

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 5688 of 2024

1. Jharkhand Small Industries Association, a society registered under the Societies Registration Act, 1860 having its registered office at Udyog Bhawan, Kokar Industrial Area, Ranchi-834001, Jharkhand, through its President Anjay Pachariwala, aged about 57 years, S/o Basudeo Pachariwala, resident of 873/A, Anjani Bhawan, Old HB Road, Kokar, P.O. Ranchi G.P.O., P.S. Sadar, Ranchi- 834001, Jharkhand.
2. Laghu Udyog Bharati, having its registered office at Anant Rao Bhide Smriti Parisar, Central Bazar Road, 184, Shivaji Nagar, Nagpur-440010, through its State President Vijay Kumar Chhaparia, aged about 73 years, S/o Late Mishrilal Chhaparia, resident of Pahari Mandir, Garikhana Chowk, Harmu Road, P.O-Ranchi G.P.O, P.S.-Kotwali, Ranchi- 834001 Jharkhand.
3. Adityapur Small Industries Association, having its registered office at M5(P), Asia Bhavan, Tata Kandra Road, Adityapur, Jamshedpur-832109, Jharkhand through its President Shri Inder Kumar Agarwal, aged about 63 years, S/o-Hanuman Prasad Agarwal, resident of Flat No. 214, Ashiana Housing Complex, P.O.- Adityapur, P.S.- Adityapur, Seraikela- Kharsawan, 831013, Jharkhand

..... Petitioner

Versus

1. The State of Jharkhand.
2. The Secretary, Department of Law, Government of Jharkhand, P.O- Dhurwa, P.S- Jagarnathpur, District – Ranchi.
3. The Secretary, Department of Labour, Employment, Training and Skill Development, Government of Jharkhand, P.O- Dhurwa, P.S- Jagarnathpur, Dist. – Ranchi.
4. The Chief Secretary-cum-Legal Advisor, Law Department, Government of Jharkhand, P.O- Dhurwa, P.S- Jagarnathpur, Dist. – Ranchi.
5. Union of India, through its Secretary, Ministry of Labor and Employment, Shram Shakti Bhawan, Rafi Marg, P.O.- Parliament House, P.S.- Rafi Marg, New Delhi-110001.

..... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner:	Mr. Amit Kumar Das, Advocate Mr. Shivam Utkarsh Sahay, Advocate Mr. Sankalp Goswami, Advocate
For Resp. Nos.1-4/State:	Mr. Ashutosh Anand, Addl. A.G.-III
For Resp.No.5/IOI	Mr. Anil Kumar, Addl. S.G.I.

02/Dated: 11.12.2024

M.S. Ramachandra Rao, C.J.(Oral)

- 1) In this Writ Petition, the constitutional validity of the “The Jharkhand State Employment of Local Candidates in Private Sector Act, 2021” (for short “the Act”) is challenged.
- 2) This Act applies to every such establishment in the State of Jharkhand where 10 or more workforce is employed. Every such establishment has to register itself on a portal (Section 3); every such employer, if there are vacancies for recruitment for the manpower having monthly salary upto Rs.40,000 p.m shall have to ensure that 75% recruitment is made of local candidates against total vacancies notified (Section 4(1)); the local candidates who wish to benefited from the Act shall have to register themselves on Rojgar Portal (www.jharniyojan.jharkhand.gov.in) (Section 4(iii)). The Act also provides for hefty financial penalties in case of violations (Sections 9 to 12).
- 3) The ostensible purpose for enacting this law is that people of Jharkhand are not getting employment opportunities within the State and so they are migrating to other States because many employers of Jharkhand employ workforce from outside the State. The Act was passed to provide job opportunities to local people locally.
- 4) This Writ Petition had been filed on 19.9.2024. On 23.10.2024 notice was issued to the State of Jharkhand (respondent no.1) and notice was accepted by Mr. Sahbaj Akhtar, learned AAC to AAG-III for the

State of Jharkhand. The case was adjourned to today for filing of counter affidavit . But no counter affidavit was filed and again time was sought to file it.

5) Petitioners, who are Associations of Small and Micro Industries, contend that this Act is manifestly unjust, glaringly unconstitutional and arbitrary; that the State authorities had issued notices to certain members of petitioner Associations on 3.12.2024 demanding filing of reports under Section 6 of the Act for the quarter July to September and threatening coercive action on failure to do so; and also another notice dt.10.12.2024 demanding details of local persons employed and threatening to initiate penal action if details are not furnished; and therefore, it is just and necessary to stay the implementation of the Act. Copies of the said notices issued to members of petitioner association have been produced by counsel for petitioners and also furnished to counsel for the State.

6) Though there is undoubtedly a presumption of constitutionality of legislation and normally Courts should be reluctant to stay it's operation, the Supreme Court in ***Health for Millions v. Union of India***¹ held that only in a situation where the court is fully convinced that the particular enactment or the rules are *ex facie* unconstitutional and the factors, like balance of convenience, irreparable injury and public interest are in favour of passing an interim order, there should be granted a stay of the impugned legislation.

¹ (2014) 14 SCC 496 at page 499 :

7) We shall examine whether any case has been made out by the petitioners for grant of stay of implementation of the Act or not.

8) Art.16(1) of the Constitution guarantees to all citizens equality of opportunity in matters relating to employment or appointment to any office under the State. In matters of public employment, Art.16(2) prohibits the State from discriminating on grounds only of religion, race, caste, sex, *descent, place of birth, residence* or any of them. Under Art.16(3) only Parliament is empowered to make a law prescribing any requirement as to *residence* within the State in regard to a class of employment under the Government of a State. Art.35 of the Constitution prohibits the State Government from making a law with respect to a matter under Clause (3) of Art.16.

9) The question to be considered is:

‘when the State Government is prohibited by Art.35 to discriminate in public employment on the ground of residence /descent/place of birth, and when only Parliament is empowered to legislate on that matter, can the State of Jharkhand compel private employers in its territorial jurisdiction to employ only local people in 75% of jobs of remuneration below Rs.40,000/- p.m?’

10) *Prima facie*, we are of the opinion that the State of Jharkhand could not have enacted the impugned law and restrict the right of a private employer to recruit from the open market employees who would receive less than Rs.40,000/- pm. This is because a private employer

cannot be compelled to do by the State what the State itself is forbidden to do by the Constitution.

11) Admittedly, Art.19(1)(d) of the Constitution of India confers a fundamental right to *move freely* throughout the territory of India ; Art.19(1)(e) of the Constitution of India confers a fundamental right on Indian citizens *to reside and settle* in any part of the territory of India.; and Art.19(1)(g) of the Constitution of India confers a fundamental right on Indian citizens to *practice any profession, or to carry on any occupation, trade or business*. No doubt reasonable restrictions can be imposed on exercise of these rights by Art.19(5) and (6).

12) The State of Jharkhand cannot be permitted to virtually build a wall around it's territory of this nature and prevent private employers who have a fundamental right to carry on business anywhere in the territory of India to take into their employment persons of their choice skilled to do a particular work, and which workers also have a fundamental right to reside or settle anywhere and carry on their trade and occupation. The effect of allowing the Act's implementation is that the employer's discretion to choose his work force gets severely hampered. Thus the right guaranteed by Art.19(1)(g) of the Constitution on private employers would get grossly impaired.

13) If the impugned law is implemented, *prima facie*, the concept of one citizenship for all citizens who have a domicile in the territory of India envisaged by Art.5 of the Constitution and concept of 'Fraternity' (common brotherhood) mentioned in the Preamble to the Constitution of India would be defeated. Citizens residing in other States of the

country cannot prima facie be treated as inferior to the local people of Jharkhand and discriminated against.

14) Other States also would be encouraged to enact similar laws to protect their local residents and the unity and integrity of the country will be seriously jeopardised.

15) In ***Pradeep Jain v. Union of India***², in the context of reservation for local students in admission to MBBS/BDS courses, the Supreme Court's observations are apt to be noted here. Justice Bhagwati held:

“10..... Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J., in Jagdish Saran v. Union of India³ “this has burning relevance to our times when the country is gradually being ‘broken up into fragments by narrow domestic walls’ by surrender to narrow parochial loyalties”. What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is

² (1984) 3 SCC 654, at page 671

³ (1980) 2 SCC 768

denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set-up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote substandard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It is no blessing to inflict quacks and

medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation.” The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students.” (emphasis supplied)

16) In ***State of Telangana v. Subba Rayudu***⁴, the Supreme Court held :

*“59. Under the Constitution, India is a Union of States. Every part of every State is an integral and inseverable part of India. Admittedly, the respondent was born in India. He has his domicile in the territory of India. As held by this Court in **Pradeep Jain v. Union of India**, under the Indian Constitution, there is only one domicile i.e. domicile of the country and there is no separate domicile for a State.*

60. The power to admit and include States into the Union under Article 2 of the Constitution, and to form new States and/or reorganise State, is in its very nature of the power, wide and its exercise necessarily guided by political issues of considerable complexity, many of which may not be judicially manageable.

61. Article 3 empowers Parliament to enact law and form a new State by separation of territory from any State or by granting two or more States or parts of States or by uniting any territory to a part of any State. The principles relating to change of sovereignty

⁴ (2022) 16 SCC 37, at page 56

in international law are not applicable to reorganisation of the territory of the State under Article 3 of the Constitution of India.

62. When such an adjustment or reorganisation of territory takes place, the existing law as well as administrative orders in a particular territory continue to be in force and continue to be binding upon the successor State so long as they are not governed, changed or repudiated by the successor State.

63. It is not in dispute that the respondent has his domicile in the territory of India and was born in the territory of India. Admittedly, he is a citizen of this country. As a citizen of India, the respondent has a fundamental right under Article 19(1)(e) to reside and settle in any part of the territory of India.

64. Under Article 13(2) of the Constitution of India prohibits the State from making any law which takes away or infringes the rights conferred by Part III of the Constitution of India and any law made in contravention of Article 13(2), to the extent of the contravention would be void.

65. All statutes and all rules, regulations and bye-laws framed by the Government, which constitute law have to be construed harmoniously with the fundamental rights guaranteed under Part III of the Constitution of India.

66. The Andhra Pradesh Reorganisation Act, 2014 or any other guidelines framed thereunder, including the Guidelines circulated on 30-10-2014 cannot take away from citizens, the right to reside and settle in any part of the country.

67. It is true that when a State is divided and the employees and officers of the State Government have to be allotted to the two States, such allocation has to be done on the basis of the Rules and Regulations and by guidelines.

68. However, such rules, regulations and guidelines have to be construed harmoniously with the fundamental rights guaranteed under the Constitution of India. It is true that the respondent may have been born in an area which now forms part of Andhra Pradesh and may have received a substantial part of his education in areas which now form part of the State of Andhra Pradesh. However, admittedly, he cleared all Board and University examinations from areas within the State of Telangana. At the time of bifurcation, he was posted in Hyderabad, which is now part of Telangana.

69. The Guidelines circulated on 30-10-2014 for allocation of the employees and officers to the States of Telangana and Andhra Pradesh are directory and not inflexible. On a liberal interpretation of the Guidelines in the light of the philosophy of the Indian Constitution read with the Andhra Pradesh Public Employment Order, 1975, which was in force at the time of bifurcation, and is applicable to the respondent even under the Guidelines referred to above, the High Court rightly arrived at the conclusion that the respondent was a local candidate of Telangana and was entitled to allocation as per his seniority in terms of Para 18(f) of the Guidelines. Furthermore, admittedly, the spouse of the respondent was a local candidate of Telangana.”

17) The High Court of Punjab and Haryana in **IMT Industrial Association and another v. State of Haryana**⁵ held that the State of Haryana could not have passed the Haryana State Employment of Local Candidates Act, 2020 containing provisions similar the Jharkhand State

⁵ 2023 SCC Online P & H 2867 (DB)

Employment of Local Candidates in Private Sector Act, 2021 and that it is unconstitutional and violated Part III of the Constitution of India.

18) For all the aforesaid reasons, it appears that the Act is prima facie manifestly unjust and discriminatory, violates Part III of the Constitution of India and its implementation is not in public interest.

19) If the implementation of the Act is not stayed, undoubtedly the State authorities would start penalising the private employers by levying hefty financial penalties mentioned in Sections 9 to 12 of the Act. The notices dt. 03.12.2024 and 10.12.2024 filed by counsel for petitioners corroborate the serious apprehensions they entertain about the intention of the respondents to levy such penalties since they mention of such penal action. Balance of convenience is therefore in favour of members of petitioner Associations and irreparable injury would be caused to them if the implementation of the Act is not stayed.

20) Therefore, there shall be interim stay of implementation of the Act by the respondents until further orders.

21) List on 31.1.2025.

22) Counter affidavits shall be filed by respondents without fail in the meantime and furnish copies of the same to the counsel for petitioners.

(M.S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

Manoj/Pramanik/Cp.2