

(2010) 09 GUJ CK 0164

In the Gujarat High Court

Case No : Special Civil Application No. 9079 of 2010

Bhavi Vipulkumar Shah

APPELLANT

Vs

State of Gujarat (Deleted) and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Emigration Act, 1922 — Section 2
Emigration Act, 1983 — Section 2
Gujarat Advocates Welfare Fund Act, 1991 — Section 2
Gujarat Professional. Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 — Section 2, 3, 6
Provident Funds Act, 1925 — Section 2

Citation : (2011) 1 GLH 367

Hon'ble Judges : S.J. Mukhopadhaya, C.J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : G.M. Joshi and Nirav K. Padhiyar, for the Appellant; K.B. Trivedi and A.M. Mehta, for Trivedi and Gupta for Respondent 2, for the Respondent

Judgement

Akil Kureshi, J.—In the present petition, petitioner seeks admission to MBBS course for the academic year 2010-2011 in "Non-Resident Indian" quota seats. She has prayed for following substantive relief:

13(a) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus for directing the respondent authorities to consider the case of the petitioner according to her merits and give her admission to the MBBS Course for academic year 2010-11 according to seriatim of her merits (i.e. about the candidate who was granted admission and who has secured lesser marks than to the petitioner) with all consequential effect.

2. Shortly stated the facts are as under:

2.1 Petitioner appeared in the Higher Secondary Examination in science stream conducted by the Gujarat Secondary and Higher Secondary Education Board,

Gandhinagar in March 2010. She secured 79 % marks in the Board examination. She also appeared in Common Entrance Test, conducted by the Board and secured 75.65 % marks. On 05.07.2010 she filled up the form seeking admission in the MBBS course in Non-resident Indian dependent category in medical colleges run by the Ahmedabad Municipal Corporation viz. Smt. NHL Medical College and AMC MET Medical College. Her first choice was Smt. NHL Medical College.

2.2 It is the case of the petitioner that she submitted the application form in the office of the respondent No. 2 accompanied by requisite documents. According to the petitioner, such form and documents were accepted after due verification. Petitioner had also annexed demand draft of Rs. 8,000/- as process fees and Rs. 2,000/- as form fee.

2.3 On 14.07.2010 petitioner received an E-mail from the respondents, stating:

This is with reference to application submitted for admission in MBBS/BDS/BPT Course on NRI seats at the colleges of AMC Medical Education Trust. On the verification by the competent authority regarding NRI Status of Sponsor, it was brought to the notice that the documents submitted by you for NRI Status (copy of all pages of passport of sponsor) are either unreadable or incomplete in numbers. Therefore, you are herewith requested to send the scanned copies of all pages of Passport of Sponsor within two days.

The application is liable for rejection on non-submission of above documents within time frame.

2.4 It is the case of the petitioner that thereupon she submitted legible copies of the necessary documents to the Deputy Director of Ahmedabad Municipal Corporation Medical Education Trust. She was assured that she would receive call letter for counselling in due course.

2.5 Since the petitioner did not receive call letter for a long time, she inquired with the authorities and found out that merit list of NRI quota seats was prepared on 20.07.2010 but the name of the petitioner was not found in the said list. It is her case that students less meritorious than her have been included in the said merit list in NRI quota. Upon further inquiry, it was conveyed to her that photocopies which were supplied later on by her were also not readable and therefore, her name could not be included in the said list of NRI quota seats. Petitioner has, therefore, approached this Court praying for above-mentioned relief.

3. On behalf of the respondent Nos. 2 & 3, affidavit-in-reply dated 13.08.2010 has been filed, in which, it is stated inter alia that:

7. In the present case, the petitioner had submitted an application on 5.7.2010 for MBBS category as NRI dependent for two colleges, i.e. AMC MET Medical College, Maninagar and Smt. NHL Municipal Medical College, Ellisbridge, Ahmedabad. As far as the sponsorer of the petitioner, who, as per the application

form is one Chitral Sureshkumar Shah, is concerned, the details of which were required to be included in the form at Sr. No. 14 in the application along with supporting documents, but no details of the number of day abroad for the year 2009-2010 of the sponsorer Shri Chitral Sureshkumar Shah were mentioned in the application. Also the petitioner submitted the xerox copy of the Passport of the sponsorer Shri Chitral Sureshkumar Shah whereas the petitioner was required to submit scanned copies of all the pages of the Passport of the sponsorer Shri Chitral Sureshkumar Shah so that the same could be verified at the time of scrutiny by the respondent No. 2 Trust. Unfortunately, the petitioner submitted documents which were not legible / readable and it was not possible to verify the status of the sponsorer Shri Chitral Sureshkumar Shah as NRI. A copy of the application and the connected documents will be produced before the Hon"ble Court as and when the Hon"ble Court desires to peruse the same.

xxx xxx xxx xxx

10. Under such circumstances, when the petitioner had submitted incomplete application due to which the status of the sponsorer of the petitioner could not be ascertained, the petitioner could not be considered for the purpose of grant of admission and in terms of the rules and regulations governing the admission and thereafter the respondent No. 2 Trust declared the merit list for the eligible candidates on 20.07.2010. It is also pertinent to note that thereafter the counselling took place on 26.07.2010 and admission was completed on the same day. Since 3 seats were vacant, the respondent No. 2 Trust undertook reshuffling and filled up the rest of the seats from the merit list on 09.08.2010. The notice of this Hon"ble Court was received at the office of the respondent No. 2 Trust on 11.08.2010.

4. From the above, it can be seen that the petitioner claims to be a dependent of NRI on which basis she sought admission in the medical colleges run by the respondents. The case of the respondents, however, is that the petitioner did not supply legible copies of the documents pertaining to the sponsor and therefore, it was not possible to ascertain whether he is a Non-Resident Indian or not.

5. During the course of discussion, however, we inquired from the Counsel for the petitioner regarding her relationship with the sponsor and how does she claim to be his dependent. Counsel for the petitioner candidly stated that the sponsor is cousin brother of father of the petitioner. He also fairly stated that there is nothing to suggest that in the past the petitioner was dependent on the sponsor in any manner. He, however, submitted that the sponsor has undertaken to pay fees for the petitioner for higher education in MBBS course and therefore, she was dependent on him for such further study. He, therefore, contended that the petitioner would be covered within category of "NRI dependent" candidates. He submitted that this is precisely how even the respondents have interpreted the statutory provisions and the majority of the students who have been admitted in NRI quota seats by the respondents claim dependency on the sponsor under similar circumstances. He referred to and relied on the Sub-clause

(i) of Clause (9) of the "Important Instructions" appended to the Application Form for M.B.B.S./ B.D.S./ B.P.T. courses, which reads as follows:

(i) The candidate who is Non-Resident Indians as also the candidate whose parents and in the absence of his/her parents, his/her legal guardian who is Non-Resident Indian, shall be offered the Non-Resident Indian seats in the first instance, and thereafter, if the Non-Resident Indian Seats remains vacant, shall be offered to the candidate who is dependent of the Non-Resident India.

6. Learned Senior Counsel Mr. Kamal B. Trivedi appearing for the respondents opposed the petition pointing out that the documents supplied by the petitioner with respect to her sponsor were not legible. It was therefore not possible to ascertain the true status of the sponsor. Now even the admission process is over and all seats have been filled up. With respect to admitting dependents of NRIs, he submitted that the respondents have been admitting students similarly situated as the petitioner in the NRI quota seats treating them as dependents of Non-Resident Indians. He relied on the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 (hereinafter referred to as the "said Act" for short) wherein, term "Non-Resident Indian Seats" has been defined u/s 2(i) as follows:

2(i) "Non-Resident Indian Seats" means fifteen percent seats reserved for children or wards or the dependents for the education purpose, of the Non-Resident Indian, to whom admission is to be given in the professional educational colleges or institutions;

6.1 He further pointed out that said provision came up for consideration before the Division Bench of this Court in Special Civil Application No. 8747 of 2008 and connected matters, in which, the Constitutional validity of the said definition of "NRI seats" was upheld by a judgment dated 22.09.2008. He further contended that the respondents have been admitting large number of NRI dependent students whose higher fees having been utilized for subsidizing the education of local students.

7. Question of admission of NRI quota seats is recurring question and rearing it's head every now and then. We have, therefore, decided to tackle the issue in the present petition though as already noted the petition is opposed by the respondents on some other grounds.

8. The Act was enacted to make special provision for regulation of admission in professional medical educational colleges or institutions in the State and fixation of fees in such colleges or institutions. As already noted, Section 2(i) of the Act defines the term "Non-Resident Indian seats". Sub-section (2) of Section 3 further provides that any admission made in contravention of the provisions of this Act shall be invalid. Section 6 of the Act pertains to admission to Government seats and management seats and makes provision for granting admission to such quota of seats. In particular, it is provided that where any Non-Resident Indian seat remains vacant, such seat shall be filled in from the

management seats and that if any management seat remains vacant, such seat shall be filled in from the Government seats.

9. In so far as the definition of term "Non-Resident Indian Seats" contained in Section 2(i) of the Act is concerned, same poses no difficulty. The State Legislature has provided for the definition which we have already reproduced earlier. As noted, said provision came up for consideration before the Division Bench of this Court wherein the Constitutional validity of the provision was called in question. The Division Bench upheld its vires making following observations:

23. When a student having done schooling in India, whose parents or guardians are residing abroad, is eligible for admission to an NRI seat, there is no question of his being reunited with the Indian culture because he is already a part of the Indian culture while studying in a school in India. No grievance can, therefore, be made against inclusion of the third category of students who are dependents on NRIs for education purpose, merely on the ground that such dependents have done their schooling in India. The petitioner in Special Civil Application No. 8747 of 2008 himself has passed the qualifying exam conducted by the Gujarat Board.

25. It is for the Legislature to decide in its wisdom as to which class/es of candidates should be made eligible for admission to NRI seats. So long as the classification made by the Legislature is founded on an intelligible differentia and the same has rational nexus with the object sought to be achieved by the statute, the legislative provision cannot be faulted with. The legislative object is to permit the private unaided institutions to generate more funds by taking higher fees from students whose higher education is being financed by NRIs provided the students are children of NRIs or wards of NRIs or are dependents of NRIs for education purpose. Therefore, only students who have some rational connection with the NRIs are considered eligible. In case of children and wards of NRIs, there would always be a presumption that they are dependents of NRIs for education purpose. In case of others, where the students are able to show that they are dependents of NRIs for education purpose, they are considered as eligible. Thus dependence on NRIs for education purpose is a common running thread amongst all the categories of students who are considered by the Legislature as eligible for admission to NRI seats. We are, therefore, not in a position to accept the contention urged on behalf of the petitioners that legislative provision including in the definition dependents of NRIs for education purpose has no rational nexus with the object sought to be achieved.

10. In the present case, however, we are not concerned with the validity of the Section 2(i) of the said Act but we are concerned with the interpretation of the said provision and the question whether in the facts of the present case and in such similar cases, students can seek admission in Non-Resident Indian seats. As can be seen from the said provision, 15 % of the available seats are reserved as "Non-Resident Indian seats" and are to be filled up from amongst the children or wards if Non-Resident Indians or persons dependent for education purpose on the Non-Resident Indians. In so far as the expression "children" or "ward" of

Non-Resident India is concerned, same poses no difficulty. Contentious issue is who can be called "dependent for the education purpose" of NRI.

11. It is true that prescribing separate quota reserved for Non-Resident Indian students has been recognized by the Apex Court. However, the entire purpose was to make such benefit available to genuine NRI students and not to enlarge the scope to such an extent that even non-genuine students could claim such benefit. In the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, , the Apex Court observed as follows:

131. 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 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 limited number of such seats should be made available as the money brought by such students admitted against the NRI quota enables the educational institution to strengthen their level of education and also to enlarge their educational 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 re-united with the Indian culture 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 mother land. Limited reservation of such seats not exceeding 15 %, in our opinion, may be made available to NRIs depending upon the discretion of the management subject to two conditions. First, such seats should be utilized bonafide by NRIs only and for their children or wards. Secondly, within this quota, merits 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 well defined criteria, the educational institutions may admit on subsidized payment of their fee. To prevent mis-utilization 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.

12. From the above portion of the decision of the Apex Court, it can be seen that the purpose of permitting NRI quota seats was not to permit educational institutions to grant admission to less meritorious students by charging higher fees. The purpose was to permit the limited quota of seats under this category to enable the educational institutions to strengthen their level of education and also to enlarge their educational activities and simultaneously, to enable the people of

Indian origin who have migrated to other countries and who have desire to bring back their children to their own country to get education and also get re-united with the Indian cultural ethos. This has been permitted subject to following two conditions:

(I) That such seats should be utilized bonafide by NRI's only and for their children or wards and;

(II) Even in this quota, the merit should not be given complete go-by. It was further provided that the money in whatever form collected from such NRI's should be utilized for benefiting students such as socially and economically weaker sections of the society. The Apex Court also directed that to prevent mis-utilization of such quota, suitable legislation or regulations be framed.

13. On this basis and on this twin test, we are inclined to interpret the expression "dependent of Non-Resident Indian for education purpose". The clear intention borne out from the above decision of the Apex Court was that NRI quota seats should not be mis-utilized and that merit should not suffer and higher fees brought by such students should be utilized for benefit of unaffording students.

13.1 Expression "dependent of Non-Resident Indian" has not been defined in the said Act. In "Advanced Law Lexicon" - the Encyclopaedic Law Dictionary with Legal Maxims, Latin Terms and Words & Phrases, 3rd Edition, Volume 2 D-I, the term "dependent" has been explained in the following manner:

"DEPENDANT/DEPENDENT." "DEPENDENT" (in the Emigration Act.) Means any woman or child who is related to an emigrant and any aged or incapacitated relative of an emigrant. [Emigration Act (7 of 1922), Section 2].

"DEPENDENT" means any of the following relatives of a deceased subscriber to, or a depositor in, a Provident Fund, namely, a wife, husband, parent, child, minor brother, unmarried sister and a deceased son's widow and child, and where no parent of the subscriber or depositor is alive, a parental grand parent. [Provident Funds Act (19 of 1925), Section 2(d)].

"DEPENDENT" means any person who is related to an emigrant and is dependent on that emigrant. [Emigration Act (31 of 1983), Section 2(c)]

"DEPENDENT" means wife, husband, father, mother, unmarried daughter and minor child or such of them as exist. [Gujarat Advocates Welfare Fund Act (14 of 1991), Section 2(h)]

13.2 In Black's Law Dictionary, Sixth Edition, the term "dependent" is explained as under:

"Dependent" One who derives his or her main support from another. Means relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power, or aid of someone else. Fox-Vliet Wholesale Drugs Co. v. Chase Okl. 288 P. 2d 391, 393. Generally, for

workers" compensation purposes, "dependent" is one who relies on another for support or favour and one who is sustained by another. *Industrial Indem. Co. v. Industrial Acc. Commissioner* 243 Cal. App.2d 700 : 52 Cal. Rptr. 647. One who has relied upon decedent for support and who has reasonable expectation that such support will continue. *Wheat v. Red Star Exp. Lines* 156 Conn. 245 : 240 A.2d 859. See also Lawful dependents.

In taxation, a person who receives more than half of his or her support from the taxpayer during the calendar year; is a relative of the taxpayer, i.e., brother, child, parent, aunt, etc.; and is a citizen or resident of the U.S.

14. In the present case, petitioner admittedly prior to filling up the form for admission in NRI quota seats never claimed any dependency on her NRI sponsor. It is also not case of the petitioner that the petitioner's parents are not able to pay fees for her higher education. Admittedly, petitioner studied upto 12th Standard without any dependence on the sponsor. Her education and all other expenses have so far been borne by her parents. It is not case of the petitioner that her parents are not able to bear costs for her further education. In short, till she filled up her admission form, the sponsor had provided no economic support to the petitioner for her education or for any other purpose.

15. Applying the above principles, we fail to see how the petitioner can claim to be a dependent of her sponsor. As already noted, sponsor is a distant relative of the father of the petitioner. Petitioner, thus, is admittedly neither a child nor a ward of the Non-Resident Indian. It is nowhere pointed out how she claims dependency over an NRI. Permitting such case to be covered u/s 2(i) of the Act would only encourage misuse of NRI quota seats which precisely the Apex Court desired to curb in the said decision in the case of *P.A. Inamdar and Ors.* (Supra). Such interpretation would also bring down the standard of merit since within said quota admission would be given to such students who can somehow or the other bring a sponsor howsoever distant relative he may be or in a given case may not have any relation whatsoever with the candidate but who may for some obscure reason agree to sponsor the student for his/her higher education. Accepting the case of the petitioner would mean that no matter what the relation between the student and the sponsor, no matter what the financial capacity of the parents or the guardians of the student, simply because a Non-Resident Indian agrees to pay fees of the student for the course in question, the student would be considered as his dependent and would be admitted in NRI quota seat. This would directly affect the merit since not the marks secured by the student but his or his parents' ability to secure NRI sponsor would be the crucial factor for giving admission. We cannot countenance such interpretation even if supported by the respondents. We may recall that those NRI seats which remain unfilled are to be filled up by the management quota seats and failing which, by the Government quota seats. Thus, NRI quota seats which remain vacant for non availability of students belonging to such quota, have to be filled up on the basis of open merit.

16. Reference to Clause 9(i) of the instructions for filling up form for NRI quota

seats is of no avail. Said clause only provides for the manner in which preference is to be given within sub-categories of Non-Resident Indian Seats viz. the children or wards of NRIs and dependent of the NRIs. In any case, such instructions cannot govern the statutory provision to which we have given our interpretation in this judgment.

17. In the result, quite apart from the objections raised by the respondents to the candidature of the petitioner on the ground of non-legible copies of the documents supplied by her, we are of the view that on simple interpretation of term "Non-Resident Indian Seats" as defined u/s 2(i) of the Act, the petitioner would not qualify for the said quota. While therefore, disposing of the petition, we direct that the respondents shall follow for future admissions, the interpretation of term "Non-Resident Indian Seats" given in this judgment for admitting the students in the said quota.

18. Though, it was submitted before us that in the present academic year, the respondents have admitted large number of students as dependents of NRIs under similar circumstances, their admissions are not under challenge before us. We, therefore, do not propose to touch their admissions, particularly, in absence of such students.

19. We are, therefore, clearly of the opinion that to claim status of "dependent of Non-Resident Indian", it would not be enough that a candidate produces willingness of the sponsor to pay his/her fees for the course in question. It would be necessary for the candidate to show in what manner he or she claims to be a dependent of the NRI. A candidate would have to produce before the authority materials suggesting that in the past also for his/her education and other related requirements, he/she was dependent on such sponsor and that the parents do not have economic means to provide for necessary fees and other expenditure for the course in question.

20. With the above direction, the petition is disposed of.