

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-25336-2024

Reserved on: 04.10.2024

Date of decision: 18.10.2024

KARMAN SINGH KHAIRA

..Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Kumar Kaundal, Advocate
for the petitioner.

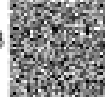
Mr. Gagneshwar Walia, Addl. Advocate General, Punjab
for respondent No.1.

Mr. Himanshu Malik, Senior Panel Counsel (Union of India),
(through video conferencing).

ANIL KSHETARPAL, J.

1. The petitioner herein aspires for admission in Bachelor of Veterinary Science and Animal Husbandry Programme in the College of Veterinary Science Guru Angad Dev Veterinary & Animal Sciences University, Ludhiana. He was allotted seat by the Veterinary Council of India in Overseas Citizen of India (in short 'OCI') category, which has been cancelled as the petitioner has refused to deposit fee under the category of Non-Resident Indian (in short 'NRI') quota as per University Fee Structure for NRIs. While praying for a writ of certiorari, the petitioner challenges University's communication issued on 24.09.2024 (Annexure P-9).

2. Having heard the learned counsel for petitioner at length, this Court is of the considered view that the matter in hand is squarely covered



by the judgment passed in ***Civil Writ Petition No.23075 of 2024, titled as “Aranav Bhargav Vs. The Baba Farid University of Health Sciences, Faridkot and another”***, decided on 25.09.2024, wherein, this Court while examining the issue of ‘OCI card holders and their admission rights’, held as under:-

“OCI Cardholders and their Admission Rights:

ii. In **Anushka Rengunthwar’s case (supra)**, the Supreme Court laid down that the notification dated 04.03.2021 shall not have retroactive effect. This judgment was delivered in the context of notifications issued by the Union of India under Section 7B of the 1955 Act. The petitioner has annexed notifications dated 11.04.2005, 05.01.2007, 05.01.2009 and 04.03.2021. The operative parts of the notifications regarding the ‘wards of the President’s Gallantry Medal awardees’ are extracted as under:-

11.04.2005:-

S.O. 542(E). In exercise of the powers conferred by Sub-section (1) of Section 7B of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby specifies the following rights to which the persons registered as Overseas Citizens of India under Section 7A of the said Act shall be entitled, namely: -

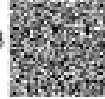
- a. grant of multiple entry lifelong visa for visiting India for any purpose;
- b. exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and
- c. parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

05.01.2007:-

1. Registered Overseas Citizens of India shall be treated at par with Non-Resident Indians in the matter of inter-country adoption of Indian children.
2. Registered Overseas Citizens of India shall be treated at par with resident Indian Nationals in the matter of tariffs in air fares in domestic sectors in India.
3. Registered Overseas Citizens of India shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India.

05.01.2009:-

- (b) to appear for the All India Pre-Medical Test or such



other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.

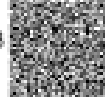
04.03.2021:-

(4) Parity with Non-Resident Indians in the matter of,-

(i) inter-country adoption of Indian children subject to the compliance of the procedure as laid down by the competent authority for such adoption;

(ii) appearing for the all India entrance tests such as National Eligibility com Entrance Test, Joint Entrance Examination (Mains), Joint Entrance Examination (Advance) or such other tests to make them eligible for admission only against any Non-Resident Indian seat or any supernumerary seat; Provided that the OCI cardholder shall not be eligible for admission against any seat reserved exclusively for Indian citizens;

*Upon careful study of the notification dated 11.04.2005, it becomes evident that OCI cardholders were extended parity with NRIs considering all resources available to them in various fields, including education. The notification dated 05.01.2007 does not pertain to admission in the education field. As per the notification dated 05.01.2009, OCI cardholders were allowed to appear for All India Pre-medical Tests or other similar exams, making them eligible for admission under relevant provisions of various Acts. However, this notification does not relate to State quota seats. It is nowhere stated that OCI cardholders shall be treated as Indian citizens for all intents and purposes. The Supreme Court, while deciding Anushka Rengunthwar's case (supra), has laid down that the notification dated 04.03.2021, represents a step towards retrogression and, therefore, shall not have retroactive effect. However, the notification dated 04.03.2021 has not been quashed/set aside. It is evident that Clause 4(ii) provides that OCI cardholders shall be at par with NRIs in the matter of appearing for All India Entrance Tests such as NEET or JEE. They were never granted parity with Indian citizens. Moreover, **Section 4.—Citizenship by Descent** is applicable only after renouncing the citizenship of another country. The petitioner has never renounced US citizenship and does not claim any intent to surrender it. Similarly, the petitioner may be entitled to apply for Indian citizenship under Section 5(1)(d) of 1955 Act; however, he has never applied for the same. He is now 18 years and 7 months old and has never made any such choice. In fact, the parity of OCI cardholders with Indian citizens has been considered by a Division Bench of Karnataka High Court in Meghna Kuruwali Vs. State of*



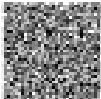
Karnataka, W.P. No.15400 of 2024, decided on 04.09.2024. After taking note of the judgment in **Anushka Rengunthwar's case (supra)**, the Division Bench has held that OCI cardholders are not at par with Indian citizens. Similarly, another Division Bench of Gujarat High Court in **Vatsa Shah Through Father Bhavesh Ajit Kumar Shah Vs. State of Gujarat, LPA-1459-2019, decided on 16.10.2023**, has also formed the same opinion. With the highest respect, the judgment passed in **Anushka Rengunthwar's case (supra)**, does not establish that OCI cardholders before 04.03.2021 shall be entitled to admissions against the seats reserved for Indian citizens.”

3. Learned counsel for petitioner apart from referring to the notifications dated 11.04.2005, 05.01.2009 and 04.03.2021, has also relied upon the judgement of the Supreme Court in **Anushka Rengunthwar Vs. Union of India, 2023 SCC (online) SC 102**, and various interim orders directing that OCI card holders are entitled to be considered at par with Indian citizens.

4. With the highest respect, the judgment passed in **Anushka Rengunthwar's case (supra)**, has already been examined and analyzed and it does not apply to the facts of the present case.

5. Interim orders passed by the Supreme Court do not lay down ratio decidendi, and hence they cannot be interpreted as declaration of law, which may be binding under Article 141 of Constitution of India. Moreover, interim orders were passed in the year 2022 in the peculiar facts and circumstances of the case.

6. Learned counsel for petitioner has also submitted that in certain Indian Institutes of Technology, OCI card holders are required to pay fee at par with Indian citizens. It may be noted here that respondent No.2- University, which runs the College is an autonomous body and the aforesaid fact entitles it to provide a specific fee structure. The petitioner could have applied for surrendering his Canadian citizenship while applying for Indian



citizenship, however, as he is more than 18 years and 17 months old, he has neither applied nor he claims to have such intent.

7. The education institutions are free to prescribe fee structure for different courses in the various categories. This is a policy decision taken by the University and the Courts in exercise of power of judicial review is not expected to interfere unless the policy is manifestly arbitrary, irrational, mala fide or inconsistent with the Constitution or the laws.

8. Learned counsel for petitioner has failed to make any submission in this regard. He contends that OCI card holders are at par with Indian citizens, which is not correct in view of the decision in Aranav Bhargav’s case (supra).

9. For the foregoing reasons, the writ petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

October 18th, 2024

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No