

**Varsha Sathees Vs State of Assam and Others
 Ms. Madhuri Sethia Vs State of Assam**

Court: Gauhati High Court

Date of Decision: Sept. 4, 2013

Citation: (2013) 4 GLT 1030

Hon'ble Judges: Hrishikesh Roy, J

Bench: Single Bench

Advocate: S.K. Medhi, Mr. D.P. Borah and Mr. D. Das, in WPC No. 4399 of 2013, Mr. B.D. Konwar, Ms. J.M. Konwar, Ms. P. Choudhury and Ms. G. Ghosh, in WPC Nos. 4235 and 4238 of 2013, Mr. S. Chamaria, Mr. M. Phukan and Mr. S. Chanda in WPC No. 4216 of 2013, for the Appellant; D. Saikia, Addl. A.G., Assam and Mr. B. Gogoi, SC, Health in WP(C) Nos. 4399, 4235, 4238 and 4216 of 2013, for the Respondent

Judgement

Hrishikesh Roy, J.

Heard Mr. S.K. Medhi, the learned Counsel appearing for the petitioner in the WP(C) 4399/2013. Ms. J.M. Konwar,

the learned Counsel is appearing for the 2 petitioners in the WP(C) 4235/2013 & WP(C) 4238/2013 and advocate Mr. S. Chamaria is

representing the petitioner in the WP(C) 4216/2013. Also heard Mr. D. Saikia, learned Additional Advocate General, Assam who appears for the

respondents. The 4 petitioners applied for admission into MBBS Course 2013 for the Medical Colleges located in Assam and they challenge the

rejection of their candidature on the ground of non fulfilling the eligibility condition laid down by Rule 3(2) of the Medical Colleges of Assam,

Regional Dental College, Guwahati and Government Ayurvedic College, Guwahati (Regulation of Admission of Undergraduate Students) Rules,

2007 (hereinafter referred to as "the Admission Rules") which requires an applicant to be "Permanent Residents of Assam". They also challenge the

order(s) dated 26.7.2013 of the Appellate Authority, whereby the appeal filed by the aggrieved candidates was rejected. The petitioners"

candidatures were declared to be invalid on the ground that they do not satisfy the requirement of being a resident of Assam, as was prescribed by

the Admission Rules.

2. The petitioner Varsha Sathees in WP(C) 4399/2013 projects that she qualified in the Entrance Test with 184 aggregate marks and secured the

237th rank in the general merit list. Since the candidate was called for counselling as per her performance in the Entrance Test, she expected a

general category seat in the Jorhat Medical College, Assam. Her father is an Engineer with the Oil India Limited, Duliajan (Assam) since 1984 till

date and the applicant has done her schooling from the Kendriya Vidyalaya (K.V.), Duliajan w.e.f. 2005 till 2013 when she passed her Class-XII

Examination under the CBSC Board.

2.1. Appearing for the petitioner Parvathi R. in the WP(C) 4235/2013, advocate Ms. J.M. Konwar, submits that the candidate qualified in the

Entrance Test with 180 aggregate marks and secured the 295th rank. As per her performance, the applicant expected the 20th general seat in the

Fakhruddin Ali Ahmed Medical College, Barpeta. The petitioner's father is a Professor of I.I.T., Guwahati who is residing in Assam since

19.2.1997 till date. This applicant studied in the Faculty School, Guwahati uptill Class-VIII and thereafter she passed her Class-XII Examination

under the CBSE Board as a student of the Kendriya Vidyalaya, I.I.T., Guwahati.

2.2. The 3rd candidate Sitalakshmi Srinivasan is the petitioner in the WP(C) 4238/2013. In the Entrance Test, she secured the 157th rank with the

aggregate score of 192 marks and as per her merit position, the petitioner expected the 46th general seat in the Assam Medical College,

Dibrugarh. Earlier her father was a faculty member of the Assam University from 25.4.1996 and since 13.2.1997, he is serving as a Professor in

the I.I.T. Guwahati till date. This applicant did her schooling from Faculty School, Guwahati and passed her Class-XII examination under the

CBSC Board in the year 2013.

2.3. The petitioner Mathuri Sethia in the WP(C) 4216/2013 scored 192 marks and secured the 160th rank and with her performance she

expected admission in the general category in the Silchar Medical College, Assam. The student did her schooling at Silchar and passed her Class-

XII Examination from the Maharishi Vidya Mandir, Silchar in 2011. Her parents are permanent residents of Silchar town and their names are

enrolled in the 1997 Voter List. The father has produced a certificate from his employer to show that he served as an Assistant in the Kunchunpore

Tea Company Limited of Hailakandi District from 1.2.1988 to 31.12.1996 and thereafter he worked as a Manager with another Assam based

Company from 1997 till date.

3. The admission process for the year 2013 was started through the Educational Notice dated 29.3.2013 requiring the applicants to apply on or

before 2.5.2013. The petitioners applied in due time and the result of the Combined Entrance Test (CET) was notified on 25.6.2013. The

counselling for the selected candidates were scheduled w.e.f. 8.7.2013 and all the petitioners were short-listed for counselling. But when the

petitioners appeared, their candidatures were rejected on the ground that they can't be considered to be permanent residents of Assam.

Accordingly the aggrieved students challenged the said decision by filing separate writ petitions. Since alternate remedy is provided under Rule 12

of the Admission Rules, the candidates were relegated to the Appellate Forum but when the Appellate Authority upheld the admission rejection

decision, the aggrieved candidates have re-approached the Court through these petitions.

4. The conditions for admission and eligibility is prescribed under Sub Rule (2) of Rule 3 of the Admission Rules under which candidates should be

permanent residents of Assam. The applicant is also required to study minimum 4 years in a school situated in Assam. However the children of

officers of the All India Services of Assam Cadre are exempted" from these eligibility criterion. The mode of application is prescribed by Sub-Rule

(2) of Rule 7 which requires a candidate to apply initially in Form-A for appearing in the Entrance Examination. But Form-B with all enclosures is

required to be submitted, if called for, at the time of counselling. Interestingly submission of Form-A & B together will disqualify the candidature of

an applicant. Under Sub Rule (3) of Rule 7, the candidate should to satisfy herself on her eligibility and all the candidates are expected to appear

personally at the counselling stage with their original testimonials. Under the Admission Rules the Selection Board is empowered to order

verification of the documents by competent authority and to withhold the result, till the verification is complete.

4.1. It may be noted that in the prescribed format of Certificate of Residency [Annexure-III(C)], the ownership of immovable property and

requirement of residing continuously for 15 years in Assam either by the candidate or his/her parents is stipulated. Such Certificate of Residency is

to be certified by the concerned Deputy Commissioner. In these cases all candidates had furnished the Certificate of Residency but in those

certificates there was no specific mention of the property ownership of immovable property prescribed through Annexure-III(A) was left blank by

2 of the petitioners. But parents of the 2 candidates purchased immovable property just on the eve of counselling and filled up the property

particulars in their respective Annexure-III(A) certificate. But the 3rd certificate (Proof of Residence) prescribed under Annexure-III(B) which

required minimum 2 supporting documents, was furnished by all the candidates.

5. The petitioners contend that they had offered valid candidature with the requisite P.R.Cs. which certify that they are permanent residents of

Assam and accordingly by virtue of their meritorious performance in the Entrance Examination, they should have been admitted.

5.1. The petitioners project that they and their parents have lived in Assam continuously for more than 15 years and have also produced the PRC

certificates which certify them to be permanent residents of Assam. Accordingly they argue that declaring their candidature to be invalid on the

ground of the family not owning any property is unreasonable and irrational.

5.3. While conceding that the State has the power to encourage admission of local students to the 85% State quota seats, the petitioners contend

that they satisfy the prescribed criteria of being permanent residents of the State, since they have done their schooling from Assam's schools and

their parents have lived in the State for the requisite numbers of years. Questioning the logic of owning immovable property as irrational, the

petitioners argue that their permanent residency status can't be undermined on the ground that their family do not possess immovable property in

the State.

5.4. The petitioners rely upon the Government Circular dated 24.7.1987 enclosed to the additional affidavit in the WP(C) 4216/2013 to contend

that owning of landed property is irrelevant to obtain PRC and they argue that a person who continuously reside in Assam for the prescribed years

can be legitimately issued PRC for the purpose of admission to Educational Institutions.

5.5. Referring to Rule 13 of the Admission Rules, which requires the medical students to execute a Bond to serve under the Assam Government

for a period of 5 years with 7 Lakh penalty for defaulting doctors, it is argued that the stated objective to have enough doctors to serve in Assam is

addressed adequately by Rule 13 and presumption shouldn't be drawn that petitioners will not serve in Assam once they qualify.

6.1. Defending the rejection of the candidature, Mr. D. Saikia, the learned Additional Advocate General however submits that the none of the

candidates or their family possessed any immovable property when they applied for admission and accordingly they are liable to be disqualified

under Rule 3(2)(b) and Rule 7(2) of the Admission Rules. Omission to give of the property details in the PRC in Annexure-III(C) is argued to be a

good ground for denial of admission. According to Mr. Saikia this deficiency doesn't get cured with purchase of property just on the eve of

counselling.

6.2. According to the respondents, the Government Circular dated 24.7.1987 which allows issuance of PRC for educational purpose without any

immovable property is inapplicable for MBBS admission since the candidate is required to be satisfy the permanent residency criteria as per the

prescribed Admission Rules. Projecting that Government has enacted the Admission Rules under Entry 25 of the concurrent list, the respondents

argue that the State can regulate the process of admission and protect the interest of their own students by stipulating the residency requirement for

the State Quota Seats.

6.3. Pointing out that the petitioners' family are residing in the State only because their parents are employed here, the learned Additional

Advocate General contends that these candidates are unlikely to serve as Doctor in Assam and accordingly they should be considered ineligible for

admission by considering them to be non-residents of the State.

6.4. Referring to Rule 7 of the Admission Rules, the respondents submit that the petitioners knew that they do not fulfil the eligibility criteria for

admission to the State Quota Seats and this is why parents of the 2 candidates hurriedly purchased immovable property on the eve of counselling,

which demonstrate that the candidates were aware of their ineligibility status when they applied for admission.

6.5. According to Mr. Saikia, the prescription of Rs. 7 Lakh penalty for bond violator can't confer legitimacy to non-residents of the State to

secure admission and he argues that Rule 13 is intended to secure the service of enough doctors to serve the State's interest.

7. The residence requirement for admission to medical colleges in State is held to be constitutionally valid in Dr. Pradeep Jain and Others Vs.

Union of India (UOI) and Others, . Therefore State is legally competent to provide for admission of those who are residents of the State. The

object of reservation as has been projected by the State is to ensure that the doctors graduating from the State's Medical Colleges will opt to

serve the patients in the State. The perception is that doctors with roots in the State are likely to serve in Assam and therefore providing for

reservation to the State residents in the State's Medical Colleges can't be faulted.

8. But since seats have been reserved for the State residents, this Court is required to examine the reasonableness of such classification since

discrimination based on residency presupposes that the permanent residents of Assam after qualifying as doctors, will surely serve the need of the

people of the State.

9. In India when a person with roots in one State moves to another State with intention to reside there permanently or indefinitely, his domicile

doesn't change and he doesn't acquire a new domicile of choice. This is because our country has only one citizenship i.e. the citizenship of India

and the domicile of origin which is conferred by operation of law to each person at birth doesn't change with relocation to another part of the

country. However the domicile of choice is acquired by residents in a territory subject to distinctive legal system with intention to reside there

permanently or indefinitely. Therefore although domicile can't change through migration, the residential status can change when a person moves

with the intention to reside for long duration. In this context the Apex Court in Pradeep Jain (Supra) has held that for admission to Medical

Colleges situated within a State, the meaning of residence is to be understood as intention to reside in that State permanently or indefinitely.

10. Therefore a person by continuous residence in a particular State may acquire the residence of choice when it is reflected by his conduct that he

intends to reside in that State permanently or indefinitely. If we look at the requirement of permanent residents in this context, it is obvious that the

prescription of 15 years stay in Assam was intended to address that category who resides in Assam for employment or other bona fide purpose.

To establish that an applicant is a permanent resident of Assam she is required to produce the PRC issued by the authorized State functionary and

her eligibility is to be tested on the basis of continuous stay for minimum 15 years. Although these twin requirement is fulfilled by the petitioners this

Court is called upon to decide whether the additional requirement of property ownership is consistent with the eligibility criteria of permanent

residency, for securing MBBS seat in a State Medical College.

11. The question therefore is relevance of property ownership with the object of medical admission? Does it mean that otherwise eligible

permanent residents whose family do not own any property will be de-recognized for the purpose of admission into State Medical Colleges. Apart

from the issue of financial capacity of the family to buy property, the larger issue of whether the status of a permanent resident gets extinguished by

want of property is also required to be answered in these cases.

12. At this stage it may be useful to take note of exemption granted to the children of the officers of All India Services in Assam Cadre. Such

children don't require to study in Assam schools nor she is required to be permanent resident of Assam. Obviously the requirement of ownership

of property is also not applicable to this category of applicant. Therefore it is apparent that there is a classification even amongst those whose roots

are outside of Assam but who are staying in the State in connection with their vocation or business. If a person by choice has resided in Assam

permanently or indefinitely or at least for the prescribed years he is entitled to PRC under the Government Circular dated 24.7.1987. Therefore it

would be hardly reasonable or rational to say that they are not to be treated as permanent residents only because, they do not possess immovable

property in the State.

13. The irrationality of the above proposition is also discernible from the hurried purchase of property by the family of 2 of the applicants just

before counselling started. The respondents contend that those who have recently purchased property are ineligible and so in other words,

according to respondents only those who acquired property prior to the application, are to be treated as permanent residents. This according to

me is an absurd differentiation which can't have any rational relationship to the objective of permitting only permanent residents to apply for

medical admission to the State Quota Seats. If this is accepted the balance will unfairly tilt against the poor who are otherwise eligible.

14. Each of applicants here have done their schooling in Assam and their parents have resided for many years in the State to satisfy the permanent

residents criteria. Moreover they have furnished their respective PRCs issued by the competent authority of the State and other contemporaneous

documents. Should it then be logical to discard the PRCs only because the applicants' family didn't own immovable property when they applied

for admission ? The Assam Government's Circular dated 24.7.1987 makes it clear that ownership of landed property is not necessary for issuance

of PRC for the purpose of admission to educational institutions and this Government circular definitely supports the conclusion that property

ownership is irrelevant to establish permanent residency for admission.

15. The PRCs produced by the petitioners were admittedly issued by competent authority. Moreover the validity of the PRCs furnished by the

applicants is not the ground for denying admission. Therefore it would be unreasonable according to me for the respondents to disregard the PRCs

for denying the certified status of the petitioners.

16. It may also be noted that in the instruction to the candidates, they were informed that Form-B testimonials are to be produced only if called for.

This makes it clear that eligibility of the candidates is to be judged on the basis of the stipulation made in Rule 3 of the Admission Rules. Here the

applicants/parents have furnished proof of residence in the State by producing the supporting documents prescribed in Annexure-III(B) and have

also produced the Certificate of Residency issued by the concerned Deputy Commissioner. Since the Government Circular dated 24.7.1987

permits issuance of Permanent Residency Certificate without ownership of landed property, the omission to mention the immovable property in the

Certificate of Residency in my view, is not fatal to the candidature of the petitioners.

17. The children of All India Services officers are not required to establish that they are permanent residents of Assam and therefore it is obvious

that the State doesn't expect this group of medical graduates to serve in the State. But on the other hand others who are domicile by birth of

another State and who have become permanent residents of Assam are required to satisfy that they studied in Assam's schools. They should also

execute a Bond to serve in Assam for 5 years after they qualify. This requirement is applicable across the board to everyone except the children of

All India Services officers. As earlier noted the parents of the petitioners are serving in the I.I.T., Guwahati, Oil India Limited, Duliajan and in the

private sector for last many years which qualify them as permanent residents. Therefore to consider them as non-residents only because their

parents do not have immovable property would in my view will be irrational and discriminatory. It has been held by this Court in Shri Saikat Mallik

Vs. State of Assam and Others, that ownership of land to establish permanent residentship of Assam for the purpose of medical admission is

unreasonable. Therefore having regard to the fact that genuineness of the PRCs produced by the applicants is not being questioned, it would not be

fair to deny them admission by refusing to acknowledge them as permanent residents of Assam.

18. Moreover if the contention of the respondents is to be accepted and ownership of immovable property is to be read into the requirement of

permanent residency status, what will happen to the poor who have no means to acquire property. They will suffer discrimination and similarly

situated meritorious State residents will be treated differently only on the differentiation of their economic status. This obviously will be

unreasonable and irrational.

19. At this stage it may be important to examine the merit of the order passed by the Appellate Authority. In respect of Parvathi R. and Sitalakshmi

Srinivasan, the acquiring of property by the parents of these 2 candidates one day prior to the counselling was considered to be a relevant factor to

conclude that the candidates did not fulfil the eligibility criteria at the stage of applying for the common entrance examination.

In so far as the petitioner Varsha Sathees is concerned, the appellate authority perversely concluded that the candidate did not fulfil the schooling

requirement or her parents did not continuously stay in Assam for 15 years. In fact the candidate has studied in the Kendriya Vidyalaya, Duliajan

from 2005 to 2013 and her father has served at Duliajan from 1994 to 2013.

For the candidate Madhuri Sethia it was declared that continuous stay of her parents in Assam could not be established but in reaching the said

conclusion, the appellate authority disregarded the other supporting documents enclosed by the candidate and also ignored the fact that her parents

were registered voters of the Silchar constituency, since the year 1997.

Therefore non application of mind is clearly discernible and accordingly rejection of the appeal by the appellate authority for the grounds and

reasons stated in the order are held to be unsustainable.

20. The Addl. Advocate General has cited Amarjeet Kumar Vs. State of Assam and Others, where the petitioner therein relied upon a PRC not

on his father's stay but on his Uncle's residency in Assam and that is how Court upheld the denial of admission in that case. But this ratio is

inapplicable here as the petitioner's parents are permanent residents of Assam. Similarly the next cited case i.e. Piyush Madhukar Vs. The State of

Assam and Others, where verification of the PRCs were ordered by the admission authorities is also inapplicable as facts here is different. In Dr.

Jagadish Saran and Others Vs. Union of India (UOI), ; Dr. Parag Gupta Vs. University of Delhi and Others, and Anant Madaan and others Vs.

State of Haryana and others, it is held that State is competent to provide for admission of State's students who might be expected to serve the

State's people after they qualify as doctors. In the present case, nobody has a different view on the ratio of these judgments of the Apex Court.

21. While the State is certainly empowered to protect the interest of local students to ensure that sufficient doctors are available to serve the

people of Assam, rejection of the candidature of the petitioners on the ground that their family do not possess immovable property, will be illogical

since the ground for rejection has no reasonable nexus with the object of providing for medicare to the residents of the State. The stated objective

is already addressed by requiring the students to do their schooling in Assam and by requiring the parents who are domicile by birth of another

State to reside continuously in Assam for certain number of years. But the additional requirement of ownership of property is unlikely to further

advance the otherwise laudable objective of the State, to provide for doctors who might opt to serve in the State. Moreover there is nothing to

prevent a person to sale away his property if it is acquired with the oblique motive of securing admission, once the purpose is achieved.

22. That apart, even those who are domicile of the State by birth after qualifying from the State Medical Colleges may migrate to another State for

better career prospects and for such violators, the Bond penalty under the Rule 13 is the only barrier. The petitioners herein are also covered by

similar bond conditions and seeing that they have lived in this State for long and since their parents work life has not yet ended, it can't be said with

certainty that they will never serve in Assam. Therefore as the petitioners satisfy the permanent residency criteria they are held to be eligible for

admission. Consequently the impugned order(s) dated 26.7.2013 of the Appellate Authority is quashed and the respondents are directed to give

admission to the petitioners as per their entitlement and respective merit position. Since the classes for 2013 session has already started from 1st

August 2013, there should not be any unnecessary delay and admission should be granted within 7 days from today. The cases are accordingly

allowed without any order on cost.