

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19555-2020

Date of Decision: 23.11.2020

Aanchal Setia

...Petitioner

Versus

Chandigarh Administration and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJAN GUPTA.
HON'BLE MR. JUSTICE KARAMJIT SINGH.**

PRESENT: Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate for the petitioner.

Mr. Pankaj Jain, Senior Standing Counsel with
Mr. Anil Mehta, Advocate for respondents No.1 and 3.

Mr. Subhash Ahuja, Advocate for respondent No.2.

Mr. Gaurav Chopra, Advocate for the Intervenors.

RAJAN GUPTA, J. (Oral)

Case has been heard through Video Conferencing on account of
COVID-19 Pandemic.

Petitioner applied for admission to MBBS course in
government Medical College and Hospital (GMCH), Sector 32, Chandigarh
in general category. Apprehensive that she may not be selected in the
general category, has contended in the present writ petition that she is
eligible to be considered against the NRI quota. As per the prospectus for
admission to GMCH, she does not fall within the definition of NRI. She
has, thus, taken a stand that there is a contradiction in the prospectus for

admission to MBBS in GMCH and BDS courses being offered by Dr. Harvansh Singh Judge Institute, Sector 25, Chandigarh. Stand of the petitioner is that she clearly comes under the category of NRI as described in the prospectus for admission to BDS course being run by the said Institute. She has, thus, posed a challenge to the eligibility criteria for admission to foreign Indian student to MBBS course and contends that the definition of NRI given in the prospectus for admission to MBBS course in GMCH is discriminatory and arbitrary. She has also sought a writ in the nature of certiorari for quashing Clause A-8 of the prospectus for MBBS/BDS/ BHMS Courses-2020 issued by GMCH, wherein criteria for admission to NRI seats has been laid down. According to her, same is discriminatory and diametrically opposed to Clause B-4 of the same prospectus which lays down eligibility criteria for admission to NRI students to BDS course.

Learned counsel for the petitioner has vehemently contended that the entire admission process would be vitiated in view of contradictions and definition of NRI for MBBS and BDS courses. He has referred to a judgment in **P.A. Inamdar and others v. State of Maharashtra and others, 2005(6) SCC 537**. According to him, law laid down therein has to be followed in letter and spirit.

Aforesaid contentions of the petitioner have been opposed by learned counsel representing the respondents. Mr. Pankaj Jain, Advocate who represents UT, Chandigarh, has submitted that two courses are different and cannot be equated in any manner. GMCH is entitled to lay down its own criteria, same being run by Chandigarh Administration. Dr. Harvansh Singh Judge Institute runs a dental college which is constituent

college of Panjab University for which funds, staff and equipment etc. are provided by the Panjab University. A common prospectus is issued only for the purposes of drawing up the merit list on the basis of National Eligibility -cum-Entrance Test (NEET).

Learned counsel for Panjab University-respondent No.2 reiterated this stand and submitted that all expenses for running the dental college are borne by Panjab University and it has laid down its own definition of NRI.

Mr. Chopra who has moved an intervention application also made submissions on similar lines.

We have heard learned counsel for the parties and have given careful thought to the stand taken by the rival parties.

At the outset, it needs to be noticed that the petitioner applied in general category. After she applied and the counselling process was about to commence, she posed a challenge to the definition of NRI as contained in the prospectus for GMCH. Clause 7 on page 62 of the prospectus clearly lays down that a candidate who fills up a particular category in application form is not entitled to change the same later on. Challenge posed on the basis of comparison with the BDS course, in our view, is misconceived. Two colleges and the courses being run by them are totally different. They are entitled to lay down their own definition of NRI in their respective prospectus. Having filled up the admission form in terms of the prospectus, the petitioner is bound by the same. Law is well settled that the terms of the prospectus are binding in nature. The effort of the petitioner to be considered against the NRI seat by importing the definition of NRI for BDS course is not only strange but is unacceptable. The

contention that the clause pertaining to definition of NRI for admission to MBBS course in GMCH is arbitrary and discriminatory, is without any merit. Petitioner after filling up the form and having submitted it before the college is deemed to have accepted all terms and conditions thereof. There can be no dispute with the law laid down in **P.A. Inamdar's case (supra)**, but in our considered view, same has no relevance to the facts of the instant case as it is well settled by virtue of law laid down therein that a separate quota for admission to NRI students can be reserved by the institutions.

In the judgment rendered by a Division Bench of this Court in **Asmita Kaur v. State of Punjab and others, CWP-16680-2019** decided on 26.6.2019, somewhat similar definition of NRI as contained in the instant prospectus for MBBS was upheld by the Division Bench of this Court. The said matter pertained to Punjab State, wherein Clause 17 defined as to who would be NRI for the purposes of admission to MBBS seats in Punjab. Said Clause reads as under:-

“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 1 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.”

Upholding the aforesaid contention, the Court held that it was upto the State to lay down its own policy as regards of NRI. Relevant para thereof reads as under:-

“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.”

Clause A-8 of the prospectus for MBBS/BDS/BHMS Courses-2020 issued by GMCH reads as under:-

“A-8: Eligibility criterial and admission procedure for Foreign Indian Student:

1. The candidates must fulfill relevant **General Eligibility Criteria** (Pages 7-8).
2. The Candidates must be of Indian origin. These seats are not open to foreign nationals who are of non-Indian origin.
3. The candidates meeting any of the following criteria will be eligible to apply for admission under this

category:

- i. Persons of Indian origin who are citizens of countries other than India and hold the passport of the country concerned.
- ii. Overseas Citizens of India.
- iii. Indian citizens (candidates) who have resided in a country other than India for a minimum period of three years immediately preceding the year of admission in the Govt. Medical College and Hospital, Sector-32, Chandigarh.

Explanation:

- (a) The aforesaid condition of residence for a minimum period of three years in a country other than India prescribed in clauses (iii) above means actual/physical residence on a regular basis. Notional, Deemed or constructive residence of any kind shall not be considered for this purpose. Accordingly, possession of a green card will ipso facto not confer eligibility or entitlement for admission.
- (b) The expression “Overseas Citizens of India” in clauses (ii) above refers to

persons registered as such under
Section 7-A of the Citizenship Act,
1955 as amended up-to-date.”

The prospectus makes it clear that the possession of Green Card will not make a person eligible for admission to MBBS course in GMCH, as a matter of right. Merely, because the petitioner's stand is that her maternal aunt, i.e. her mother's real sister, who is having green card of USA and is ready to support her, does not make her eligible for admission to MBBS course as the definition as contained in the prospectus for admission to MBBS course excludes the distant relations and has been confined to Foreign Indian students as has been described in Clause A-8 of the prospectus.

In view of above, we find no merit in the instant petition and same is hereby dismissed.

(RAJAN GUPTA)
JUDGE

November 23, 2020
gbs

(KARAMJIT SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No