysore for not less than ten years at any, time prior to the date of the application for a seat, shall be eligible to apply Provided that this provision shall not apply
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> (a) in the case of persons applying for seats referred to in clauses (a), (b) (c) (d) and
>
> (e) of sub-rule (1) of rule 4, (b) in the case of children of Central Government employees.

serving on duty in the State on the date of making the application and (c) in the case of children of Mysore Government employees including children of members of all India Services borne on the Mysore State Cadre who-

(i)are serving or have, served outside the State of Mysore on deputation during the relevant period, and

(ii)are in the service of the State on the date of making the application or have retired from service not more than four years prior to the date of making the application."

Shri Datar, the learned counsel for the petitioner, challenged the constitutional validity of r. 3 on two grounds. The first challenge is founded on the ground of violation of the right to equality guaranteed by Art. 14 of the Constitution. According to his argument the impugned rule has, by imposing the condition of residence for a minimum period of ten years in the State of Mysore in addition to the condition of being domiciled in that State, created an artificial classification which suffers from unconstitutional discrimination, between the Indian citizens domiciled in the State of Mysore who have resided there for ten years or more and those who have resided there for less than ten' years. The period of ten years of residence selected in this rule is not only arbitrary but is highly unreasonable, based on no rational or intelligible principle, said the counsel. Its unreasonableness was illustrated by submitting that students normally pass the Pre-University Examination at the age of 16 or 17 years. To expect such students to have resided in the State of Mysore for ten years in order to, be eligible for admission to the Pre-Professional/B.Sc. Part 1 Course leading to M.B.B.S. would mean that the children of those Indian citizens having their domicile in the State of Mysore who happen, for compelling reasons, to reside in other States in the Indian Union before their children have completed ten years of residence in the State of Mysore would be deprived of the opportunity of having medical education in their own State of domicile. This argument was elaborated by submitting that if all other States in the Union were also to frame similar rules insisting on residence for ten or more years then the children of' those citizens, who are compelled by the necessity of earning their livelihood, to shift their residence from one State to another at short intervals, without completing ten years of residence in any one State, would never be able to get admission in any State. Fixing a period of ten years of residence in the State' according to Mr. Datar, is arbitrary and fanciful having no rational relationship or nexus with the object or purpose of framing the rules, namely, of selecting the best talent or the most meritorious students for admission to the Medical Colleges. The Attorney-General on behalf of the respondents sub that by the impugned rule the State Ms attempted to select those students who are more likely to serve as doctors in the State after they pass out. In this connection our attentions was drawn to the counter-affidavit filed by the State. The Attorney-General further contended that it was for the-State to determine the sources from which to select candidate and the selection so made deserves to be, upheld. in support of the validity of the rule he drew our attention to the decision of this Court in Chitra Ghosh & Another v. `Union of India and Others(1) and to a decision of the Mysore High Court in K. Shivashankar v. University of Mysore & Others(2).

This Court in Minor P. Rajendran v. State of Madras & Ors.(3) while dealing with the rules made by the State of Madras for the selection of candidates for admission to the First Year integrated M.B.B.S. course, struck down, as violative of Art. 14, the rule which allocated seats on district-wise basis. A bench of five judges observed in that case:

> "The question whether district-wise allocation is violative of Art. 14 will depend on what is the object to be achieved in the matter of admission to medical colleges. Considering the fact that there is a larger number of can- didates than seats available selection has got to be made. The object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object. of selection must

be to secure the best (1) [1970] 1 S. C. R. 413. (2) [1970] 1 Mys.L.J. 475.

(3)[1968] 2 S. C. R. 786.

possible talent from the two sources. If that is the object it must necessary follow that that object would be defeated if seats are allocated district by district. it cannot be and has not been denied that the object of selection is to secure the WA possible, talent from .the two sources so that the country may have the "best possible doctors". If that is the object, the argument on behalf of the petitioners/appellant is that that object cannot possibly be served by allocating seats district wise' It is true that Art. 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Therefore, as the, object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional colleges, the allocation of seats districtwise, hat no reasonable relation with the object to be achieved. If anything, such allocation will result in many cases in the object being destroyed, and if that is so, the classification. even if reasonable, would result in discrimination, inasmuch as better qualified candidates from one district may be X X rejected while less qualified candidates from other districts may be admitted from either of the two sources.

The argument that candidates coming from various districts would settle down in those districts to serve the people there was not accepted, because there was no material on the record giving facts and figures suggesting that candidates from a particular district would generally settle down in that district. It was not even so stated in the affidavit filed on behalf of the State of Mysore, in that case. The Court, however, took care to clarify the legal, position by adding:

> "We may add that we do not mean to say that territorial classification is always bad under all circumstances. But there is no doubt that district-wise classification which is being justified on a territorial basis in these cases is violative of Art. 14, for no justification worth the name in support of the classification has been made out."

In Chitra Ghosh's case (1) this Court said:

> "TThe main purpose of admission to a medical college is to impart education in the theory and practice of me--
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> (1) [1970] 1 S. C. R. 413.

25-1 S.C. India/71 dicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In Minor P. Rajendran v. State of Madras-(1968) 2 S.C.R. 786it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that

such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose"

> The decision in Minor P. Rajendran's case C) was distinguished on the ground that in that case the classification made district wise had been considered to possess no reasonable relation with the object sought to be achieved. It was also observed in Chitra Ghosh's case (2). "It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification."

According to this observation which merely re-affirms the settled law, if the sources are properly classified on reasonable basis, then courts are not expected to interfere with the manner and method of making the classification. Reasonable basis of course must mean that the basis is not arbitrary or fanciful, but bears a just, rational and intelligible relation with the object sought to be achieved by the classification.

(1) [1968] 2 S.C.R. 786.

(2) [1970] 1 S.C.R. 413.

in D. P. Joshi v. The State of Madhya Bharat and Another this Court had while upholding by majority the rules, made by the State of Madhya Bharat, for admission to the Mahatma Gandhi Memorial Medical College, Indore, charging capitation fee from non-Madhya Bharat students laid down that in those ,rules the word "domicile" was used in its popular sense conveying the idea of residence. Venkatarama Ayyar, J., speaking for the majority said:

> "It was also urged on behalf of the respondent that the word "domicile" in the rule might be. construed not in its technical legal sense, but in a popular sense as meaning "residence and the following passage in Wharton's Law Lexicon, 14th Edition, page 344 was quoted as supporting such a construction:
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> "By the term 'domicile', in its ordinary acceptation, is meant the place where a person lives or has his home-. In this sense the place where a person has his actual residence, inhabitancy, or commorancy, is some times called is domicile".

In Mcmullen v. Wadsworth (1880) 14 A. C. 631'it was observed by the Judicial Committee that "the -word 'domicil' in article 63 (of the Civil Code of Lower Canada) was used in the sense of residence, and did not refer to international domicile". What has to be considered is whether in the present context "domicile" was used in the sense of residence. The rule requiring the payment of a capitation fee and providing for exemption therefrom refers only to bona fide residents within the State. There is no reference to domicile in the rule itself, but in the Explanation which follows, clauses (a) and (b) refer to domicile, and they occur as part of the definition of "bona fide resident". In Corpus Juris Secundum, Volume 28, page 5, it is stated:

> "The term 'bona fide residence' means the residence with, domiciliary intent."

There is therefore considerable force in the contention of the respondent that when the rule making authorities referred to domicile in clauses (a) and (b) they were thinking really of ;residence. In this view also, the contention that the rule is repugnant to article 15(1) must fail."

(1) [1955] 1 S.C.R. 1215.

Under the impugned rule in that case no capitation fee was to charged from the students who ,were bona fide residents of Madhya Bharat, and the, expression "bona #de resident"

> for the purpose of the rule'. was defined as (to quote the relevant portion):
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> "one who is--
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> (a) a citizen of India whose original domicile is in Madhya Bharat, provided he has not acquired a domicile elsewhere, or
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> (b) a citizen of India, whose original domicile is not in: Madhya Bharat but who has acquired a domicile in Madhya Bharat and has resided there for not less than 5 years at the date-. on which he applies for admission, or
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> (c) a person who migrated from Pakistan before September 30, 1948 and intends to reside in Madhya Bharat permanently, or
>
> (d).....

In our view the word "domicile 'a used in r. 3, in the present case is also used to convey the idea of intention to reside or remain in the State of Mysore. If classification based on residence does not impigne upon the principle of equality enshrined in Art. 14 as held by this Court in the decision already cited which is binding upon us, then the further condition of the residence in the State being there for at least ten years would also seem to be equally valid unless it is shown by the petitioner that selection of the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia. The object of framing the impugned rule seems to be to attempt to impart medical education to the best talent available out of

the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the inhabitants of the State of Mysore. It is true that it is not possible to say with absolute certainty that all those admitted to the medical colleges would necessarily stay in Mysore State after qualifying as doctors: they have indeed a fundamental right as citizens to settle anywhere in India and they are also free, if they so desire and can manage, to go out of India for further studies or even otherwise. But these possibilities are permissible and inherent in our constitu- tional set-up and these considerations cannot adversely affect the constitutionality of the otherwise valid rule. The problem as noticed in Minor P. Rajendran's case (1) and as revealed by a large number of cases which have recently come to this Court Is that the number of candidates desirous of having medical educa-

(1) [1968] 2 S.C.R. 786.

tion is very much Luger than the number 'of seats available in medical colleges. The need and demand for doctors in our country is so great that young boys and girls feel, that in medical profession they can both get gainful employment and serve the people. The State has therefore to formulate with reasonable foresight a just scheme of classification for imparting medical ,education to the available candidates which would serve the object and purpose of providing broad- based medical aid to the people of the State and to provide medical education to those who are best suited for such education. Proper classification inspired by this consideration and selection on merit from such classified groups therefore cannot be challenged on the ground of inequality violating Art. 14. The impugned rule has not been shown by the petitioner to suffer from the vice of unreasonableness. The counter-affidavit filed by the State on the other hand discloses the purpose to be that of serving the interests of the residents of the State by providing medical aid for them.

The petitioner's argument that candidates whose parents have ,of necessity to remain out of Mysore State and who have also by ,compelling reasons to shift their residence frequently from one State to another without completing ten years in any one State, would suffer because their parents cannot afford to arrange for their children's residence in Mysore State for ten years during the first 17 years of their age, merely suggests that there is a likelihood of some cases of hardship under the impugned rule. But ,cases of hardship are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional. For relief against hardship in the working of a valid rule, the petitioner has to approach elseWhere because it relates to the policy underlying the rule. Redress for the grievance against the wide. gap between the number of ,seats in the medical colleges and the number of candidates aspiring to become doctors for earning their own livelihood and for serving the needs of the country, is also to be sought elsewhere and not in this Court, which is only concerned with the constitutionality of the rule.

For the aforesaid reasons this petition fails and is dismissed but without costs.

K. B. N. Petition dismissed.