

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.15471 of 2017.

Date of Decision: July 18, 2017

Sukhpreet Singh Mann

.....Petitioner

versus

Union Territory, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDHIR MITTAL.

Present: Mr.Anand Chhibbar, Senior Advocate and
Ms.Reeta Kohli, Senior Advocate with
Mr.Vaibhav Sahni, Advocate, for the petitioner.

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Surya Kant, J. (Oral)

The petitioner has laid challenge to the provisional list of candidates short-listed for Foreign Indian (NRI) category seats for admission to MBBS Course-2017 in the Government Medical College and Hospital, Sector-32, Chandigarh. The petitioner also seeks a direction to be considered eligible in the category of Foreign Indian student (NRI) and consequently granted admission in MBBS 1st year course on the basis of his overall merit in NEET-2017.

[2] A brief reference to the facts may be made.

[3] The father of the petitioner is of Indian-origin and is a citizen of United States of America. He holds the U.S.A. Passport. The petitioner has been studying in India from the very beginning and passed his matriculation as well as Senior Secondary Certificate Examinations (10+2) from the Central Board of Secondary Education. The petitioner appeared in National Eligibility cum Entrance Test of 2017 and secured 67055 overall rank.

[4] The petitioner applied for admission to the MBBS course in NRI category in Government Medical College and Hospital, Sector-32, Chandigarh but his candidature was rejected and he was declared ineligible on the ground that **“the candidate is an Indian Citizen and he has not resided in a country other than India for a minimum period of three years immediately preceding the year of admission in the University...”**

[5] The aggrieved petitioner lays challenge to the above-stated decision and claims eligibility in the NRI category on the strength of the decision of the Constitution Bench in **P.A.Inamdar and others versus State of Maharashtra and others, (2005) 6 SCC 537.**

[6] We have heard Mr.Anand Chhibbar and Ms.Reeta Kohli, Senior Advocates in support of the petitioner's claim but are not inclined to interfere with for the reasons recorded hereinafter.

[7] The Government Medical College and Hospital, Sector-32, Chandigarh is affiliated with the Panjab University, Chandigarh. The Syndicate of the University, who is the supreme decision making Authority, in its meeting held on 17.10.2016 evolved the eligibility criteria for the candidates seeking admission in Foreign Indian students (NRI) category. The Syndicate minutely considered para No.132 of the judgment in **P.A.Inamdar and others' case (supra)** and after taking legal advice from University's senior counsel, it viewed as follows:-

“.... Accordingly, the definition of NRI quota cannot be stretched to accommodate persons who are not NRI themselves or their children or wards. Nor can the term “children” be stretched to include grandchildren, when their parents are alive. The expression “children or wards” may be construed to include grand children whose parents are not alive and who would, therefore, be deemed or

presumed to be in the care of under the tutelage of their grandparents. A spouse may have been treated as a “ward” in the 19th century or early 20th century, when the law did not consider a married woman as an independent or completely independent person, and chose patronizingly and unfairly to submerge the persona of the wife in the monopolistic persona of her husband. Such a vestige of feudalism cannot survive the foundational value of gender equality or freedom and equality of the sexes enshrined in the Constitution as also in the clutch of emancipatory legislations compendiously called the Hindu Code Bill (the Hindu Marriage Act, Hindu Succession Act, etc.).

What cannot and must not be lost sight of is that the NRI quota is a radical departure from, or an exception to, the constitutional principle of equality. It must, therefore, be strictly construed lest the exception eat up the principle. The sole justification for this exception to the principle of equality is that the NRI students bring in much needed money for the national economy as a whole and can, therefore, be admitted to educational institutions by a procedure which is less than equal. The NRI students compete with other NRI students only. They do not compete with hundreds or thousands of other students who, being ordinary Indians and not financially affluent NRIs, do not seek to secure admission or preferential admission by virtue of their financial resources. Just as the financially weak do not lose their right to vote in our democracy because they lack financial resources, the constitutional principle of equality dictates that all students or candidates must compete for admission on the strength of their merit alone, completely regardless of their financial condition. Since the *raison d'etre* of the NRI Quota is fundamentally opposed to this constitutional perspective of universal egalitarianism, it must be treated only as a necessary and transient evil in a situation of

national economic crunch and no more. It lacks, in other words, any moral or academic justification *per se* and can be suffered to continue only within the strictest definitional limits in conformity with para 131 of the *Inamdar* judgment.....”

(emphasis by us)

[8] Thereafter, the Syndicate evolved the following criteria to be legally eligible or entitled for consideration for admission in the NRI quota:-

“.... Adopting and employing the above perspective and approach, only the following categories of students or candidates would, in our considered opinion, be legally eligible or entitled for consideration for admission in the NRI quota:-

- (i) Persons of Indian Origin who are citizens of countries other than India and hold the passport of the country concerned.
- (ii) Overseas Citizens of India.
- (iii) Children, i.e., sons/daughters of Persons of Indian Origin (who may, or may not, be citizen of countries other than India), or of Overseas Citizens of India, provided they have resided in a country other than India for a minimum period of three years immediately preceding the year of admission in the University.
- (iv) The eligibility or entitlement under clauses (ii) and (iii) above would extend also to grandchildren, whose parents are not alive or, at least, whose father is not alive at the time of seeking admission in the University, and who can, therefore, be treated as being 'wards' of their grandparents who are Persons of Indian Original (who may, or may not, be citizens of countries other than India), or Overseas Citizens of India, provided such grandchildren have resided in a country other than India for a minimum period

of three years immediately preceding the year of admission in the University.

Explanation:

- (a) The aforesaid condition of residence for a minimum of three years in a country other than India prescribed in Clauses (iii) and (iv) above means actual/physical residence on a regular basis. Notional, deemed or constructive residence of any kind shall not be considered for this purpose. Accordingly, the possession of a Green Card will ipso facto not confer eligibility or entitlement for admission.
- (b) The expression “overseas Citizens of India” in Clause (ii) to (iv) above refers to persons registered as such under Section 7-A of the Citizenship Act, 1955, as amended up-to-date.....”

(emphasis applied)

[9] The Panjab University, Chandigarh conveyed the above-stated criteria for admission under the NRI quota to all the Colleges by way of letter No.ST-1817 dated 13.02.2017.

[10] Government Medical College and Hospital, Sector-32, Chandigarh consequently in its Admission Prospectus for the Session-2017, which was published in the last week of June, 2017, has prescribed the following criteria for admission for Foreign Indian students under NRI category seats:-

“.... 3. Admission for Foreign Indian Student (NRI category seats) will be based on the guidelines issued by Panjab University, Chandigarh vide letter No.ST/1817 dated 13.02.2017. The candidates meeting any of the following criteria will be eligible to apply for admission under this category:

- (i) Persons of Indian origin who are citizens of countries other than India and hold the passport of the country concerned.
- (ii) Overseas Citizens of India.
- (iii) Children, i.e., sons/daughters of Persons of Indian Origin (who may, or may not, be citizen of countries other than India), or of Overseas Citizens of India, provided they have resided in a country other than India for a minimum period of three years immediately preceding the year of admission in the University.
- (iv) The eligibility of entitlement under clauses (ii) and (iii) above would extend also to grandchildren, whose parents are not alive or, at least, whose father is not alive at the time of seeking admission in the University, and who can, therefore, be treated as being 'wards' of their grandparents who are Persons of Indian Original (who may, or may not, be citizens of countries other than India), or Overseas Citizens of India, provided such grandchildren have resided in a country other than India for a minimum period of three years immediately preceding the year of admission in the University.

Explanation:

- (a) The aforesaid condition of residence for a minimum period of three years in a country other than India prescribed in Clauses (iii) and (iv) above means actual/physical residence on a regular basis. Notional, deemed or constructive residence of any kind shall not be considered for this purpose. Accordingly, the possession of a Green Card will ipso facto not confer eligibility or entitlement for admission.

(b) The expression “overseas Citizens of India” in Clause (ii) to (iv) above refers to persons registered as such under Section 7-A of the Citizenship Act, 1955, as amended up-to-date....”

[11] It may be seen from the decision taken by Panjab University and as followed by the respondent-Medical College, only those children, i.e., sons/daughters of persons of Indian Origin who may or may not be citizens of the countries other than India, shall be treated eligible who have resided in a country other than India for a minimum period of three years immediately preceding the year of admission.

[12] This condition, in our considered view, has been laid down by the University in conformity with the principles evolved by the Hon'ble Supreme Court in para No.132 of **P.A.Inamdar and others' case (supra)**. The Apex Court took notice of the fact that several people of Indian Origin who have migrated to other countries, carry a desire to bring their children back to their own country as they not only get education but also get reunited with Indian culture and ethos by virtue of being here. The litmus test propounded in the cited-case is that NRI seats should be utilized only for such NRI's children or wards who have been geographically disconnected from India due to settlement of their parents outside India. There can, however, be no compromise on the question of merit as the same cannot be completely given a go by.

[13] A child of Non Resident Indian who from the very inception is studying in India is not at par with the children/wards of an NRI who have migrated to other countries and wish to be educated here. A child who have studied in India throughout is not alien or stranger to the competitive merit

financial status or conditions, a student is entitled to admission purely on the basis of his/her merit. The petitioner belongs to the latter category of students who have no disadvantage of any nature. He is similarly placed as hundreds or thousands of other students who, being ordinary Indians have to secure admission on the basis of their merit.

[14] Contrarily, the children or wards of NRIs who have been studying in different countries and studied the compulsory subjects of Physics, Biology and Chemistry etc., are required firstly to establish the equivalence of their qualification with 10+2 examination and then secure a merit position in NEET-2017 so as to seek admission against NRI seats. The petitioner, as we said earlier, does not belong to that category of NRI students. He has thus rightly been held to be ineligible.

[15] There is yet another reason to turn down the petitioner's claim. The University evolved the criteria in October, 2016 for admission to NRI seats and formally circulated and brought it in the public domain in February, 2017. Assuming that the petitioner or his father did not come across such criteria, it is obvious that they came to know about it as soon as the Admission Prospectus-2017 was published by the College. The petitioner knew very well that as per the prescribed criteria, he was ineligible for admission under NRI category. Nevertheless, he took a chance. His candidature was bound to be rejected for want of eligibility. He cannot be permitted now to turn around and question the eligibility criteria when eligibility conditions once published in the Prospectus have acquired the status of an enforceable law and hundreds of students have altered their position in accordance with such eligibility conditions. It is too late for the petitioner to question the eligibility criteria at this juncture.

[16] For the reasons afore-stated, we do not find any reason to interfere with the order under challenge.

[17] Dismissed.

[SURYA KANT]
JUDGE

July 18, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No