

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No. D-247 of 2023

Present:

Yousuf Ali Sayeed, J
Zulfiqar Ali Sangi, J

Appellant : Dua Tauseef, through Ghulam Murtaza Korai, Advocate.

Respondent No.1 : Province of Sindh, through Shehriyar Imdad Awan, AAG.

Respondents 2 to 4 : Director Admissions SMBBMU and others, through Sarfraz Ali Abbassi, Advocate.

Date of hearing : 07.11.2023

JUDGMENT

YOUSUF ALI SAYEED, J - The Petitioner had apparently applied for and obtained admission in the 1st year of the MBBS/BDS program for the Session 2022-23 at Ghulam Muhammad Mahar Medical College, Sukkur, a constituent college of Shaheed Mohtarma Benazir Bhutto Medical University, but the same was cancelled vide a letter dated 01.02.2023, prompting her to invoke the jurisdiction of this Court under Article 199 of the Constitution so as to impugn that action and seek restoration of her status.

2. As it transpires, such cancellation was undertaken on the ground of what was perceived as being a discrepancy in the Petitioner's domicile. The substantive portion of the aforementioned letter reads as follows:

“Dear candidate

Please refer to your application for admission to MBBS/BDS Course, session 2022-23, at SMBBMU, Larkana on the basis of Domcile/PRC of district Sukkur and provisional allocation & Fee deposition at GMMMC, Sukkur.

During verification of original documents submitted by you at Directorate of Admissions SMBBU, Larkana, you were found to have domicile of district Rahimyar Khan also. Such status of your domicile of Rahimyar Khan was confirmed from website <http://domicile.punjab.gov.pk>.

As per admission rules, possessing domicile of 02 district simultaneously, comes under the act of forgery and amounts to cancellation of admission.

You were also called for personal hearing at Directorate of Admissions SMBBU, Larkana on 01.02.2023, where you could not satisfactorily answer the queries raised on your document.

Keeping in view the above facts, there is considerable evidence of forgery in your documents. Therefore your provisional admission in MBBS Course at GMMMC, Sukkur, a constituent college of SMBBU, Larkana, cannot confirmed and is CANCELLED with immediate effect.

As per prospectus rules, any fees deposited by you shall stand forfeited and University reserves the right to initiate legal proceeding against you.”

3. On 14.02.2023, being the very first date that the matter came up in Court, an ad-interim Order was made whereby the operation of the impugned letter was suspended and the Petitioner permitted to continue her education on a regular basis.

4. In the comments that then came to be filed on behalf of the Respondents Nos. 2 to 4, it was stated that whilst the Petitioner's domicile of Rahimyar Khan had been cancelled on 25.09.2020, her domicile of Sukkur had been obtained on 05.08.2020. This was considered to be a violation of Rule 6(II) of Sind Permanent Residence Certificates Rules 1971 (the "**PRC Rules**"). Indeed, learned counsel who appeared in the matter on behalf of said Respondents presented his arguments precisely along the same lines, while emphasising that admissions in public sector medical colleges were based on a quota system where seats were allocated by the Government on a District basis and granted to those students who qualified on merit from the relevant District, but that in the present case, the Petitioner had wrongly obtained a second Domicile in this Province in order to usurp the quota of the residents of Sukkur.

5. Under the given circumstances, it falls to be considered that Rule 2(1) of the PRC Rules provides that:

“No person shall be eligible for admission to a Medical or an Engineering College in Sind, or such other Educational or Technical Institution in the Province as may be notified by Government in that behalf from time to time (hereinafter referred to as an educational institution) or be recruited to any Service or against any post under the rule-making authority of the Governor of Sind, or under any local authority or statutory body set up or established by it hereinafter referred to as the Public Service), unless he furnishes to the authority competent to make the admission or the recruitment, as the case may be, a certificate of his permanent residence in Sind from the District Magistrate of the area where he is permanently residing.”

6. Furthermore, as per Rule 5(1) of the PRC Rules, a Permanent Residence Certificate (“**PRC**”) for the purpose of admission to an educational institution is issued in Form “C”, whereas that for recruitment to public service is issued in Form “D”, with it being provided in terms of Rule 5(2) that “the certificate shall specify the District or other local area in Sindh of which the holder of the certificate is a permanent resident”. However, while Rule 7(2) provides that “A person who is domiciled in or has acquired a domicile of another Province shall not be granted a certificate in Form “D”, unless he renounces such domicile and produce satisfactory evidence before the District Magistrate of such renunciation”, there is no parallel as regards the grant of a certificate in Form “C”.
7. In the matter at hand, no question appears to have been raised regarding the Petitioner’s PRC, and the question of her eligibility in terms of the PRC Rules has instead been conflated with her domicile, albeit the concepts being distinct, as observed in the judgment rendered on 01.12.2021 by a learned Division Bench of this Court in CP No. D- 1170 of 2021, titled Haroon Sohail v. LUMHS, where it was noted that:

7. We are of the considered view that when a person is certified as domiciled in Pakistan, and who is permanently residing in one Province goes to another Province to reside there permanently or indefinitely, his domicile in Pakistan does not undergo any change, nor does it acquire a new certificate of domicile. There is a distinction between the concept of domicile under the Pakistan Citizenship Act and the place of ‘permanent residence’ of a person within Pakistan since the former relates to the status of a person and involves a question of law while the latter is a question of fact. The country of domicile and the place of permanent or ordinary residence within the country are altogether different concepts.

8. In the same matter, as regards the subject of a PRC, the learned Division Bench went on to observe that:

“9. The requirement of a Permanent Residence Certificate [PRC] for obtaining admission to a medical college in Sindh emanates from Rule 2 of the Sindh Permanent Residence Certificate Rules, 1971. The eligibility for the grant of such PRC is governed by Rule 6 thereof which provides:

6. No person shall be eligible for grant of a certificate in Form ‘C’ unless-

(i) he was born in any area forming a part of Sind, and further—

(a) in the case of a person of legitimate birth, at the time of his birth, his father was domiciled in Sind, or if he was born after the death of his father, the father, at the time of his death, was domiciled in the Sindh, or

(b) in the case of a person of illegitimate birth, his mother, at the time of his birth, was domiciled in Sindh; or

(ii) in the case of a person who was not born in Sind—

(a) his parents are domiciled in Sind, and have resided in Sind for a period of not less than 3 years; or

(b) if his parents are not domiciled in Sind, he is domiciled in Sind, and further has either resided in Sind or has been educated in Sindh for a period of not less than 3 years; or

(iii) his father or mother is in the service of the Government of Sindh and has put in not less than one year service as such.

From the above Rule, it is apparent that a domicile certificate issued to a person under the Pakistan Citizenship Act which shows his place of residence as Sindh, may at best be a piece of evidence in considering his eligibility for a PRC in Form-C under Rule 6 of the Sindh Permanent Residence Certificate Rules, 1971; it is not a pre-condition for granting a PRC in Form-C.”

9. Earlier, as regards the import of Rule 6(1), it had been observed by another learned Division Bench of this Court in the case reported as Mehmood Ul Hassan Khan v. Dow University of Health Sciences through Vice-Chancellor PLJ 2008 Karachi 10, that:

“6. With great respect, we find the contention patently untenable. Learned counsel indeed read out Rule 6(i), which relates to a situation where the father of a candidate is domiciled in Sindh (for whatever it means) but completely overlooked that Rule 6(ii)(b) also explicitly makes a candidate eligible for a Certificate if his parents are not domiciled in Sindh but he himself is domiciled in Sindh and is either resided or has been educated in Sindh for a period of not less than three years. Whatever confusion might have been created by the use of the expression "domicile" in these Rules it is at least evident that they envisage separate domiciles for parents and children applying for admissions in educational institutions and the Rule that the Domicile of a child must follow that of his father has no application whatsoever for the purpose of these Rules. A careful reading of the Rules clearly demonstrates that the basic objective is to determine the permanent residence of a candidate in an area on the basis of a factual inquiry.

7. As regards a domicile certificate it was contended that the same is to be granted under Section 17 of the Citizenship Act, 1951 and the petitioner had to be treated as a minor and granted a certificate for the same area as his father. In this context, we need to observe that the expression "domicile" with reference to a particular area appears to be misnomer which has given rise to a great deal of confusion. The distinction between "domicile" and "permanent residence" needs to be clearly kept in view. The former reflects a person's status as a citizen of a particular State or a country whereas the latter may be a pure question of fact as to his residence in a particular area. Way back in 1961, the Honourable Supreme Court observed in *Joan Marg Carter versus Albert William Carter* (PLD 1961 SC 616), "we are constrained to observe that the learned Judges of the Letters of Patent Bench have fallen into error in thinking that a person cannot be domiciled in a country unless his Domicile can be fixed at some particular place in that country" Clarifying the position a Division Bench of this Court in *Mehr-un-Nisa Baloch versus Appellate Committee* (PLD 1978 Karachi 214) held that "insofar as the Citizenship Act is concerned Domicile Certificate is

granted when the concerned Authority is satisfied that the applicant has ordinarily resided in Pakistan for a period of not less than one year immediately before making of the application and has acquired domicile therein. Therefore, the Domicile of which Section 17 speaks of is not of a particular area in Pakistan but of Pakistan".

8. The distinction was further highlighted by the Honourable Supreme Court in the subsequent case of Muhammad Yar Khan versus Deputy Commissioner-cum-Political Agent Loralai (1980 SCMR 456). Their lordships observed, "in this view of the matter it would be obvious that the domicile certificate granted to the petitioner by the District Magistrate, Loralai, would only show that he was domicile of Pakistan and not the domicile of Balochistan or for that matter of the District of Loralai." Highlighting the distinction between the concepts of domicile and certificate of permanent residence and applying them to the facts of the case, their lordships held that the petitioner being a citizen of Pakistan by birth having his ancestral home in District Dera Ghazi Khan, there was no legal bar even to his applying to the District Magistrate Loralai for grant of a domicile certificate. Nevertheless, as to the certificate of permanent residence the position was altogether different and when he claimed admission in an institution of higher learning against seats reserved for residents of Balochistan or its districts he was required to prove such residence as a matter of fact to the satisfaction of the concerned authorities. The above precedents were followed by a Division Bench of this Court in Ziaullah versus District Magistrate Nawabshah (2000 CLC 406) of which one of us (Sabihuddin Ahmed C.J) was a member, and it was explained that domicile related to the status of person and was question of law, permanent residence was one of fact. It was held that the District Magistrate could not refuse to grant domicile certificate to the petitioner's children merely on the ground that he had taken up residence in another District. At the same time it was clarified that a permanent residence certificate could not be claimed merely on the strength of such domicile certificate. We are therefore, of the view that permanent residence of a candidate could be the only relevant consideration for his eligibility for admission in an institution of higher learning aided by public revenues.

9. The prospectus for admission to State owned medical colleges in Karachi required that 426 seats on open merit be reserved for candidates with Karachi domicile who had studied at Karachi. The eligibility criteria requires that apart from matric or intermediate examination Certificates from Karachi, a candidate's domicile certificate of District Karachi, his P.R.C. of the same District and his father's domicile of Sindh Province is to be filed. It obviously implies that a

candidate must possess his own independent "domicile certificate" separate from that of his father who could have such a certificate from any other place. Indeed if the father has obtained a Certificate from any other District in the Province of Sindh, the candidate would fulfil the criteria on account of his own certificate from Karachi. However, there may be occasions where the father possesses a domicile certificate from another Province where the candidate himself has never resided or has no intentions of residing. A legitimate question could arise whether such a candidate would be eternally barred from seeking admission in any Institution of professional and higher education anywhere on account of application of similar Rules? Article 15 of the Constitution guarantees to every Citizen the right to reside and settle in any part of Pakistan. Article 22(3)(b) guarantees that no citizen will be denied admission to an educational institution receiving aid from public revenues on grounds of race, caste or place of birth etc. Article 37(c) requires State to make technical and professional education equally accessible to all on the basis of merit. However, as observed by the Honourable Supreme Court in Muhammad Yar Khan's case (1980 SCMR 456), it is possible for a Provincial Government to reserve seats for permanent residents of that Province in institutions of higher learning. The above principle was further highlighted in Atiya Bibi Khan versus Federation of Pakistan (2001 SCMR 1161) and Gul Rukh Sarfaraz versus Government of N.-W.F.P. (2001 SCMR 1729), wherein reservation of seats for candidates for less developed areas in medical colleges was upheld, but it was observed that the benefit should only go to those who had lived and studied in those areas and not to those who had merely acquired domicile certificates in respect of such areas.

10. More crucially, the learned Division Bench then went on to conclude as follows:

“10. For the foregoing reasons, we have arrived at the following conclusions:--

(i) That the domicile and permanent residence Certificate are two entire distinct concepts.

(ii) That the Citizenship Act 1951 only speaks of the concept of Pakistan domicile and has nothing to do with any particular Province, District or area. The District Magistrate is only a functionary authorized to issue a certificate of domicile to a person who has resided in Pakistan for a certain period and chosen to make Pakistan his permanent home.

(iii) Rule 23 of the Pakistan Citizenship Rules only contemplates cancellation of Domicile Certificate if it has been obtained through misrepresentation and a person is entitled to retain his certificate of domicile issued by one District Magistrate even if he chooses to permanently settle down in another District.

(iv) A Provincial Government may have the right to reserve seats in educational institutions for bona fide residents of that Province but denial of such right to a resident on a mere ground that he has failed to get his original domicile certificate cancelled would be violative of his fundamental rights guaranteed under Article 15 of the Constitution.

(v) That in any event the question of permanent residence in a Province or a District is to be determined on the basis of a factual inquiry under the Sindh Permanent Residence Rules 1971 and the factum of such permanent residence of student could be only relevant consideration for a candidate's admission into an institution of higher learning imposed through law made under the authority of a Provincial legislature and a certificate of domicile issued under the Citizenship Act either to a candidate or his parents is altogether irrelevant."

[underlining added for emphasis]

11. As such, it is apparent that the subject of domicile is not germane to the matter. Even otherwise, the Petitioner had only one domicile at the time that she applied for and obtained admission, which was that from Sukkur. Furthermore, during the subsistence of the PRC issued to her under the 1971 Rules, it does not fall to the Respondents Nos. 2 to 4 to question the validity thereof on the touchstone of Rule 6(II).

12. That being so, the Petition stands allowed with the impugned letter dated 01.02.2023 being set aside and the admission of the Petitioner being restored as was prior to issuance thereof.

JUDGE

JUDGE

Irfan/PA