

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-355-2020**

Mr. Christley Camilo Pereira,
Indian National, Major of Age,
Presently residing at 4F-F1,
Models Complex, Amaral Waddo,
Taleigao, Goa, 403002

.... Petitioner.

Versus

1. The State of Goa,
through the Chief Secretary,
Having office at Secretariat,
Porvorim, Goa.

2. The Directorate of Technical,
Through its Director,
Having Office at Alto Porvorim,
Bardez, Goa.

3. Admission Committee,

Directorate of Technical Education,
Through its Chairman,
Alto, Porvorim, Bardez,
Goa, 403521.

4. Ms. Esha Rose Rebello,
Presently holding Merit No.1 in NRI
Category, presently admitted as a
student in the Goa Medical College,
Bambolim, Goa.
Through the Chairman,
Admission Committee, Directorate of
Technical Education, Having office
at Alto Porvorim, Bardez – Goa.
Rep. Thru. The Mother of Resp.No.4,
Mrs. Nitasha Gracy Rebello. Respondents.

Mr. N.Sardesai, Senior Advocate with Mr. G. Panandiker, Advocate
for the petitioner.

Mr. D.Pangam, Advocate General with Ms. Maria Correia, Addl.
Government Advocate for the respondent No.1, 2 and 3.

Mr. Amey Kakodkar, Advocate for the Respondent No. 4.

Coram : M. S. SONAK, &

SMT. M. S. JAWALKAR, JJ.

Reserved on: 09th December, 2020

Pronounced on : 14th December, 2020

JUDGMENT: Per M.S. Sonak, J.

Heard Mr. N. Sardesai, learned Senior Counsel who appears alongwith Mr. G. Panandiker, learned Counsel for the petitioner. Heard Mr. D. Pangam, learned Advocate General, for the State of Goa, who appears alongwith Ms. Maria Correia, learned Addl. Government Advocate for the respondent nos. 1, 2 and 3. Heard Mr. Amey Kakodkar, learned Counsel for the respondent no.4.

2. Rule.

3. Rule is made returnable forthwith at the request and with the consent of the learned Counsel for the parties.

4. The petitioner challenges the admission of respondent no.4 to the First MBBS course at Goa Medical College against category 11 – NRI described in Clause 6.11 of the Prospectus and seeks admission in her place.

5. Mr. Sardesai, learned Senior Counsel submits that Clause 6.11 of the Prospectus is quite clear, in that, any applicant who seeks admission to NRI quota must possess an Indian passport and must have passed the qualifying examination from schools to colleges located outside India in a country of his/her residence. He points out that respondent no. 4, neither holds an Indian passport nor has she passed the qualifying examination from schools/colleges located outside India. He, therefore, submits that respondent no.4 was not entitled to be admitted against the NRI quota for the first MBBS course. Mr. Sardesai submits that the Admission Committee (respondent no.3) had no jurisdiction or authority to relax or waive any conditions stipulated in the prospectus. He submits that even the Government is required to amend the prospectus at least six months before the commencement of the academic year. He submits that the clauses of a prospectus are quite sacrosanct and cannot be deviated from, in this manner. He relies on **United Tribals Associations Alliance and anr. Vs. State of Goa, {2020 SCC Online Bom 938}**, **Dean, Goa Medical College, Bambolim, Goa and anr. Vs. Dr. Sudhir Kumar Solanki and anr., {(2001) 7 SCC 645}**, **Prabha Kalyandeo Vs, Nagpur University {1992 Mh.L.J. 1345}**, **MGM Institute Vs. State of Maharashtra {2008 (5) Mh.L.J. 913 (FB)}** in support of his contentions

6. Mr. Sardesai, learned Senior Counsel, submits that at the highest the condition about holding of Indian passport could have been waived because respondent no.4 was an Overseas Citizen of India (OCI) and therefore a foreign national. He, however, submits that, neither the Admission Committee nor the government had the power to relax the condition of an applicant passing the qualifying examination from a school or college outside India. He submits that such relaxation is without jurisdiction, arbitrary and unconstitutional.

7. Mr. Sardesai submits that the public law element involved in a departure from this clear condition. He submits that such departure will deprive other similar placed applicants who might be more meritorious than respondent no.4, but, who might have not applied because of the clear condition in the prospectus, that such applicant should pass, such qualifying examination, from schools/colleges outside India. He submits that the departure from this clear condition only to render respondent no.4 eligible, amounts to unfairness and arbitrariness, which is what Article 14 seeks to prevent. He relies on **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and anr. Vs M. Tripura Sundari Devi, {(1990) 3 SCC 655 and Dr. (Mrs.)Dulari Bandodkar Vs The Dean, GMC,**

Panaji, Goa, {1991 (1) Goa L.T. 337} in support of this contention.

8. Mr. Sardesai submits that since the admission of respondent no. 4 is patently illegal, no amount of sympathies ought to play any role in protecting such illegal admission. He submits that the petitioner has instituted this petition at the earliest instance and even the last date for completing the admission process is 31.12.2020. He, therefore, submits that the Rule in this petition be made absolute.

9. Mr. D. Pangam, learned Advocate General, and Mr. Kakodkar, defend the admission of respondent no.4 by submitting that Clause 6.11 of the Prospectus nowhere requires an OCI cardholder to either hold an Indian passport, which is an impossibility or to pass the qualifying examination outside India. They point out that Clause 6.11 of the Prospectus merely provides that OCI/PIO cardholders are considered eligible for admission to seats of the NRI category. They submit that this means that as long as an applicant is OCI/PIO cardholder, he/she is eligible for admission to this reserved quota based on the merit determined by NEET.

10. Mr. D. Pangam and Mr. Kakodkar, submit that in the case of OCI/PIO cardholders, the card issued by the competent authority is ample proof that the applicant is indeed OCI/PIO. However, there

is no competent authority as such, to certify whether an applicant is indeed NRI. To ensure that the applicant is indeed an NRI, three conditions have been provided in the prospectus. Such conditions apply only to NRI applicants and not to OCI/PIO cardholder applicants.

11. Mr. D. Pangam and Mr. Kakodkar point out that OCI/PIO card holders were included in the NRI category for the benefit of reservation only from the year 2011. They point out that there is no ambiguity in Clause 6.11 of the Prospectus and any case, right from the year 2011, the Admission Committee and the State Government have understood this Clause to mean that the requirement of holding an Indian passport or passing the qualifying examination outside India, applies only to NRI applicants and not to OCI/PIO cardholder applicants. They invoke the principles of *Contemporanea Expositio* in their support.

12. Mr. Kakodkar pleads equities by pointing out that respondent no.4 is more meritorious than the petitioner and further based upon her present admission, has forgone her admission to the Ayurvedic Medical Course. He submits that the merit ought not to be sacrificed at the altar of hypertechnical pleas which in any case, lack legal foundation.

13. Mr. Sardesai rejoins to point out that the merit is to be judged only after the benchmark of eligibility is crossed. He reiterated that respondent no. 4 was not eligible for admission and therefore, her higher merit is quite irrelevant. He submits that, if the interpretation of the respondents is to be upheld, then this could amount to giving a handle to the respondent to practice discrimination by taking advantage of some ambiguities of their own making. He submits that the State Government may at the highest amend the prospectus from the next academic year but cannot justify the admission of respondent no.4 based upon the existing Clause 6.11 of the Prospectus. He submits that this is necessary to ensure that the Rule of Law prevails and arbitrariness is jettisoned from the admission process.

14. The rival contentions now fall for our determination.

15. In this matter, Dr. Vivek Kamat, the Director of the respondent no. 2, has filed a detailed affidavit in which, he has explained the difference between NRI applicant and OCI/PIO cardholder applicants. He has pointed out that initially the benefit of reservation was extended only to NRIs – *per se*. However, from 2011, the benefit of reservation was extended to OCI/PIO cardholders in terms of the policy decision of the State Government reflected in circular dated 07.03.2011. This policy decision was in

turn was based on the guidelines issued by the Central Government for extension of such benefit to OCI/PIO cardholders.

16. Since the determination of the rival contentions is based mainly on the provisions of Clause 6.11 of the Prospectus, we transcribe them for the reference of convenience:

“ 6.11 Category 11 – NRI (up to 5%) –

Non-resident Indian applicants holding Indian passport shall be eligible for consideration under this category provided he/she has studied and passed qualifying examination from school/colleges located outside India, in the country of his/her residence. NRI candidate must produce a certificate issued by Indian Diplomatic Mission or Chancellery or Commission abroad under their seal stating that the father /parent of the applicant is an Indian resident in that country. Overseas Citizens of India (OCI)/ Persons of Indian Origin (PIO) cardholders are considered eligible for admissions to seats under NRI Category. One seat in each branch of study in Engineering in the Government colleges and upto 5% of self-financed seats in the unaided colleges are reserved for the candidates under this category. Any seat remaining vacant under this category shall be reverted to the General Category. There is no provision for “NRI sponsored” seats or by payment of “equivalent amount” against “vacant NRI seats”. (AICTE circular No. F.38-7/Legal/2001 dt. 03-10-2001). Seats under this category shall first be offered to NRI/OCI applicants of Goan origin (i.e. whose either of the parent or grandparent is born in Goa) and thereafter, to other eligible NRI

applicants. Such applicants shall pay fees applicable to NRI Category applicants.”

17. Now, though Clause 6.11 of the Prospectus is entitled: category 11-NRI (up to 5%), the category so indicated includes the following: (i) NRI – *per se*;

(ii) OCI cardholder; and

(iii) PIO cardholder.

18. Clause 6.11 of the Prospectus provides that up to 5% of seats at GMC are reserved collectively for *NRI – per se*, *OCI* cardholder, and *PIO* cardholder.

19. The expression “NRI” has not been defined in the prospectus. However, there was no dispute at the bar that reference can be made to the provisions of the Foreign Exchange Management Act, 1999 (*FEMA*) or the Income Tax Act, 1962 (*ITA*), for understanding the scope of this expression. Mr. D. Pangam took us to the provisions of *FEMA* and pointed out that for a person to acquire the NRI status what is most important is the duration of his residence outside India. He points out that there is no authority as such, either under the *FEMA* or the *ITA* which certifies whether an applicant is NRI or not for the relevant year. He submits that this is a matter of evidence and therefore, turns on the facts peculiar to such applicant. In

contrast, he pointed out that there is a competent authority who upon satisfaction of the criteria prescribed under Section 7-A of the Citizenship Act, 1955 issues a card to an overseas citizen of India. Section 7B of the Citizenship Act then confers certain rights on such OCI cardholders.

20. The prospectus, conscious about the aforesaid distinction, in the first part of Clause 6.11 of the Prospectus, has provided the following criteria for determining whether an applicant is truly NRI or not:

- i. *That the applicant must possess an Indian passport; and*
- ii. *The applicant must have studied and passed the qualifying examination from schools/colleges outside India in the country of his/her residence*
- iii. *The applicant must produce a certificate issued by the Indian Diplomatic Mission or Chancellery or Commission abroad under their seal stating that the father or parent of the applicant is an Indian resident in that country.*

21. According to us, the aforesaid eligibility criteria was introduced in Clause 6.11 of the Prospectus only to obtain sufficient proof that the applicant was truly an NRI and therefore, entitled to the benefit

of reservation in terms of the policy decision of the State Government.

22. There was no reason to introduce such eligibility criteria to OCI cardholders because in their case the competent authority has already examined the eligibility criteria prescribed under Section 7A of the Citizenship Act, 1955 and only thereafter issued to them a card thereby conferring upon them the status of OCI cardholders. This is quite clear, from the circumstance that an OCI cardholder, is not a citizen of India, and therefore, it would be futile to insist that even the OCI cardholder must hold an Indian passport.

23. This is a case of reservation in favour of NRIs – *per se* and OCI/PIO cardholders. This is not a reservation in favour of applicants who may have passed the qualifying examination outside India. The requirement for passing qualifying examination outside India applies to NRIs *per se* more so because this is one of the substantially reliable modes for determining whether the applicant is truly NRI or not. This condition coupled with the other two conditions possibly render sufficient assurance that the applicant is indeed an NRI and therefore, eligible for the benefit of reservation.

24. No such issue arises in the case of OCI/PIO card holders because in their case, there is the competent authority who is expected to verify whether such applicant fulfills the eligibility

criteria prescribed in the Statute which governs this position and therefore issued a card to such OCI or PIO. Therefore, advisedly reservation is not in favour of the applicant who merely claims to have fulfilled the eligibility criteria for obtaining an OCI or PIO card but the reservation is in favour of an OCI cardholder or a PIO cardholder.

25. This is possibly the reason why Clause 6.11 of the Prospectus, after adverting to the conditions prescribed for determining whether an applicant indeed is an NRI only provides “*Overseas Citizen of India (OCI)/person of Indian Origin(PIO) card holders are considered eligible for admission to seats*”

26. The reference to “NRI Category” in the italicized portion above, is really a reference to the title in Clause 6.11 of the Prospectus. As noted earlier, this category includes NRIs *per se*, OCI cardholders, and PIO cardholders. Therefore, to insist that even OCI cardholders or PIO cardholders must comply with the conditions prescribed for determining whether an applicant is an NRI would amount to doing violence to the provisions of Clause 6.11 of the Prospectus, as they stand.

27. Thus construed, we find no infirmity in the Admission Committee or the State Government reading and construing Clause 6.11 of the Prospectus, in the manner in which they have. The

circumstance, that this is how Clause 6.11 of the Prospectus has been read, understood, and construed right from the inclusion of OCI/PIO cardholder to the benefits of reservation i.e. from 2011 is only an additional, though not a conclusive circumstance, in favour of the respondents.

28. This is not some case of a waiver, relaxation, or departure from the conditions set out in Clause 6.11 of the Prospectus. Consequently, the rulings relied upon by Mr. Sardesai really do not apply to the fact situation of the present matter. In the absence of any relaxation, waiver, or departure, the contention-based upon arbitrariness or unfairness also fails and the rulings relied upon by Mr. Sardesai, on this aspect, are also quite inapplicable.

29. Since, we find no infirmity in the admission granted to respondent no.4, there is no need, to go into the issues of equity or sympathy raised by Mr. Kakodkar, learned Counsel in this matter. Such issues do not arise.

30. For all the aforesaid reasons, we discharge the Rule in this petition, but, leave the parties to bear their own costs.

SMT.M.S.JAWALKAR, J.

M. S. SONAK, J.

MF/-