

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15532-2023

Date of decision: 20.07.2023

Aqeeq Mann (minor) through his father and natural guardian Sh. Iqbal
Singh MannPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Surjit Singh Swaich, Advocate,
for the petitioner.

Mr. Arjun Sheoran, DAG, Punjab.

Mr. Nitin Kaushal, Advocate,
for the respondent No.3.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This petition has been filed by the petitioner alleging that the petitioner wishes to compete in the General Category for the purpose of securing admission in MBBS Course, after having appeared in the NEET (UG)-2023, but the same is being denied, as he did not able to open the portal on account of the fact that he is an Overseas Citizen of India (OCI) card holder.

The petitioner, in the petition, has prayed for the following relief:

“Civil Writ Petition under Section 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially a writ in the nature of Certiorari for quashing Clause 17 (vi) of the impugned Notification No. 5/5/2021-5HB-3I/446 dated 10.03.2023 (Annexure P-4) issued by Government of Punjab,

Department of Medical & Research (Health-III Branch), which is also part of Prospectus (Annexure P-5), under Graduate Medical/Dental Courses (For Admission to MBBS/BDS Courses) Session-2023, published/uploaded by Baba Farid University of Health Sciences, Faridkot, Punjab, on its website 29.06.2023, being totally illegal, arbitrary, null and void, without jurisdiction, power and authority, ultra vires Article 14, 16, 19 and 21 of the Constitution of India and in contravention and gross violation of the judgment dated 03.02.2023 (Annexure P-6) of the Hon'ble Supreme Court of India in Writ Petition (C) No. 891 of 2021 titled as Anushka Rengunthwar & Ors. vs. Union of India & Ors.

AND

For the issuance of a further writ of Mandamus directing the respondents to allow the registration of the petitioner (overseas citizen of India card holder) and consider him for admission (Counseling) for MBBS (UG) Course Seat in the State of Punjab against 85% State Open Merit Quota at par with Indian Citizens for the Session-2023, as per his Rank No.226861 in NEET, the result of which has been declared on 13.06.2023

AND

For the issuance of further directions/interim to the respondents to allow the registration the petitioner (overseas citizen of India card holder) and consider him for admission (Counseling) for MBBS (UG) Course Seat in the State of Punjab against 85% State Open Merit Quota at par with Indian Citizens for the Session-2023, as per his Rank No. 226861 in NEET, the result of which has been declared on 13.06.2023, provisionally and grant the stay of operation of the said impugned Clause 17 (vi) (Annexure P-4) of the said impugned notification dated 10.03.2023, during the pendency of the present writ petition before this Hon'ble Court, in the interest of justice."

Learned counsel for the petitioner submits that the Supreme Court in Anuskha Rengunthwar & Ors. Vs. Union of India & Ors. (Writ Petition (C) No. 891 of 2021), has held that OCI candidates are entitled to the same benefits, that are being given to the NRI candidates, and the

notification dated 04.03.2021, issued by the Union of India, providing that OCI card holders would be eligible for admission against the seats reserved for NRI candidates only, has been quashed. He further submits that in spite of the said position, the respondent authorities are not providing any opportunity to the petitioner to fill up the form as a general category candidate, and are confining his claim to the NRI quota alone, as an OCI candidate. It is stated that Registrar of the Baba Farid University of Health Sciences, Faridkot, has even sought for a clarification from the Director, Medical Education & Research Department, Punjab (respondent No.2) as regards legal position subsequent to the decision in **Dr. Radhika Thappeta & Ors. Vs. Union of India & Ors.** (Writ Petition(s) (Civil) No(s). 1397/2020, and the orders passed therein on 08.11.2021, but no response has been received. It is also stated that today (20.07.2023) is the last date for filling up the form and in such circumstances, appropriate orders be passed.

In the pre-lunch session, this Court had asked the learned Deputy Advocate General, Punjab, as well as counsel for the Baba Farid University of Health Sciences, Faridkot, to seek instructions in the matter.

In the post lunch session, when the matter is again taken up, learned Deputy Advocate General, Punjab, has placed before us a communication dated 18.07.2023, issued by the Department of Medical Education and Research, Punjab, which is the response to the clarification sought by the Registrar of the University. However, no decision has been taken by the authorities on the representation of the petitioner (P-9). The said communication dated 18.07.2023 is taken on record as Annexure X.

Evidently, vide the communication (Annexure X), the authorities have not examined and decided the issues raised by the petitioner in the petition. Even the authorities have not looked into the NEET-UG (MBBS/BDS/B.Sc.Nursing) Counselling 2023, Information Bulletin &

Counselling Scheme, issued by the Medical Counseling Committee, relating to 15% quota, the stipulations contained therein and the NEET Information Bulletin, which was amended, pursuant to the orders passed by the Supreme Court in the case of Anushka Rengunthwar (supra), specifically the corrigendum dated 15th April, 2023, amending clause 5.2.2.

It is informed by the learned counsel for the University that the position in the state quota and the practice that was being followed in the State of Punjab was different and the OCI candidates have never been permitted to participate in the General Category Pool, and their claims have always been confined to the seats reserved for NRI category candidates. However, this issue still needs to be verified.

Looking to the facts that today is the last date for filling up the admission form, representation of the petitioner (P-9) is still pending consideration and the issues raised by him in the petition are required to be addressed by the competent authority, the present petition is disposed of, on the statement made by learned Deputy Advocate General, Punjab, that respondent No.1 and 2 would consider and decide the matter today itself.

However, it is made clear that in case, the decision would be taken in favour of the petitioner, the necessary consequences/action, as regards permitting him to apply, would also be taken by the authorities today itself. Further, the consequential instructions, if any, would also be issued to the Admission Committee of the University. The petitioner shall be communicated the decision taken by the authorities through his counsel, today itself.

Learned counsel for the University submits that the University shall abide by the decision of respondents No.1 and 2.

It is made clear that this Court has not expressed any opinion on the merits of the case and, therefore, the authorities would be at liberty

to examine the matter, keeping all facts and facets into consideration, in accordance with law.

A copy of this order, under the signatures of Bench Secretary, be supplied to the learned Deputy Advocate General, Punjab, as well as counsel for the University.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

July 20, 2023
Ak Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No