

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2053 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2078 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2054 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 3381 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2920 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 3194 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5362 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2089 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2059 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 4091 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2809 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 4620 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 3612 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 3791 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 3222 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2582 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2107 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 2090 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS JUSTICE SONIA GOKANI**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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MO NADEEM MOHAMMEDALI WRITER

Versus

OIL AND NATURAL GAS CORPORATION LIMITED

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Appearance:

BANSI M KARIA(9320) for the Petitioner(s) No. 1,2,3,4,5,6,7,8,9

RAJVI N PATEL(9620) for the Petitioner(s) No. 1,2,3,4,5,6,7,8,9

MR AJAY R MEHTA(453) for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 27/02/2020

ORAL JUDGMENT

1. The word 'domicile' is "to identify the personal law by which an individual is governed in respect of various matters such as the essential validity of a marriage, the effect of marriage on the proprietary rights of husband and wife, jurisdiction in divorce and nullity of marriage, illegitimacy, legitimation and adoption and testamentary and intestate succession to moveables. "Domicile" as pointed

out in Halsbury's Laws of England (Fourth Edition) vol. 8, paragraph 421 is the legal relationship between an individual and a territory with a distinct legal system, which invokes that system as his personal law. It is well settled that the domicile of a person in that country in which he either has or is deemed by law to have his permanent home. "By domicile" said Lord Cranworth in **Wicker v. Humes**, [1858] 7 HL Cases 124, "We mean home, the permanent home".

2. "Domicile" 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. There are two main classes of domicile: domicile of origin that is communicated by operation of law to each person at birth, that is the domicile of his father or his mother according as he is legitimate or illegitimate and 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. Now 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.

3. *This position is brought out clearly and emphatically in paragraph 422 of Halsbury's Laws of England (Fourth Edition) Volume 8 where it is stated: "Each person who has, or whom the law deems to have, his permanent home within the territorial limits of a single system of law is domiciled in the country over which the system extends; and he is domiciled in the whole of that country even though his home may be fixed at a particular spot within it." What would be the position under a federal polity is also set out in the same paragraph of volume 8 of*

Halsbury's Laws of England (Fourth Edition): "In federal states some branches of law are within the competence of the federal authorities and for these purposes the whole federation will be subject to a single system of law and an individual may be spoken of as domiciled in the federation as a whole; other branches of law are within the competence of the states or provinces of the federation and the individual will be domiciled in one state or province only." This legal position has been reflected by the Apex Court in these golden words which shall be beneficially and profitably employed to adjudicate the matter on hands.

4. The issue of domicile certificate being the focal point in this group of petitions and since the questions of law and facts in all the petitions being identical, they are being decided by this common judgement and order and the facts in capsulized form, are being drawn from Special Civil Application No. 2053 of 2020 for the purpose of adjudication hereinafter :-

4.1. The petitioners are young aspirants,

who want to join the respondent company on the post of Assistant Technician and other posts of Class-III and Class-IV, where their candidatures have been declared disqualified on the basis of not possessing the domicile certificate at the time of filing of the applications, though they have appeared in the qualifying merit list.

4.2. Respondent No.1 is a public sector Corporation enterprise and country's flagship energy major in exploration and production of oil and gas. It contributes 70% of India's domestic oil and gas production. Respondent No.2 is the western region head office, which had floated an advertisement for the appointment of candidates for different regular posts with pay-scales advertised in the public advertisement dated No.1 of 2019 on 31.01.2019 inviting on-line applications from 31.01.2019 from 10:00 hrs to 20.02.2019, 18:00 hrs. The respondent is a government undertaking with Central Government being the stake holder and is amenable to the writ

jurisdiction of this Court. There are specifications in the advertisement as to the requisite qualifications, technical pay-scale given and offered for specified posts.

4.3. Different petitioners have applied for post of Assistant Technician (Electrical), Junior Assistant Technicians, Assistant Technicians (Instrumentation) etc. The petitioners also are qualified in the computer based Tests (CBT) conducted from 08.06.2019 to 19.06.2019 so also on 27.06.2019 and obtained sufficient numbers to figure in the final merit list.

4.4. The petitioners were subsequently declared disqualified on the ground that they did not possess the domicile certificate at the time of application, which was a mandatory requirement and hence this action on the part of the respondent Corporation has aggrieved the petitioners, who are before this Court seeking following prayers:-

"10. In view of the above, the petitioner therefore prays:-

A.YOUR LORDSHIPS may be pleased to admit and allow this petition;

B. YOUR LORDSHIPS may be pleased to issue a writ of mandamus or in the nature of mandamus or any other writ order or direction quashing and setting aside the action of the respondents in disqualifying the petitioners (informed to two petitioners via email) and further be pleased to direct the respondent authorities to consider the petitioners eligible to be considered for the final merit and select list as per the advertisement at Annexure-A to the present petition;

C. Pending the admission and final hearing of the petition, YOUR LORDSHIPS may be pleased to restrain the respondents from proceeding ahead with the recruitment process pursuant to the advertisement at Annexure-A to the petition;

D. Ad-interim relief in terms of C may kindly be granted;

E. Any other and further reliefs in the interest of justice may be granted."

5. It is averred by the petitioners that they are domicile of the State of Gujarat, which can be surely and confirmed on subsequent procurement of such document by each petitioner. It is urged that Clause-7 of para 1.3 of the advertisement cannot be read as a mandatory requirement, but should be read as a condition, which requires to be satisfied at the time of uploading the document as has been mentioned in the very clause of the advertisement.

5.1. The petitioners also have questioned reasonable nexus as to the requirement of the

domicile in the recruitment process on the ground that the Corporation is a Central Government public sector unit and recruitment process nowhere provided for any reciprocal steps, except for the State of Gujarat candidates, which is wholly dehors the recruitment rules prescribed.

5.2. The grievance also had been that they are at the top of the merit list in respective disciplines as per the final merit list of phase-I. They are being precluded on the ground of absence of domicile certificate at the time of filing up of form, despite the requisite qualifications they possess and hence, this action deserves indulgence. The petitioners also averred that they are domiciled by origin and the requirement as to the procurement of domicile certificate subsequent to the advertisement would not arise in the present set of facts, as all of them are having birth place and permanent residence in the State of Gujarat from the very inception and the same would satisfy

requirement of guidelines of issuance of domicile certificate. They could comply with such requirement at a later stage and, hence, they cannot be held ineligible only on this count. Petitioners have also given the instances of Maharashtra, Assam and Tripura, Chennai, Delhi to urge that those candidates were required to produce domicile certificate at the time of either skill test or while uploading the documents. Therefore, those who appeared from the State of Gujarat cannot be discriminated against the rest, as it was the very respondent, which had published and conducted examination in other regions of the country.

5.3. It is also the say of the petitioners that the frequently asked questions have been uploaded by the respondent Corporation resolving the queries of various candidates where Point No.6 also mentioned that candidates must possess the valid domicile certificate at the time of uploading of documents or skill test. Therefore, contrary

stand cannot be taken later. Action is alleged to be arbitrary, illegal and de hors the principles of service jurisprudence.

5.4. It is further their averment that cut off date of uploading the domicile certificate has not been mentioned in the rules or in the schedule. What had been mentioned in the advertisement was that at the time of uploading the documents, domicile certificate was required. The cut-off date for the same, as provided by the final merit list, is 17.12.2019 and the petitioner had uploaded the valid domicile certificate within that time frame.

6. This Court, on issuance of notice on 28.01.2020, protected the petitioner where the respondents are restrained from denying the consideration solely on the ground of non-possession of domicile certificate at the time of making on-line application.

7. In response to the notice issued by this Court, the respondent appeared and filed affidavit-in-reply. Shri Rajesh Kumar Sinha,

Deputy General Manager (HR), denied all the allegations, assertions and contentions set out in the petition. According to the respondents, the petition is thoroughly misconceived and misconstrued. There is no fundamental right of the petitioner, which is violated in any manner and hence, there is no reason existing for invoking the extra ordinary jurisdiction of this Court under Article 226 of the constitution of India. It is the contention raised by the respondent that Courts have, time and again, held that institutes/government entities have power to determine the procedure and requirements for recruitment of persons which are not amenable to judicial scrutiny except in case of mala fides or such conditions being tailor made to exclude certain persons, which is factually not so in the present case. There is absolutely no question of any discrimination being suffered by the petitioners. The advertisement in question pertained to recruitment of 737 persons in various disciplines in the State of Gujarat, the same is

uniformly applied by the respondent Corporation qua all persons, who had responded to the said advertisement. The advertisement makes it abundantly clear in clause 1.3 of the Important Notes for the candidates, more particularly in sub-clause No.[7] that "Candidates must possess a valid certificate of domicile of the State of Gujarat at the time of on-line application." The last date for submitting domicile certificate was 20.02.2019 and as the requirement is mandatory, those who did not possess the valid certificate of domicile on or before 20.02.2019, could not then question the act of the respondent. According to the respondent, the petitioner did not possess the valid domicile certificate and they have wrongly stated in the on-line application that they possessed such certificate on the date of application which was duly confirmed by the petitioners, and the same is contrary to the facts. This giving of incorrect information made them guilty of furnishing the false information at the time of applying by way of an on-line application.

Resultantly, no illegality is committed by the respondent Corporation in refusing to consider their applications and it is also urged that this Court may not give any equitable relief invoking extra ordinary jurisdiction under Article 226 of the Constitution of India.

7.1. It is the contention of the respondent that numerous persons, who did not possess such certificate on the last date of application, could not have applied for this recruitment process and the petitioners only on the ground of making false statement, if are given the relief, that would tantamount to reverse discrimination in favour of the petitioner and the same would also open flood gates of litigations by those persons, who chose not to apply for not possessing domicile certificate on the prescribed date.

7.2. According to the respondents, they received 1,07,000 applications, out of which, 42,000 applications were not complete in different respects and they were not processed further, leaving behind approximately 65000

applications including applications of the petitioners, which contained false/incorrect information. All the 65,000 applicants were given admit cards, out of which, 45000 approximately appeared for CBT. This test was conducted for 518 posts on account of the fact that for remaining 219 posts, the process could not be finalised due to technical issue. For these 518 posts, according to the respondents, 2929 candidates were short-listed and nearly candidates in the ratio of 1:5 have been called. It is required to be noted that out of these 2929 applicants, 1848 applicants had valid domicile certificates, as on the date of application. These petitioners gave incorrect details that they possessed valid domicile certificate at the time of filling up of forms, therefore, they are not entitled to any relief by misleading the Court nor can the Court grant any discretionary relief to the petitioner. They also participated in the said process and now at this stage, they have approached the Court, which is also

impermissible under the law. According to the respondent, reliance is placed on FAQ and its answers which also is an unsustainable approach for the purpose of assessing the application and they cannot, by any stretch of imagination, override the requirement of advertisement. Response to query No.6 is to be read in context of Clause 1.3 (7) of the advertisement.

7.3. So far as recruitment of similar post in Assam, Tripura, Delhi etc. is concerned, no comparison is permissible, as these are non-executive Class-III and Class-IV post of western sector of respondent. It is a requirement of valid domicile for that region, which has no comparison.

7.4. It is also the contention of the respondent that the work sector of the respondent is decentralized and classified into northern sector, north-eastern sector, southern sector, Western Sector and Mumbai-off-shore sector. State of Gujarat has been insisting from all public sector undertakings

for their maintaining 85% of the manpower to non-supervisory category from the Gujarat residents only. This was also taken up by respondent's recognised union and its members agitating since 2017-18 and after due deliberation and threadbare discussion with the recognised unions, the respondent assured the recognised union that the condition of having valid "domicile certificate" of State of Gujarat, invariably shall be taken from the candidates applying for recruitment for Class-III and Class-IV posts in western sector. This requirement of obtaining domicile certificates from candidates of other sectors also continues. It is therefore, urged that the petition is misconceived and deserves rejection.

8. Affidavit-in-rejoinder has been filed in detail by the petitioner where, again, it is urged that clause 1.2 of paragraph No.1 mentions essential qualification for applying for the post of advertisement, which does not specify minimum requirement for possessing the domicile

certificate. It further says that clause 1.3 of paragraph No.1 speaks of the candidate to produce certificate of domicile at the time of uploading. It has also provided the Frequently Asked Questions to these clauses to urge that the rejection of the candidature is contrary and illegal. This action has resulted into lesser meritorious candidates being selected and the discriminatory practice also cannot be allowed to stand. Clause [7] of paragraph No.1.3 cannot be read as a mandatory requirement, when Paragraph No.4 of the advertisement specifies that the candidate must possess document on the cut-off date.

9. This Court extensively heard Mr. S.N.Shelat, learned Senior Advocate appearing with Ms. V.D. Nanavati and Ms. Bansi Karia, learned advocates for the petitioners. He has emphatically urged by taking this Court through the various clauses of the advertisement that the clause, which requires the possession of the domicile certificate at the last date of application cannot be read as a mandatory

requirement. The possession is specified in the very clause, where the production also has been mentioned, which is only at the time of production of the documents on-line on the name of the candidate figuring in the merit list. According to the learned Senior Advocate, what is required of that candidate is that the candidate resides in the State. Possession of domicile certificate is not the eligibility, which would render his candidature rejected, merely because, he did not possess the domicile certificate, at the time of making his application, when in fact, he is the resident of this State. According to learned Senior Counsel all the petitioners are born and brought up in the State of Gujarat. They are the domicile of this State and it is not the case of the respondent that after the date of application, they have gained this eligibility of being domicile of the State.

9.1. It is further urged that the Court is asked to interpret word "possession" with "production". These are the two separate

aspects. There is no request for the Court to re-write the advertisement. According to the learned Senior Advocate, what was needed was the Gujarat domicile for permitting to participate in the recruitment process. The first part of Clause [7] of paragraph No. 1.3 and the second part of both should be read in harmony and, if in other States, candidates have not been denied to upload the application without possessing certificate on the date of application on-line, there is no reason as to why there should be such discriminatory practice so far as the State of Gujarat is concerned. He also further pointed out to this Court from the FAQ that the understanding of those who have answered FAQ on the official website and all the present petitioners match. What all is being asked is for the Court to read down the advertisement since it is not the Statue. Otherwise, it would result into allowing arbitrary and discriminatory practice. By interpreting in this fashion, the Court would be saving the clause and if it is

not upheld, it will be discriminating qua the residents of Gujarat. Separate and independent reading of this clause is impossible. It is further pointed out to this Court that Article 5 of the Constitution of India speaks of the condition of being the citizen is on being born in the State. The status of domicile could not have been a qualification. There could not have been any discrimination under Article 16(2) of the Constitution of India. What all is being asked is that, if the candidates are called five times the number of posts, their consideration should not have been denied.

10. Mr. Zubin Bharda, learned advocate appearing in Special Civil Application No. 2078 of 2020 has urged that interim order has not been complied with. There has been no verification of the documents of this petitioner. According to him, much emphasis on the misrepresentation of his possessing the domicile while filling up the form is not a correct interpretation. There was no scope for

anyone to write either "yes" or "no", but, only to declare that they are domicile of a particular State. He urged that it is arbitrary and illegal to insist on certificate of domicile at the time of filling up of form as the advertisement in other States did not require possession of domicile certificate at the time of filling up of the form. These were identical posts for the candidates of various States. This being an opportunity once in a life time, petitioner cannot loose the same only on account of the fact that the possession of domicile certificate was necessitated at the time of filing up of the form.

11. So far as the candidate of Special Civil Application No. 2660 of 2020 is concerned, according to him, he is an ex-serviceman, whose domicile certificate was a xerox copy, since the original was lying with the station he last served. He had obtained it later and, therefore his case also needs to be separately considered.
12. Learned advocate Mr. Dastoor appearing for the petitioner of Special Civil Application No.

3612 of 2020 has urged that Article 16(2) of the Constitution of India provides not to discriminate on the ground of being a resident of a particular place. If such a condition was not imposed for the candidates of other States, there is no reason why it should be applied to the people of the State of Gujarat.

13. Mr. N.A.Thakkar, learned advocate for the petitioner of Special Civil Application No. 3791 of 2020 has adopted the arguments advanced by learned Senior Advocate Mr. S.N.Shelat.

14. Mr. Ajay Mehta, learned advocate appearing with Ms.Niyati Vaishav for the respondent has fervently and vociferously argued before this Court that knowing fully well that there was a mandatory requirement of possessing the domicile certificate, the petitioners have chosen to fill-up their forms. They already participated in the examination and cleared the written test. Clause [7] of paragraph No.1.3 is extremely clear and unambiguous that the person, who fills up the form needs to possess necessarily the domicile certificate of the State of Gujarat.

The respondent being the Public Sector Undertaking (PSU) is required to give employment to 80% of the residents of the State and, therefore, this requirement is a must. He further has urged that in CBT, MCQs are being asked. There are two categories being Physical Standard Test and Physical Efficiency Test. Categories are made compulsory whereas for the others, there is no such physical test and they need to clear the examination and upload the documents. There are no interviews for Class-III and IV, as per the policy of the State and the Center. It is not in dispute that each one has filled in the mandatory field of possessing the domicile certificate clicking on the State of Gujarat, which is *ex facie* wrong and they cannot be permitted to take an advantage of their own wrong.

14.1. According to him, the Court when is asked to interpret and re-write the advertisement, it is impermissible since it is a prerogative of the concerned PSU as to in what manner, it needs to call for the

advertisement and the applications. He has further urged that had there been no requirement of possessing this certificate at the time of filling up the form, many candidates, who have accepted this condition without challenging the same are excluded and that vital aspect cannot be ignored by the Court, since their exclusion is not justifiable. He further has urged that this being a mandatory field, no form could be permitted to be filled further and only because the petitioners chose to say "yes" to such mandatory field, they could manage to sit in the examination and appear. He further urged that such a request in the form of questioning the advertisement can go to any further length and for how long, the Court would read down this mandatory conditions of the advertisement. Is it so unreasonable a qualification that the same would require interference, or is it such a *mala fide* exercise, which directed a particular group discriminating them for the Court to

intervene! The answer, according to learned advocate, since is in negation, the Court has nothing to interfere.

14.2. According to him, because of their inability to comprehend the requirement, if this is an attempt to upset the advertisement, the same shall need to be denied, as it would also amount to opening the flood gates of litigation. He has urged that the respondent has abided by the order of this Court and no process, thereafter, has been undertaken after this Court issued the notice and protected the petitioners.

15. Having thus heard both the sides and also on thoroughly considering the pleadings as well as the material on the record, firstly, the question arises as to whether this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India, is required to interfere with the order passed by the respondent where the question is raised by the petitioner with regard to the advertisement for the post of Class III and IV and the clauses of

such advertisement.

16. It is a trite law that the Court needs to interfere exercising its jurisdiction under Article 226 of the Constitution of India only in extraordinary circumstance and not ordinarily. Undoubtedly, the respondent is a PSU and it is under the Ministry of Petroleum and 75% of this Corporation is controlled by the Government of India. It will be liable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. However, the requisite requirement for exercise of such power shall need to be regarded by the Court.

17. The question revolves around the domicile certificate, which is made a mandatory requirement made by the respondent in its advertisement published on 31.01.2019. This is an on-line application meant for Class-III and Class-IV employees for different posts of Assistant Technicians, Assistant Technicians (Electrical), Assistant Technicians (Instrumentation) etc. There are, in all, 737 posts advertised by the respondent ONGC. It is

not in dispute that all the petitioners have filled-in the on-line forms in response to the said advertisement. For each post, the pay-scale and the minimum essential qualification along with the details of number of posts, reservations etc. have been provided.

18. Clause [7] Paragraph No.1.3 provides for Important Note for candidates. Clause [7] runs as follows:-

*"[7] Candidates must possess a **Valid certificate of Domicile of the State of Gujarat at the time of online application.** The candidates will have to produce a Certificate of Domicile from the Gujarat State at the time of Skill test/ Uploading documents."*

19. Paragraph No.2 speaks of details of physical test and skill test.

20. Paragraphs Nos. 3 and 4 speak of age limit and relaxation of age and caste criteria and crucial dates for determining eligibility criteria.

21. Paragraph no.5 speaks of Computer Based Test.

22. Paragraph No.6 speaks of Selection process, which includes selection methodology, format of

computer based test and selection criteria.

23. Paragraph No.7 speaks of General Instructions.

24. Paragraph No.8 speaks of Time Schedule for on-line registration/receipt of printed registration slip.

25. Paragraph No.9 speaks of Note and paragraph No.10 speaks of Important notice to all candidates

26. Apt would be to refer to Annexure-E under the heading of Frequently Asked Questions-Recruitment of Non-Executive Posts-Western Sector (Gujarat State) and Rajasthan Kutch-On land Exploratory Asset, which provides answers to 40 frequently asked questions. At Sr.No.6 in the group of Eligibility, a question is asked. Following is the question which is vital for the purpose of adjudication." ***I am a resident of Gujarat. I have applied for Domicile certificate but the same has not been issued as yet. Am I eligible to apply?*** The answer to this is "YES. You are eligible to apply. However, you must possess a valid Domicile Certificate at the time

of Uploading of documents/Skill test as part of this recruitment process, without which your candidature is liable to be rejected."

27. It is an undisputed fact that all the petitioners have applied on-line and their applications were found valid and they were permitted to appear for the CBT. It is a written test conducted by the respondent Corporation. It is conducted at different centres and each one of them has been qualified. Due to technical and other serious issues in relation to 219 posts, the results have not been declared for the same. These petitioners are not concerned with those 219 posts. They are concerned with 518 posts, out of 737 total number of posts.

28. This Court notices that out of the total candidates for class-III and Class-IV posts, applications of 65000 candidates have been found valid. Out of them, 45000 appeared for the CBT, 2929 number of candidates, have cleared and these petitioners are amongst those persons, who have qualified in that figure. It is emphatically pointed out to this Court that out

of these 2929 candidates, 1848 candidates already possessed the domicile certificate at the time of filling up the on-line application forms. According to the respondents, these 1848 candidates understood the requirement of the advertisement correctly and have cleared the CBT also.

29. It is necessary to note at this stage that it is the obligation of the candidate to possess the domicile certificate of the State of Gujarat at the time of online application. Plain reading of this would require the candidates to possess the domicile certificate for the State of Gujarat by 20.02.2019 where by 6:00 p.m. in the evening, the on-line application was to be submitted. Those who possessed this domicile certificate beyond 20.02.2019 would not be considered for the said post.

29.1. The Court cannot be oblivious of the fact that in the very breath, clause [7] of paragraph 1.3 of the advertisement speaks of the candidates to produce a certificate of domicile from the State of Gujarat at the time

of skill test/uploading documents. It is also necessary to make a mention here that the respondent has not necessitated this domicile certificate to be uploaded at the time of making an application and the originals are required to be examined and checked only on their clearing the CBT. It is for the first time, after clearing the CBT, the stage would come for production of the certificate of domicile when the candidates are asked to upload their documents. It would be not be out of context to mention, at this stage, that in the pleadings itself reiteratively, it has been urged that the respondent has its workforce across the country. It has decentralized itself into five different sectors, namely, northern, north-eastern, western, southern and Mumbai off-shore sectors. In the very State where the respondent works, the requirement of the domicile certificate of the State comes into play for the recruitment of Class-III and Class-IV posts, inasmuch as the State insists

on the employment in non-supervisory cadre of PSU from the residents of the concerned State. It is in the very mandate in the affidavit-in-reply filed that the respondent is constrained to maintain the percentage for non-supervisory cadre. Insistence of the State in the State of Gujarat such requirement being 85%, it is a must for the respondent to insist on such domicile certificate to be produced of the State of Gujarat. A valid domicile certificate would be compulsory for the candidate of the State of Gujarat to meet with the requirement. It is further maintained that a recognised Union also had agitated since the years 2017 and 2018 and it continued the deliberations. It has mentioned that every time the procedure for advertisement of such non-supervisory category would be undertaken, domicile certificate would be insisted for upon. The only vital aspect is whether to be domicile of the State while making an application or to possess the certificate of such Domicile.

30. This Court cannot resist itself from

reproducing at this juncture the words of the Apex Court from the case of **Dr. Pradeep Jain and others vs. Union of India and others, (1984) 3 SCC 654**, where it was a question of national importance affecting the medical colleges both at the under graduate and post graduate level. The question before the Apex Court was whether consistent with the constitutional values, the admissions to the medical college or any other institution of higher learning situated in a State can be confined to those, who have their domicile within the State or who are resident within the State for a specified number of years or can, any reservation in admissions be made for them so as to give them precedence over those, who do not possess domicile or residential qualification within the State, irrespective of merit. This question had assumed importance. Considering the question of integrity of nation, when the Apex Court, with all its seriousness, had seen that the unity was being threatened by divisible forces of regionalism, linguism and communalism and

regional, linguistic and communal loyalties are gaining ascendancy in national life and seeking to tear apart and destroy national integrity.

30.1. Relevant paragraphs of the said decision are reproduced as under:-

"2. The history of India over the past centuries bears witness to the fact that India was at no time a single political unit. Even during the reign of the Maurya dynasty, though a large part of the country was under the sovereignty of the Mauryan kings, there were considerable portions of the territory which were under the rule of independent kingdoms. So also during the Moghul rule which extended over large parts of the territory of India, there were independent rulers who enjoyed political sovereignty over the territories of their respective kingdoms. It is an interesting fact of history that India was forged into a nation neither on account of a common language nor on account of the continued existence of a single political regime over its territories but on account of a common culture evolved over the centuries. It is cultural unity something more fundamental and enduring than any other bond which may unite the people of a country together-which has welded this country into a nation. But, until the advent of the British rule, it was not constituted into a single political unit. There were throughout the period of history for which we have fairly authenticated account, various kingdoms and principalities which were occasionally engaged in conflict with one another. During the British rule, India became a compact political unit having one single political regime over its entire territories and this led to the evolution of the concept of a nation. This

concept of one nation took firm roots in the minds and hearts of the people during the struggle for independence under the leadership of Mahatma Gandhi. He has rightly been called the Father of the Nation because it was he who awakened in the people of this country a sense of national consciousness and instilled in them a high sense of patriotism without which it is not possible to build a country into nationhood. By the time the Constitution of India came to be enacted, insurgent India, breaking a new path of nonviolent revolution and fighting to free itself from the shackles of foreign domination, had emerged into nationhood and "the people of India" were inspired by a new enthusiasm, a high noble spirit of sacrifice and above all, a strong sense of nationalism and in the Constitution which they framed, they set about the task of a strong nation based on certain cherished values for which they had fought.

3. The Preamble of the Constitution was therefore, framed with the great care and deliberation so that it reflects the high purpose and noble objective of the Constitution makers. The Preamble declares in highly emotive words pregnant with meaning and significance:

"We, The People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

In Our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact And Give To Ourselves This Constitution."

These words embody the hopes and aspirations of the people and capture and reproduce the

social, economic and political philosophy underlying the Constitution and running through the warp and woof of its entire fabric. It is significant to note that the Preamble emphasises that the people who have given to themselves this glorious document are the people of India, the people of this great nation called India and it gives expression to the resolve of the people of India to constitute India into a sovereign socialist secular democratic republic and to promote among all its citizens fraternity assuring the dignity of the individual and the unity and integrity of the nation. The Constitution makers were aware of the past history of the country and they were also conscious that the divisive forces of regionalism, linguism and communalism may one day raise their ugly head and threaten the unity and integrity of the nation, particularly in the context of the partition of India and the ever present danger of the imperialist forces adopting new stratagems, apparently innocuous, but calculated to destabilise India and re-establish their hegemony and, therefore, they laid great emphasis on the unity and integrity of the nation in the very Preamble of the Constitution. [Article 1](#) of the Constitution then proceeds to declare that India shall be a Union of States but emphasizes that though a Union of States, it is still one nation with one citizenship. Part II dealing with citizenship recognises only Indian citizenship: it does not recognise citizenship of any State forming part of the Union. Then follow Articles 14 and 15 which are intended to strike against discrimination and arbitrariness in state action, whether legislative or administrative. They read as follows:

"[Article 14](#): The State shall not deny to any persons equality before the law or the equal protection of the laws within the territory of India." "[Article 15](#): (1) The State shall not discriminate against any citizen on grounds

only of religion, race, caste, sex, place of birth of any of them. (2) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places so public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article or in clause (2) of [article 29](#) shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

[Article 19 \(1\)](#) again recognises the essential unity and integrity of the nation and reinforces the concept of one nation by providing in clauses (d) and (e) that every citizen shall have the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. [Article 301](#) declares that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free. Then there are situations envisaged in certain Articles of the Constitution such as Articles 353 and 356 where the executive power of a State forming part of the Union is exercisable by the Central Government or subject to the directions of the Central Government. Thus, the entire country is taken as one nation with one citizenship and every effort of the Constitution makers is directed towards emphasizing, maintaining and preserving the unity and integrity of the nation. Now if India is one nation and there is only one citizenship, namely, citizenship of India, and

every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and is entitled to equality before the law and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamil Nadu or speaking Tamil language can be regarded as an outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or speaking Marathi language be regarded as an outsider in Karnataka. He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or Karnataka, as the case may be. To regard him as an outsider would be to deny him his constitutional rights and to derecognise the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent states."

31. This Court is conscious of the fact that it is not required to at this stage examine whether the necessity or requirement of the domicile certificate is in consonance with the principles laid down by the Constitution of India. It is merely to interpret clause [7] of paragraph No. 1.3 of the advertisement and to see whether reading it in its present format and without harmonious reading, can it lend any meaning.

More particularly, when for all those candidates, who are appearing and applying for the post for clearing their ambiguity and to provide them guidance Frequently Asked Questions are answered on the website of the respondent undertaking itself. This Court must be also alive to the reality that India constitutes 35% of the world youth, who are aspirants to be engaged for their gainful employment. The respondent undertaking is contributing to 70% of the domestic oil and gas production. It is country's flagship Corporation for production of oil and gas in the country. It is a Government undertaking with the Central Government being the main stake holder. Therefore, the Court cannot be oblivious of the fact that such opportunity of recruitment with the respondent for the youth is also rare. The Apex Court again in the decision of **Dr.Pradeep Jain and others** (supra) has discussed the use of word "domicile" in detail. The word "domicile" refers to only one domicile, namely, domicile in territory of India. The Apex Court reminded us that it must

be remembered that India is not a federal State in the traditional sense of the term. It is not a group/cluster 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 the only citizenship, namely, the citizenship of India. It has also one single unified legal system, which extends throughout the country.

32. In that sense the word "domicile" if is understood, this concept shall need to be used for the purpose of legitimate purpose and cannot be used out of context and relevance. It is also quite unfortunate that in this country, the Central Government undertaking also needs to promote parochial regionalism and also needs to cater to the requirement of every State insisting on the employment to the extent of 80% to 85% for the local residents. However, that being not the question for this Court to resolve, the only aspect that requires to be addressed is as to whether Clause [7] of

paragraph No.1.3 of the advertisement in its present form would serve the purpose or whether the harmonious reading will be a necessity for the purpose of interpretation. The Court needs to take also the aid of FAQs and answers given in the official website of the respondent ONGC.

33. It is sought to be urged by Mr. Mehta, learned advocate for the respondent that when the advertisement itself is clear, there is no requirement for the Court to also go to the reply posted on the website under the heading of FAQs. Reiteratively, it has been alleged against the petitioners that they have misled and misrepresented by filling up the mandatory form indicating that they possessed the domicile certificate. It is true that that each of them has filled-in this form and was permitted to complete filling of the rest of the online form. There are mandatory fields in these applications and this was one of them. If the petitioners had not filled up this, he/she could not have been permitted to proceed further for completing filling up of forms. This field had given two

options, Rajasthan and Gujarat. Clicking of answer Gujarat would only permit them to proceed further. To that extent, learned advocate for the respondent is right in pointing out to this Court that this was not a correct filling up of the form. However, to urge where this would amount to misrepresentation and, therefore, disqualify them as also deny them any equitable relief is not found sustainable. This Court would hold that any inaction for the reason that this field being mandatory field was necessary to be filled in by the candidate, but had option for either clicking on Rajasthan or Gujarat or to leave it and close the filling up of the form, since there was no third option. Therefore, to an extent, it can be stated that it had no other option. There is nowhere in the entire form mentioned that there is a scope of anything nor is there any more column, which would entitle any candidate to specify his/her their stand and clarify as to why have the form is filled in, in the manner they did. It is not questioned by the respondent at all that each of

them is a domicile of the State. It is also not disputed that this State of being domicile of the State is prior to the date of application of filling on-line form. No rationale is given as to why when the production of the document of this domicile certificate was meant at the time of uploading the documents online, after their clearing the CBT, there was an insistence of their possessing the domicile certificate at the time of filling up of the form. Sans this rationale, the Court sees no reason to uphold the contention of the respondent, to hold against the petitioners that they have attempted to mislead the Court. It is noticed that in their zeal and aspiration to apply for various non-supervisory posts, they have filled-in the form. However, had there been more column to explain/clarify clicking on the State on the question of "Domicile" or had there been a question of any of them being qualified only after 20.02.2019, this could have meant to be misrepresentation, which is certainly not the case. The Court finds that for the candidate to

express their inability or any of them having completed the requisite number of years in the State, for them to be eligible to possess the domicile certificate, each of them is born in the State and also is having the domicile of the State of Gujarat.

34. In that view of the matter, the Court holds that this aspect should not be held against any of the petitioners to debar them from being considered for the posts.

35. It is also necessary, at this stage, to emphasize that in every other sector, be it northern, southern, north-eastern or any other sector where the respondent, apart from its workforce, has chosen to insist on this domicile certificate to be possessed at the time of filling up of the forms. It is only when it comes to the western sector that the respondent has insisted not only for production, but also for the possession of the said certificates at the time of filling up of on-line application.

36. With nothing coming up for this insistence, Clause [7] of paragraph 1.3, if is looked at, it

comes under the heading of important note for the candidates. It is not falling under the minimum essential qualification or eligibility criteria. There is a wide difference between the important note meant for the candidates to be born in mind and the essential minimum qualification or the criteria. The petitioners before this Court are not requesting this Court to make any change in its essential qualification or the criteria, which may have precluded many of the candidates to fill in the form or may have precluded others from the filling up of the forms so also, from the zone of consideration, at the time of scanning those applications, which had been made.

37. This note permits the candidate to apply for multiple posts, if he or she is eligible. The necessary aspect to be kept in mind at the time of candidate being eligible for multiple posts, particularly, at the time of filling up of the post in order of preference, is that later on it is not be changed.

37.1. The words used are "the candidates

must possess a valid certificate of domicile of the State of Gujarat". One rational, which can be thought of is that many a times candidates, who are not the domicile of this State and, who may, after a completion of certain period, are becoming eligible to be domicile of this State, would attempt to apply on-line in their zeal and enthusiasm to clear the examination and, thus, produce the certificate at the time of uploading of the all the documents. There could be a catch here, since this was meant essentially for non-supervisory cadre and, particularly, 85% of the quota to go to the State, such kind of gimmick may not be found tolerable and that could have been possible reason for the insistence of the possession of the domicile certificate at the time of filling up of the form. However, as is mentioned hereinabove, and as is not being contested or disputed on the part of the respondent that any of them has made any such attempt or has become eligible only on completion of last date of

application to be made on-line, their having valid domicile certificate of the State of Gujarat from the beginning, this clause alone should not come in their way in being considered for this non-supervisory posts, there is no requirement as rightly argued before this Court.

38. Learned Senior Advocate Mr.Shelat for the petitioners has submitted before this Court that it is not required to either annul this requirement, or to hold it discriminatory against any class of candidates. Mere reading down of this clause or harmonious reading of the entire clause would also suffice. Once the word "certificate" in the first part of this clause is excluded and found right that the candidate must possess the valid domicile of the State of Gujarat at the time of on-line application, production of certificate at the time of uploading of the document would automatically fulfill the requirement. The certificate, since is a necessity, the Court may not exclude this word, as it is not even

necessary. Bearing in mind the overall facts and circumstances, so also recruitment and the selection process undertaken in other sectors, when is regarded with the answer given in the FAQs for the guidance to the candidates, a harmonious reading will make this Court to read that they are possessing the certificate at the time of uploading of the documents, which will be a valid satisfaction of this requirement of Clause [7] of paragraph No.1.3 of the advertisement.

39. This Court also needs to consider that for all these posts, in the advertisement, minimum essential qualification is provided in paragraph No.1.2 of the advertisement. For every posts advertised under this advertisement, everywhere the minimum qualification is prescribed. It does not satisfy the possession of the domicile certificate. The Court cannot also overlook the fact that one of the candidates had particularly asked the question and since it is in the list of FAQs, being convinced of the field, filling up the form that he or she, though is a domicile

of the State, but is not possessing the certificate, whether would be eligible to fill up the form, the answer given is "Yes, you are eligible. However, you must possess a valid domicile certificate at the time of up-loading of documents/ Skill test as part of recruitment process, without which your candidature is liable to be rejected". It is not a common answer given for any recruitment process undertaken in any other sector where this was one of the mandatory clauses made requiring domicile certificate to be possessed at the time of on-line application, as stated before this Court and also not disputed by the State for rest of the sectors. This requirement at the time of on-line application was missing. It is only this time in the advertisement that the same has been given a miss for FAQs. It is not for other sectors, but it is meant for Gujarat and Western sector, as also it can be seen from the Annexure-E and, therefore, it is answered on the website by the respondent ONGC and there also the guidance provided to the candidate is

of permitting them to apply and to insist on their possessing this certificate for the purpose of uploading only at the time of clearing the CBT, as that is the only stage where there is an absence of any physical test.

40. As rightly averred before this Court, as all the petitioners are having their birth place in the State of Gujarat from the very inception and they all satisfy the condition of Government Resolution of the year 1989, which lays down the guidance for domicile certificate, this cannot be used as a advantage building feature for the petitioners. Petitioners of Special Civil Application No. 2078 of 2020 have provided in detail as to what are the required documents to be appended for the applicant to apply for the domicile certificate.

41. The petitioners are right when they averred before this Court that on-line applications were to be made within 19 days from the date of issuance of the advertisement and there were effectively 13 working days, barring the public holidays and weekly holidays. It would have been

next to impossible for these petitioners to obtain a domicile certificate from the competent authority. It takes about 03 to 06 months for any person to obtain the certificate of domicile more particularly, in rural areas from which many of the candidates may be hailing. The very requirement of the certificate for proof of being the domicile of the State, if are looked at, apart from the birth certificate, proof of ration card, property, tax bill, Aadhar card, Voter ID, 7/12 form, education qualifications from 1st Standard to 12th Standard, University marksheets for all these years coupled with character certificate, to be issued by the police are required. One wonders as to whether the candidate, who is required to fill in the form when is given the time period of 19 days and who never had an occasion to make a request for the domicile certificate, would at all be in a position to get the certificate. It is impossible for anyone to obtain the domicile certificate within such a short span. And if this is held a mandatory requirement, this would

mean that there would be an attempt to exclude many of those, who are eligible and are aspiring and also asking for impossibility. It is also a matter of record that the stage of document verification commenced from 18.01.2020, which is after about a period 11 months from the date of issuance of advertisement. Thus, it is not on account of non-availability of domicile certificate or where after the process had been initiated, their domicile certificate could be rejected by the respondent ONGC, as non-reading of this clause [7] of paragraph 1.3 of the advertisement in harmonious manner would amount to absurdity. Therefore, the Court is of the opinion that, the respondent ONGC in its advertisement, which is otherwise identical, if had not insisted for the domicile certificate from the candidates in rest of the country, it is illegitimate and unacceptable as to why this insistence should be made for those candidates, who have proved their worth and who are otherwise not found to be ineligible in any other respects.

42. So far as the candidate of Special Civil Application No. 2660 of 2020 is concerned, the petitioner was an ex-servicemen, who was already possessing the xerox copy of the domicile certificate. However, as the original was lying with the army, he could not produce the same at the relevant point of time, when there was a need for verification of these documents. His case would be completely unique and different. There is no reason for his candidature to be rejected and his now having obtained the same from the concerned authority and having produced, there is no reason to deny him candidature considering only on account of his possessing the xerox copy of the domicile certificate.

43. The last limb of submission by Mr. Mehta, learned advocate for the respondent ONGC is that many of the eligible candidates on account of this clause may have chosen not to participate and their exclusion will also be discriminatory qua, those who could not apply. This hardly could be the ground for denial, as

candidates are found entitled for the reasons detailed hereinabove. Those who have chosen to not even fill up the form interpreting such clause, cannot be found worth regarding by the Court to deny those, who are eligible and found meritorious. Moreover, they too had for their guidance FAQs on the website of respondent undertaking which could have convinced them for filling up the form. Again, it is a sheer hypothetical submission which deserves no further dilation.

44. In support of his submission, learned advocate Mr. Dastoor for the petitioners has submitted before this Court a decision of the Apex Court decided on 07.02.2019 in the case of ***Sandeep Yadav vs. The State of Madhya Pradesh***, wherein it was the case where the petitioner had participated in the recruitment test conducted for appointment to the post of S.O and Special Inspector cadre. He cleared written examination, but was not selected on the ground that domicile certificate of his mother was submitted after the cut off date. The Court relied on a decision

of Single Bench of this Court rendered in Writ Petition No.4105/2018 (Sanjay Kumar Sharma vs. State of M.P and others) decided on 24.08.2018, wherein, it had held that the petitioner is a domicile of the State of M.P. He was borne and brought up in the State of M.P and joined the Indian Army. If he is not permitted by the State to participate in the second round of process of selection, only because the domicile certificate, in prescribed format, is not dated as required, it would amount to denying him the merit, particularly which otherwise he is legally required to get. The Court not only permitted and directed the respondent to second round of physical proficiency test to be conducted by the petitioner, but also permitted him all consequential benefits, if he is found to be successful in further tests.

45. In the case of ***Mahalaxmi Sugar Mills Company Limited vs. Union of India***, AIR 2009 SC 792, which is relied upon by learned Senior advocate Mr.Shelat, the following relevant paragraphs are required to be reproduced as

under:-

"65. We are of the opinion that the same principle should be applied herein.

66. That is how the Central Government itself understood the decision of this Court in *Malaprabha-I*. It explicitly said so in the counter affidavit filed in *Bharat Sugar Mills*. Indisputably, for the purpose of determination of the price of levy sugar, it called for the relevant materials from each of the owner of the sugar mill. It is, therefore, too late in the day for the Central Government to contend contra.

67. Rules of executive construction in a situation of this nature may also be applied where a representation is made by the maker of legislation at the time of introduction of the Bill or construction thereupon is put by the executive upon its coming into force, the same carries a great weight.

68. In this regard, we may refer to the decision of the House of Lords in the matter of *R.V. National Asylum Support Service* [(2002) 1 W.L.R.2956] and its interpretation of the decision in *Pepper v. Hart* [(1993) A.C. 593]. on the question of 'executive estoppel'. In the former decision, Lord Steyn stated:-

"If exceptionally there is found in the Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before a court."

46. It is to be noted that here it is not even the case where a statute or the provisions of

the statue that are being read down, but this is an advertisement, which, at the best, could be termed as an executive policy. The decision of Allahabad High Court decided on 27.05.2020 in the case of **Abha Shukla and others vs. State of U.P and others**, was relying on the prescription of minimum qualification for admission to the course and other qualifications relating to the recognition of domicile certificate issued by District Magistrate/ Additional District Magistrate/ Sub-Divisional Magistrate of the District, where the Court held that it is for the Court to determine whether prescribed qualification should or should not be recognised, In an appropriate case the Court could examine whether dealing with the matter is based on fair, rational and reasoned ground, where the decision has been taken on consideration of relevant aspects of the matter and where exercise of power has been regarded as *mala fide* and where the decision saves time for appropriate training to the candidates or it is based on irrational or irrelevant consideration

or group of candidates.

47. The Court is conscious of the fact that is not for the Court to determine mandatory requirement as noted above, it is not about the minimum requirement, educational qualification or other necessary qualification where the Court is required to either interpret or interfere. It is the interpretation of the advertisement, which, at the best, is an administrative order or policy decision and, if it is considered at the touchstone of rational consideration, it is surely found to be not rational. Although it cannot be said to be intended to benefit any particular individual or class of individuals, however, the decision since does not sub-serve the purpose and it is not in harmony or in consonance with the decision, which had been taken while undertaking the process of examination in other States, the Court needs to hold it as irrational consideration.

48. The last decision of the Apex Court in the case **Ramesh Chandra Shah and others vs. Anil Joshi and others** decided on 03.04.2013 in Civil

Appeal No.2802 to 2804 of 2013 , sought to be relied upon by the respondent requires consideration where the Court has laid the preposition that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.

49. The Court is conscious of the fact that it is not the methodology adopted by making selection or any vital field, it is affecting the eligibility criteria, which is adopted by the candidates. Of course, with open eye and reading the advertisement as advertised online and also, as interpreted by the respondent in the FAQs, candidates have chosen to participate and, therefore, to find fault with them and to deny them candidature only on the ground that

they participated knowing fully well, is not the interpretation, which can be countenanced.

50. The Court is required to consider that the respondent Manager addressed a letter dated 17.01.2020 to the petitioners referring to Clause [7] of paragraph No.1.3 of the advertisement under the heading "Important note for the candidates" stating therein clearly that candidate must possess a valid certificate of domicile of State of Gujarat at the time of on-line application. Last date of application was 20.02.2019 and, therefore, it is clear that the candidate must have a valid certificate of domicile of the State of Gujarat on or before 20.02.2019. This was in reference to the email of the candidate address to CGM-(HR)-Support Manger, which cannot be endorsed and approved of. At this stage of the recruitment, they cannot go beyond the terms of reference, as provided in the advertisement which is in a public domain. When the respondent questioned the very conduct of the petitioners and alleged of filing up the form to mislead the authority

and it is pointed to this Court that it would amount to travelling beyond the reply, which was clear on 17.01.2020, where no case is made out of their either misrepresenting or misleading the authority and, therefore, there cannot be misrepresentation of the case.

51. This Court is of the opinion that although while rejecting their candidature and also denying them the opportunity for further consideration on account of their not fulfilling the requirement under Clause [7] of paragraph No.1.3 of the advertisement, it has specifically answered this point mentioning therein as to what was required to be mentioned is available to the respondent, since there was no legal challenge at the relevant point of time and the respondent would thus have the right to take a legal contention including their factual contention at its disposal. However, when this Court has not found this being misrepresentation in stricto sensu as attempted to be made out by the authority, this point does not require any further dilation.

52. The last but not the least, necessary would be the reference of Article 5 of Part-II of the Constitution of India, under the heading of Citizenship, which says that at the commencement of this Constitution, every person, who has his domicile in the territory of India and who was born in the territory of India or either who was born in the territory of India or who has been ordinarily resident in the territory of India for not less than 05 years immediately preceding such a commencement, shall be a citizen of India. Thus, every person, who has his domicile in the territory of India at the commencement of the Constitution or is borne in the territory of India is a citizen of this country. All the petitioners are citizens of this country. Applying the popular meaning of the expression "Domicile" as per the Apex Court's decision in case of **Chandhigarh Hsng. Board vs. Gurmit Singh,** 2002 (2) SCC 29 means the person has a permanent home or he being there for years with an intention to live permanently or indefinitely under the Indian Constitution.

There is only one domicile i.e. domicile of the country and there is no separate domicile for the State as per the decision of **Dr.Pradeep Jain** (supra). In that view of the matter also, no discrimination is permissible nor can the petitioners be denied the right to be considered, merely because, they could not obtain the domicile certificate at the time of making on-line application. Article 16(2) does not permit the discrimination in employment under the State on the ground of place of birth, caste, race, religion etc. Therefore, also the petition needs to be succeed.

53. Resultantly, these petitions are allowed quashing and setting aside the action of the respondent in disqualifying the petitioners as informed to them by email. It is further being directed that if the petitioners are eligible for the final merit and if on their clearing the rest of the criteria, they find place in the select list, they shall be provided with all consequential benefits. The petitions, accordingly, are disposed of. Cost to be the

cost in cause.

54. It is given to understand that those candidates, in whose case domicile certificate was not issued, the rest of the documentation also were clear. It was an exercise conducted in the month of December, 2019 to complete that task, let the process for these petitioners be completed in 12 weeks' time.

(MS. SONIA GOKANI, J.)

SUDHIR