

Indu Pal Kaur v. The Union Territory of Chandigarh and another
(I. S. Tiwana, J.)

21. To conclude finally, the answer to the question posed at the very outset is rendered in the terms that an Administrator of a Union Territory appointed under Part VIII of the Constitution is only a medium or machinery through whom the President acts and not as his delegate.

22. Applying the above rule, Letters Patent Appeal Nos. 139 and 1154 of 1982 preferred by the Chief Commissioner, Union Territory, Chandigarh, are plainly entitled to succeed and are hereby allowed. We are constrained to set aside the judgment of the learned Single Judge as also its modification by the review order and dismiss the writ petitions. As a necessary consequence, L.P.A. No. 472 of 1982 preferred by M/s Sushil Flour Mills must fail and is dismissed. In view of the somewhat ticklish constitutional issues involved we leave the parties to bear their own costs.

N.K.S.

Before I. S. Tiwana, J.

INDU PAL KAUR,—Petitioner.

versus

THE UNION TERRITORY OF CHANDIGARH and another,—

Respondents.

Civil Writ Petition No. 3857 of 1982.

September 21, 1982.

Constitution of India, 1950—Article 14—Seats in medical college in India reserved for bona fide residents of the Union Territory of Chandigarh—Administration considering applications for nominating candidates for admission—Candidates applying for admission or taking any entrance examination for admission anywhere in India except those taking all India open competition examination declared ineligible—Such ineligibility—Whether violative of Article 14—Classification of candidates seeking admission on the basis of domicile and those taking all India Open Competition—Whether constitutionally valid.

Held, that the condition of declaring the children and dependants of residents of Union Territory, Chandigarh, who have applied admission or for taking any entrance examination for admission A.B.B.S. and B.D.S. courses anywhere in India except on the

basis of All India Open Competition ineligible to apply has been introduced with a view to allow the genuine of *bona fide* residents/domicile of Union Territory of Chandigarh to avail of the seats meant or reserved for the Union Territory of Chandigarh. Those residents or domiciles of Chandigarh who treating themselves to be domiciles of any other State including the State of Punjab have availed of a chance for admission to any of the medical colleges of that State cannot again be allowed to compete with the genuine or *bona fide* residents/domicile of Union Territory of Chandigarh. The sole purpose of the conditions laid down is to provide facility of medical education to those *bona fide* and genuine residents/domiciles of Union Territory of Chandigarh who are desirous of receiving the said education. This does not appear to be without any rational basis. Article 14 does not forbid reasonable classification. To pass the test of permissible classification two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that the differentia must have a rational relation to the object sought to be achieved. The implication of the aforesaid ineligibility is that the persons who have treated themselves to be domicile of any other State should not be entitled to avail of the facility of reservation of seats provided for in favour of the residents/domiciles of the Union Territory of Chandigarh. Those persons who have availed of a chance to be admitted to a medical college on the basis of their being domicile of a particular State is a well defined category and cannot possibly be put at par with persons who have either competed on all India basis (without taking advantage of their being domicile of a particular State) for such admission or want to be considered for nomination for such admission being the *bona fide* and genuine residents/domiciles of Union Territory of Chandigarh. The aforesaid condition of eligibility does not result in any unreasonable classification and thus cannot possibly be struck down as violative of Article 14 of the Constitution of India. (Para 3).

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—

- (i) call for the record of the case and after perusing the same;
- (ii) issue a writ of certiorari quashing the impugned condition of making the candidates ineligible who have applied for entrance examination (P.M.T.) for consideration for nomination to the seats reserved for Chandigarh domicile;
- (iii) issue a writ of mandamus directing the respondents consider the case of the petitioner for nomination at the reserved seats for Chandigarh domicile;

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- (iv) *issue any other appropriate writ, order or direction which this Hon'ble Court deems fit under the circumstances of the case;*
- (v) *stay the nomination of the candidates against the reserved seats during the pendency of the writ petition;*
- (vi) *exempt the petitioner from issuing advance notices at this stage in view of the urgency of the matter;*
- (vii) *dispense with the filing of certified copies of Annexures; and*
- (viii) *award costs of the writ petition.*

Vinod Sharma, Advocate, for the Petitioner.

M. R. Agnihotri, Advocate, for the Respondents.

JUDGMENT

I. S. Tiwana, J. (Oral)

(1) The petitioner impugns the action of respondent-authorities in not considering her for being nominated to one of the seats reserved for the Union Territory of Chandigarh in various medical colleges of the country. The brief background of the case is as follows:

(2) Petitioner's father is an employee of the Punjab and Haryana High Court at Chandigarh and she was born and educated at Chandigarh. She passed her Pre-Medical examination of the Panjab University in April, 1982. In response to an advertisement, issued by respondent No. 2, inviting applications from the eligible candidates for being considered for nomination to one of the seats, the petitioner submitted her application but on scrutiny she has been held to be not eligible for such consideration. This is stated to have been done in view of the following condition of the advertisement Annexure P. 7.

"Children and dependents of residents of Union Territory, Chandigarh who have applied for 'admission' or for taking any entrance examination for admission to

M.B.B.S. and BDS Courses anywhere in India except on the basis of All India Open Competition Examination shall be ineligible to apply."

This condition of the advertisement is challenged as being violative of Article 14 of the Constitution of India on the plea that it is not based on any rationale and the candidates who have taken their examination for admission to any M.B.B.S./B.D.S. courses anywhere in India on the basis of a domicile certificate cannot be differentiated or discriminated as against candidates who have taken such a test on the basis of all India competition. It deserves to be mentioned here that prior to her applying to the respondent-authorities in response to advertisement Annexure P. 7, the petitioner had already applied and took the Pre-Medical Entrance Test (P.M.T.) held by the State of the Punjab for admission to its various medical colleges. This test is open to all the eligible candidates who are domiciles of Punjab. The criteria for judging 'domicile' of Punjab is provided for in the instructions (Annexure P.5) dated March 12, 1982 issued by the Punjab Government. These instructions also specify the category of persons who are eligible for the grant of this certificate. One of the categories is "the children/wards of an employee of the Government of India posted in Chandigarh or in Punjab in connection with the affairs of the Punjab Government." As a matter of fact, the petitioner did obtain such a certificate (Annexure P.6) from the High Court on 1st June, 1982. On the basis of this certificate, she did compete for P.M.T. examination held by the Punjab Government, but as already indicated, she remained unsuccessful. Another important condition of these instructions (Annexure P. 5) is that a person securing a certificate in accordance with the same has to swear an affidavit that he has not obtained the benefit of "domicile" in any other State. Petitioner having availed of the certificate (Annexure P.6) must be presumed to have furnished such an affidavit when she took the P.M.T. test.

(3) Now Mr. Agnihotri, learned counsel for the respondent-authorities explains that the above-noted impugned condition of Annexure P. 5 has been introduced in the advertisement with a view to allow the genuine or *bona fide* residents/ domiciles of Union Territory of Chandigarh to avail of the seats meant or reserved for the Union Territory of Chandigarh. According to the learned counsel, those residents or domiciles of Chandigarh who treating themselves to be domiciles of any other State including the State of Punjab have availed of a chance for admission to

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any of the medical colleges of that State cannot again be allowed to compete with the genuine or *bona fide* residents/domiciles of U.T. of Chandigarh. This stand of the learned counsel, to me does not appear to be devoid of merit or without any rational basis as is sought to be pleaded by the learned counsel for the petitioner. The sole purpose of the conditions laid down in the advertisement Annexure P. 7 is to provide facility of medical education to those *bona fide* and genuine residents/domiciles of Union Territory of Chandigarh who are desirous of receiving the said education. Article 14 does not forbid reasonable classification. To pass the test of permissible classification two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that the differentia must have a rational relation to the object sought to be achieved. The implication of the impugned condition of the advertisement Annexure P. 7 is that persons who have treated themselves to be domiciles of any other State should not be entitled to avail of the facility of reservation of seats provided for in favour of the residents/domiciles of the Union Territory of Chandigarh. Those persons who have availed of a chance to be admitted to a medical college on the basis of their being domicile of a particular State is a well defined category and cannot possibly be put at par with persons who have either competed on all India basis (without taking advantage of their being domicile of a particular State) for such admission or want to be considered for nomination for such admission being the *bona fide* and genuine residents/domiciles of U.T. of Chandigarh. As already indicated, the petitioner on the basis of a domicile certificate (Annexure P. 6) has availed of the chance for admission to one of the medical colleges in the Punjab. The above-noted impugned condition of Annexure P. 7 does not result in any unreasonable classification and thus cannot possibly be struck down as violative of Article 14 of the Constitution of India. The following dictum of their Lordships of the Supreme Court in *Kumari Chitra Ghosh and another v. Union of India and others*, (1) "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

(1) AIR 1970 S.C. 35.

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" too supports the case of the respondents.

(4) Learned counsel for the petitioner, however, relies on a judgment of the Karnataka High Court in *Dr. Y. Shantha v. The Selection Committee for Post-Graduate Degree and Diploma Courses in Medical College and Others* (2), wherein denial of admission to a candidate who had sought admission to a particular course of study on the ground that she had already been admitted to another course was struck down as discriminatory and violative of Article 14 of the Constitution of India. The facts of that case have no bearing on the facts of the instant case.

(5) For the reasons recorded above, I see no merit in this petition and dismiss the same but with no order as to costs.

N.K.S.

Before J. V. Gupta, J.

SUJAN SINGH SADHANA,—Appellant.

versus

MOHKAM CHAND JAIN and others,—Respondents.

Regular First Appeal No. 152 of 1968.

September 23, 1982.

Transfer of Property Act (IV of 1882)—Section 54—Land Acquisition Act (I of 1894)—Sections 4, 6 and 16—Sale of immovable property by public auction—Agreement between bidders not to outbid each other with an understanding that one will sell to the other a portion of the purchased property—Such agreement—Whether against public policy—Agreement to sell a portion of the property executed between the parties but actual sale not effected—Suit for specific performance—Property acquired during the pendency of the suit and possession taken under section 16 of the Land Acquisition Act—Effect of acquisition proceedings on the suit—Degree for specific performance—Whether could be passed.

(2) AIR 1978 Karnataka 66.