

Dinesh Kumar and 2 ors. Vs. State of Rajasthan and ors.

Dinesh Kumar and 2 ors. Vs. State of Rajasthan and ors.

SooperKanoon Citation : sooperkanoon.com/762800

Court : Rajasthan

Decided On : Aug-22-1986

Reported in : 1986(2)WLN685

Judge : Narendra Mohan Kasliwal, J.

Appeal No. : S.B. Civil Writ Petition Nos. 1703, 1712 and 1745 of 1985

Appellant : Dinesh Kumar and 2 ors.

Respondent : State of Rajasthan and ors.

Judgement :

Narendra Mohan Kasliwal, J.

1. In all these three writ petitions the validity of Rule 2(A) of the Rules of Admission in Medical Colleges in Rajasthan, 1985 has been challenged. The case of the petitioners is that they all appeared in the Pre-Medical Test for admission in the MBBS Course of Medical Colleges in Rajasthan, and have secured high percentage of marks so as to get position in the merit list of successful candidates. The respondents have held the petitioners ineligible for admission on the ground that they did not fulfill the condition of bonafide resident of Rajasthan according to which it was necessary that his/her natural father or na'ural mother should have continuously resided in Rajasthan for a period of last 18 years and the candidate should have studied at least for last 5 years in a recognised educational institution

in Rajasthan. The petitioners have challenged the above rule of eligibility on the ground of being arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

2. In order to appreciate the controversy raised in these cases, it would be proper to give the facts of each petitioner in short.

3. Dinesh Kumar, who has filed writ petition No. 1703/85 has alleged that he was born on 6-3-1965 in village Dhalop, District Pali, Rajasthan. The petitioner's family and his ancestors have been residing in this village for the last more than 3 generations i.e. more than 100 years. The petitioner's family owns ancestral agricultural land bearing Khasra No. 28,83, 291 and 299 in village Dhalop. The petitioner's family has got 3 houses in this village. The petitioners father is having cloth business in village Dhalop in the firm named M/s Gheesu Lai Madan Raj. Petitioner's family also owns an Oil Mill named as M/s Bharat Oil Mill at Rani (Pali) in Rajasthan. The petitioner's father is an income tax payer for the last more than 15 years and in the ration card issued in the year 1975, the name of the petitioner is entered therein. The petitioner's father, mother and elder brothers names have also been entered in the voters list for Desuri Legislative Assembly Constituency, 1983 at item Nos. 50,51,52 and 53. The petitioner had been living with his family in village Dhalop since his birth. At the age of 4-1/2 years the petitioner was admitted in class I in Government Higher Primary School, Dhalop and studied there upto VIII lass, i.e. up to 12-5-1978 as a regular student. The petitioner thereafter joined O.M S. Government Higher Secondary School, Sadari (Pali) Rajasthan on 27-6-1978 in class IX. The petitioner studied in this school up till 27 6-1981 and passed the secondary and higher secondary examination from this School.

4. In the year 1981 the father of the petitioner became seriously ill. He was initially treated at Rani (Pali) and thereafter on Medical advice he was taken to Bombay and was admitted in Bombay Hospital. The petitioner in these circumstances had to go with his father for looking after his treatment. The petitioner's father was suffering from serious illness which required continuous treatment at Bombay. The petitioner's father as such had to remain in Bombay from May 1981 to December 1983, except some short intervals. The petitioner was attending his father and in

order to avoid loss to his educational career, the petitioner joined class XII of 10 plus 2 scheme in Sidharath College of Art and Science, Bombay in 1982. The petitioner could not appear in 1982 examination because of serious illness of his father. However, the petitioner appeared for Higher Secondary Certificate Examination (10 plus 2) pattern from Maharashtra State Board of Secondary & Higher Secondary Education, Pune. Petitioner passed this examination in March 1985 in First Division. By this time the father of the petitioner recovered from his illness and so the petitioner along with his father came back to their village in Rajasthan. The petitioner joined IInd Year of Three Year Degree Course in the Maharana Bhopal College, Udaipur. Meanwhile Pre-medical Test for admission in MBBS Course in Medical Colleges in Rajasthan was held in 1984 and the petitioner in order to prepare for this test did not appear in the examination of Second Year TDC in 1984. The petitioner appeared for the PMT in 1984 but was not called for interview as having obtained lower position in merit. The petitioner thereafter appeared in the IInd Year TDC examination in 1985 from Sukhadia University, Udaipur and passed the said examination. The petitioner again applied for appearing in the Pre-medical Test to be held in 1985. The application form of the petitioner was scrutinised by the respondents and he was issued admission card for appearing in the test and he was allotted Roll. No. 19726. The petitioner appeared in the test held from 2-7-85 to 6-7-85 and was declared successful having secured 60% marks. The petitioner was placed at Number 1 & 2 in the merit list, The petitioner was also invited for interview on 21-9-85 by the Admission Board. On 21-9-85 the petitioner appeared before the Admission Board. One of the members of the Board told the petitioner that he had not studied for last 5 years in Rajasthan. The petitioner replied that he had studied from Clauses I to XI in Rajasthan and is also domicile of Rajasthan. The member of the Board told the petitioner that they were only concerned with the studies for the last five years. Dr. S.R Mehta, Principal, Medical College, Jaipur thereafter told the petitioner that he was not eligible for selection in view of Rule 2(A) of the rules of admission and also showed the said rule to the petitioner. Dr. S.R. Mehta there after noted 'NE' with block letters on the application form of the petitioner which meant Non-eligible in the register of candidates who were found eligible on merit. The following entry was made against the name of the petitioner 'non-eligible under Rule 2(A)'. The

petitioner thereafter made a representation but no heed was paid. The petitioner then served a notice for demand of justice through his counsel and thereafter filed the present writ petition on 30th September, 1985.

5. In writ petition No. 1712/85, Arvind Kumar has alleged that the petitioner appeared in the Pie-medical Test held in 1985 and secured No. 269 in the merit list prepared by the Sukhadia University of Udaipur for filling 565 seats. The petitioner was called for interview and appeared before the Admission Board on 22-9-85. When the petitioner was interviewed, he was asked by one of the members of the Board as to whether the father of the petitioner was a servant of the Rajasthan Government. The petitioner replied in the negative. The petitioner was then asked whether he had undergone education in Rajasthan for the last five years. The petitioner replied that for the last four years he had studied in St. Xavier School, Jaipur. The petitioner was thereafter told that he cannot be selected since he had not completed studies at least for five years in a recognised educational institution in Rajasthan. The petitioner was told that he was not eligible for selection and he must try his luck next year. The members wrote 'NE' with bold letters on the application form of the petitioner.

6. The case of the petitioner is that he was born in Jaipur on 16-2-67 at Anil Nursing Home, Deepak Marg, Moti Doongari Road, Jaipur. The parents of the petitioner are displaced persons of Pakistan. The mother of the petitioner migrated to India in 1947 with her father and settled at Ajmer. She later on shifted to Jaipur and in 1963 she got married with petitioner's father. The petitioner received his education in St. Xavier School, Jaipur from class IX onwards that is integrated course leading to admission to Pre-medical Test in Rajasthan. The mother of the petitioner had been residing with her father in Jaipur for the last more than 10 years. The maternal grand father of the petitioner Shri Gangadhar Widhani is an eminent educationist who migrated to Rajasthan in 1947 and since then he is residing in Rajasthan. He is having house property in Jaipur. He retired as Secretary of the Central Board of Secondary Education in 1957. The mother of petitioner continued to reside with her parents in Jaipur because of the indifference behaviour of the petitioner's father. Later on the petitioner's father became ill because of mental depression. He also shifted to Jaipur in 1981 and

came to reside with petitioner's grand father and thereafter the entire family of the petitioner is residing in Jaipur. The case of the petitioner is that his natural mother is continuously residing in Jaipur for a period of more than 10 years. The petitioner, remained with his father upto June 1981, but thereafter shifted with his father to Jaipur in 1981 and joined St. Xavier School, Jaipur.

7. Kiran Garg has filed Writ Petition No. 1745/85 and his case is that he is a natural born person of Rajasthan and his date of birth is 3-12-1966. Till June, 1979 the petitioner was in Rajasthan and passed VIth standard examination from Nalanda Balika School. Sriganganagar. This is a school imparting co-education and is a recognised educational institution in Rajasthan. The petitioner's parents have through-out been residing in Rajasthan and they too are natural born persons of State of Rajasthan. They have been residing at Kesari Singhpur in District Ganganagar. The petitioner's father Shri Surendra Garg is running a firm of commission agent dealing in food grains in the name of style of M/s Gokul Chand Mohan Lal at Kesari Singhpur. In the year 1979 the petitioner was admitted in class VII at Velhatn Boys' School, Dehradun and he studied in this school up to March, 1983 and passed class Xth examination i.e. Indian School Certificate Examination. Thereafter the petitioner sought admission in the Maheshwari Public School, Jaipur in class XI in July 1983 and studied there up to 17th May, 1983 and passed XII class examination in science group and thus qualified to appear in the Pre-medical Test for admission to the MBBS Course. The petitioner was required to fill the following certificate prescribed at page 16 in the application form for being considered as a candidate belonging to Rajasthan.

I certify that Shri/Kumari...is the natural son daughter of Shri/Shrimati...and his/her father/mother has continuously resided in Rajasthan for a period of last 10 years and he/she has studied at least for 5 years as a regular candidate in a recognized educational institution in Rajasthan.

Court seal

Signature of the Distt. Magistrate,

Addl. Distt. Magistrate/S.D.M.

8. The petitioner submitted the above certificate. The petitioner also annexed Ex. 3, a certificate issued by the SDM Shri Karanpur to show that he is bonafide resident of Rajasthan. The names of the petitioner's parents are also shown in the voters list of Kesrisinghpur Assembly Constituency of the State of Rajasthan and they are also having the Ration Card issued by the Supplies department. Thus, the case of the petitioner is that his parents have throughout been residing in Rajasthan and the petitioner is also a bonafide resident of Rajasthan except that he had gone out of Rajasthan for studies between the period from June 1979 to March, 1983. The petitioner appeared in the Pre-medical Test held in 1965 and secured position in the merit at No. 292. The petitioner was called for interview and appeared before the Admission Board on 22-9-86. The members of the Board however, told the petitioner that it would not be possible to admit him because he had not studied in Rajasthan for the last five years.

9. All the above petitioners have challenged the validity of Rule 2(A) of the rules of admission for 1985. It would be necessary to State that in 1984 the rules of admission to MBBS course had laid upon the following conditions for holding a person as belonging to the State of Rajasthan.

(a) He/she has studied for last three years continuously as a regular candidate in a recognised institution in Rajasthan;

OR

His/her natural father or natural mother has continuously resided in Rajasthan for a period of last 10 years and the candidate has studied at least for five years in a recognised educational institution in Rajasthan.

10. In contrast to the above provision following rule has been provided in the rules of 1985.

'Reservations:

(a) 85% of the total number of seats shall be filled by the candidates belonging to Rajasthan defined here under-

His/her natural father or natural mother has continuously resided in Rajasthan for a period of last 10 years, and the candidate has studied at least for last five years in a recognised educational institution in Rajasthan;

OR

He/She is a son/daughter of serving or retired employee:

(i) Government of Rajasthan including Officers of All India Services borne on the State Cadre of Rajasthan;

OR

(ii) Undertakings/Corporations/Improvement Trust/Municipal Board/ Panchayat Samities/Cooperative Bodies duly constituted by the Government of Rajasthan;

OR

(iii) Statutory Bodies and Corporations formed under the Indian Companies Act incorporated in Rajasthan;

OR

(iv) He/She is a son/daughter of an employees of University in Rajasthan or Higher Secondary Board of Education (Rajasthan) provided for category (i) to (iv) referred to above the employee has put in atleast three years service on the last date for submissions of application in the year of admission;

OR

(v) He/she is a son/daughter of an Indian Defence/Central Government Service/Public Sector Undertakings or Corporation of Government of India employees of Rajasthan origin irrespective of his place of posting provided a certificate is submitted by the employee from the employer to this effect stating the State of origin and the home town as given by him at the time of his entry into service.

Provided that for the purpose of this rule an employee who was born in Rajasthan (and has lived in Rajasthan for at least ten years) shall be deemed of Rajasthan origin.

11. Contention of the learned counsel for the petitioners is that there is no reasonable nexus with the object to be achieved in laying down the condition of having studied at least for last five years in a recognised educational institution in Rajasthan. Mr. Bhandari, learned counsel for Dinesh Kumar submitted that the family of Dinesh Kumar was living in Rajasthan for the last four generations. The petitioner was born in Rajasthan and took his entire education from Class I to class XI and thereafter again joined IInd year of three years degree course, in Rajasthan. The petitioner was compelled from unavoidable circumstances to take his education for one year only out of Rajasthan and the rule of having studied atleast for last five years in a recognised educational institution in Rajasthan is per se arbitrary and unreasonable. It is further submitted that according to the provisions laid down in the rules of submission for 1984, the petitioner was considered a candidate belonging to the State of Rajasthan and was found eligible to appear in the pre-medical Test. Unfortunately, the petitioner could not qualify in merit in 1984 and now when the petitioner has come in merit in 1985, the respondents are treating the petitioner as ineligible according to Rule 2(A) of rules of admission. It is submitted that there can be no logic or reasonable ground in holding that the petitioner could have achieved the object laid down by the rules in 1984 but could not achieve the same object in 1985. It is submitted that Rule 2(A) is also arbitrary and discriminatory on the simple ground that no such requirement of studying atleast for last five years in a recognised educational institution in Rajasthan has been imposed for the candidates whose parents were in the service of Government of Rajasthan, Officers of All India Service born on the State Cadre of Rajasthan, Statutory bodies, Corporations, Improvements Trust, Municipal Board, Panchayat Samitis, Co-operative Societies, duly constituted by the Government of Rajasthan etc. It is submitted that there is no reasonable basis for making this discrimination in respect of such candidates whose parents were not employed in the above services. It has been further argued that the State cannot deny to any person equality before the law or the equal protection of the laws within the territory of India. Admittedly the petitioners are meritorious and they

cannot be denied admission to the MBBS Course arbitrarily and on grounds which have no reasonable nexus with the duties of a doctor.

12. Mr. Calla, learned counsel for Kiran Garg, submitted that the rule of continuous residence of the parents in the State of Rajasthan for a period of last 10 years is understandable but so far as the student is concerned the condition that he must have studied in Rajasthan itself and that too in the last preceding five years is without any rationale and it does not advance the object sought to be achieved. It is submitted that it will be an unreasonable discrimination that a candidate who has throughout lived in Rajasthan and sought the entire education in Rajasthan right from primary to the qualifying examination except for a short period out of Rajasthan for studies or for any other purpose is denied the right of admission to the M.B.B.S. Course. Kiran Garg was a natural born person of Rajasthan and passed his VIth standard examination from Sriganga Nagar. Thereafter, he joined Class VII at Dehradun and continued till he passed his Class X examination. Thereafter, again the petitioner sought his admission in Maheshwari Public School, Jaipur, in Class XI and passed Class XI and XII examination from that school and became qualified to appear in Pre-medical test in the 1985. In the above circumstances it is submitted that would be too harsh, arbitrary and unreasonable to deny admission to the petitioner in the M.B.B.S. Course.

13. On the other hand Mr. M.I. Khan, learned Additional Advocate General argued that the Supreme Court in *Dr. Pradeep Jain and Ors. v. Union of India and Ors.* : (1984) 11 LLJ 481 SC had decided as under:

The only question which remains to be considered is as to what should be the extent of reservation based on residence requirement and institutional preference. There can be no doubt that such reservation cannot completely exclude admission of students from other Universities and State on the basis of merit judged in open competition.

14. Their Lordships then considered as to what extent can reservation based on residence requirement with the State or on institutional preference for students passing the qualifying examination held by the Universities or the State be regarded as constitutionally permissible? It was held that it was not possible to

provide a categorical answer to this question for, as pointed out by the earlier statement of the Government of India, the extent of such reservation would depend on several factors including opportunities for professional education in that particular area, the extent of competition, level of educational development of the area and other relevant factors. Their Lordships then held that in their opinion such reservation should in no event exceed the outer limit of 7% of the total number of open seats after taking into account other kinds of reservation validly made.

15. Mr. Khan therefore submitted that the rule of residential requirement was held constitutionally permissible in the above case and the State Government framed the rules of admission of 1985 in consonance with the above dictum laid down by the Supreme Court. It was further submitted that in Dr. Pradeep Jain's case(supra) their Lordships had considered the rules of different States in which the rule of domicile or permanent residence required residence for a specified number of years. The requirement laid down by few States was that the candidate should have studied in an educational institution in the State for a continuous period varying from 4 to 10 years. It was submitted by Mr. Khan that such condition of domicile or permanent residence or condition of having studied in an educational institution in the State were held to be valid by the Supreme Court with the only condition that such reservations should not completely exclude admission of students from other Universities and States and the outer limit for such reservations was fixed at 7%. Mr. Khan also placed reliance on the following observations of Krishna Iyer, J. in Jagdish Saran v. Union of India AIR 1983 SC 820 which also met with approval in Dr. Prasad Jain's case.

If potential for rural service or aptitude for rendering medical attention among backward people is a criterion of merit and it, undoubtedly is in a land of sickness and misery, neglect and penury, veils and tears-then, merely, belonging to a University catering to a deprived region is a plus point of merit. Excellence is composite and the heart and its sensitivity are as precious in the scale of educational values as the head and its creativity and social medicine for the common people is more relevant than peak performance in fresh cases.

16. It was further submitted that in *D.P. Joshi v. State of Madhya Bharat*. : [1955]1SCR1215 the validity of a rule made by the State of Madhya Bharat for admission to Mahatma Gandhi Memorial Medical College, Indore came up for consideration. The rule in that case provided that no capitation fee should be charged from students who were bonafide resident of Madhya Bharat but for other non-Madhya Bharat students, there can be a capitation fee of Rs. 1,300/-for nominees and Rs. 1,500/-for others. The expression 'Bonafide resident' was defined for the purpose of this rule to mean inter alia (a) a citizen of India whose original domicile is in Madhya Bharat, provided that he has not acquired a domicile elsewhere, or (b) a citizen of India, whose original domicile is not in Madhaya Bharat but who has acquired a domicile in Madhya Bharat and has resided therefor not less than five years at the date, on which he applies for admission, or

(c)

(d)

17. The constitutional validity of this rule was challenged on the ground that it discriminated between students who were bonafide residents of Madhya Bharat and students who were not and since this discrimination was based on residence in the State of Madhya Bharat, it was violative of Article 14 of the Constitution. The court by a majority of four against one held that the rule was not discriminatory as being in contravention of Article 14 because the classification between students who were bonafide residents of Madhya Bharat and those who were not was based on an intelligible differentia having rational relation to the object of the rule. Mr. Khan thus contended that in the above case also the requirement of residence for not less than five years at the date of the application for admission has been held to be constitutionally valid.

18. Mr. Khan also placed reliance on *N.N. Vasundara v. State of Mysore* : AIR 1971 SC1439 in which the validity of Rule 3 of the rules for selection of candidates for admission to the professional course leading to MBBS course in the Government Medical Colleges in the then State of Mysore was challenged. That rule 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 10 years a any time prior to

the date of the application for a seat, shall be eligible to apply.' The challenge to the above rule was negated and the constitutional validity of Rule 3 upheld. It was also argued by Mr. Khan that every classification is bound to be discriminatory but the same cannot be challenged if it has reasonable nexus with the object to be achieved. It was further argued that no classification can be perfectly logical and the provisions contained in Rule 2(A) in the present case are perfectly valid and justified. Mr. Khan also submitted that the requirement of studying at least for last preceding five years was made with the object that the candidate should be conversant with the local dialect social environment and diseases common in rural areas of Rajasthan so that the candidate after taking the MBBS Degree may better serve in the rural areas in Rajasthan.

19. I have given my careful consideration to the arguments advanced by learned counsel for both the parties and have thoroughly perused the record. It is now well established that reservation based on residence requirement is constitutionally valid. Bhagwati, J. (as he then was) in Dr. Pradeep Jain's case observed as under:

There are massive social and economic disparities and inequalities not only between State and State but also between region and region within a State and even between citizens and citizens within the same region. There is a yawning gap between the rich and the poor and there are so many disabilities and injustices from which the poor suffer as a class that they cannot avail themselves of any opportunities which may in law be open to them. They do not have the social and material resources to take advantage of these opportunities which remain merely on paper recognised by law but non-existent in fact. Students from backward States or regions will hardly be able to compete with those from advanced States or regions because, though possessing intelligent mind, they would have had no adequate opportunities for development so as to be in a position to compete with others. So also students belonging to the weaker sections who have not, by reason of their specially or economically disadvantageous position, been able to secure education in good school would be at a disadvantage compared to students belonging to the affluent or well-to-do families who have had the best of school education and in open All-India Competition, they would be to be worsted. There could also be a number of students who, if they do not get admission in a

medical college near their residence and are designed admission in a far off college in another State as a result, they would be effectively deprived of a real opportunity for pursuing the medical course open though on paper they would have got admission in a medical college. It would be tantamount to telling these students that they are given an opportunity of taking up the medical course, but if they cannot afford it by reason of medical college to which they are admitted being far away in another State, it is their bad luck; the State cannot help it, because the State has done all that it could, namely, provided equal opportunity to all for medical college education. But the question is whether the opportunity provided is real or illusory. We are, therefore, of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical education on a broader basis and to bring about real and not formal, equal and not merely, legal equality.

20. In the case it has also been laid down by the Supreme Court that such reservation should in any event not exceed the outer limit of 7% of the total number of open seats after taking into account other kind of reservation validly made.

21. The question in the cases before me is not that the Government has no power to make reservation on the basis of residential requirement but the question raised is as to what should be the criterion and principles for laying down such requirement. Another question to be decided is whether the conditions of residential requirement contained in Rule 2(A) of the rules of admission of 1985 are arbitrary, unreasonable and discriminatory under Article 14 of the Constitution of India or not. The Supreme Court in *Dr. Pradeep Jain's case* relied on *Major P. Rajendran v. State of Madras* AIR 1960 SC 1012 and observed:

The problem as noticed in *Major P. Rajendran's case* and as revised by a large number of cases which have recently come to this court is that the number of candidates desirous of having medical education is very much larger than the number of seats available in medical colleges. The need and demand for doctors in our country is as 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 Article 14. The impugned rule has not been shown by the petitioner to suffer from the vice of un-reasonableness. The counter-affidavit filed by the State on the other hand discloses the interests to be that of serving the interests of the residents of State by providing medical aid for them.

22. In the above P. Rajendran's case the reservation based on residence requirement of not less than 10 years was held to be non discriminatory though it denied equality of opportunities for admission to the Medical Colleges in the State to all those who did not satisfy this residence requirement. The court took the view that the object of the State Government in making such a reservation based on residence requirement of not less than 10 years was 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. Similarly Rule 3 of the rules for selection of the candidates for admission to the professional course leading to the MBBS Course in the Government Medical Colleges in the then State of Mysore laying down the reservation based on residence requirement for a period of not less than 10 years was upheld in R. Vasundera's case (supra) The Supreme Court in Dr. Pradeep Jain's case took note of different rules of reservation made on the basis of residential requirement or institutional preference, it was noted that domicile or permanent residence in some State required residence for a specified number of years ranging from 3 to 20 years while in a few States the requirement was that the candidate should have studied in an educational institution in the State for a continuous period varying from four to 19 years.

23. Thus, it remains now well settled that reservations based on residential as well as on institutional preference are constitutionally valid when tested on the touch stone of Article 14. It has also been noticed that residence for a specified number of years ranging from 3 to 20 years and institutional preference for having studied

in an educational institution in the State for a continuous period varying from 4 to 10 years is also valid. However, the question which still period for determination in the case in hand before as is whether the condition of having studied at least for last 5 years sub-serves and has reasonable nexus with the object of imparting medical education and fulfils the purpose of providing broad-based medical aid to the people of the State of Rajasthan. The object of framing such rules can be two fold one to impart medical education to the best talents and two to serve the interest of the residents of the State by providing medical aid to them. If Rule 2(A) in question could have provided continuous residence in Rajasthan for period of last 10 years for the natural father or the natural mother of the candidate or the condition that the candidate should have studied for five years in a recognised educational institution in Rajasthan for holding a candidate belonging to Rajasthan the rule would have fulfilled the two fold object and purpose mentioned above. The difficulty has arisen on account of the condition of having studied at least for last five years laid down in the rule. Such condition of last five years in my humble opinion has a reasonable nexus with the two fold objects to be achieved. The case of Dinesh Kumar illustrates an example to show the hollowness of such rule. Dinesh Kumar was born in Rajasthan and had studied from class I to class XI in Rajasthan. Thereafter, he had to shift to Bombay on account of the serious illness of his father and passed only class XII from Maharashtra State Board, of Secondary and Higher Secondary Education. Thereafter, again he came in Rajasthan and passed his second Year TDC examination from the Sukhadia University, Udaipur. According to the rules of admission in 1984 he was eligible but unfortunately he did not find place in merit. Now when he stood in merit in 1985 he is being denied admission simply on the ground that he had not studied in the recognised educational institution in Rajasthan for the last five years. Such sort of rule is clearly arbitrary and discriminatory and cannot be considered as fulfilling the two objects sought to be achieved by such rule of reservation. If the contention of learned Additional Advocate General is accepted that two objects of such rule is to give institutional preference so that such matters may better serve the people of the State of Rajasthan, it does not stand to reason as to how this object could have been achieved if Dinesh Kumar has been selected in 1984 as he was eligible under the rules of 1984 and will not achieve the object if selected in 1985 because

now Rule 2(A) holds him ineligible. A gap of some years in studies in an educational institution in Rajasthan may be on account of unforeseen and unsideable circumstance as a candidate may be compelled to take education outside Rajasthan due to circumstances like the illness of his parents, exigencies of business, natural calamity etc. Thus, there is no reasonable basis for laying down the condition of having studied atleast for last five years. As already mentioned above the condition could have been laid down of having studied for five years at any time but not that it should be restricted to last five preceding years, continuously.

24. It may also be pointed out that the Government itself is changing such rule from year to year. In 1984 the only condition was of having studied for last three years continuously or where the natural father or natural mother of the candidate had continuously resided in Rajasthan for a period of last 10 years then the requirement was that the candidate should have studied atleast for five years in a recognised educational institution in Rajasthan. There was no condition of having studied at least for last five years (Emphasis added) as now contained in the rules of 1985. Thus, in 1984 the only condition was that the candidate should have studied atleast for for five years but it was not necessary that such period should be last preceding five years. It may be further important to note that again in 1986 the rule has been changed and now the only requirement is that the natural father or natural mother of the candidate-should have continuously raised in Rajasthan for a period of last 10 years or a candidate is a bonafide of resident of Rajasthan.

25. It may also be pertinent to mention that Rule 2(A) of the rules of admission of 1985 are as longer in force as different rules have been laid down in 1986 and petitioners in persuance to the directions given by this court were granted admission in the MBBS course in 1985 and they have pursue their studies for nearly one year.

26. In view of the above circumstances instead of striking the entire Rule 2(A) of the admission to Medical Colleges in Rajasthan, as the only word 'last' to hold to be arbitrary and discriminatory being violative of Article 14 of the Constitution. Rule 2(A) of the Rules of 1985 could thus be read without containing the word 'last' in

the rule. The petitioner Arvind Kumar though, does not become eligible even if Rule 2(A) is read after deleting word 'last' from it, but in view of the fact that he was also granted admission by this court in 1986 and he has continued the studies of MBBS course for one year it would not been the interest of justice to cancel his admission. All the petitioners are therefore allowed to continue their studies in the MBBS Course as regularly selected candidates. The writ petitions No. 1785/85 and 1745/85 filed by Dinesh Kumar and Kiran Garg are allowed. The writ petition No. 1712/85 filed by Arvind Kumar is dismissed but he would be allowed in continue his studies in the MBBS course as regularly selected candidates.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com