

(2021) 08 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2869 Of 2021

Dr. Rajdeep Das

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 04-08-2021

Acts Referred:

Citation : (2021) 08 GAU CK 0011

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A D Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. A.D. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Chakraborty, learned counsel for the respondents No. 1 to 4

being the authorities under the Ministry of Education, Department of Higher Education, Mr. D.K. Baisya, learned counsel for the respondent No.8

being the authorities under the Medical Council of India (renamed as National Medical Commission).

2. Considering the nature of the order proposed to be passed, we also requested Mr. RKD Choudhury, learned ASGI for his assistance to bring a

solution to the issue raised. As Mr. RKD Choudhury is present before the Court, we also record his appearance on behalf of the respondents No.5, 6

and 7.

3. Without going into the details of the issue raised and the earlier stand taken by the respondent authorities, we deem it appropriate that we take note

of only the relevant facts necessary for the purpose of the order we propose to pass.

4. The petitioner is a student who had his graduate qualification from Kathmandu Medical College; he had his post graduate medical education from Gulf Medical University; his doctorate education in medical science from Adelaide Australia. Presently, the petitioner is pursuing his post doctoral study from the University of California. The immigration laws of United States of America requires a certificate of No Obligation to Return to India (NORI) for allowing to pursue their respective courses.

5. The petitioner in this petition is aggrieved that his application for issuing NORI certificate was rejected by the authorities under the Govt. of India in the Health and Family Welfare Department. The ground of rejection was that under the guidelines that were in force of the relevant time, a category of medical student who desire to pursue their higher education in an university outside the country are not entitled for a NORI certificate. On a query it has been submitted before us that the underlying reason for such is that the medical profession is guided in India by the Medical Council of India (renamed as National Medical Commission) and the procedure followed in the country is that the registered medical professionals are required to have their medical degrees from a university recognized within the country. As the present petitioner had his medical education from the institutes outside the country, there was an apprehension in the mind of the respondent authorities that by not issuing the NORI certificate, the petitioner can be prevented for pursuing his medical profession in the country. It is stated that the relevant provision is that the person who has acquired Foreign Medical Graduate Examination (FMGE) is not entitled to undertake his medical profession in India.

6. The petitioner on the other hand has taken a stand and as required has filed an affidavit that he has no intention in the present as well as in the future to undertake a medical profession in India on the basis of his qualification which he had acquired from the universities outside the country. His only intention is to successfully complete his medical education and for that purpose there is a requirement under the immigration laws of the United States of America that there must be a NORI certificate that the person would return back to India.

7. The petitioner seeks to distinguish between his requirement of NORI certificate to enable him to return India and to complete his post doctoral

medical education course in the United State of America and that of claiming a right to have its medical profession in India based on his qualification

acquired from the institutes and universities from outside the country. The petitioner is very categorical that he seeks the NORI certificate only for the

purpose of completing his medical education and for the purpose to enable him to return to India for all other purpose other than to pursue a medical

profession in the country based on his qualification acquired from institutes and universities outside the country.

8. But in the meantime, the respondents in the Ministry of Health and Family Welfare. Govt. of India has issued an office memorandum dated

03.08.2021 wherein, certain guidelines have been laid down for issuing the NORI certificate. The relevant provision of the guidelines of 03.08.2021 is

extracted below:-

â??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.â??

9. It is an agreement between the parties that the claim of the petitioner for a NORI certificate would be covered by Clause (C)(iii) from the point of

view that the petitioner does not have a MCI/NMC/State Medical Council registration nor he intends to procure any such registration in future based

on his present medical qualification from the institutes/universities from outside the country.

10. As the issue raised does not require any further adjudication in view of clause (C) of the guidelines issued by the office memorandum dated

03.08.2021, we deem it appropriate to close this writ petition by requiring the petitioner to forthwith submit a fresh application for the NORI certificate

in terms of Clause (C) of the guidelines provided in the office memorandum dated 03.08.2021. We have already recorded in the earlier order that

there is a concern on the part of the petitioner for producing the NORI certificate before the authorities in United States of America and if it is not produced within a very short time, it may have adverse impact on his further continuation of his post doctoral course he is presently undertaking in that country. From the said point of view we require the authorities in the Health and Family Welfare Department of the Govt. of India to give a consideration to any such application that may be submitted by the petitioner within a period of seven days from it being received by the respondent authorities and pass the reasoned order thereon in terms of Clause(C) of the guidelines laid down in the office memorandum dated 03.08.2021. As the petitioner is presently pursuing his post doctoral course in the United States of America and in the present it will be difficult for him to physically come over for submitting such application, the petitioner is permitted to submit his application through e-mail process in the appropriate address of the Health and Family Welfare Department of the Govt. of India. Any such certificate if issued by the Health and Family Welfare Department of the Govt. of India be also transmitted and forwarded to the petitioner through e-mail in his e-mail address and also to any other authority as may be required under the law.

11. Writ petition stands closed in the above terms. A copy of the guidelines provided in the office memorandum dated 03.08.2021 is kept on record.