ITEM NO.8 COURT NO.2 SECTION

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.689/2017

CONSORTIUM OF DEEMED UNIVERSITIES IN KARNATAKA (CODEUNIK) & ANR. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

Date : 22-08-2017 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Dr. Rajeev Dhawan, Sr. Adv.
Ms. Farah Fathima, Adv.
Mr. Mahesh Thakur, AOR

For Respondent(s) Mr. P.S. Narasimha, ASG
Ms. Arunima Dwivedi, Adv.

Mr. Gaurav Sharma, Adv.
Ms. Amandeep Kaur, Adv.
Mr. Prateek Bhatia, Adv.
Mr. Dhawal Mohan, Adv.
Ms. Deepeika Kalia, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Dr. Rajeev Dhawan, learned senior counsel along with Ms. Farah Fathima, learned counsel for the petitioners, Mr. P.S. Narasimha, learned Additional Solicitor General for the Union of India and Mr. Gaurav Sharma, learned counsel for the Medical Council of India.

**The matter was listed today for consideration of the filling up of NRI quota seats. Dr. Rajeev Dhawan, learned senior counsel appearing for the petitioners has drawn our attention to the letter circulars dated 13th July, 2017 and 28th July, 2017, issued by the Directorate General of Health Services. According to him, the said communications create an anomalous situation as a consequence of which the description of NRI has become extremely difficult. He has drawn our attention to a passage from *P.A. Inamdar* vs. *State of Maharashtra* (2005) 6 SCC 537, wherein the Constitution Bench has held thus:-**

> **"Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their education activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be**

> utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate."

Submission of learned senior counsel is that the word "wards" used in the said paragraph should be understood in a broader compass and be applied in a wider spectrum. He has also drawn our attention to the decision rendered in ***Ruchin Bharat Patel*** *vs.* ***Parents' Association for the M/D Students and Others*** in I.A. Nos.9-10 & 11-12 in Civil Appeal No.4480 of 2006, wherein this Court after referring to various aspects, has held thus:-

> "Normally, the admissions to the medical colleges should have been finally concluded before 30th September. This year's admission is long overdue and if this 15% of the students are not allowed to be admitted under NRI quota there may be financial loss to these college and the seats shall also go waste. In view of the peculiar circumstances of the case, for this year we are taking a practical view of the situation and we feel that the students to these colleges may be admitted under the following directions and we make it clear that this is exclusively for this year only as a one time arrangement because of the peculiar circumstances of the case:-
>
> > "1) The students be admitted as NRIs in NRI quota as against 15%: At least one of the parents of such students should be an NRI and shall ordinarily be residing abroad as an NRI;

> **2) The person who sponsors the student for admission should be a first degree relation of the student and should be ordinarily residing abroad as an NRI;**
>
> **3) If the student has no parents or near relatives or taken as a ward by some other nearest relative such students also may be considered for admission provided the guardian has *bona fide* treated the student as a ward and such guardian shall file an affidavit indicating the interest shown in the affairs of the student and also his relationship with the student and such person also should be an NRI, and ordinarily residing abroad."**

**Even if these parameters are applied and sufficient number of students are not available for this year as against admission to 15% quota, the colleges would be at liberty to fill up the remaining seats from the State list and if the number of candidates admitted as against 15% quota is very much less and the colleges are unable to raise sufficient funds, they would be at liberty to approach the Committee to restructure the fees."**

**In this regard our attention has been invited to a Division Bench decision of the High Court of Madhya Pradesh rendered in *Anshul Tomar* vs. *State of M.P. and Others* (2008) 2 MPLJ 450, wherein the High Court after referring to the authority in *Ruchin Bharat Patel* *(supra)* has referred to a set of guidelines drafted by Pravesh Niyantran Samiti (Medical Education), Mumbai. The said guidelines read as follows:-**

> **"Based upon the decision of Hon'ble Supreme Court referred herein above dated 13th November, 2006 has laid down a criteria for admission in NRI quota, the Samiti decides and resolves the criteria for granting the admissions in NRI quota, as under :**
>
> **1) If the mother or father of student is NRI and residing abroad ordinarily, then, either of the situations so held will be**

considered to be proper.

2) If the first degree relation of the student is NRI and residing abroad ordinarily, then in such circumstances also, qua this year, should be considered eligible. It is natural that such definition would include the real brother and sister over and above the mother-father of the first degree relation.

3) As per the definition revised by the Hon'ble Apex Court, interpretation of clause 3 thereof as not made limited but if made in a broad perspective, then, it is clear that the person who wanted to consider such student as ward (Palya), then, he be considered to be proper subject to compliance of the following conditions :

   a) He should be the nearest relation.

   b) In the definition of the nearest relation, committee has considered following relative having blood relations.

      i) Real brother and sister of father i.e. real uncle and real aunt.

      ii) Real brother and sister of mother i.e. real maternal uncle and maternal aunt.

      iii) Father and mother of father i.e. grand father and grand mother.

      iv) Father and mother of mother i.e. maternal grand father and maternal grand mother.

      v) First degree-paternal and maternal cousins.

      vi) Such person should be NRI.

   c) Such persons should ordinarily be residing abroad.

   d) Such person should have looked after such student as the guardian of the student and evidence to that effect

must have been produced before the committee by such person.

e) There should be affidavit with aforesaid fact.

The Samiti directs the AMUPMDC and the Institute/Colleges to follow the above guidelines strictly while granting the admissions in NRI quota in respect of the First Year Health Science course for the academic year 2007-2008 and onwards."

After reproducing the said guidelines, the Division Bench of the High Court of Madhya Pradesh has held as under:-

"In view of the aforesaid, we are inclined to think that the term 'ward' has been given a broader meaning in *Ruchin Bharat Patel* (supra). We have reproduced the guidelines of Mumbai Committee to show that they are in consonance with the guidelines set forth by *Ruchin Bharat Patel* (Supra). Nothing has been placed on record to show that NRIs have acted in a mala fide manner.

Regard being had to the amplified meaning of the term 'ward' and in the absence of any mala fide and further on the foundation that the merit has not been completely given a go-bye, we are inclined to quash the decision of the Committee and hold that the admission of the petitioners under the NRI quota are valid and the petitioners are entitled to prosecute their studies under the said College."

On being asked, Mr. P.S. Narasimha, learned Additional Solicitor General has submitted that this Court may think of making any kind of interim arrangement subject to final adjudication of the controversy so that the same does not arise in future.

As presently advised, the principles set out in *Anshul Tomar (supra)*, shall be followed this year for the purpose of filling up of 15% NRI quota. Be it clarified, the

**NRI quota shall include Overseas Citizens of India (OCI) and Persons of Indian Origin (PIO). The counseling shall be held and finalised by 31st August, 2017, in respect of this quota and, if for some reason or other, the counseling is not concluded by that date, the same shall be completed by 4th September, 2017. It needs no special emphasis to state that the present order is only applicable to the deemed universities and no other category of institution.**

**Let the matter be set out for final disposal on 23rd November, 2017.**

**(Chetan Kumar)**
**Court Master**

**(H.S. Parasher)**
**Assistant Registrar**