

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 20.07.2020

Pronouncing orders on : 31.07.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.7401 & 7549 of 2020
and W.M.P.Nos.8861 & 8862 of 2020

Dr.C.S.Shri Lakshmi ...Petitioner in both W.Ps

vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Fort St. George, Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010.
4. The Secretary,
Medical Council of India,
Pocket 14, Sector - 8,
Dwaraka,
New Delhi - 110 077. ...Respondents in both W.P.s

PRAYER in W.P.No.7401 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating the impugned Prospectus issued by the 3rd respondent Selection Committee dated 12.03.2020 and to quash the same insofar as Clause II (3) relates to the guidelines for admission to PG Medical Course under NRI quota is concerned insofar as it excluded the real sister/real brother of the candidate to be the NRI financial supporter is concerned and consequently,

incorporate the Clause to include real sister and real brother of the candidate to be a NRI financial supporter for admission to PF Medial Course in Self Financing Medical Colleges in Tamil nadu for 2020-2021 session under NRI quota and to allow the petitioner to participate in the selection under NRI quota on the basis of the financial support of her real sister in terms of the order passed by the Hon'ble Supreme Court of India passed in 'Consortium of Deemed Universities in Karnataka and another vs. Union of India and others dated 22.08.2017'.

PRAYER in W.P.No.7549 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from proceeding with selection for admission to Post Graduate Medical Courses under NRI quota based on the Prospectus issued by the 3rd Respondent Selection Committee dated 12.03.2020 without considering the real sister and real brother of the candidate to be NRI supporter for admission to Post Graduate Medical Courses in Self Financing Medical Colleges in Tamil Nadu for 2020-2021 session, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran
in both W.Ps

For Respondents : Mr.Vijay Narayan
in both W.Ps Advocate General assisted by
Mr.E.Manohar
Special Government Pleader
for R1 to R3

Mr.V.P.Raman for R4

COMMON ORDER

The challenge made in these writ petitions pertains to the prospectus issued by the Government of Tamil Nadu for admission to Post Graduate Degree / Diploma Courses fixing the eligibility criteria for NRI quota.

2. The facts of the case in a nutshell are as follows :

The petitioner underwent the MBBS Course and completed the same in the year 2015. The petitioner thereafter wrote the NEET examination and secured 387 marks and thereby became eligible for being considered for admission to the Post Graduate Medical Course. The petitioner wanted to apply for admission under the NRI quota in Self Financing Medical Colleges / Medical Universities. The petitioner wanted to apply under this quota on the basis that her blood sister is a permanent resident of

Singapore and that she will financially support the petitioner by sending funds from Singapore and enable the petitioner to undergo the course.

It will be relevant to extract the eligibility criteria as prescribed in the Prospectus hereunder:

II.ELIGIBILITY CRITERIA:

2.Candidates should be a Citizen of India

3.The following guidelines shall be followed regarding admission to Post Graduate Degree/Diploma Course under under NRI quota in Self Financing Medical Colleges 2020-2021 session.

a) "Candidates should be India Origin settled in foreign countries.

OR

Candidates who were born in foreign countries and whose parents are of India Origin.

OR

Children of Indian Citizen stay abroad for employment, business

OR

Children of Indian Citizens deputed abroad by Public Sector Undertaking

OR

Children of the Official of the Central/State Government on deputation to abroad

b) The Candidates seeking admission to NRI Quota should have valid Indian Passport.

c) Admission under Non Resident of India scheme may be made on the basis of the marks obtained in the Qualifying Examination as prescribed.

d)The seats under NRI quota should be utilized by the bonafide NRI's only and for their children or wards.

Therefore, the NRI financially supporting the candidates should either be the parent (Father or Mother) of the candidate or legally declared as guardian of the candidate by the Court as per provision in "The Guardian and Wards Act 1890".

e) Candidates admitted under "NRI" quota should submit the following documents:

(i) NRI status of the financial supporter issued by the Indian Embassy of the respective country under their seal.

(ii) Certificate of Relationship between the NRI financial supporter and the candidates issued by the competent authority and valid Indian Passport of the NRI financial supporter.

(iii) NRE (Non Resident External) Bank Account Pass Book of the financial supporter.

(iv) Evidence for payment of Development charges US \$1000/- to the college by the NRI financial supporter (One time payment at the time of admission only).

3. The concept of providing for NRI Quota was mooted by the Hon'ble Supreme Court in P.A. Inamdar vs. State of Maharashtra reported in 2005 (6) SCC 537. The relevant portion of the judgment is extracted hereunder:

"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 4 of 9 Academy [(2003) 6 SCC 697] to regulate."

4. According to the petitioner, the Hon'ble Supreme Court, in two subsequent orders passed in *Ruchin Bharat Patel vs. Parents' Assn. for the M/D Students case* and *Consortium of Deemed Universities in Karnataka vs. Union of India case*, has expanded the scope of the term "wards" and has brought within the purview of NRI quota even near relations like blood brother, sister etc. By relying upon these orders, the petitioner wants to make herself eligible under the NRI quota on the ground that she will be funded by her sister from Singapore. In other words, the petitioner wants the scope of NRI quota to be expanded and include her within the purview based on the funding made by her near relatives from a foreign country.

5. The grievance of the petitioner is that, the Prospectus issued by the Government of Tamil Nadu goes contrary to the above mentioned two orders passed by the Hon'ble Supreme Court and it has restricted the eligibility criteria by recognizing the candidates to be considered under this quota only when there is a nexus, either to their parents or guardian or the candidate, to a foreign country. Therefore, the

Prospectus issued by the Government of Tamil Nadu has been put to challenge in these writ petitions.

6.Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner submitted that the Prospectus issued by the 3rd respondent is in violation of the MCI Regulations, since it excludes the blood brother and sister of the candidate to be a financial supporter and that it also runs contrary to the orders passed by the Hon'ble Supreme Court in Ruchin Bharat Patel vs. Parents' Assn. for the M/D Students case and the Consortium of Deemed Universities in Karnataka vs. Union of India case. The learned counsel further submitted that, the Prospectus of Institutions in various other States like Maharashtra, Karnataka, Andhra Pradesh and Kerala have clearly considered the orders of the Hon'ble Supreme Court of India and the eligibility criteria under NRI quota had been properly fixed, whereas, when it came to the Government of Tamil Nadu, the scope of NRI quota has been completely restricted. Therefore, the Prospectus issued by the 3rd respondent requires interference. The learned counsel submitted that there should be uniformity in following the MCI Guidelines and the orders of the Hon'ble Supreme Court, and the State of Tamil Nadu cannot stand alone by restricting the eligibility criteria under NRI quota. The learned counsel further submitted that the sister of the petitioner is a permanent resident of Singapore and she is a NRI and she has supported the education of the petitioner right through and that she will continue to send funds from Singapore and financially support the petitioner to undergo the Post Graduate Medical Course also. Therefore, the learned counsel concluded his arguments by submitting that the petitioner must be considered under the NRI quota and must be allowed to participate in the selection process.

7.Per contra, Mr.Vijay Narayan, learned Advocate General, appearing on behalf of the respondents 1 to 3 submitted that the claim made by the petitioner is unsustainable. The learned Advocate General justified the fixing of the eligibility criteria in the prospectus by relying upon the specific stand taken by the 3rd respondent in the counter affidavit and the relevant portion in the counter affidavit is extracted hereunder:

5. A perusal of the above would clearly show that the three categories of candidates, who can be granted admission under the NRI quota, recognized by the Supreme Court in P. A. Inamdar are:i) NRI himself/herself,ii) Children of the NRIs andiii) 'Wards' of the NRIs. It is submitted that "wards"

would entail a guardian legally appointed/declared by the Court and such criterion are necessary to be prescribed so that, as observed by the Hon'ble Apex Court, the NRI quota cannot be made available to a candidate simply for the reason that some of his NRI/her relative or blood relative has agreed to provide NRI money only for the purpose of undergoing the course for which the admission is sought. Circumventing this would affect the truly meritorious and deserving candidates.

6. It is submitted that the also Petitioner has failed to understand that the Interim Order Dt: 22.08.2017 in Consortium of Deemed Universities in Karnataka Vs. Union of India (WP(C) 689/2017) will not be applicable to/support the Petitioner cause for the following reasons: Primarily the Petitioner has failed to note that the latter Order was passed as an one-time measure for particular academic year at the relevant time. Also, the issue, leading to the passing of the Interim Order was pertained to the amplified meaning given to the term "Ward". Moreover, the Order states the following:

"As presently advised, the principles set out in Anshul Tomar (supra), shall be followed this year for the purpose of filling up of 15% NRI quota. Be it clarified, the WP(C) 689/2017 NRI quota shall include Overseas Citizens of India (OCI) and Persons of Indian Origin (PIO). The counseling shall be held and finalised by 31st August, 2017, in respect of this quota and, if for some reason or other, the counseling is not concluded by that date, the same shall be completed by 4th September, 2017. It needs no special emphasis to state that the present order is only applicable to the deemed universities and no other category of institution.

Let the matter be set out for final disposal on 23rd November, 2017."

A perusal of the above fact would clearly go to show that the above Interim Order does not in any way confer a valid ground/right for the Petitioner to challenge the Prospectus issued by the 3rd Respondent for this academic year.

7. It is pertinent to mention that a matter, comprising of similar facts as in the current WP, came up for due consideration of the Hon'ble Division Bench of the Punjab and Haryana High Court in Asmita Kaur Vs State of Punjab (2019 SCC Online P&H 937). In the said case, the Petitioner therein had challenged the Notification of the State which excluded the First Degree Relations of NRI and Wards thereof from the realm of the definition of "NRI". The Hon'ble Court while deliberating on the issue considered the proposition laid down in both the P.A. Inamdar and the Consortium of Deemed Universities in Karnataka case and held the following:

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

12. 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.

13. The reliance placed by learned counsel for the petitioner on the interim orders passed in cases of Consortium of Deemed Universities of 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....."

8. The Hon'ble Court further observed (in Para 14 and 15) that the perusal of the Consortium of Deemed Universities in Karnataka case clearly reflects that 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 and that 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. On these grounds the Hon'ble Division Bench upheld the action of the State in their prescription of the definition of NRI and thus dismissed the WP therein. In light of the fact that the Petitioner herein's WP is similarly placed, the same also deserves to be dismissed.

9. It is also submitted that the Hon'ble Division Bench of the Kerala High Court has also in Poomulli Neelakandan Namboodiripad Memorial Ayurveda Medical College Vs Admission Supervisory Committee for Professional Colleges (2019 SCC Online 2656 : (2019) 3 KLT 929) had deliberated on the issue of NRI. In the issue therein the Kerala Act of 2006, while regulating Admission, has prescribed that NRI Seats as seats reserved for children or wards or dependants of NRI. The Hon'ble Division Bench, relying on P. A. Inamdar case, observed that even the use of the term "dependant" in the Act therein was infact a legislative excess. This fact shows that the scope to

expand beyond what was prescribed by the Apex Court is not allowed and that is exactly what is sought by the Petitioner herein.

10. It is also submitted that the Petitioner has failed to understand that the under Entry 25 in the Concurrent List of Schedule VII of the Constitution of India, the legislature of the State is permitted to make laws on subject pertaining to Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I. Thus both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. Therefore, the prescription of criteria for eligibility/ admission viz., the NRI Seats herein, is well within the State's legislative competence.

11. It is submitted in a similar matter the Hon'ble High Court of Jammu & Kashmir in Omer Bashir Itoo Vs State and Ors (2014) SCC Online J&K 124 held the following:

"42.Supreme Court in P. A. Inamdar clearly did not envisage or indicate a category of NRI sponsored or financially supported candidates to be granted admission under NRI quota. Had the Supreme Court intended to extend the benefit under NRI quota to the persons financially supported by their NRI blood relatives other than the parents, the same could have been clearly mentioned in the judgment. The Supreme Court as a matter of fact in para 131 of P. A. Inamdar had started with observing that under NRI quota generally students who can afford more money get admission and has emphasized the bona fide use of the quota. The College, therefore, cannot be said to have acted legally by incorporating clause 4.2 and creating a category of candidates financially supported by their blood relatives, other than father and mother. This tantamount expanding the parameters laid down by the Supreme Court in P. A. Inamdar which is not permissible and cannot be allowed to sustain. As said above, such expansion is permissible only to the

extent of an NRI relative on whom a candidate is dependent for education purpose or, having regard to facts of a case, the NRI is responsible for education of the candidate."

A perusal of the above goes to show clearly that the scope of NRI cannot be extended beyond what has been prescribed by the Apex Court. The Petitioner is neither an NRI nor has shown any proof to the effect that her Sponsor is a legally appointed Guardian and that she is their ward, as prescribed under the Prospectus. No proof has also been shown that the Petitioner's education has continuously been funded by the NRI relative and under these circumstances permitting the Petitioner's prayer would run contrary to the Hon'ble Apex Court Order.

12. It is submitted that the Petitioner cannot seek to challenge the admission process if the condition prescribed therein is inconvenient to them. The Hon'ble Courts have held that mere inconvenience is not a ground to challenge a provision. No question of arbitrariness or unfairness can be attributed by persons who fail to qualify the requirements of a Prospectus. It is also submitted that conditions prescribed in a prospectus have the force of law and are binding on all parties and as such the same cannot be subject to alteration. Any such alteration would cause unwarranted prejudice to other candidates and also disrupt the time bound admission process.

13. It is submitted that as observed above by the Hon'ble Court's, it is well within the jurisdiction of the State Government to take policy decision as it deems necessary for promoting merit and transparency in the admission process and the Petitioner cannot seek a direction for framing of a policy decision in their favour. In light of the above facts it is thus seen that the Petitioner's WP deserves to be dismissed.

In light of the above, it is humbly prayed that this Hon'ble Court is pleased to dismiss the Writ Petition and thus render justice.

8.The learned Advocate General by relying upon the counter affidavit filed by the 3rd respondent submitted that, the prospectus issued by the 3rd respondent is perfectly in line with the judgment of the Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case and it satisfies the criteria fixed by the Hon'ble Supreme Court. The learned Advocate General specifically relied upon paragraph 131 of the judgment which has been extracted supra. The learned Advocate General further submitted that the two interim orders passed by the Hon'ble Supreme Court makes it very clear that both orders are more in the nature of an interim arrangement and that it was a one-time measure for that particular year because of the peculiar circumstances prevailing at that point of time.

9.The learned Advocate General further submitted that the criteria for becoming eligible under the NRI quota is directly relatable to only three categories of candidates viz., a) the candidate being an NRI himself/herself b) Children of the NRI's and c) Wards of the NRI's. The learned Advocate General submitted that the criteria prescribed in the prospectus has a direct nexus to the object sought to be achieved. The learned Advocate General by developing his argument submitted that the purpose of restricting the definition was to give weightage only in genuine cases where the children of those parents who have migrated to other countries are given a chance to get their children educated in their native country. If this scope is expanded by bringing in dependence as the criteria or flow of foreign funds as a criteria, it will open the pandora's box and the same will defeat the letter and spirit of the judgment of the Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case. It is possible that a candidate without having any nexus to a foreign country can always bring himself or herself under the NRI quota by merely getting foreign funds from some relative. This will defeat the very object of the NRI quota.

10.The learned Advocate General submitted that a similar argument was made before the Division Bench of the Punjab and Haryana High Court in Asmita Kaur vs. State of Punjab and others reported in 2019 SCC Online P&H 937 and the same was rejected by the High Court. The learned Advocate General specifically relied upon Paragraphs 9 to 14 in the judgment and the same is extracted hereunder:

9.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.

10.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.

11.After a careful perusal of the ratio of the order of the Inamdar's case 5 of 9 (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.

12.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.

13.The reliance placed by learned counsel for the petitioner on the interim orders passed in cases of Consortium of Deemed Universities of 6 of 9 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."

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."

14.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.

11.The learned Advocate General also relied upon the judgment of the Kerala High Court in the case of Poomulli Neelakandan Namboodiripad Memorial Ayurveda Medical College vs. Admission Supervisory Committee for Professional Colleges reported in 2019 3 KLT 929. The relevant paragraphs are extracted hereunder:

6.Apart from the genuineness or acceptability of the documents submitted by petitioners 2 and 3 in support of their claim for admission under the NRI quota, a larger question as to whether the petitioners fall within the definition of 'NRI students eligible for admission to the 15% NRI quota' arises for consideration. Section 2 (o) of the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 ('the Act' for brevity) defines Non-Resident Indian Seats as seats reserved for children or wards or dependants of Non-Resident and non-exploitative manner on the basis of fees as may be prescribed. The Act itself was enacted in the backdrop of the judgments of the Apex Court in TMA Pai Foundation v. State of Karnataka [(2002) 8 SCC 481], Islamic Academy of Education v. State of Karnatak [(2003) 6 SCC 697 : AIR 2003 SC 3724] and P.A.Inamdar vs. State of Maharashtra reported in [(2005) 6 SCC 537]. In P.A.Inamdar the Apex Court, discussed, deliberated and suggested the extent of seats that can be earmarked for Non-resident Indian students and the categories to which the admission can be offered. The reasoning of the Apex Court contained at Paragraph 131 of the judgment reads 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 4 of 9 Academy [(2003) 6 SCC 697] to regulate."

7. Thus, a limited reservation of seats, not exceeding 15% was permitted to be made available to NRIs subject to two conditions:

- (i) Such seat should be utilised bona fide by NRIs only and for their children or wards
- (ii) Within the NRI quota, merit should not be given a complete go-by.

8.The reasons which prompted the Apex Court to permit reservation of 15% of seats for NRI is also discernible from the above passage, viz; to provide people of Indian Origin, who have migrated to other countries and are desirous of bringing their children back to their own country, so that the children not only get education, but also get reunited with the Indian cultural ethos. It was also made clear that the amount of money, in whatever form collected from such NRIs, should be utilized 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 fee. The Act of 2006 having been legislated in terms of the directions in P.A.Inamdar, the addition of the term 'dependant' along with 'children and wards', is in fact a legislative excess. Therefore, under no circumstances can an expansive meaning be given to the term 'dependant' incorporated in Section 2(o) of the Act.

12.The learned Advocate General concluded his arguments by submitting that the Prospectus issued by the 3rd respondent is in line with the judgment of the Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case and just because the petitioner does not fall within the eligibility criteria, the petitioner is not entitled to challenge the Prospectus. It was submitted that the conditions prescribed in the Prospectus has the force of law and it is binding on all parties and the same cannot be altered just because it is not in favour of some of the candidates. The interim orders passed by the Hon'ble Supreme Court was a one-time measure given under peculiar circumstances and the same cannot be made as the basis for challenging the Prospectus.

13.Mr.V.P.Raman, learned senior counsel appearing on behalf of the Medical Council of India adopted the arguments placed by the learned Advocate General and submitted that the Medical Council of India completely supports the stand taken by the State Government. The learned counsel submitted that the Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case had made it very clear that 15% of the seats under NRI quota must be utilized bonafide by the NRI's only and for their children or wards and secondly, merit should not be compromised in any manner. The learned counsel submitted that the Prospectus issued by the 3rd respondent satisfies both the criteria and the

definition provided under the Prospectus clearly falls within the criteria prescribed by the Hon'ble Supreme Court of India. The learned counsel further submitted that a reading of the order passed by the Hon'ble Supreme Court in Ruchin Bharat Patel vs. Parents' Assn. for the M/D Students case makes it very clear that emphasis is made only upon the parents and/or the child being a NRI and who wants to come to India to pursue his/her education. The criteria cannot be expanded to dependents of some relatives living abroad who want to support the education of the students by sending funds from a foreign country.

14. This Court has carefully considered the submissions made on either side and also the materials available on record.

15. The main focus of the arguments of the learned counsel for the petitioner revolved around the scope and effect of the order passed by the Hon'ble Supreme Court in Consortium of Deemed Universities in Karnataka vs. Union of India case. Therefore, it will be more beneficial to extract the order hereunder:

The matter was listed today for consideration of the filling up of NRI quota seats. Dr. Rajeev Dhawan, learned senior counsel appearing for the petitioners has drawn our attention to the letter circulars dated 13th July, 2017 and 28th July, 2017, issued by the Directorate General of Health Services. According to him, the said communications create an anomalous situation as a consequence of which the description of NRI has become extremely difficult. He has drawn our attention to a passage from P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537, wherein the Constitution Bench has held thus:-

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 education 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 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 utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized 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 to regulate.

Submission of learned senior counsel is that the word wards used in the said paragraph should be understood in a broader compass and be applied in a wider spectrum. He has also drawn our attention to the decision rendered in Ruchin Bharat Patel vs. Parents' Association for the M/D Students and Others in I.A. Nos.9-10 & 11-12 in Civil Appeal No.4480 of 2006, wherein this Court after referring to various aspects, has held thus:-

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 college 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.

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.

In this regard our attention has been invited to a Division Bench decision of the High Court of Madhya Pradesh rendered in Anshul Tomar vs. State of M.P. and Others (2008) 2 MPLJ 450, wherein the High Court after referring to the authority in Ruchin

Bharat Patel (supra) has referred to a set of guidelines drafted by Pravesh Niyantran Samiti (Medical Education), Mumbai. The said guidelines read as follows:-

Based upon the decision of Hon'ble Supreme Court referred herein above dated 13th November, 2006 has laid down a criteria for admission in NRI quota, the Samiti decides and resolves the criteria for granting the admissions in NRI quota, as under :

1) If the mother or father of student is NRI and residing abroad ordinarily, then, either of the situations so held will be WP(C) 689/2017 considered to be proper.

2) If the first degree relation of the student is NRI and residing abroad ordinarily, then in such circumstances also, qua this year, should be considered eligible. It is natural that such definition would include the real brother and sister over and above the mother-father of the first degree relation.

3) As per the definition revised by the Hon'ble Apex Court, interpretation of clause 3 thereof as not made limited but if made in a broad perspective, then, it is clear that the person who wanted to consider such student as ward (Palya), then, he be considered to be proper subject to compliance of the following conditions :

a) He should be the nearest relation.

b) In the definition of the nearest relation, committee has considered following relative having blood relations.

i) Real brother and sister of father
i.e. real uncle and real aunt.

ii) Real brother and sister of mother
i.e. real maternal uncle and maternal aunt.

iii) Father and mother of father i.e.
grand father and grand mother.

iv) Father and mother of mother i.e. maternal grand father and maternal grand mother.

v) First degree-paternal and maternal cousins.

vi) Such person should be NRI.

c) Such persons should ordinarily be residing abroad.

d) Such person should have looked after such student as the guardian of the student and evidence to that effect WP(C) 689/2017 must have been produced before the committee by such person.

e) There should be affidavit with aforesaid fact.

The Samiti directs the AMUPMDC and the Institute/Colleges to follow the above guidelines strictly while granting the admissions in NRI quota in respect of the First Year Health Science course for the academic year 2007-2008 and onwards

After reproducing the said guidelines, the Division Bench of the High Court of Madhya Pradesh has held as under:-

In view of the aforesaid, we are inclined to think that the term 'ward' has been given a broader meaning in Ruchin Bharat Patel (supra). We have reproduced the guidelines of Mumbai Committee to show that they are in consonance with the guidelines set forth by Ruchin Bharat Patel (Supra). Nothing has been placed on record to show that NRIs have acted in a mala fide manner.

Regard being had to the amplified meaning of the term 'ward' and in the absence of any mala fide and further on the foundation that the merit has not been completely given a go-bye, we are inclined to quash the decision of the Committee and hold that the admission of the petitioners under the NRI quota are valid and the petitioners are entitled to prosecute their studies under the said College.

On being asked, Mr. P.S. Narasimha, learned Additional Solicitor General has submitted that this Court may think of making any kind of interim arrangement subject to final adjudication of the controversy so that the same does not arise in future.

As presently advised, the principles set out in Anshul Tomar (supra), shall be followed this year for the purpose of filling up of 15% NRI quota. Be it clarified, the WP(C) 689/2017 NRI quota shall include Overseas Citizens of India (OCI) and Persons of Indian Origin (PIO). The counseling shall be held and finalised by 31st August, 2017, in respect of this quota and, if for some reason or other, the counseling is not concluded by that date, the same shall be completed by 4th September, 2017. It needs no special emphasis to state that the present order is only applicable to the deemed universities and no other category of institution.

Let the matter be set out for final disposal on 23rd November, 2017.

16. There is no requirement to search for any other judgment / order of the Hon'ble Supreme Court, since, the above order clearly brings out the law as it stands today.

17. It must be borne in mind that as on today, the law declared by the Hon'ble Supreme Court in P.A. Inamdar vs. State of Maharashtra case governs the field. Paragraph 131 of the judgment, referred supra, succinctly brings out the basis of fixing the eligibility criteria under the NRI quota. The subsequent orders passed by the Hon'ble Supreme Court in Ruchin Bharat Patel vs. Parents' Assn. for the M/D Students case and Consortium of Deemed Universities in Karnataka vs. Union of India case are in the nature of interim orders and the Hon'ble Supreme Court itself has made it clear that it is a one-time arrangement exclusively applicable for the relevant year and after taking into consideration the peculiar circumstances of the case.

18. The eligibility criteria that was prescribed in the Prospectus has been extracted supra. In the considered view of this Court, the eligibility criteria prescribed in the

Prospectus perfectly falls in line with the judgment of Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case. The 3rd respondent has very carefully defined the eligibility criteria by ensuring that it has a nexus with the foreign country either in relation to the parents or the candidate. It is also made clear that the financial support should also come only from the parent of the candidate, or the guardian of the candidate as declared by the Court under the provisions of the Guardian and Wards Act, 1890.

19.The next question that arises for consideration is as to whether the State Government ought to have expanded the scope of the eligibility criteria by taking into consideration two interim orders passed by the Hon'ble Supreme Court. At this juncture, it will be more beneficial to rely upon the judgment of the Division Bench of the Punjab and Haryana High Court in Asmita Kaur vs. State of Punjab case. The relevant portions of the judgment have been extracted supra. The Division Bench of the Punjab and Haryana High Court has taken into consideration the judgment of the Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case and also the subsequent interim orders passed by the Hon'ble Supreme Court and has held that placing reliance upon the interim orders of the Hon'ble Supreme Court is totally unsustainable since, those orders were passed as a one-time measure for a particular academic year at the relevant point of time. The Punjab and Haryana High Court had upheld a similar clause on the ground that it was in line with the Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case. This Court is in complete agreement with the judgment of the Division Bench of the Punjab and Haryana High Court.

20.As rightly contended by the learned Advocate General, the conditions prescribed in the Prospectus has the force of law and it is binding on all parties. Mere inconvenience faced by certain candidates who want to claim admission under a quota cannot be a ground to interfere with the Prospectus unless the Prospectus is violative of any statutory regulations or the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution of India. Even to bring a decision within the scope of Article 141 of the Constitution of India, the principles of law that emanates from the judgment which has ultimately aided the Supreme Court in reaching the conclusion, for the problem can only satisfy the requirement of a binding precedent within the ambit of Article 141 of the Constitution of India. Useful reference can be made to the judgement of the Hon'ble Supreme Court in Fida Hussain and Others vs. Moradabad Development Authority and another reported in 2011 (12) SCC 615. It is equally true that even the

observations made by the Hon'ble Supreme Court on the points raised and decided by the Court will be binding under Article 141 of the Constitution of India. However, an order passed as an interim measure as a one-time arrangement and for a particular year will not satisfy the requirements of the Article 141 of the Constitution of India and it cannot be called as the law declared for reaching a final conclusion in a case. Admittedly, the Hon'ble Supreme Court has not passed any final orders in both the cases referred supra and it is pending final adjudication.

21.The only test to be applied in the present case is whether the Prospectus runs contrary to the MCI Regulations or the judgment of the Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case. It is seen that the Prospectus does not violate either of the two. The eligibility criteria for NRI quota satisfies the twin requirements viz., the seats being utilized bonafide by NRIs only and the merit of the candidates not being compromised.

22.This Court does not find any ground to interfere with the eligibility criteria prescribed in the Prospectus issued by the 3rd respondent and it is perfectly in line with the MCI Regulations and the judgment of the Hon'ble Supreme Court in P.A.Inamdar vs. State of Maharashtra case.

23.Accordingly, these writ petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Fort St. George, Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai - 600 010.

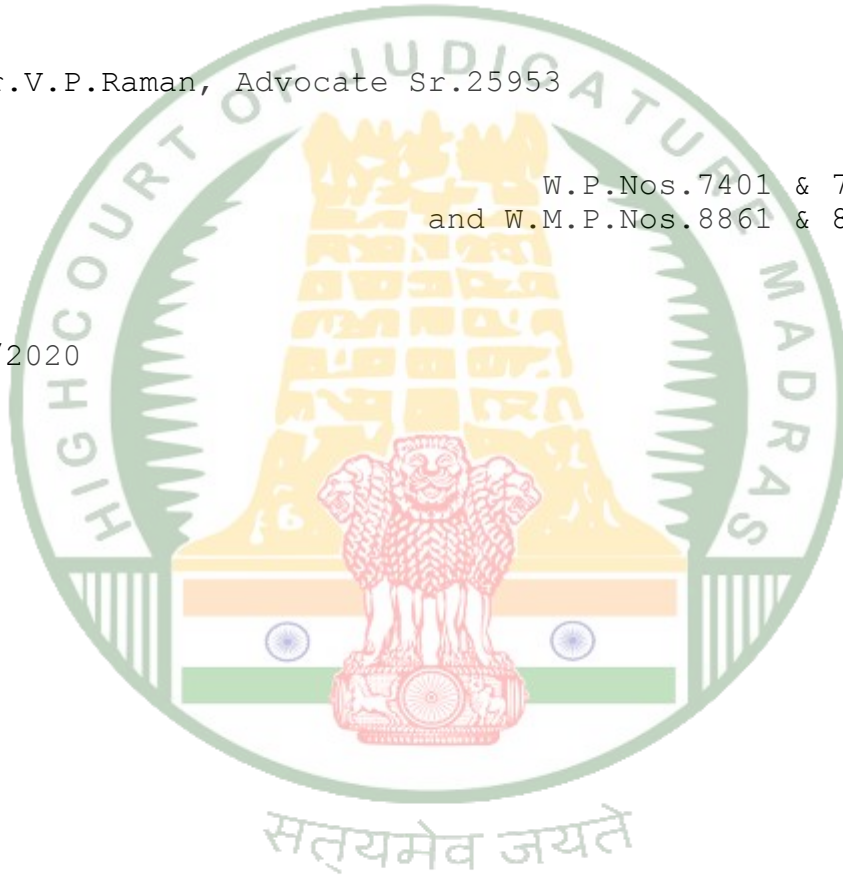
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
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4. The Secretary,
Medical Council of India,
Pocket 14, Sector - 8,
Dwaraka,
New Delhi - 110 07.

+1cc to Mr.V.P.Raman, Advocate Sr.25953

W.P.Nos.7401 & 7549 of 2020
and W.M.P.Nos.8861 & 8862 of 2020

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srg 21/08/2020



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