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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27th January, 2023

+ W.P.(C) 14012/2022 and CM APPL. 47316/2022

DR AKHIL VAID THROUGH DR KAMALWANT

ROY VAID

..... Petitioner

Through: Ms. Malvika Trivedi Sr. Advocate
with Mr. Mohit Siwach, Mr. Karan
Sharma, Mr. Udit Bali & Mr. Sujal
Gupta, Advocates. (M:9643797717)

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Jivesh Kumar Tiwari, Sr. Panel
Counsel with Mr. Vinod Tiwari,
Advocates for UOI.

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.
2. The Petitioner - Dr. Akhil Vaid has filed the present petition through his father seeking directions to the Respondents to issue No Obligation to Return to India (NORI) Certificate to him.
3. The Petitioner is an MBBS graduate from Maulana Azad Medical College, University of Delhi (*hereinafter 'MAMC'*). He completed his degree in 2010 and registered himself with the Delhi Medical Council with registration number DMC/R/08604. The Petitioner's registration was valid for a period of five years and as per the Petitioner, the same has not been renewed by him.

4. The Petitioner got an opportunity to work with Icahn School of Medicine at Mount Sinai, New York, USA (*hereinafter*, “Icahn”) as a research scholar. Accordingly, in March, 2020 he applied for a J1 Scholar visa under the category *Certificate of Eligibility for Exchange Visitor Status (J-non-immigrant)*.

5. Since March 2020, the Petitioner has been working as a research scholar at Icahn. His research has been in various areas including AI, ECG, deep-learning algorithms, Machine learning, etc. Recently, he is also stated to be involved in research *qua* COVID-19 patients. The Petitioner has also placed on record a list of the research papers which he has co-authored and some of the papers are also on record.

6. It is submitted by the Petitioner that he has not practiced as a doctor since the time he obtained his degree in medicine from MAMC. As per US immigration laws, the Petitioner, having a J1 Scholar visa, was required to do (home) residency in his country of origin, for a mandatory period of two years, unless an exemption was given by the Government of India.

7. The Petitioner wanted to seek exemption from this two year requirement and, accordingly, applied under the Guidelines for issuance of Statement of Need (SON) Certificate/ Exceptional Need Certificate (ENC)/ No Obligation to Return to India (NORI) Certificate-reg dated 3rd August, 2021 (*hereinafter*, “NORI Guidelines”).

8. According to the Petitioner if the NORI certificate is not issued to him he may not be able to continue to stay in the USA and seek renewal of his USA visa. He may be forced to give up his position at Icahn, return to India for two years at least. He, accordingly, filed an application on 2nd August 2022, for issuance of the NORI certificated. The same was rejected by the

Ministry of Health and Family Welfare (*hereinafter*, “MHFW”) on 17th September, 2022 in the following terms:

*“Dear Akhil Vaid,
Please refer to your request dated 07th June, 2022 requesting the Ministry to issue NOC for NORI. The matter has been examined and in light of clause (G) (iii)(b) of the revised guideline No L-20019/1(Policy)/2013-IC dated 03.08.2021 issued by MoHFW. (copy enclosed), your request could not acceded to.
2. This issues with the approval of competent authority.
With Regards,
International Cooperation Section
Ministry of Health & Family Welfare
Room No. 648- 'A' Wing;
Nirman Bhavan
New Delhi - 110011.
Tel. 011-23061945”*

9. As per the aforementioned email, it is evident that the MHFW relied upon the NORI Guidelines to deny the NORI certificate to the Petitioner as he did not satisfy the category as per the said guidelines.

10. The submission of Ms. Trivedi, Id. Senior Counsel for the Petitioner is that the Petitioner is no longer a practicing doctor in India or the USA. He has not renewed his Delhi Medical Council registration and is now involved in important research projects at Icahn. She submits that the NORI guidelines which have been issued are to be considered as mere guidelines meant to avoid brain drain from India, and not as binding provisions of law. She submits that the Petitioner is not a medical professional who is interested in practice and, thus, an exemption ought to have been granted by issuing a NORI certificate.

11. She relies on three decisions of the Bombay High Court. The same are as under:

(i) ***Dr. Sunil Kiran Noothi v. Union of India through The Under Secretary and Another, WP(C) No. 8095/2016***

(ii) ***Avani Sudhir Vaishnav v. Union of India through The Under Secretary and Another, 2021 SCC OnLine Born 2940***

(iii) ***Siddesh Ramesh Veer v. Union of India, through Mr. Sonu Kumar and Another, 2022 SCC OnLine Born 932***

12. Ms. Trivedi, Id. Senior Counsel for the Petitioner submits that in all these cases, the Hon'ble Bombay High Court has directed issuance of NORI Certificate in favour of professionals, especially who are in the field of research.

13. Mr. Tiwari, Id. Counsel for the Respondent, i.e., the Ministry of Health and Family Welfare and Ministry of Education submits that the three decisions which have been cited by the Id. Senior Counsel for the Petitioner are fully distinguishable inasmuch as in the said cases, the Petitioners were not equally placed as the present Petitioner. It is submitted that in one case the family had fully immigrated in the USA, in the second case, the medicine degree was obtained from Russia and in the third case, the Petitioner therein had pursued Ph.D at the Tata institute of Social Sciences after pursuing his medicine and was not a practicing doctor.

14. Id. Counsel for the Respondents submits that in the present case, there is no clarity as to what the Petitioner was doing between the years 2010 to 2018. He may have practiced in India or in the US. Further, it is submitted that the entire purpose of the NORI Guidelines is to ensure that doctors who receive subsidized medical education in Government

institutions in India ought to work in India considering that there is a large-scale need for doctors in India. Thus, the conditions which are set out in the NORI Guidelines are stringent in nature and ought not to be diluted in any manner.

15. Upon a clarification being sought by the Court from the Petitioner as to whether he practiced, during the period between 2010 to 2018, the Petitioner who has joined online from the USA submits that he was undergoing various mental health issues during the said period and has never practiced as a doctor either in India or the USA. This fact is confirmed by his mother who is present in Court. He further submits that he moved to the USA upon obtaining the opportunity to conduct research at Icahn.

16. Heard Counsels for the parties.

17. The relevant part of the NORI guidelines are extracted below:

“Guidelines for issuance of Statement of Need Certificate/Exceptional Need Certificate/No obligation to return to India Certificate

xxx xxx xxx

C No Obligation to Return to India (NORI)

(i) NORI (No Obligation to Return to India) certificate shall not be issued in general

(ii) NORI may be issued to a person attaining 65 years of age.

(iii) NORI may be issued to the person satisfying the following three (3) conditions

(a) If SON has not been issued previously,

(b) If the applicant is a Foreign Medical graduate and has not qualified eligibility test as per IMC/NMC Act,

(c) If the applicant does not have MCI /NMC/State Medical Council registration”

The factual situation that emerges in this case is that the Petitioner despite obtaining a medical degree from MAMC, has not practiced at all in India or in the USA. The letter issued by the Icahn School of Medicine at Mount Sinai shows that Icahn has extended an invitation to the Petitioner and sponsored him for a post-doctoral research fellowship. The research involves various studies of Machine learning, deep learning using databases and electronic medical records. The said letter by Icahn dated 1st September, 2020 is as under:

“To Dr. Akhil Vaid

The Department of Genetics and Genomic Sciences and the Hasso Plattner Institute of Digital Health at Mount Sinai at Icahn School of Medicine at Mount Sinai would like to extend our invitation and J-1 sponsorship to you for the duration of 02/24/2020-02/23/2022 as a postdoctoral research fellow. Drs. Benjamin Glicksberg and Girish N Nadkarni will act as your supervisor.

You will participate in the research study which focuses on data machine, machine learning and deep learning using large databases and electronic medical records. Your responsibilities in this research are prepare and analyze research data; keep a detailed notebook summarizing experiments and recording research data; maintain computer database of research data; tabulate and display data for presentation in research conferences and for manuscript preparation and use graphics and statistical software to analyze and present data . You are expected to be on duty for approximately 40 hours per week.

Your participation is solely for the purposes of observation, consultation, teaching, or research. No element of patient care services will be involved.

You will be compensated by Icahn School of Medicine

at Mount Sinai in the amount of \$58,661 annually with fringe benefit.

Should the conditions of your J-1 sponsorship change, you must contact International Personnel, Icahn School of Medicine at Mount Sinai before the changes take place. ”

18. It is clear from a perusal of the above certificate issued by Icahn as also the various research publications wherein the Petitioner is shown to be a co-author that, there is no reason for the Court to disbelieve that the Petitioner is involved in significant amount of research relating to analysis of medical records especially after the outbreak of the COVID-19 pandemic. The facts, in the present case, also show that the Petitioner is not interested in practicing medicine at all. He also appears to have not practiced as a doctor since the time he obtained his medical degree in 2010. A perusal of the three decisions of the Bombay High Court show that in certain unique facts, the issuance of the NORI certificate has been directed by the Court.

19. This Court is of the opinion that the non-issuance of the NORI certificate can have adverse consequences to the Petitioner as he may be forcefully required to come back to India. This would also result in depriving him of his career opportunities and contribution in the areas of research which he is undertaking. The Court is also bearing in mind, the medical situation of the Petitioner, in the past.

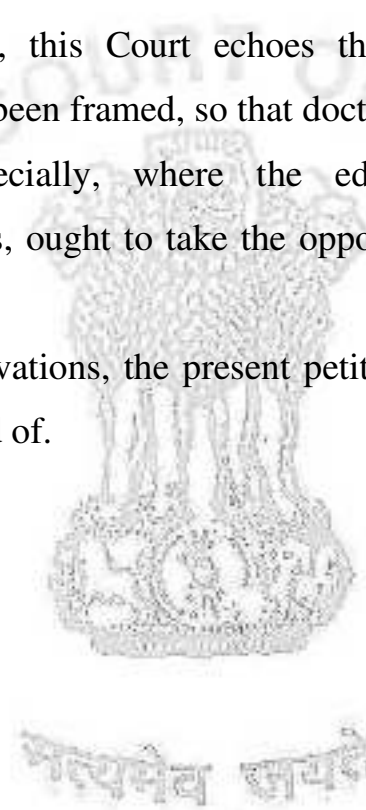
20. Though, the purpose of the NORI Guidelines is to ensure that doctors who obtained medical qualifications in India serve in India for a minimum period, this Court is of the opinion that in the case of the Petitioner, since he is not a practicing doctor, the relaxation which he is seeking ought to be granted in to the unique facts of the case. A perusal of the NORI guidelines

also shows that such certificates are usually granted for persons who do not intend to practice as doctors.

21. Under these circumstances, keeping in mind the position of the Petitioner who is involved in research and not practicing as a doctor, the Court directs the Respondents to issue the NORI certificate to the Petitioner after receiving the necessary documentation, if any, required from him. The NORI certificate shall be issued within four weeks

22. Needless to add, this Court echoes the sentiment of the NORI Guidelines which have been framed, so that doctors who qualify from Indian medical schools, especially, where the education is subsidized in Government institutions, ought to take the opportunity to serve in India, at least for some time.

23. With these observations, the present petition, along with all pending applications, is disposed of.



**PRATHIBA M. SINGH
JUDGE**

JANUARY 27, 2023
dj/kt