



W.P.No.21773 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM

MR.JUSTICE N.SESHASAYEE

W.P.No.21773 of 2023
and W.M.P.No.21116 of 2023

Shivani Sivasekaran

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by Principal Secretary to the Government,
Health and Family Welfare Department,
Fort St.George, Secretariat,
Chennai-600 009.

2.The Director of Medical Education
Directorate of Medical Education,
Kilpauk, Chennai-600 010.

3.The Secretary, Selection Committee,
162, Periyar E.V.R High Road,
Directorate of Medical Education,
Kilpauk, Chennai-600 010.

4.Union of India
Rep. by its Secretary,
To Government of India,
Ministry of Home Affairs,
North Block, New Delhi-110 001



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5.The National Medical Commission

Rep. by its Secretary

Pocket 14, Sector-8, Dwaraka,

New Delhi-110 007

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the 3rd respondent to consider the application of the petitioner for MBBS admissions for 2023-24 session under Management quota and allot a seat based on merit.

For Petitioner : Mr.V.P.Raman

For Respondent : Mr.V.Manoharan
Additional Government Pleader
for R1 and R2

M/s.M.Sneha
for R3

Mr.M.E.Saraswathy
Senior Panel Counsel
for R4

Mr.Subharanjani Ananth
for R5



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ORDER

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This petition has been filed seeking a direction to the 3rd respondent to consider the application of the petitioner for MBBS admissions for 2023-24 session under Management quota and to allot a seat based on merit.

2.The petitioner finds herself in a piquant situation. She is an American Citizen and also holds a Person of Indian Origin card issued to her on 17.08.2005. This card was to expire on 16.08.2020. While so, the Government of India Vide its notification in the Gazette dated 9 Jan 2015 in F.No.26011/01/2014-IC.I has specified the following ;

“the Central Government hereby specifies that on and from the date of publication of this notification in the Official Gazette, all the existing Persons of Indian Origin cardholders registered as such under notification of the Government of India in the Ministry of Home Affairs number 26011/4/98-F.I, dated the 19th August, 2002, shall be deemed to be Overseas Citizens of India cardholders”.

This would imply that notwithstanding the fact the petitioner was holding only a PIO card, she would be deemed to be a holder of OCI card.



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3. However, this status will expire co-extensively on 16.08.2020 when the PIO card expires. The PIO card expired during Covid-19 lockdown and the petitioner notwithstanding the fact her right to stay in India has expired, she continued to stay in India, which was later rectified by the Foreigners Registration Office Vide its proceedings dated 27.02.2023, wherein, the said Office regularized the stay of the petitioner. This was pursuant to an earlier notification dated 02.09.2021 which reads as below;

“Regular visa or e-visa or stay stipulation of period of foreign nationals stranded in India due to COVID-19 may be considered as deemed to be valid till 31.08.2021 on gratis basis without levy of any overstay penalty. Such foreign nationals may not be required to submit any application to FRRO/FRO concerned for extension of their visas. Before exiting the country, they may apply for an exit permission, which would be granted by the FRRO/FRO concerned on gratis basis without levy of any overstay facility.

2. The matter has been re-considered by the Government in view of the present situation. It has accordingly been decided to extend the existing facility of deemed extension of the regular visa or e-visa of stay stipulation period on gratis basis without levy of any overstay penalty granted to foreign nationals stranded in India due to COVID – 19 pandemic till 30th September 2021. Such foreign nationals may not be



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required to submit any application to FRRO/FRO concerned for extension of their visas. Before exiting the country, they may apply for an exit permission, which would be granted by the FRRO/FRO concerned on gratis basis without levy of any overstay penalty.

3.If extension of Visa is required beyond 30.09.2021, the foreign national concerned may apply for extension of visa on the online e-FRRO platform on payment basis, which would be considered by FRRO/FRO concerned subject to the eligibility as per the provisions contained in the Visa Manual 2019.

4.Afghan nationals living in India on any category of visa will be granted extension of visa by FRRO/FRO concerned on gratis basis until further orders. They will not be granted exit or issued leave India notice by FRRO/FRO concerned without prior approval of the Ministry of Home Affairs.

5.These instructions shall come into force with immediate effect.”

4.According to the petitioner inasmuch as her stay is permitted by the Foreigners Registration Office, and inasmuch it was also subsequently recognized, she must be considered as a PIO card holder up to the date on which her stay was regularized. This would imply that she is also deemed to be an OCI card holder during this period, and more particularly will imply that, she is an OCI card holder as on 04.03.2021, the cut of date which the Hon'ble Supreme Court has fixed in ***Anushka Rengunthwar and others Vs. Union of India and others***



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[2023 SCC Online SC 102].

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5.Learned counsel for the petitioner today circulated an official website of the Embassy of India at Washington., D.C., USA. The website states that "*the Indian Immigration will accept all Person of India Origin (PIO) cards (including handwritten ones) along with valid foreign passport, as valid travel document till December 31, 2023, instead of earlier deadline of December 31, 2022*". The website also mentions that "*Indian Immigration Check Post(s) will continue to consider all PIO cards (which were valid as on January 9, 2015) valid for exit from/entry into India till December 31, 2023.*"

6.Heard the learned counsel for the respondents. Mrs.M.Sneha, the learned counsel appearing for 3rd respondent submitted that if the petitioner's case is considered sympathetically, it may pave the way for a spate of litigation on the same point, with the candidates trying to gate crash into the counselling that commences tomorrow (i.e) on 25.07.2023.

7.The cumulative effect of the submissions made by the petitioner is that, even



though petitioner's PIO Card expired on 16.08.2020, the notification dated 02.09.2021 and the Embassy notification downloaded from its official website, as mentioned earlier, indicate that despite the expiry of the PIO cards, they will be deemed to be valid until 31.12.2023. By default, this would also amount to an OCI Card, which is contextually relevant for the current purpose. Furthermore, this would be retroactive and dates back to the date on which the PIO Card expired i.e., on 16.08.2020. This would imply that the petitioner would be deemed to be an OCI Card holder from 16.08.2020, which is well before the cut-off date of 04.03.2021 as prescribed in *Anushka's case*. To conclude, the petitioner shall be considered as an OCI card holder prior to 04.03.2021, and shall be treated at par with citizens of this country, subject to such restrictions or qualifications prescribed for issuing the OCI Card.

8.Turning to the concern or anxiety of the counsel for the 3rd respondent, the counselling has not commenced as yet and is expected to commence only from tomorrow. Therefore, what may apply to the petitioner may not necessarily have to apply for other candidates. If some one approaches with an identical prayer after the commencement of the counselling, it definitely will create unnecessary



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disruption, but at the end of the day, every case has to be considered on its merits and the circumstances in which it arises.

9.This Court requires the 3rd respondent to ensure that the online application form is also suitably amended forthwith to enable the petitioner to apply for the NEET UG-2023 counselling.

10 . In conclusion, this Writ Petition stands allowed on terms herein above indicated. No Costs. Consequently, the connected miscellaneous petition is closed.

24.07.2023

(2/2)

Anu

Index : Yes / No

Neutral citation : yes/no

Note to office:Issue order copy today



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N.SESHASAYEE, J.



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