

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8095 OF 2016

Dr. Sunil Kiran Noothi,
age : 39 years, Occu.: Scientist,
Currently Residing at B-604,
Sea Crown, Sector – 8, Plot No.19,
Near Old Telephone
Exchange Charkop, Kandivali (W),
Mumbai 400067

PETITIONER

VERSUS

1. Union of India, Through

- a) Mr. Ghanshyam, Under Secretary,
(Scholarship Division),
Department of Higher Education,
Ministry of Human Resource
Development, having its office
at West Block – 1, Wing -6,
2nd Floor, R.K. Puram,
New Delhi – 110066
- b) Mr. N. Kumarswamy, Under Secretary,
or Deputy Secretary Ministry of Health
& Family Welfare, having its office
at A Wing, Nirman Bhawan,
Maulana Azad Road,
New Delhi – 110 011

RESPONDENTS

[Names of respondent nos. 1 (a) and 1 (b) in-person
are deleted as per the leave granted by Court's
order dated 10.08.2016]

Mr. R.F. Totala, Advocate for the Petitioner
Mr. S.B. Deshpande, A.S.G.I. for the respondents

**CORAM : R.M. BORDE AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : 2nd DECEMBER, 2016
PRONOUNCED ON : 20th DECEMBER, 2016**

JUDGMENT (PER : SANGITRAO S. PATIL, J.)

Rule, returnable forthwith. With the consent of the learned counsel for the petitioner and learned Additional Solicitor General of India (A.S.G.I.), heard finally.

2. The petitioner has assailed the communications dated 04.03.2016, 06.04.2016 and 23.05.2016, whereby his claim for grant of "No Obligation to Return to India" ("NORI", for short) certificate came to be rejected by the respondents.

3. The petitioner obtained the degree of M.B.B.S. from Rajeev Gandhi University of Health Sciences, Bangloor, Karnataka in July, 2002. He was selected for Ph.D. programme at Tata Institute of Fundamental Research, Mumbai through a Nationwide Entrance Test. He worked as Postdoctoral Fellow at Orchid Chemicals and Pharmaceutical Ltd., Chennai from September, 2008 to

September, 2009 and simultaneously worked on research publication and thesis. He worked as Analyst for Competitive Intelligence Reporting in Pharmaceutical Industry at Chennai and Gangavath from September, 2009 to January, 2011. He was conferred with the Doctorate of Philosophy (Ph.D.) for the research work leading to the thesis on "Non-sequence Specific Protein DNA Interaction : a Mechanistic Study" by the Tata Institute of Fundamental Research, Mumbai, a National Centre of the Government of India for Nuclear Science and Mathematics, on 30.07.2010. He then applied to the Department of Physiology and Biophysics, Case Western Reserve University, Cleveland, Ohio, USA for further research training as Postdoctoral Fellow from January, 2011 to December, 2011 and on being selected, travelled to U.S.A. on J1 (Research Scholar) Visa. He wanted to do cancer research and therefore, moved to the Department of Cancer and Cell Biology, University of Cincinnati, Ohio from December, 2011 to August, 2013. In the meanwhile, he got an offer letter dated 20.08.2013 from the University of Kentucky, USA for the post of Postdoctoral Scholar in the Department of Microbiology, Immunology and Molecular Genetics. The

petitioner accepted the said offer and has been working since then with the University of Kentucky. He is a Scientist as evidenced by his research publications. He was not involved with patient care or clinical practice. He never practised medicine nor is inclined to practise it in future. Considering his research abilities and credentials, he has been offered by the University of Kentucky an appointment under the State Department J1 Title of Research Scholar whereunder he would be working as a Postdoctoral Scholar at the University of Kentucky in the Department of Microbiology, Immunology and Molecular Genetics Markey Cancer Center.

4. According to the petitioner, the Research Scholar job that is being carried out by him in the U.S.A. is not available in India. He is already in the midst of his job and has invested huge time and money on the research projects. The ultimate aim of his research project is to find cures in blood cancer, which would benefit the entire world. He is already under a confidentiality and on IP protection agreement and as such, cannot undertake the said research work anywhere else.

5. The petitioner is in need of NORI Certificate so as to enable him to go to join his Research Project in the University of Kentucky, U.S.A., as required under the Rules of U.S.A. Therefore, he applied to the respondents for issuance of NORI Certificate. However, as per the impugned communications, his request has been turned down on the ground that as per the extant policy guidelines, NORI Certificate is not issued by the Ministry of Health and Family Welfare to anyone except in the cases where the age of the applicant is over 65 years on the date of submission of the application.

6. The learned counsel for the petitioner submits that the petitioner is not at all a Medical Practitioner. He never practised medicine after obtaining the M.B.B.S. Degree. The petitioner is a Research Scholar. He intends to go with the research project taken up by the University of Kentucky, U.S.A., which would benefit the entire world in finding cures for various types of cancers. Since the petitioner has not worked as a Medical Practitioner and has no inclination to practise medicine, he would not be able

to earn anything for himself. He has been offered monthly salary of Rs. 2,42,100/- per month for working as a Research Scholar by the University of Kentucky. Since he has not been granted NORI Certificate by the respondents, he is not in a position to join the Research Project. The petitioner, thus, is sustaining loss of his salary. Moreover, his non-participation in the Research Project is hampering the research work which ultimately would cause loss to the entire world. He submits that the impugned communications, rejecting claim of the petitioner for grant of NORI Certificate, is totally unjust, unfair, illegal, discriminatory and unconstitutional. He, therefore, submits that the impugned communications may be set aside and the respondents may be directed to issue NORI Certificate to the petitioner.

7. Respondent no. 2 filed affidavit-in-reply in Writ Petition No. 8611 of 2015, wherein almost the similar issue has been involved. With the consent of the parties, the said reply has been treated as the reply to the present petition as well. Based on the contents of the said reply, the learned A.S.G.I. submits that there

are about 6.90 lakhs Doctors in India. However, considering the population of India, four lakhs more Doctors are required by 2022. It is noticed that a large number of the Indian Doctors / Medical Professionals have migrated to U.S.A. He states that the Doctors of Indian origin are serving in U.K. and Canada to the extent of 30% and 25%, respectively. There is acute shortage of Doctors, Nurses, Paramedical Staff and Health Workers in India. To bridge the gap of specialist Doctors and utilize fully the clinical experience available in the Medical Institutions, Diploma of National Board (DNB) has been started in India which is equivalent to the postgraduate degree and post doctoral level qualifications of universities. A number of degree and diploma courses have been started in India to increase the number of Doctors/Medical Practitioners in the country. As a part of capacity building efforts for the Doctors in the country, the Government of India facilitates medical students/Doctors joining training programmes/courses in medical specialties in Medical Institutions out of India and especially in U.S.A. by issuing the Statement of Need (for short, "SON") certificates or Exceptional Need Certificate ("ENC", for

short), where the Government of India certifies that the home country is in need of Doctors requiring admission abroad to the medical courses/training covered in such certificates. These certificates are issued under the Exchange Visitors Programme of the Government of U.S.A. (J1 Visa). At the time of issuing of SON certificate, the applicant is required to furnish a written assurance that after completion of the said training/course, he would return to the home country and start practising in the specialty for which SON certificate was sought by him. Accordingly, J1 Visa is issued to such applicant which enables him to stay in U.S.A. until the training/course is completed, subject to maximum of seven years. In case the duration of the training/course exceeds the period of seven years, the ministry issues ENC to facilitate the applicant to participate in the concerned training programme. If the applicant is unable to return to home country, he is required to obtain a waiver approved by the Department of Homeland Security, U.S.A. by obtaining NORI certificate or on certain other grounds.

8. The learned A.S.G.I. submits that there is increasing trend in the Indian Doctors of not returning to India after completion of their study/training in U.S.A. and preferring to stay back in U.S.A. only. This defeats the basic objective of issuing SON and ENC certificates, since there is acute shortage of Doctors in the country. Therefore, it was considered appropriate to put in place a system to ensure that the commitment made by the applicant while seeking SON certificate is honoured. Accordingly, as per the US laws, J1 Visa holder has to necessarily go back to his home country and stay there for at-least for two years after completion of study in U.S.A. or on expiry of J1 Visa, which is called Home Residency Requirement (HRR). The NORI certificate, which is requirement of the US Government, mandates the home country to certify that the applicant is under no obligation to return to India, before they consider the request for applicant's waiver from two years mandatory HRR, associated with issue of J1 Visa. The learned A.S.G.I. submits that as per the policy of the Government, in view of the prevailing shortage of Doctors in India, NORI certificates are not being issued by the ministry since August, 2011, except

in the cases of the applicants aged over 65 years. He submits that in view of this policy, the request of the petitioner for issue of NORI certificate has been rejected and rightly so. He, therefore, prays that the writ petition may be dismissed.

9. The impugned letters dated 04.03.2016, 06.04.2016 and 23.05.2016 are produced at Exhibits-Q, R, and W, respectively, whereby the claim of the petitioner for issuance of NORI certificate has been rejected. The last letter dated 23.05.2016 addressed to the petitioner by the Ministry of Health and Family Welfare reads as under:

"This has reference to your e-mail dated 09th May, 2016 and representation dated 11th May, 2016 addressed to Hon'ble Minister of Health & Family Welfare on the subject mentioned above and to say that as per extant policy guidelines, No Obligation to Return to India (**NORI**) Certificate is not issued by the Ministry of Health & Family Welfare to any applicant, except to an applicant who is over the age of sixty-five (65) years on the date of submission of application."

10. As contended by the learned A.S.G.I., because of acute shortage of Medical Practitioners in India, the policy decision has been taken by respondent no. 1(b) that NORI certificate should not be issued to the Medical Practitioner except in the case where the age of such a Medical Practitioner is over 65 years. According to him, this policy decision has been taken for stemming brain drain of Doctors, having Indian origin. The working conditions of the Indian Doctors have been improved by the Central Government by enhancing their pays and allowances, age of superannuation and other conditions. He submits that in view of policy decision, the petitioner, who is holding M.B.B.S. Degree, is not entitled to claim NORI certificate.

11. As seen from the certificate (Exh-A), the petitioner has got registered himself in the register of Medical Practitioners maintained by the Karnataka Medical Council, vide Section 13 of the Karnataka Medical Registration Act, 1961, on 25.07.2002. However, it is the specific case of the petitioner that he never practised medicine even after getting certificate of registration. It is further his case that he does not

intend to practise medicine in future also because he is interested in research work in the medical field.

12. The meaning of word "Doctor", according to Oxford Advanced Learners Dictionary - 5th Edition, is "a person who has been trained in and practising medical science". "Medical Practitioner" as defined in Section 2(d) of the Maharashtra Medical Council Act, 1965, means a person who is engaged in the practice of modern scientific medicine in any of its branches including surgery and obstetrics, but not including veterinary medicine or surgery or the Ayurvedic, Unani, Homeopathic or Biochemic system of medicine. It is clear from the specific contention raised by the petitioner that he never practised medicine and does not intend to practise as such in future. He has given his career track since after obtaining the degree of M.B.B.S. in 2002, which shows that he never practised in medicine. This factual position has not been denied by the respondents. In the circumstances, only because the petitioner obtained the degree of M.B.B.S. in 2002, it cannot be said that he worked as a Doctor/Medical Practitioner.

13. It seems that since before obtaining the degree of M.B.B.S., the petitioner was inclined towards research work. He started his first research project with the Professor of Micro-Biology in the Medical College on Sero-Diagnosis of staphylococcus aureus infections in acute and chronic osteomyelitis from August, 1998 to July, 2001. He was selected for Ph.D. programme for his research work leading to the thesis on "Non-sequence Specific Protein DNA Interaction : a Mechanistic Study" at Tata Institute of Fundamental Research, Mumbai from 2002. He worked as postdoctoral fellow at Orchid Chemicals and Pharmaceutical Ltd., Chennai and also worked on research publication and thesis from September, 2008 to September, 2009. He worked as Analyst for Competitive Intelligence Reporting in Pharmaceutical Industry at Chennai and Gangawat from September, 2009 to January, 2011. He applied to the Department of Physiology and Biophysics, Case Western Reserve University, Cleveland, Ohio, U.S.A. for further research training as postdoctoral fellow from January, 2011 to December, 2011 and travelled to U.S.A. on J1 (Research Scholar) Visa. He has produced the Certificate of Eligibility for Exchange Visitors (J VISA) Status at

Exhibit-E, wherein under the caption 'Exchange Visitor Category', he has been referred to as 'RESEARCH SCHOLAR' (see clause 4).

14. The petitioner received offer letter dated 20.08.2013 (Exhibit-D) from the University of Kentucky, U.S.A. for the post of postdoctoral scholar in the department of Microbiology, Immunology and Molecular Genetics, Markey Cancer Center, which reads as under:

UK
UNIVERSITY OF KENTUCKY

College of Medicine
Dept of Microbiology,
Immunology and Molecular Genetics
303, Combs Cancer Bldg.
Lexington, KY40536-0230
Phone : (859) 323-4705
Fax : (859) 257-8940
E-mail :
bondada@e-mail.uky.edu

August 20, 2013

Dr. Sunil K. Nooti,
Postdoctoral Fellow,
University of Cincinnati,
Dept. of Cancer & Cell Biology,
3125 Eden Avenue,
Vontz Room 3208,
Cincinnati, OH 45267

Dear Dr. Nooti,

My Colleagues and I at the University of Kentucky have enjoyed our conversations with you and believe you would be an excellent fit in our Dept of Microbiology, Immunology and Molecular Genetics, Markey Cancer Center and the University. We were impressed with your experience and credentials and very much look forward to you joining our team.

Therefore, on behalf of the University of Kentucky, Dr. Rangnekar and I are pleased to offer you an appointment under the State Department J-1 title of

Research Scholar. You will be a Postdoctoral Scholar at the University of Kentucky within the Dept. of Microbiology, Immunology and Molecular Genetics, Markey Cancer Center. Your compensation includes a pay rate of \$41483 per year. The position will start on 8-28-13. It is for one year and is renewable for one more year after satisfactory progress.

The University of Kentucky has an exceptional benefits package. You will receive the standard paid leave benefits (temporary disability leave, vacation leave and holiday leave) available to all employees who are similarly situated. The University also generously contributes to UK employees' retirement plan, medical coverage, life insurance, and long term disability (after one year). In addition, UK offers optional dental, vision, and accidental death and dismemberment insurances, and other retirement plan opportunities. Other voluntary benefits include short-term disability, long-term care, group home and auto insurance, etc. To learn more about these benefits and many more, please visit: www.uky.edu/HR/benefits.

As you may be aware from the application process, this offer of employment is contingent upon your successful completion of a pre-employment drug screen and/or national background check.

We are excited about the prospect of you joining us at the University of Kentucky. If the terms of this agreement are acceptable to you, please notify me by 8-25-13 by your acceptance and to confirm your availability to start on August 28, 2013). I look forward to hearing from you soon. Please let me know if you have any questions.

This appointment is contingent on your ability to obtain a visa for entry to the United States. We will request that the International Student and Scholar Services issue a form DS2019 for your J-1 visa application. Please complete the Candidate Information Form attached to this letter and send it to our office along with a copy of your C.V., passport, and proof of funding source

Sincerely,
Sd/-

Subbarao Bondada,
Professor of Microbiology,
Immunology and Molecular Genetics,
Member, Markey Cancer Center,
Member, Graduate Center for Toxicology,
Member, Graduate Centre for Gerontologys

Sd/-
Vivek M. Rangnekar
Alfred Cohen Chair in Oncology Research
Dept of Radiation Medicine
Dept of Microbiology, Immunology and
Molecular Genetics
Member, Markey Cancer Center
Member, Graduate Center for Toxicology”

15. The petitioner accepted the offer contained in the letter (Exhibit-D) dated 28.08.2013 and has been working since then with the university of Kentucky.

16. From the above mentioned facts, it is clear that though the petitioner has obtained degree of M.B.B.S. and has got himself registered as a practitioner under the Karnataka Medical Registration Act, 1961, he actually neither practised as a Doctor/Medical Practitioner, nor intends to practise as such. If that be so, the policy decision taken by respondent no. 1(b) of not issuing NORI certificate to any Doctor for the purpose of stemming brain drain of Doctors and to cope up with the acute shortage of Doctors in India, cannot be made applicable to the petitioner. It is obvious that even if he resides in India, he is not going to render his services to the citizens of India as a Doctor because of his inclination in research work. It may be stated that research work requires special aptitude, intelligence, dedication, perseverance and deep concentration. There may be a number of Doctors holding medical qualifications

included in the Schedules to the Indian Medical Council Act, 1956. All of them cannot work as research persons. There may be a very few persons, who would have the inclination to go for research work instead of practising medicine. The Research Scholar cannot be equated with a Doctor/Medical Officer. In the circumstances, the refusal on the part of the respondents in issuing NORI Certificate in favour of the petitioner, making it difficult for him to prosecute his research work as contained in the letter (Exhibit-D), dated 20.08.2013, does not appear to be fair, reasonable and proper. The research work taken up by the petitioner is likely to help the entire mankind. Therefore, it was expected of the respondents to encourage the petitioner for doing the research work by issuing NORI Certificate instead of creating technical hurdles in his commendable research project. At the most, the respondents could have imposed a condition that in case the petitioner starts practising medicine, the NORI Certificate would stand cancelled and he would be required to come back to India. In our view, the policy decision taken by respondent No.1 (b) of not issuing NORI Certificate to the person holding medical

qualifications cannot be made applicable to the petitioner who is a Research Scholar and not a Medical Practitioner.

17. In the above circumstances, the Writ Petition deserves to be allowed partly and it is accordingly allowed. The respondents are directed to reconsider the claim of the petitioner for grant of NORI Certificate in view of the fact that he is not a Medical Practitioner and is a Research Scholar. Respondent No. 1 (b) shall take decision on the claim of the petitioner for issue of NORI Certificate within three months from today on its own merits keeping in mind the fact that the petitioner is a Research Scholar and not a Medical Practitioner. In case respondent No. 1 (b) allows the claim of the petitioner, after considering the merits thereof, he shall communicate his decision to respondent No. 1 (a), who, in turn, shall take decision on the claim of the petitioner for issue of NORI Certificate within three months from the date of receiving communication from respondent NO. 1 (b).

18. With the above directions, the Writ Petition is partly allowed. Rule is made absolute partly in the above terms. The parties shall bear their own costs.

[SANGITRAO S. PATIL]
JUDGE

[R.M. BORDE]
JUDGE

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