1999 (I) OLR — 448

D. M. PATNAIK AND P. K. MISRA, JJ.

O. J. C. No. 5516 of 1996

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Sri Shambhulal Yadav ... Petitioner

Versus

Sri V. R. P. Ahuja ... Opp. Party

For Petitioner : M/s. Milan Kanungo, L. Kanungo, S. Das, D. Pradhan, P. K. Rath, S. Nanda

For Opp. party : Addl. Standing Counsel

DOMICILE CERTIFICATE — Consideration for issue — Petitioner has been living in Jharsuguda from his birth though his family originally belong to Bihar — He has been prosecuting his studies upto Class-IX and has passed lower Oriya as third language — The Tahasildar recommended for issue of certificate, but the Collector rejected the request on the ground that his performance of speaking Oriya was not satisfactory — Guideline of Govt. in Home Deptt. as to permanent resident, is that he should have lived in the province for a minimum period of 12 years and is able to speak Oriya, if literate is able to read and write it and has passed test in Oriya equivalent to middle standard — *Held*, issuance of certificate in regard to permanent residence in any place in the State has nothing to do with knowledge in Oriya — Language, religion and caste of one person have no nexus with one's permanent plea of stay — Rather such considerations are against mandate of Arts. 15 and 16 of Constitution of India — The notion which lies at the root of the concept of domicile is that of permanent home — Domicile by birth and also domicile by choice explained — Position of law stated.

(Paras - 3 to 6)

Relied on :

1. *AIR 1984 SC 1421 : Dr. Pradeep v. The Union* ... 3
2. *Halsbury's Laws of England* ... 4
3. *(1958) 8 HLC 124 : Whieker v. Hume* ... 4

Decided on 4th February, 1999.

JUDGMENT

D. M. PATNAIK, J. — The petitioner is aggrieved by the order dated 25.4.1996 of the Collector, Jharsuguda rejecting his prayer for issuance of a domicile certificate. Heard the learned counsel for the petitioner and learned counsel for the State. Perused the impugned order and the counter-affidavit of the State.

2. The petitioner having been born in Dipupada in Jharsuguda claims to be a permanent resident of Orissa. He also claims his education upto Class-IX in the Railway High School, Jharsuguda. He claims that though his ancestral place is Dadhihar in Khadagpur in the district of Munger (Bihar) yet since his father was serving in the Railway Station at Jharsuguda, he has been living there since his birth.

Though the Tahasildar after enquiry gave a favourable report stating that in fact he is residing in that area in Jharsuguda, the Collector by the impugned order rejected the request holding that on testing his ability to write and speak Oriya, the performance of the petitioner was found to be unsatisfactory.

In the counter the only ground taken is that the Collector conducted such a test according to the Resolution No. 38 dated 18.1.1949 of the Govt. of Orissa in Home Department wherein the Government stipulated the guidelines for issuance of domicile certificate. A copy of the said Resolution has been filed as Annexure-A. In the Resolution under Clause (v) a definition was given to the term 'a permanent resident of Province of Orissa' by stating thereunder that it would mean anybody who or one whose parents has lived in the Province of Orissa for a minimum period of 12 years and who is able to speak Oriya and if he is a literate person (i) is able to read and write it; and (ii) has also passed a test in Oriya equivalent to the middle standard.

3. The petitioner in the writ petition has averred that he wants a Domicile Certificate for his service in the defence and that a bare certificate by the State authorities that his permanent residence in Orissa is all that is necessary to serve his purpose and it is further averred that an enquiry into this aspect of his permanent stay in Orissa has nothing to do with his knowledge of either writing or speaking Oriya. However, the impugned order itself shows that the petitioner has read upto Class-V in Hindu medium in the school of South Eastern Railway, Jharsuguda. The Collector, in the impugned order has also mentioned that the certificate issued by the Headmaster, Railway Colony High School, Jharsuguda corroborating the mark sheet of Class-IX reveals that the petitioner passed lower Oriya as a third language.

We are of the view that issuing of a certificate in regard to the permanent residence of the petitioner in any place within the State of Orissa has nothing to do with his knowledge in Oriya. The impugned order of the Collector does not indicate anything adverse about the fact of the petitioner permanently staying at Dipupara in Jharsuguda town. There is neither constitutional nor legal sanction to refuse a person a certificate for his permanent residence at a particular place. Language, religion and caste of one person have no nexus with one's permanent place of stay. Rather such considerations are against the mandate of Articles 15 and 16 of the Constitution as held by the apex Court in the case of **Dr. Pradeep Jain and others v. The Union of India**, *AIR 1984 SC 1421*. A reading of the judgment would show as to what was stated by the Court with regard to the word 'domicile'.

4. The Court in the above case quoted the definition of the word 'domicile' given in the Halsbury's Law of England as the legal relationship between an individual and a territory with a distinctive legal system which invokes that system as his personal law. The Court further quoted the definition of 'domicile' by *Lord Cranworth* in **Whieker v. Hume**, *(1958) 8 HLC 124*, where it was stated that 'by domicile', it means 'home', the 'permanent home'.

The notion which lies at the root of the concept of domicile is that of permanent home. It is basically a legal concept for the purpose of determining what is the personal law applicable to an individual and even if an individual has no permanent home, he is invested with a domicile by law. In para 7 of the judgment in the case of Dr. Pradeep Jain (*supra*) the Court held that there are two main classes of domicile: domicile of Origin that is communicated by operation of law to each person at birth, and secondly, the domicile of choice which every person of full age is free to acquire in substitution for that which he presently possesses. The domicile of origin attaches to an individual by birth while the domicile of choice is acquired by residence in a territory subject to a distinctive legal system, with the intention to reside there permanently or indefinitely. The area of domicile whether it be domicile of origin or domicile of choice, is the country which has the distinctive legal system and not merely the particular place in the country where the individual resides.

In para-8 of the judgment the Court held as follows :

> "Now it is clear on a reading of the Constitution that it recognises only one domicile, namely, domicile in India. Article 5 of the Constitution is clear and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India". Moreover, it must be remembered that India is not a federal State

> in the traditional sense of that term. It is not a compact of sovereign States which have come together to form a federation by ceding a part of their sovereignty to the federal State. It has undoubtedly certain federal features but it is still not a federal State and it has only one citizenship, namely, the citizenship of India. It has also one single unified legal system which extends throughout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India. The legal system which prevails throughout the territory of India is one single indivisible system with a single unified justicing system having the Supreme Court of India at the apex of the hierarchy, which lays down the law for the entire country...."

In another place in the same para it has been further made clear that the concept of 'domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States. It would not, therefore, in our opinion be right to say that a citizen of India is domiciled in one State or another forming part of Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any change; he does not acquire a new domicile of choice. His domicile remains the same, namely, Indian domicile. According to the Court, it is highly detrimental to the concept of unity and integrity of India to think in terms of State domicile.

5. We find the petitioner in his application for the certificate rightly mentioned that it should be a certificate for residence. But the opposite party rather, wrongly being ignorant of its meaning given by the apex Court in the case referred to above mentioned the word 'domicile. It seems the above decision of the Apex Court perhaps was not brought to the notice of the Collector. The reason given for refusing a certificate in regard to the permanent residence of the petitioner runs counter to the law laid down by the apex Court. The Collector instead should have issued a certificate of 'nativity'.

6. In the result, the writ petition is allowed. No cost. The Collector, Jharsuguda is hereby directed to issue a certificate of nativity as permissible under the rules and the said certificate should be sent by Registered Post to the address given by the petitioner in the application within two weeks from the date of receipt of this order. Requisites be filed within three days for communication of the order.

P. K. MISRA, J. I agree.

Petition allowed.