

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1680 OF 2021

Aditi Sudhir Vaishnav

... Petitioner

Vs.

Union of India, Thr.

1(a) The Under Secretary (Scholarships) &

1(b) The Under Secretary, Ministry of Health
& Family Welfare.

... Respondent

Mr.Y.S. Jahagirdar, Sr. Advocate a/w Mr. Vyom Shah & Mr. Anagh Pradhan & Mr. Anand Iyer i/by M/s. Divya Shah Associates for the Petitioner.

Mr.R.V. Govilkar a/w Mr. Ashutosh Gole for Respondent Nos.1(a) and 1(b).

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.**

DATE : 30TH SEPTEMBER 2021

P.C. :

1. Rule. Mr. Govilkar, the learned counsel for Respondents waives service.

2. By consent of the parties, Writ Petition is heard finally.

3. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner has prayed for writ of certiorari for quashing the

communication dated 9th June, 2020 and the subsequent communications dated 22nd February, 2021 and 22nd March, 2021. The Petitioner also seeks a writ of mandamus directing the Respondent No.1(a) to issue the NOC for NORI certificate in favour of the Petitioner.

4. The Petitioner has passed MBBS course and graduated in MBBS degree in 2017 and accomplished second rank. The Petitioner had to be enrolled as a doctor under the Maharashtra Medical Council Act. All the family members of the Petitioner are residents of USA. At one stage, the Petitioner's family has received their Green Cards. The Petitioner accepted an internship offered to her by Hospital for Special Surgery, New York on 20th June, 2017. The Petitioner made an application to Respondent No.1(b) for obtaining NOC to obtain her NORI certificate on 9th March, 2020. The Petitioner applied to the Ministry of Health and Family Welfare for issuance of a SON certificate. The SON certificate was issued to her on 11th May, 2020. The Petitioner applied to Respondent No.1(a) for issuance of NOC for the NORI certificate on 19th May, 2020, which came to be rejected by Respondent No.1(a) on 9th June, 2020. The review filed by the Petitioner also came to be rejected. The Petitioner thus filed this Petition for various reliefs.

5. The Petitioner has filed an additional affidavit affirmed on 22nd September, 2021. It is the case of the Petitioner that after her graduation, she was only undertaking research-based work on the basis of a J-1 'Research Scholar' visa in the USA with the Department of Cardiology Research at North Shore University Hospital. She was solely engaged in research activities which did not involve any patient contact. In Paragraph 4 of the said affidavit, she has made a statement that she has decided to give up her research activities and instead pursue a career in business, which necessitates pursuing a MBA (Masters in Business Administration) course. She was never practicing clinical medicine or engaged in patient contact and seeks to pursue a career in business. It is stated that she will not be doing any research in medicine. She is likely to apply for admission to the MBA programme, which is scheduled to begin from January, 2022. She has been advised to apply for immigrant visa, i.e., green card, which can not be applied, unless she obtains NORI certificate from the Central Government.

6. Mr. Jahagirdar, the learned senior counsel invited our attention to the judgment delivered by this Court on **15th September, 2021**

in **Writ Petition No.1679 of 2021** filed by the sister of the Petitioner, **Avani Sudhir Vaishnav Vs. Union of India & Ors.** and would submit that the said judgment applies to the facts of this case and is binding on this Court. He submits that by the said judgment, this Court has directed the Respondents therein to grant NOC for NORI certificate in favour of the Petitioner therein. It was made clear in the said judgment that the Respondent shall make it clear in the NORI certificate that in case the Petitioner starts practicing medicine in USA, NORI certificate would stand cancelled and she would be required to come back to India. He submits that the similar endorsement may be made in the NOC as well as NORI certificate, if issued in favour of the Petitioner by the Respondents in this case.

7. Mr. Govilkar, the learned counsel for the Respondents, vehemently opposed this Petition on the ground that the Petitioner does not disclose that any such NORI certificate would be required, to be obtained from the Central Government, if the Petitioner seeks to pursue the MBA course in US. He further states that there are no such pleadings in the Writ Petition filed by the Petitioner and thus on this ground also no such relief, as prayed in the Petition, shall be granted by this Court.

8. We have perused the averments made in the Petition and also the additional affidavit.

9. A perusal of the order annexed at Page 60 passed by Respondent No.1(a) rejecting the application for NOC filed by the Petitioner clearly indicates that the application for NOC is rejected on the ground that the documents submitted by the Petitioner indicated that she possessed a medical qualification. The Ministry of Health and Family Welfare has clarified that the applicant, who possesses medical qualifications, included in Schedules 1, 2 and 3 of the Indian Medical Council Act, 1956 as well as to the applicants possessing the medical qualifications BDS, MDS and diploma after attaining BDS qualification, shall not be issued the NORI certificate under any circumstances. The Petitioner was informed that the request for issuance of NORI certificate thus could not be acceded to.

10. Perusal of the said order clearly indicates that the NOC for NORI certificate was rejected on the ground that the Petitioner possessed medical qualification obtained from the University in India. It is not in

dispute that the Petitioner possessed the said medical qualification, however seeks to settle down in US.

11. In so far as the contention raised by the learned counsel for the Respondents that there are no pleadings in the Writ Petition regarding Petitioner proposing to take admission for MBA course is concerned, it is not in dispute that when the Petitioner applied for NOC for NORI certificate, the Petitioner had proposed to do the research work in US, though possessed a medical degree. The Petitioner had thus applied for NOC from the Central Government for issuance of NORI certificate.

12. We have perused the averments made in the additional affidavit filed by the Petitioner that she has now decided to give up her research activities and instead pursue a career in business, which necessitates pursuing a MBA course. The statements made in the additional affidavit dated 22nd September, 2021 are accepted. The statements made in the additional affidavit are to be read with the averments made in the Petition. The objection raised by Mr. Govilkar, the learned counsel for the Respondents, that there are no such pleadings, being hypotechnical and irrelevant, is accordingly rejected.

13. This Court in the judgment delivered on **15th September, 2021** in the case of **Avani Sudhir Vaishnav** (supra) wherein the order rejecting NOC for NORI certificate by the Respondents also in case of the Petitioner carrying on research work, has been set aside by this Court. In our view, merely because the Petitioner has now decided not to continue her research activities, but to take admission for MBA course for pursuing career in business, requirement of obtaining NORI certificate from the Central Government on the premise that the Petitioner has passed a medical degree from India would continue. There is no substance in the submissions made by the learned counsel for the Respondents that it is not clear whether NORI certificate would be required also in case of the Petitioner pursuing career in business and not medical practice.

14. In our view, the judgment of this Court in the case of **Avani Sudhir Vaishnav** (cited supra) applies to the facts of this case. We do not propose to take any different view in the matter. However, the safeguards provided in the said judgment would apply to the facts of this case also. We accordingly pass the following order :-

- (a) The impugned communications, which are subject matter of this Writ Petition, are quashed and set aside.
- (b) The review application filed by the Petitioner for NOC for NORI certificate is allowed.
- (c) The application filed by the Petitioner for NOC for NORI certificate is allowed.
- (d) The Respondent No.1(a) is directed to issue NOC for NORI certificate in favour of the Petitioner within four weeks from today. It shall be made clear in the said NORI certificate that in case the Petitioner starts practicing medicine in USA, NORI certificate would stand cancelled and she would be required to come back to India.
- (e) The concerned authority shall issue NORI certificate based on the NOC that shall be issued by the Respondent No.1(a) within one week from the date of issuance of such NOC in favour of the Petitioner.
- (f) Writ Petition is disposed of in the aforesaid terms. Rule is made absolute accordingly in the aforesaid terms.

(g) The parties to act on the authenticated copy of this order.

There shall be no order as to costs.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)