

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.16680 of 2019

Reserved on : June 24, 2019

Date of Decision: **June 26, 2019**

Asmita Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE ARUN MONGA**

Present: Mr. Pankaj Bansal, Advocate for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

Mr. M.S.Longia, Advocate for
respondent No.4 – Medical Council of India.

ARUN MONGA, J.

Challenge herein is to Clause 17 as contained in notification dated 06.06.2019 (Annexure P-1) issued by Government of Punjab, whereby, definition and scope of Non-Resident Indian (NRI) has been restricted to include only an NRI and/ or children of NRI.

The facts of the case are neither in dispute nor of much relevance other than the factum that the petitioner is sister/ niece of an NRI. Both, maternal aunt and sister of the petitioner are stated to be NRIs and are living in America and Canada, respectively. The Petitioner having passed her 10+2 examination took the

National Eligibility cum Entrance Test (for short 'NEET') conducted for admission

to MBBS /BDS in medical colleges situated all over India including the state of Punjab. The petitioner has qualified the cut of marks prescribed in the said NEET examination and is eligible to apply for admission in the medical colleges pursuant thereto.

Before proceeding further it would be relevant to reproduce the relevant part of impugned Clause 17 ibid as below:-

“17. Non-Resident Indian (NRI) SEATS

15% seats in all Private Institutes/ Guru Gobind Singh Medical College Faridkot and 13 seats each in Govt. Medical College, Patiala and Amritsar and 3 seats in Govt. Dental College, Amritsar and 4 seats in Govt. Dental College, Patiala shall be earmarked for the Non-Resident Indians in the following order:

Category I NRI/ Children of NRI who originally belong to the State of Punjab

Category II NRI/ Children of NRI who originally belong to an Indian State other than Punjab.”

The petitioner is primarily aggrieved by the action of the State in excluding the first degree relations of NRI and wards thereof from the realm of the definition of 'NRI'. Vide the impugned notification the State has narrowed down the ambit of NRI from the earlier existing position wherein first degree relations of NRI and the wards of NRI who originally belong to the State of Punjab were also included in category I of NRI to apply under the 15% quota reserved for NRIs in all private/ Government medical colleges in the State.

We have perused the contents of the writ petition and the annexures appended therewith and have heard the learned counsel for the petitioner as also

the learned State counsel and the learned counsel representing Medical Council of

India.

Learned counsel for the petitioner would strenuously argue that the impugned clause 17 is in violation of interim order dated 22.8.2017 passed in WP(C) 689/2017 titled **Consortium of Deemed Universities in Karnataka (CODEUNIK) & another vs. Union of India and others** and interim order dated 13.11.2006 passed in Civil Appeal No.4480 of 2006 titled **Ruchin Bharat Patel vs. Parents' Assn. for the M/D Students and others**.

Learned counsel for the petitioner also contends that by restricting the category I to mean 'an NRI and/or children of NRI' results in hostile discrimination towards the students in the State of Punjab. NRI reservation is provided in all the medical colleges of India wherein a wider meaning has been given to word 'NRI' by including the first degree relations of NRI and wards of NRI within the meaning of word 'NRI'. However, the State of Punjab has narrowed down the ambit of NRI and thus discriminated against its own students, who, if otherwise were to apply in the other States would be eligible for NRI quota qua those seats in the other States but not in their own State.

Learned counsel for the petitioner has also emphatically argued that restriction on the scope of the word 'NRI' has no reasonable nexus with the objectives sought to be achieved. He submits that if the scope of the definition of NRI is widened then the wider pool of talent would be available and the same will thus advance the requisite merit. He further submits that the action of the State has restricted the merit pool which can compete against the NRI quota. The same is stated to be in conflict with the ratio of the law laid down by the Apex Court in **P.A.Inamdar & others vs. State of Maharashtra & others, 2005(6) SCC 537,**

wherein, the Constitution Bench has held thus:

131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ("NRI" for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic

Academy [(2003) 6 SCC 697] to regulate.”

Per contra, learned counsel appearing for the State as also the Medical Council of India have vehemently opposed the challenge to the impugned notification on the ground that the same are, in fact, in perfect consonance with the ratio of the verdict of the Apex Court in **Inamdar's** case (supra). As regards the reliance placed by learned counsel for the petitioner on interim order dated 22.8.2017 passed in the case of **Consortium of Deemed Universities of Karnataka** and order dated 13.11.2006 passed in case of **Ruchin Bharat Patel**, they contend that the issue before Hon'ble Supreme Court of India in those cases is with regard to the interpretation of the term 'wards of NRI' which is not the case herein. They further contend that the said orders are only interim in nature and final outcome before Hon'ble the Supreme Court of India is still awaited. Therefore, the said interim orders cannot be the basis for quashing the impugned clause 17 of the notification herein.

Learned counsel for the State further contends that given the population statistics in Punjab, there are quite a large number of NRIs and in its wisdom the State Government has rightly restricted the scope of definition of NRI to mean either 'an NRI or children of the NRI'. Enlarging the scope of the same to first degree relatives and/ or the wards of the NRI would open flood gates for the applicants to seek benefit of NRI quota. She contends that therefore, the argument that widening the scope of the definition of NRI would make available a wider pool of candidates does not sustain as already there exist enough number of NRIs and/or their children in the State of Punjab.

After a careful perusal of the ratio of the order of the Inamdar's case

(supra) vis-a-vis the orders dated 22.08.2017 and 13.11.2006 passed in **Consortium of Deemed Universities of Karnataka** (supra) and **Ruchin Bharat Patel' case** (supra), respectively, we are unable to persuade ourselves to accept the argument of the learned counsel for the petitioner. We are of the opinion that the purpose of narrowing down the definition of 'NRI' vide clause 17, ibid, does not miss the very ratio laid down in **Inamdar's** case, inasmuch as, it has been clearly laid down by the Apex Court that under the garb of NRI quota less meritorious students who can afford to spend more money get admission even though neither the student is an NRI nor his/ her parents are NRIs.

As far as the objective sought to be achieved by the State to restrict the definition of NRI the same is also based on reasonable nexus. The purpose of restricting the definition is to give weightage only to the genuine cases where the children of those parents who have migrated to other countries to get the benefit of education in their native country. Such NRI parents have a natural desire to impart Indian cultural ethos in their children and inculcate Indian values by bringing them back to the country of their origin. Further more, it is in the interest of the nation that the money which they would otherwise be spending on their children on a foreign land, should rather be contributed to the economy of their own country, if the same is spent in their mother land. That apart the cost of foreign education as compared to the same in India is highly prohibitive for NRI parents to afford the same and it was but natural and in their self interest also to save their hard-earned money. In the circumstances, the NRI quota is thus mutually beneficial qua both – for the State as also for the NRIs and is symbiotic in nature.

The reliance placed by learned counsel for the petitioner on the

Karnataka and **Ruchin Bharat Patel** (supra) is also misplaced as would be borne out from the perusal of the same. In both these cases the definition of 'NRI' was wider in scope and included the words 'NRI/children or wards of NRI'. The dispute pending adjudication therein is in respect of the meaning of the word 'Wards' which is not the case herein. In any case, even Hon'ble the Supreme Court while interpreting the scope and meaning of the word 'wards' consciously noted as below in **Ruchin Bharat Patel's** case :

“Normally, the admissions to the medical colleges should have been finally concluded before 30th September. This year's admission is long overdue and if this 15% of the students are not allowed to be admitted under NRI quota there may be financial loss to these colleges and the seats shall also go waste. In view of the peculiar circumstances of the case, for this year we are taking a practical view of the situation and we feel that the students to these colleges may be admitted under the following directions and we make it clear that this is exclusively for this year only as a one time arrangement because of the peculiar circumstances of the case:-

- “1) The students be admitted as NRIs in NRI quota as against 15%: At least one of the parents of such students should be an NRI and shall ordinarily be residing abroad as an NRI;*
- 2) The person who sponsors the student for admission should be a first degree relation of the student and should be ordinarily residing abroad as an NRI;*
- 3) If the student has no parents or near relatives or taken as a ward by some other nearest relative such students also may be considered for admission provided the guardian has bona fide treated the student as a ward and such guardian shall file an affidavit indicating the interest shown in the affairs of the student and also his relationship with the student and such person also should be an NRI, and ordinarily residing abroad.”*

(emphasis supplied)

Even if these parameters are applied and sufficient number of students are not available for this year as against admission to 15% quota, the colleges would be at liberty to fill up the remaining seats from the State list and if the number of candidates admitted as against 15% quota is very much less and the colleges are unable to raise sufficient funds, they would be at liberty to approach the Committee to restructure the fees.”

A perusal of above clearly reflects that not only the interim orders have been passed by the Apex Court as a one time measure for a particular academic year at the relevant time but even otherwise scope of 'wards' has been restricted to mean that where a student has no NRI parents then he/she can be considered under 'NRI Ward' definition provided guardian shall file requisite affidavit and the guardian shall be an NRI.

In view of the discussion above and the reasons contained therein, we also do not find any merit in the argument that the narrowing of the scope of the definition of 'NRI' by the State is hostile discrimination qua the students of Punjab. It is open for the State Government to make any policy with regard to the residents of the State and no interference is warranted by this Court in the domain of policy making. It is upto the State to widen or narrow the scope of the definition of 'NRI' and such exercise of power would not amount to any discrimination. In the cases relied upon by learned counsel for the petitioner wherein interim orders have been passed by the Apex Court defining the term 'wards' the State Governments chose to widen the scope of the definition of 'NRI' and also included the wards of the NRI along with the children of the NRI. The same has, however, consciously not been done by the State of Punjab. We do not

find any legal infirmity in the action of the State of Punjab to not adopt the wider definition of NRI.

With the above observations the writ petition is dismissed.

No order as to costs.

(HARINDER SINGH SIDHU)
JUDGE

(ARUN MONGA)
JUDGE

June 26, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No