IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.08.2018

\+ **W.P.(C) 4746/2018**

MOHIT SHARMA ..... Petitioner

versus

UNION OF INDIA ..... Respondent

Advocates who appeared in this case:

For the Petitioner :Mr Nakul Pathania, Advocate.

For the Respondent :Ms Maninder Acharya, ASG, Mr Sanjeev Narula, CGSC, Mr Sahil Sood, Mr Abhishek Ghai, Mr Harshul Chaudhary, Mr Viplav Acharya, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner – an Australian Citizen and an Overseas Citizen of India (OCI) – has filed the present petition, *inter alia*, praying that the respondent be directed to provide scholarship to the petitioner for the remainder of his undergraduate course in National Institute of Technology, New Delhi, in terms of the Scholarship Programme for Diaspora Children (hereafter 'SPDC Scheme'). The petitioner was disbursed the grant under the SPDC Scheme for the first year of the course but has been denied the same for the second year on the ground

that the petitioner's parents are residing in India and he does not qualify the eligibility criteria under the Guidelines for the SPDC Scheme. The petitioner disputes that the aforesaid criteria is applicable. According to the petitioner, he was admitted to the benefits of the SPDC Scheme in the year 2016-17 and, therefore, the Guidelines as applicable for the said year would continue to be applicable for the full term of his undergraduate course. He further contends that being a non-resident was not a criteria for grant of scholarship under the SPDC Scheme.

2. The aforesaid controversy arises in the context of the facts as set out below:-

2.1 In 2001, the Central Government (Ministry of Human Resource Development – hereafter 'MoHRD') launched a scheme named "Direct Admission of Students Abroad" (hereafter 'DASA Scheme') in a bid to offer admission to Foreign Nationals and Non Resident Indians to undergraduate programs in foremost technical institutions of the country. MoHRD issues the guidelines for every academic year, which lay down the eligibility and other criteria for the prospective candidates.

2.2 The Central Government (Ministry of External Affairs) also launched a scholarship programme named SPDC Scheme – "Scholarship Programme for Diaspora Children" – in 2006 for providing scholarships to the students selected for different courses under DASA Scheme. The SPDC Scheme was launched to assist the children of Persons of Indian Origin (PIOs) and Non-Resident Indians (NRIs) in pursuing undergraduate courses in various Indian Institutions.

2.3 The petitioner shifted to India with his family in April 2015 and completed his high school (Standard XII) in 2016 in New Delhi. In 2016, the petitioner secured admission in National Institute of Technology, New Delhi (hereafter 'NIT Delhi') under the DASA Scheme. It is pertinent to mention that the petitioner was also offered admission in the University of New South Wales, Australia for undertaking the Bachelor of Engineering (Hons.)(Computer) Course. He was also offered a subsidy (on enrolment for the aforesaid course) under a scheme known as "Commonwealth Supported Place" (HECS-HELP). Under this scheme, a part of the petitioner's fees was to be paid by the Australian Government. The petitioner, after considering his options in relation to the available courses and the respective scholarship schemes, decided to pursue his undergraduate course from NIT Delhi.

2.4 The petitioner applied for the scholarship under the SPDC Scheme for the academic year 2016-17. He was awarded the said scholarship and the same was intimated to him by a confirmation mail dated 30.01.2017.

2.5 On 29.06.2017, an amount of ₹2,64,000/- was remitted to NIT Delhi, as the scholarship amount awarded to the petitioner for the academic year 2016-17. Thereafter, the petitioner sent a communication dated 12.09.2017 enquiring about the timeline and procedure for the disbursement of the scholarship amount for the second year (academic year 2017-18) of his studies. In reply, the petitioner was asked to submit his mark sheet for the first year for processing the scholarship, which was duly supplied by the petitioner.

2.6 On 02.04.2018, the petitioner was informed that he was not eligible for the scholarship for the academic year 2017-18 in terms of Clause 4.1(f) of the guidelines – the 2017-18 SPDC Guidelines. The said Clause provides that *"Children of PIO/OCI/NRI who have not passed the qualifying examination from a foreign country except in the case of children of ECR country workers (category 4.i.a.iv above), are not eligible for SPDC".*

2.7 The petitioner replied to the aforesaid communication dated 02.04.2018 stating that 2017-18 SPDC Guidelines do not apply to him as he was given scholarship in the year 2016-17 and, thus, his case would be governed by Clause 8(b) of the guidelines as applicable at the material time (hereafter referred to as 'the 2016-17 SPDC Guidelines'). The said Clause stipulates the conditions to be complied for continuation of scholarship to selected applicants for the second and subsequent years of the undergraduate course.

2.8 Thereafter, the petitioner received a communication on 03.04.2018 wherein it was informed that the petitioner is not eligible for the scholarship (as per Clause 2 of the 2016-17 SPDC Guidelines), as his father was not residing in one of the sixty six countries to which the SPDC Scheme was applicable. The petitioner made representations to the concerned authorities for considering his case. On 12.04.2018, the petitioner was once again informed that he was not eligible for the scholarship and as a result, his scholarship stood cancelled from the second year onwards.

2.9 Aggrieved by the aforesaid decision of the respondent, the petitioner has filed the present petition.

Submissions

3. Ms Maninder Acharya, learned ASG contended that the entire objective of the SPDC Scheme was to provide scholarship for NRIs or PIOs, who are residing overseas in order to facilitate a bond between those persons and India. She submitted that the SPDC Scheme was not available for persons residing in India. She referred to the 'Frequently Asked Questions (FAQs) relating to Scholarship Programme for Diaspora Children Portal' as published on the website of MEA and referred to the answer to question no.5 of the FAQs in support of the aforesaid contention. She also relied on the sub-paragraph 4.3 of the 2016-17 SPDC Guidelines and contended that one of the qualifying criteria is that the candidates must have passed the Senior Secondary (10+2) or equivalent examination from a system of education recognized by the Association of Indian Universities. She submitted that SPDC Scheme would not be applicable where the candidates had passed a qualifying examination in India. Lastly, she relied on Clause 4.4 of the 2016-17 SPDC Guidelines, which require parents of a candidate to submit the income tax return attested by the Indian Mission/Consulate to establish that their monthly income did not exceed US$ 2250. She submitted that the petitioner had failed to fulfill the said criteria, as the income tax returns submitted by the petitioner's parents were not attested by the Indian Mission/Consulate. She submitted that an Indian Mission/Consulate would only certify income tax return of persons residing overseas and, therefore, this

condition implied that the candidates/their parents should be residing outside India.

Reasons and Conclusion

4. The petitioner's request for the scholarship amount for his second year of studies was rejected for the first time by an e-mail dated 02.04.2018, which reads as under:-

> "Dear Sir,
>
> This is regarding the disbursement of scholarship under the SPDC programme. It is informed that as per extant SPDC guidelines clause 4 Eligibility Criteria point (f) you are not eligible for award of scholarship from this academic year, i.e, 2017-18.
>
> Guidelines can be referred on the SPDC portal (www.spdcindia.gov.in).
>
> This issues with the approval of Competent Authority.
>
> With Regards."

5. Concededly, the 2017-18 SPDC Guidelines are not applicable in the case of the petitioner. Ms Acharya has fairly not advanced any contention to support the aforesaid stand of the respondent. Clause 4.1(f) of the 2017-18 SPDC Guidelines is set out below:-

> "(f) Children of PIO/OCI/NRI who have not passed the qualifying examination from a foreign country except in the case of children of ECR country workers (category 4.1.a.iv above), are not eligible for SPDC."

6. Concededly, the 2016-17 SPDC Guidelines did not include any such clause and, therefore, the aforesaid reason for denying the scholarship to the petitioner is not sustainable.

7. The fact that the 2017-18 SPDC Guidelines were not applicable in the petitioner's case was pointed out by the petitioner by an e-mail dated 03.04.2018, sent in response to the mail dated 02.04.2018. In response thereto, the respondent sent a mail dated 03.04.2018, which reads as under:-

> "Dear Sir,
>
> You have mentioned the guidelines of 2016-17. In this regard you may kindly refer the clause 2 of the guidelines of 2016-17 wherein it is mentioned that the scheme is applicable to Children of NRl/PlO/OCl in 66 foreign countries.
>
> Since you are not residing/working in any of these 66 countries, your son is not eligible for the SPDC.
>
> Regards"

8. In view of the above, the principal controversy to be addressed is whether in terms of Clause 2 of the 2016-17 SPDC Guidelines as floated in 2016, the SPDC Scheme was applicable only to NRIs and PIOs residing overseas. The respondent has also affirmed that while considering the petitioner's case for release of scholarship for his second year of studies in NIT, Delhi, it was observed that the Income Tax Certificate issued by the petitioner's father was not countersigned by any Indian Mission/Consulate abroad. In fact, the certificate had been issued by Government of India. As noted above, it was also contended that the

petitioner was ineligible for scholarship for completing his 12th Class schooling in India. In order to address the aforesaid controversy, it would be relevant to refer to the eligibility criteria as set out in the 2016-17 SPDC Guidelines.

9. Clauses 1 and 2 of the 2016-17 SPDC Guidelines provide an introduction to the SPDC Scheme. Clause 4 stipulates the eligibility criteria. Clause 8 provides the Financial Assistance (Scholarship) to the candidates. The relevant clauses of the 2016-17 SPDC Guidelines are set out below:-

> "1. **INTRODUCTION**
>
> Government of India launched a scheme called "Scholarship Programme for Diaspora Children" (SPDC), in the academic year 2006-2007, for the wards of persons of Indian Origin (PIOs) and Non-resident Indians (NRIs) to assist them in pursuing Under Graduate courses in Indian Universities/Institutions.
>
> 2. **SCHEME**
>
> Under SPDC scheme financial assistance for specific undergraduate courses in Professional and Non-Professional courses (except Medical and related courses) is provided towards tuition fee, admission fee and post admission services.
>
> The scheme is applicable to NRIs and PIOs from **66 select countries** as listed at **Appendix-A**.
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> * * * * *

4. ELIGIBILITY CRITERIA:

4.1 Nationality:

(a) SPDC is awarded to following four categories:

(i) Person of Indian Origin

(ii) Non-Resident Indian

(iii) Children of Indian Workers in ECR countries studying outside India

(iv) Children of Indian Workers in ECR countries studying in India.

Definitions about these four categories are given below:

> b. "Persons of Indian Origin" (PIOs) shall mean the Persons who are citizens of other countries (except Pakistan and Bangladesh) who at any time held an Indian Passport, or who or either of his/her parent or any of his/her grandparent was a citizen of India by virtue of provisions of the Constitution of India or Section 2 (B) of Citizenship Act,1955 (Act No. 57 of 1955).

Applicants are required to provide documentary evidence towards proof of Indian nationality or Indian origin.

Persons of India Origin (PIOs) applicants are expected to submit proof of Indian origin, preferably a valid PIO card or OCI card issued by the Government of India. Those who cannot submit documentary evidence of Indian origin are required to submit declaration about Indian origin. Format is at **Appendix B**.

In the absence of any documentary evidence about Indian origin, an affidavit from the applicant attested by the Head of Indian Mission concerned verifying the Indian Origin status of the applicant may be submitted.

c. "NRI" in this context means Non-Resident Indians as defined in Income Tax Act, 1961 with the following clarifications:

An individual is Non-Resident, when he/she is "not a resident" or who is "not ordinarily resident".

A person is treated as "not ordinary resident" when any of the following conditions is satisfied.

(1) If he/she has not been resident in India in nine out of ten preceding years; (OR)

(2) If he/she has not been in India for a period of 730 days or more during the preceding seven years.

d. Children of Indian Workers in ECR countries (for the purpose of availing scholarship under SPDC):

Children of Indian workers must have had at least 3 (three) years of education in any of the ECR countries (Afghanistan, Bahrain, Indonesia, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Oman, Qatar, Saudi Arabia, Sudan, Syria, Thailand, United Arab Emirates and Yemen) during the last 6 (six) years and passed the qualifying examination inclusive of 11thand 12th standard or equivalent (not beyond).

e. To apply under the quota under category of Children, of Indian Workers in ECR countries, <u>who are left behind in India</u>, the candidate must have passed the Senior Secondary (10+2) or equivalent examination from a system of education recognized by the Association of Indian Universities (AIU).

4.2 Age:

The SPDC is open to applicants in the age group of **17 to 21 years as on 1st October 2016**. Applicants born on or after 1st October, 1995 and before 1st October, 1999 are eligible to apply. Date of birth as recorded in the Secondary Education Board/University Certificate of Class 10th or equivalent, or as mentioned in a certificate for this purpose issued by appropriate Government authorities of respective countries will be taken as authentic for this purpose.

4.3 Academic Qualification:

Qualifying Examination: The candidate must have passed the Senior Secondary (10+2) or equivalent examination from a system of education recognized by the Association of Indian Universities (AIU), with requisite subjects.

Minimum Marks in qualifying Examination: The candidate must have secured a minimum of **60%** aggregate marks or equivalent grades in aggregate of all the subjects in the qualifying examination.

Subjects of Study in Qualifying Examination: The candidate must have studied the prescribed essential subjects at the qualifying examination level to pursue a particular course of study. Details of Institutions and Courses offered are as given at **Appendix-C**.

Applicants/candidates who passed the qualifying examination (10+2) and has secured admission in an undergraduate course in the designated Institution in India (as per Appendix E) and fulfill other eligibility criteria can apply for SPDC. Such candidates will be shortlisted on the basis of marks/score obtained at 10+2 level along with submission of proof of Admission Letter issued by the Institution, duly stamped and signed by Authorized Signatory of that Institution and other required documents submitted online (on SPDC portal) by **31st August, 2016**.

It shall be the responsibility of the candidates to ascertain whether they meet the eligibility criterion for application under SPDC Scholarship scheme. Eligibility of candidates, in doubtful cases, would be decided by Ministry of External Affairs.

4.4 INCOME CRITERIA: **Income criteria will be applicable to all categories of candidates i.e. NRIs & PIOs**

The total monthly income of the parent(s) of the candidate should not exceed an amount equivalent to US Dollars Two thousand two-hundred fifty (US$ 2250). The applicants' parents will provide signed salary certificate from the employer and latest annual income tax return, which will be attested by the Indian Mission/Consulate.

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8. FINANCIAL ASSISTANCE

(a) **In the First Year**: Partial financial assistance to the extent of 75% of the total **Institutional Economic Cost** (**IEC**) subject to a maximum of US $ Four Thousand (US$4,000) per annum in respect of NITs and other institutions covered under DAS A Scheme with effect from the academic year 2011-2012 (pertaining to those Institutes who had increased Tuition Fee for the Academic Year 2011-12 and onwards);

And where there is no increase in tuition fees for the academic year 2011-2012, the existing limit of 75% of IEC or US$ 3600, whichever is less would continue and would be made by the Ministry of External Affairs, Government of India to the applicants selected for the SPDC scheme. IEC includes Tuition fee, Hostel fee & other institutional charges. (Food charges are excluded).

(b) **For Second and Subsequent Years**: The parameters for continuation of scholarship to selected applicants for the second and subsequent years of study are as follows:

(i) Students securing 50% marks in aggregate in an academic year with clear pass marks in all subjects of study, would be eligible to receive the maximum admissible scholarship i.e. 75% of IEC or US$ Four Thousand only (US$ 4,000), in respect of NITs, IIITs, Schools of Planning and Architecture, 'A' Grade institutions accredited by NAAC and recognized by UGC and other institutions covered under DASA Scheme with effect from the academic year 2016-17 and where there is no increase in tuition fees for the academic year 2011-12, the existing limit of 75% of IEC or US$ 3600, whichever is less, in the following year of study.

(ii) Students, who secure less than 50% marks in aggregate in an academic year and have obtained clear pass marks in all subjects of study, would be eligible to receive 90% of the scholarship admissible under paragraph 7(b) (i) above, in the following year of study.

(iii) Students, who could not secure clear pass marks in all subjects but have been promoted by the Institute/University to the next academic year, would be eligible to receive 50% of the scholarship admissible under paragraph 7(b) (i) above in the following year of study.

(iv) Students, who have not been promoted to the next academic year, would not be eligible for grant of any further scholarship."

10. It is apparent from the plain reading of the aforesaid clauses that there is no stipulation that a PIO should be a resident of overseas. Clause 2 of the 2016-17 SPDC Guidelines only indicates that the Scheme would be applicable to NRIs and PIOs from 66 selected countries. Further, Clause 4.1 of the 2016-17 SPDC Guidelines also clearly indicates that four categories of persons are eligible to avail the benefit of the SPDC Scheme. This includes Persons of Indian Origin (PIOs). Clause 4.1(b) of the 2016-17 SPDC Guidelines defines the expression "Persons of Indian Origin" to mean the Persons who are citizens of other countries (except Pakistan and Bangladesh) but at any time held an Indian Passport, or either of his/her parent or any of his/her grandparent was a citizen of India by virtue of provisions of the Constitution of India or Section 2(B) of the Citizenship Act, 1955 (Act No. 57 of 1955). There is no stipulation that the PIO should not be a resident of India.

11. In view of the above, this Court is unable to accept that the SPDC Scheme, as published was only applicable to the persons residing outside India.

12. This Court is also not persuaded to accept that the petitioner's claim for scholarship can be rejected on the ground of FAQs related to Scholarship Programme for Diaspora Children Portal. FAQs cannot be read to either expand or restrict the eligibility criteria as set out under the SPDC Scheme. It is also important to note that the answer to question no.5 of the FAQs, which is relied upon by the respondent pertains to the question as to the countries covered under the SPDC and not to whether

the candidate or his/parents should be non-residents. Questions 4 and 5 of FAQs are set out below:-

> "**Q4. Who can apply for SPDC?**
>
> Ans. SPDC Scholarship is applicable to Children of NRIs & PIOs who want to study Under-Graduate Courses in following Indian Institutions & Universities.
>
> > i. Central Universities of India offering Under Graduate Courses;
> >
> > ii. 'A' Grade Institutions accredited by National Assessment and Accreditation Council (NAAC) and recognized by UGC;
> >
> > iii. National Institutes of Technology (NITs), Schools of Planning and Architecture and Indian Institutes of Information Technology (IIITs) through DASA Scheme.
>
> **IMPORTANT** - At the time of applying for SPDC, it is imperative that the Intuition is NAAC 'A' Grade. In case, the Institution / University is not graded 'A' after sometime, the scholarship of the candidate will not be affected and shall continue till the end of the Course.
>
> **Q5. Which countries are covered under SPDC**?
>
> Ans. SPDC is applicable to NRIs and PIOs residing in 66 countries. List of Countries is www.mea.gov.in/SPDC.htm (link) and children of Indian Workers in ECR countries studying in India."

13. As is apparent from the above, question 4 of the FAQs relates to the persons who could apply for SPDC. The answer to the said question clearly indicates that the children of PIOs who desire to study

undergraduate courses in the specified Indian Institutions/Universities could apply. Question 5 of the FAQs only related to the countries that were covered under the SPDC. Although, the answer to question 5 of the FAQs mentions that the SPDC is applicable to NRIs and PIOs residing in those countries, this Court is unable to accept that the FAQs could qualify or restrict the eligibility criteria expressly set out under the 2016-17 SPDC Guidelines.

14. The contention that the Clause 4.4 of the 2016-17 SPDC Guidelines stipulates that only persons residing overseas could apply for SPDC scholarship, is unmerited. Clause 4.4 of the 2016-17 SPDC Guidelines specifies the income criteria and stipulates that total monthly income of the parents of the candidate should not exceed an amount equivalent to US$ 2250. It is clear that the scope of Clause 4.4 of the 2016-17 SPDC Guidelines is to set out the upper income limit of the parents of the candidates who would be eligible for SPDC Scholarship and not their residential status. It is not in dispute that the income of the parents of the petitioner is less than the ceiling as specified under Clause 4.4 of the 2016-17 SPDC Guidelines. The requirement that the income tax return be attested by an Indian Mission/Consulate is a requirement to establish the authenticity of the income tax return. The said requirement cannot be read as a condition of residence.

15. The contention that the petitioner had not passed the qualifying examination, is also unmerited. Clause 4.3 of the 2016-17 SPDC Guidelines clearly specified that the candidate should have passed the Senior Secondary (10+2) or equivalent examination from a system of

education recognized by the Association of Indian Universities. The petitioner had cleared his 12th standard examination from CBSE in India. Undisputedly, this examination is recognized by Association of Indian Universities. Therefore, the contention that the 2016-17 SPDC Guidelines required the candidate to have cleared the examination from overseas is unmerited. It is also common knowledge that CBSE has also granted affiliation to several schools overseas and it is not the case of the respondent that those candidates completing their Senior Secondary Schooling under CBSE affiliated school from abroad are ineligible for scholarship under the SPDC Scheme. Further, no such reason was indicated as the ground of denial in any of the contemporaneous correspondence.

16. It is relevant to note that in its e-mail dated 02.04.2018, the respondent had not questioned the petitioner's eligibility under the 2016-17 SPDC Guidelines. The respondent had merely questioned the petitioner's eligibility for scholarship for the Academic Year 2017-18. The petitioner's eligibility under the 2016-17 SPDC Guidelines were questioned for the first time in the e-mail dated 03.04.2018, whereby the respondent referred to Clause 2 of the 2016-17 SPDC Guidelines and stated that the scheme is applicable to "children of NRIs/PIOs/OCIs in 66 foreign countries". This is *ex-facie* incorrect, as Clause 2 of the 2016-17 SPDC Guidelines clearly mentions that the Scheme was applicable to NRIs PIOs "**from**" 66 selected countries and not "**in**" 66 selected countries.

17. It is also relevant to note that the SPDC Scheme includes forms for the declaration required to be made by a candidate. None of the said forms require any candidate to declare his residential status or state that he/she or his/her parents are residing overseas. Clearly, if this was a fundamental condition of eligibility, the same would be specified in no uncertain terms.

18. In his rejoinder, the petitioner has also submitted copies of the e-mail dated 06.12.2016 sent by his father in response to the e-mail of the same date received from the SPDC India Support Team. A perusal of the said e-mail clearly indicates that the petitioner's father had duly informed the respondent that he had submitted his income tax returns for 2016-17 from India and had, further, unambiguously stated that the petitioner had completed his Class 11th from Australia and Class 12th from CBSE Board, India. It is also important to note that there is no allegation that the petitioner has suppressed any material or has furnished any incorrect declaration.

19. There is yet another important aspect of the matter that requires to be considered. The question of eligibility under the SPDC Scheme was required to be considered at the threshold; that is, before acceding to the petitioner's request for grant of such scholarship. Having once accepted that the petitioner is eligible for the same, it is no longer open for the respondent to revisit its decision at a later date. The petitioner has affirmed that he had decided to continue education in India on the premise that the scholarship under the SPDC Scheme would be available to him and had given up the option of pursuing a course in New South Wales, Australia. The respondent is now estopped from denying the scholarship

to the petitioner. It would be manifestly unfair and unreasonable to deny the petitioner's scholarship for the remaining years by now questioning his eligibility to be admitted to the benefits of the SPDC Scheme in the first place.

20. In view of the above, the petition is allowed. The respondent is directed to disburse the scholarship to the petitioner under the SPDC Scheme subject to the petitioner qualifying the criteria as set out in Clause 8 of the 2016-17 SPDC Guidelines.

VIBHU BAKHRU, J

AUGUST 24, 2018
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