

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3360 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NILAYBHAI RAJENDRABHAI THAKORE

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR GAUTAM M JOSHI for Petitioners
MR S.N.SHELAT, Additional Advocate General
with MR AMIT J SHAH for Respondents.

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 12/05/99

ORAL JUDGEMENT (Per R.K. Abichandani,J.)

Rule. Heard the learned Counsel for both the sides.

The petitioners have filed this public interest litigation, challenging Rules 6 and 7 of the Rules For Admission to Smt. N.H.L Municipal Medical College, which are at Annexure "B" to this petition, in so far as they declare the definition of "local students" for the purpose of admission to the College. Rules 6 and 7 which are challenged in this petition, read as under:-

"6. Admission to the Medical College will be restricted to the following categories of students only:-

- (i) Local students as defined in Rule 7;
- (ii) Candidates belonging to Scheduled Castes, Scheduled Tribes, Nomadic Tribes and Denotified Tribes from Gujarat State, as specified in Rule 8;
- (iii) Local candidates belonging to Socially and Educationally Backward Classes as notified by the Government of Gujarat, as specified in Rule 9;
- (iv) Students allotted for admission on the basis of All India Pre-medical Entrance Examination, as per Rule 31;

7. Local Student means a student who has passed S.S.C/New S.S.C examination and the qualifying examination from any of the High Schools or Colleges situated within the Ahmedabad Municipal Corporation limits."

2. The grievance of the petitioners is that as per the definition of the expression "Local students", only those who have passed their S.S.C/New S.S.C examination and the qualifying examination from any of the Schools or Colleges within the Corporation limits would become entitle to admission while those who have passed the S.S.C/New S.S.C or the qualifying examination from a school or college situated just outside the Corporation limits would not be entitled to be admitted to the Medical College run by the respondent Corporation.

3. Relying upon the decision in Mohan Bir Singh Chawla Vs. Punjab University, reported in AIR 1997 S.C 788 and the decision in P. Rajendran Vs. State of Madras, reported in 1968 S.C 1012, it was contended on behalf of the petitioners that a classification which was made under the said Rule was not on any rational basis and that the classification had no reasonable nexus with the object sought to be achieved, which was of selecting the best available candidates for admission to the medical college.

4. It was contended on behalf of the respondent Corporation that the respondent Corporation was running the medical college out of its own funds and therefore, was entitled to fix the criteria for admission. It was submitted that the criteria of providing admission to local students i.e. the students who had passed their S.S.C/New S.S.C and qualifying examination from the institutions located within the territorial limits of the Corporation was a reasonable criteria and the Corporation would be justified in giving preference to the students who have been educated through the institutions situated within the Corporation limits. It was also submitted, relying upon the decision of the Supreme Court in Dr. Fazal Ghafoor Vs. Union of India and ors. reported in J.T 1988 (3) S.C 698 that requirement that the candidate should have studied in an educational institution in the local area could form a valid basis for classification.

5. The provisions of identical rule framed by the respondent Corporation came up for consideration before the learned Single Judge of this Court in Ekta Arvindkumar Shah Vs. H.S.Shah reported in AIR 1993 (Guj.) 90. The learned Single Judge, after considering various decisions of the apex Court, observed that in the instant case the departure from the principle of selection based on merits is not being justified on the grounds which existed in the decisions of the Apex Court referred to in paragraphs 9 and 9A of the judgement. It was noted that students in both the petitions were denied admission only on the ground that they were not local students, meaning thereby they had not passed their S.S.C/H.S.C examinations from Schools and Colleges situated within the limits of the Ahmedabad Municipal Corporation. They were not denied admission on the ground that they were not residents of Ahmedabad. It was held that simply because the instrumentality of the State incurred expenditure for running the college, it was not relieved of its Constitutional obligations and that by financing for the expenditure of running the college, the State cannot encroach upon the fundamental rights of the

citizens. The decision in Dr. Fazal Ghafoor (supra) was considered and it was held that the judgement in that case turned on its own facts. This decision of the learned Single Judge in Ekta Arvindkumar Shah (supra) was over-turned by the Division Bench in the Letters Patent Appeal, not on merits, but on the fact that those students had secured admission elsewhere. The Division Bench, holding that the exercise of interpreting the Rules therefore remained purely academic, reversed that decision.

6. It is a settled legal position from the principles which have been culled out in Mohan Bir Singh Chawla Vs. Punjab University (supra) by the apex Court that the object of giving admissions to Medical College is to secure the best talent available. Moreover, rule of preference on the rule of domicile and requirement of residence was not bad provided it was within the reasonable limits. However, district-wise reservation was considered to be an anathema. As held by the Hon'ble Supreme Court in P. Rajendran Vs. State of Madras (supra) Article 14 does not forbid classification but the classification has to be justified on the basis of nexus between the classification and the object sought 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, where the object to be achieved is to get the best talent for admission to professional colleges, the allocation of seats districtwise has 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 rejected while less qualified candidates from other districts may be admitted from either-general pool or from socially and educationally backward classes. Though territorial classification is not always bad in all circumstances, it was held, districtwise classification which was being justified on a territorial basis in the Rule was violative of Article 14, specially when no justification worth the name could be made out.

7. In Dr. Pradeep Jain Vs. Union of India, reported in AIR 1984 S.C 1420, the Supreme Court held that the object of any valid scheme to the admission must be for selecting the best talent to medical colleges and if any departure is to be made from the principle of selection

on the basis of merit, it should be tested on the touch stone of Art. 14.

8. Under the impugned rule, the candidates who have passed their S.S.C/New S.S.C examination and the qualifying examinations from the High School or College situated in the Ahmedabad Municipal Corporation limits are treated as "local students" who would be eligible for admission to the medical colleges. These local students are therefore classified separately. There would be, beyond the periphery of the Corporation limits, many institutions from which students passed S.S.C/New S.S.C examination and/or the qualifying examination may have secured more marks. All those students would be left out of the consideration zone, so far as the category of the local students is concerned, even if they happened to reside within the city limits. The object of admission rules is to secure best available students and this classification on the basis of students having passed their S.S.C/New S.S.C as well as qualifying examination from the institutions within the local limits, has no reasonable nexus with the object sought to be achieved by the Admission Rules of selecting the best candidates for admission to Medical Colleges. Such a classification on the basis of attending the schools or colleges within and outside the Corporation limits, is not a reasonable classification in context of admissions to the Medical College. The classification is not on the basis of residence nor in respect of students of a particular university and therefore the decisions of the Supreme Court in Sanjay Ahlawat Vs. Maharshi Dayanand reported in (1995) 2 S.C.C 762 and Jagdish Saran Vs. Union of India, reported in AIR 1980 S.C 820, cannot assist the respondent. The impugned Rule 6(i) and Rule 7 of the Rules for Admission to Smt. N.H.L Municipal Medical College cannot, therefore be sustained as they are violative of Article 14 of the Constitution of India. These rules are therefore, struck down. Rule is made absolute accordingly with no order as to costs.

9. The learned Advocate appearing for the respondent Corporation requests that this order may be stayed for some time. We do not want to create any uncertainty in the matter of admission of students to Medical Colleges. There is therefore, no warrant for granting stay of the order. The request is therefore, rejected.
