

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P No.26619 of 2017
and
W.M.P.No.28337 of 2017

Shanti Esther Puyravaud Petitioner
Vs.

1.The Tamil Nadu Veterinary and Animal Sciences University,
Rep by its Registrar
Madhavaram Milk Colony,
Chennai-600 051.

2.The Chairman
The Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram Milk Colony,
Chennai-600 051.

3.Ministry of External Affairs,
Government of India,
New Delhi.
(Suo moto impleaded as third respondent as per
order dated 20.10.2017 in W.P.No.26619 of 2017
and W.M.P.No.28337 of 2017) Respondents

Prayer: Writ petition is filed under Article 226 of the
Constitution of India to issue a writ of mandamus to direct the
respondents 1 & 2 to provide admission to the petitioner under
the Foreign National Quota in the BVSC-AH course for the
academic session 2017-2018.

For Petitioner : Mr.R.Srinivas
For Respondents : Mr.Vijaya Kumar (for R1)
Standing counsel

Mr.T.M.Pappiah, (for R2)
Special Government Pleader

Mr.T.Madhanagopal Rao (for R3)
Standing counsel

O R D E R

The petitioner is a French Citizen holding a French passport. She applied for BVSC & AH course as a foreign National in June 2017 to the first respondent university. Though, the petitioner is entitled to be considered for admission as a foreign national, she was not considered and her name was rejected on the ground that she had attained the age, which exceeds the age limit fixed for NRI category viz., 21. Therefore, the petitioner has come before this Court, seeking a direction to the first and second respondents to provide admission to her under the foreign national quota in the BVSC & AH course for the academic session 2017-2018.

2.The petitioner's mother Priya Davidar is an Indian Citizen and her father Jean-Philippe Puyravaud is a French Citizen and the petitioner was born in India on 02.02.1995 and has been registered as French Citizen at birth at the French Consulate of Pondicherry. The petitioner had her schooling mostly in India and thereafter studied in Panama, a Central American Country and completed +2 examination under the Academie then de Rennes in the school called Lycee Francais de Pondichery 12, Rue Victor Simonel Pondichery 605001 in French medium. The petitioner secured about 97.5% of marks in Biology, Physics, Chemistry, Mathematics & English subjects (Group 1). Thereafter, the petitioner went to France and pursued some diploma courses in the French Universities and returned to India and applied for BVSC & AH course as a foreign National in June 2017 (academic year 2017-2018) in the first respondent university. Though, the petitioner is an OCI ie., Overseas Citizen of India and she is entitled to be treated as a Foreign National, her application was rejected as she was not considered as a foreign national stating that she had attained the age which exceeds the maximum age limit, i.e., 21 years, prescribed for NRI category. In those circumstances, the petitioner has come before this Court.

3.Mr.R.Srinivas, learned counsel appearing for the petitioner would submit that there are three types of outsiders other than Indians viz., Foreigner, Overseas Citizen of India and Non-resident of India. According to the petitioner, though her mother is an Indian Citizen and she was born at Pondicherry, she has registered herself as a French Citizen at the French consulate and therefore, neither she could be considered as an Indian Citizen nor an NRI. Therefore, she would come under the definition of a foreigner and Overseas Citizen of India. As per the rules, the petitioner, as an Overseas Citizen of India, is entitled to the benefits on par with NRI. The Overseas Citizens of India have to be considered as foreigners and since the petitioner is not an NRI, he would contend that the petitioner

has to be necessarily treated as a Foreign Citizen. He would further submit that the concept of NRI or definition of NRI is nowhere defined or stated in any of the statute, except it has been stated in the Income Tax Act, that too only for the purpose of taxing income. He would also rely upon the Division Bench's judgment of Karnataka High Court, wherein it was held that though the OCIs are entitled to be treated on parity with NRI for certain benefits they could not be called as NRIs as they are not Citizens of India. Hence, he would stress that the petitioner has to be considered as a foreign national and if the petitioner is considered as a foreign national, the petitioner's application cannot be rejected on the ground that she is over aged viz., 21 years, since the maximum age limit for a foreign national is 25 years.

4.Mr.Vijayakumar, learned counsel appearing for the respondent university would rely upon clause 1.2 of the prospectus which speaks about guidelines for admission of students to under graduate degree programmes for Foreign Nationals, wherein it has been stated that Foreign Nationals must be possessing foreign passport and should not be of Indian origin. Though the petitioner is a foreign national, her mother is of Indian origin and therefore, she would not come within the parameters of Foreign National. He would also rely upon clause 1.2 of the guidelines for admission to under graduate degree programmes under NRI/Wards of NRI/NRI sponsored candidates, wherein it has been stated that the NRI who is financially supporting the candidate must be a blood relation, such as father/mother/brother/sister/uncle(Own brother of father or mother)/aunt(Own sister of father or mother) only. In this case, the petitioner's mother is of Indian origin. Therefore, she would come under the definition of NRI. When she comes under NRI category, her age limit is 21years and therefore, the respondent University rightly rejected the petitioner's application as she is over aged to be considered under the NRI category.

5.Mr.T.Madhanagopal Rao, learned Senior Central Government Standing Counsel, would support the letter written by Overseas Indian Affairs-II Division, Ministry of External Affairs, Government of India, wherein it has been stated that OCI cardholders have been granted parity with NRIs in economic, financial and Educational fields and therefore, they should be treated as NRIs.

6.Heard all the parties and perused records. Now what has to be seen is whether the petitioner would fit into the definition of the "Foreigner" or "Overseas Citizen of India" or "Non resident Indian". Admittedly, the petitioner's mother is an Indian Citizen. Though, the petitioner was born in Pondicherry,

she got registered at French consulate and she is a French passport holder. Therefore, it is clear that the petitioner is a foreign Citizen.

7.As rightly pointed out by Mr.R.Srinivas, a Non resident Indian (NRI) is nowhere defined under any of the Act, except in Income Tax Act. As per the Income Tax Act, Non resident Indian (NRI) is an Indian Citizen staying outside India, for more than 182 days in a year. If we go by the above definition, it will not be applicable to the petitioner, since the petitioner is neither an Indian nor a Non resident Indian. Only a person, who is an Indian, by birth as per section 3 of the Citizenship Act 1965 or by descent as per section 4 of the Act, or by Registration as per section 5 of the Act or by naturalisation as per section 6 of the Act, or by incorporation of territory, as per section 7 of the Act could be called as a Citizen of India. Since the petitioner is not coming under any of the above definitions, she cannot be called as an Indian or an Indian Citizen. When the petitioner is not an Indian Citizen, the question of becoming a Non resident Indian (NRI) is ruled out. A Non resident Indian (NRI) even as per Income Tax act, is one, who resides outside India for more than 182 days in a year and therefore, the petitioner would not come under the definition of Non resident Indian (NRI).

8.If the petitioner is not to be considered either as an Indian or as an NRI, what is the position of statute, which could be conferred upon the petitioner? Section 7(A) of the Citizenship Act would take care of the above position. Section 7(A) is usefully extracted as follows:

"7-A. Registration of overseas citizen of India cardholder. (1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an overseas citizen of India cardholder.

(a) any person of full age and capacity,-

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grand-child or a great grand-child of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, who is a minor child, and whose both

parents are citizens of India or one of the parents is a citizen of India; or

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an overseas citizen of India cardholder registered under section 7-A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section;

Provided that for the eligibility for registration as an overseas citizen of India cardholder, such spouse shall be subjected to prior security clearance from a competent authority in India;

Provided further that no person, who or either of whose parents or grand-parents or great grand-parents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India cardholder under this sub-section.

(2) The Central Government may, by notification in the official Gazette, specify the date from which the existing Persons of Indian Origin Cardholders shall be deemed to be overseas citizens of India cardholders.

Explanation.- For the purposes of this sub-section, "Persons of Indian Origin Cardholders" mean the persons registered as such under notification number 26011/4/98 F.I., dated the 19th August, 2002 issued by the Central Government in this regard.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an overseas citizen of India card holder. "

As per section 7(A), a person could be registered as an OCI card holder, provided he/she is a Citizen of another country or foreign country or who is a child or a person of Indian origin or a foreign Citizen, whose one of the parents is Indian. Therefore, the petitioner rightly applied and got registered as OCI card holder, as per Section 7(A) of the Act. There is no dispute in this regard, as she was already issued the card.

9. What is the right available to OCI Card holders has been described under section 7(B) of the Citizenship Act, 1955 and Section 7(B) of the said Act is extracted as follows:

"7-B Conferment of rights on overseas citizen of India cardholder.-(1) Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India cardholder shall be entitled to such rights, other than the rights specified under sub-

section (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) An overseas citizen of India cardholder shall not be entitled to the rights conferred on a citizen of India-

(a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;

(b) under article 58 of the Constitution for election as President;

(c) under article 66 of the Constitution for election as Vice-President;

(d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;

(e) under article 217 of the Constitution for appointment as Judge of the High Court;

(f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;

(g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of people or of the Council of States, as the case may be;

(h) under sections 5, 5-A and section 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to eligibility for being a member of the Legislative Assembly or the Legislative Council, as the case may be, of a State;

(i) for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may, by special order in that behalf specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament. "

10. Section 7(B)(1) states that an overseas citizen of India cardholder shall be entitled to such rights, other than the rights specified sub-section (2) as the Central Government may, by notification in the official gazette, specified in this behalf. Subsection (2) speaks about the prohibition of OCI card holders to invoke Article 16 of the Constitution of India in matters of public employment; Article 58 for election as President; Article 66 for election as Vice President; Article 124 for appointment as a Judge of the Supreme Court; Article 217 for appointment as a Judge of High Court ; Section 16 of the Representation of the People's Act with regard to registration as a voter etc. Excepting the rights which have been observed

under Section 7(B)(2) of the said Act, OCI card holders are entitled to other rights. The Division Bench of the Karnataka High Court, in its judgment in W.P.No.23448 of 2017 dated 07.07.2017 between Soundarya Muthumari Vs. Union of India and others batch, referred to S.O.542(E) dated 11.04.2005 and S.O.36 (E) dated 05.01.2009 wherein benefits of education and pursuing employment and profession have been conferred upon the OCI. Notification dated 11.04.2005 and notification 05.01.2009 are extracted as follows:-

(i) Notification dated April 11, 2005:

Ministry of Home Affairs
Notification
New Delhi, the 11th April, 2005

S.O.542(E) - In exercise of the powers conferred by Sub-section (1) of Section 7-B of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby specifies the following rights to which the persons registered as Overseas Citizens of India under Section 7-A of the Said Act shall be entitled, namely:-

- (a) grant of multiple entry lifelong visa for visiting India for any purpose;
- (b) exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and
- (c) parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

(ii) Notification dated January 5, 2009:

Ministry of Overseas Indian Affairs
Notification
New Delhi, the 5th January, 2009

S.O.36(E) - In exercise of the powers conferred by Sub-section (1) of Section 7-B of the Citizenship Act, 1955 (57 of 1955), and in continuation of the notifications of the Government of India in the Ministry of Home Affairs number S.O.542(E), dated the 11th April, 2005 and in the Ministry of Overseas Affairs S.O.12(E), dated the 6th January, 2007 the Central Government hereby specifies the following rights to which the persons registered as the Overseas Citizen of India under Section 7-A of the Said Act, shall be entitled, namely:-

- (a) parity with Non-Resident Indians in respect of,-
 - (i) entry fees to be charged for visiting the national monuments, historical sites and museums in India;
 - (ii) pursuing the following professions in India, in

pursuance of the provisions contained in the relevant Acts, namely:-

- (i) doctors, dentists, nurses and pharmacists;
- (ii) advocates;
- (iii) architects
- (iv) chartered accountants;

(b) to appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.

11. From the above, it is clear that the petitioner is entitled to be admitted in the educational institution. However, the category under which the petitioner has to be admitted still needs clarification. In this regard, this Court would rely upon paragraph Nos. 11 and 12 of the judgment of the Division Bench and they are extracted as follows:

"11. The contention of the learned Additional Solicitor General that Overseas Citizens of India cardholders are also eligible for government seats cannot be accepted in view of the clear bar under Rule 5 of the Rules for foreign citizens to apply for government seats.

12. As already stated above, eligibility criteria to apply to a course and eligibility criteria to apply under different categories of seats to a course are two different things. The criteria for both could be the same or different. In the present case, all candidates who are NEET (UG) 2017 qualified are eligible to apply for 1 year MBBS/BDS course. Under which categories of seats, they are eligible to apply, depends on their fulfilling the eligibility criteria laid down under relevant Acts and / or Rules governing admission to the various categories of seats. Therefore, if the relevant Acts and/or Rules governing admission to 1 year medical/dental course in Karnataka make Overseas Citizens of India cardholders eligible for admission under various categories of seats, they shall be entitled to be considered for admission under those categories. However, we state that they are not eligible to be considered under the Non-Resident Indian quota as they are not Non-Resident Indians, though they are entitled to be considered on par with Non-Resident Indians. They are also not eligible to be considered under the category of government seats in view of the bar under Rule 5 of the Rules for foreign citizens to apply for government seats."

In paragraph 12, the Division Bench, after referring to Section 7(B) of Citizenship Act and also two notifications dated 11.04.2005 and 05.01.2009 issued under the said Section, has

categorically held that Overseas Citizen of India cardholders are eligible for admission into education institutions under various categories and they shall be entitled for consideration to those categories and they are not eligible to be considered under NRI quota as they are not NRIs, though they are entitled to be considered on par with Non-Resident Indians (NRI), in view of bar under Rule 5 of the Citizenship Rules 2009.

12. Therefore this court holds as follows:

1. The petitioner though born to an Indian Citizen and born in India got registered as French National and holding French Citizenship is a foreign national.
2. The petitioner cannot be considered as an "Indian Citizen" by virtue of sections 3, 4, 5, 6 and 7 of the Citizenship Act, 1955.
3. Since the petitioner is not an Indian Citizen, she cannot be called as a Non-Resident Indian, even as per the definition of Income Tax Act, a Non Resident Indian is an Indian Citizen residing in foreign country for more than 182 days.

13. The petitioner had already registered under section 7(A) of the Citizenship Act 1955, as an Overseas Citizen of India cardholder as she fulfilled the conditions required for getting the card in this regard. The petitioner is entitled to the benefits under section 7(B) of the Citizenship Act 1955 and therefore, she is entitled to be admitted in the Indian institution.

14. Clause 1.2 of guidelines for admission of students to under graduate degree programmes for foreign nationals, which speaks about foreign nationals possessing foreign passport and must not be of Indian origin is contrary to the above law. Therefore, it is not binding upon the petitioner. Similarly, clause 1.2 of guidelines of admissions of students to under graduate degree Programme under NRI/Wards of NRI/NRI sponsored candidates speaks about condition that the petitioner should be a non resident of Indian and the petitioner cannot called as an "NRI" as the petitioner is not at all an "Indian Citizen". Though she is entitled to the benefits under NRI quota, as stated above, since the petitioner is neither an Indian nor an NRI, she has to be necessarily treated as a "foreigner", which fact is also proved by her registration as OCI card holder under section 7(A) of the Act.

15. When the petitioner is a foreigner and she is proved to be a foreigner, for the reasons stated above, the conditions applicable to a foreign student alone would be applicable to the petitioner. If the petitioner is considered as a foreign national, the age limit prescribed for foreign nationals which is 25 years has to be necessarily applicable to the

petitioner and not 21years as stated by the respondents. Therefore, the petitioner is entitled to get the admission.

16. Therefore, the respondent university is directed to give admission to the petitioner under foreign national quota/foreign sponsored quota. Though, the schedule speaks about the admission to be over by 31.10.2017, the petitioner is in no way responsible for any delay in admission. In fact, she was denied admission and therefore, it is a special circumstance and she is entitled to be treated as a special category.

17. The Hon'ble Supreme Court has categorically stated in the judgment of Asha Vs. PT.B.D.Sharma University of Health Sciences and others, reported in 2012 (7) SCC 389 that under special circumstances, time limit could be extended. Following the said judgment, this Court directs the respondent/University to grant admission to the petitioner. More over the seats are said to be vacant under foreign national quota. As the seats are available, the respondent university is directed to give admission to the petitioner within a period of one week from the date of receipt of a copy of this order.

18. With the above directions, this Writ petition is disposed. Consequently, connected miscellaneous petition is closed. No costs. However for reporting compliance call the matter on 11.12.2017. If the respondent failed to comply with the order of this court, The Vice-Chancellor shall present before this court on 11.12.2017. If the Vice-Chancellor has not been appointed then the Officer who is incharge of the University shall present before this court on 11.12.2017.

24.11.2017

sai/mm

Note: Issue order copy by 30.11.2017.

सत्यमेव जयते
WEB COPY

To

1.The Registrar
Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram Milk Colony,
Chennai-600 051.

2.The Chairman
The Tamil Nadu Veterinary and Animal Sciences University,
Madhavaram Milk Colony,
Chennai-600 051.

3.The Ministry of External Affairs,
Government of India,
New Delhi.

+lcc to Mr.R.SRINIVAS Advocate, S.R.No. 84136/17
+lcc to Mr.S.VIJAYAKUMAR Advocate, S.R.No. 83770/17
+lcc to the Government Pleader, S.R.No. 84748/17
+lcc to Mr.J.MADANAGPAL RAO Advocate, S.R.No. 83889/17

W.P No.26619 of 2017

DK (CO)
TR(30/11/2017)



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