

(2017) 08 DEL CK 0037

In the Delhi High Court

Case No : 2240 of 2017

GAURAV DEEP AND ANR

APPELLANT

Vs

UNION OF INDIA AND ANR

RESPONDENT

Date of Decision : 16-08-2017

Acts Referred:

Citation : (2017) 08 DEL CK 0037

Hon'ble Judges : Vibhu Bakhru

Bench : SINGLE BENCH

Advocate : Ashok Aggarwal, Slomita Rai, Vikas Mahajan, S.S. Rai

Final Decision : Disposed off

Judgement

1. The petitioners belong to Scheduled Caste (SC) category and are desirous of pursuing a course in Master's in Software Engineering in the United States of America (USA). The petitioners state that they do not have the means to pursue a course overseas but have aspired to do so in expectation of securing a scholarship under the "Central Sector Scheme of National Overseas Scholarship for Scheduled Castes (SC) etc". Although, the petitioners have also been selected for such scholarship and have also secured an offer from the Auburn University, USA to pursue a course of Master's in Software Engineering, the same is being effectively denied to them as they are unable to secure the type of Visa as required by the respondents. The Auburn University, USA does not sponsor students pursuing a degree course on a "J-1 Visa" and the respondents are insisting that the petitioners proceed to USA only on a J-1 Visa to avail the scholarship for which they have been selected.

2. The respondents are willing to extend the period of validity of their offer for scholarship to enable the petitioners to secure admission in another university sponsoring a J-1 Visa. However the petitioners state that rejecting the offer from the Auburn University and securing admission in another university would be difficult mainly for two reasons. First, they have already qualified the Test of

English as a Foreign Language (TOEFL), and their result would expire on 05.12.2017. Second, they have secured the admission with much difficulty and it is common knowledge that universities do not prefer students that have taken break year from their academic career without work experience.

3. The controversy in the present petition arises in the following backdrop.

4. Respondent no.1 (Ministry of Social Justice and Empowerment) runs a scholarship programme (Scheme of National Overseas Scholarship for Scheduled Castes (SC) etc. candidates) for sponsoring students from Scheduled Castes, De-notified, Nomadic and Semi-Nomadic Tribes, Landless Agricultural Labourers and Traditional Artisans categories for studies in specified fields in universities abroad.

5. Respondent no.1 issued a public advertisement on 22.02.2016 inviting applications from eligible candidates for the purposes of providing scholarship for pursuing master's level course and Ph.D. abroad. The petitioners, who were academically accomplished students and had completed a degree course of B. Tech. in Information Technology, applied under the aforesaid scheme. They simultaneously took steps to secure an admission with the Auburn University, USA for pursuing a 28 month course of Master's in Software Engineering.

6. The petitioners were selected for award of scholarship under the aforesaid scheme and their names appeared in the list of selected candidates published by respondent no.1 on 12.07.2016. The "Regulations Governing the Central Sector Scheme of National Overseas Scholarship for SC etc. candidates for XII Plan period (2012-13 - 2016-17)" expressly provides that the candidate would obtain an appropriate Visa, which would only permit the candidate to study overseas and thereafter return to India. Clause v(x) of the aforesaid regulations reads as under:- "x) It will be for the candidate to obtain the appropriate visa for a country wherein one intends to study further under award from the Scheme and the Visa issuing authorities may see that only such type of visa be issued which only permits the candidate to pursue specified course abroad and thereafter the candidate returns to India. Government of India will render no assistance to a candidate for obtaining Visa."

7. There is no dispute that in terms of the aforesaid regulations, the petitioners are required to pursue their course only on a Visa which conforms to the aforesaid conditions; that is, the Visa would permit the candidate only to pursue the specified course but would not permit the candidate to further extend his/her stay overseas after the completion of his/her studies.

8. By letters dated 24.08.2016 and 13.09.2016, the Auburn University, USA accepted the applications submitted by the petitioners and made an offer of admission which was, inter alia, subject to the submission of financial statements, Letter of Support, Certificate of Finances and I-20 Request Form.

9. The petitioners submitted the copies of the letters received from the Auburn University, USA to the respondents for release of the scholarship amount.

Thereafter, respondent no.1 issued a letter dated 18.11.2016 informing the petitioners that they have been selected for assurance of the scholarship for pursuing Master's in Engineering and were required to comply with all the regulations governing the Scholarship Scheme. Paragraph 6 of the said letter expressly required the petitioners to obtain only a J-1 Visa if applying for admission to any university in the USA. Paragraph 6 of the said letter reads as under:- "6. The candidate is required to obtain only J-1 VISA, if applying for admission in any University in the United States of America. No Assistance will be rendered by this Department for obtaining visa."

10. The petitioners immediately sent copies of the letter dated 18.11.2016 to the Auburn University requesting for issuance of necessary forms for obtaining J-1 Visas. The Auburn University responded to the aforesaid request, inter alia, stating as under:- "At this time Auburn Global is not issuing form DS-2019 letters of eligibility for J-1 visas. These students are applying for a degree seeking program and are only eligible for an F-1 visa if attending Auburn. If Varun wishes to obtain an F-1 visa, he will need a new scholarship letter from the Indian Government omitting #6 stipulation for only J-1 visa holders or he will need a financial guarantee from personal funds. We can not issue an I-20 until this has been satisfied."

11. It is apparent from the above, that the Auburn University would only issue sponsorship for "F-1 Visa" and not "J-1 Visa". In the aforesaid circumstances, the only question to be addressed is whether the petitioners ought to be permitted to proceed to USA on an F-1 Visa instead of a J-1 Visa.

12. Before proceeding further, it would be relevant to examine the difference between an F-1 Visa and a J-1 Visa. F-1 Visa is for students attending a full-time degree course or an academic program at a school, college or university and is valid for as long as it takes for the student to finish his/her course. J-1 Visa is an exchange visitor non-immigrant visa and is issued to individuals who participate in work and study based exchange visitor programs.

13. Admittedly, the respondents are not concerned with whether the Visa is under an exchange visitor program and the only object of insisting on a J-1 Visa is that the student proceeding abroad on scholarship, returns to India after completion of his/her course. In that context, the difference between an F-1 Visa and J-1 Visa is that a candidate who has been issued a J-1 Visa by the US Authorities is required to return to his/her home country for a period of two years after completion of the program. However, there is no such attendant condition requiring a two year home country stay in case of an F-1 Visa. Further a candidate who has been issued an F-1 Visa is not precluded from applying for change in Visa. In other words, once such candidate has completed his/her program, he/she can apply for another type of Visa for continuing the stay in USA.

14. Having stated the above, there is no dispute that both in the case of J-1 Visa

and F-1 Visa, the student cannot continue to stay in USA once he/she has completed the course. In other words, neither of the two Visas would permit the petitioners to continue staying in USA after completion of their course. Thus, both these visas are compliant with the mandatory condition as specified in Regulation v(x) of the aforesaid Regulations for Overseas Scholarship.

15. However, as stated above, a student who proceeds to USA on an F-1 Visa can apply for a Visa of another category after completion of his/her course; which may or may not be granted. If a different type of Visa is not granted by the US Authorities, the student would necessarily have to leave USA and he/she cannot extend his/her stay on F-1 Visa.

16. Mr Mahajan, the learned counsel appearing for the respondents had submitted that the specific condition requiring students to obtain J-1 Visa was introduced on the specific recommendation of the Embassy of India at Washington. He drew the attention of this Court to a letter dated 28.11.2016 sent by the Indian Ambassador at Washington indicating that it was not possible to ensure the return of students who had proceeded on an F-1 Visa.

17. Mr Mahajan also submitted that certain audit objections had also been raised with regard to scholarships paid to certain students who had travelled to USA but had not returned to India as required.

18. Mr Aggarwal, learned counsel for the petitioners submitted that the petitioners would have no objection in giving an undertaking to the effect that they would not apply for change in status of their Visa and would return to India on completion of their Master's Program.

19. Mr Aggarwal also submitted that the specific condition requiring candidates proceeding to USA to obtain J-1 Visa was only introduced subsequently and there was no such requirement under the scheme as initially advertised, on the basis of which, the petitioners had taken steps to apply for admission overseas.

20. Mr Aggarwal also drew the attention of this Court to the scheme now published for the selection year 2017-18 wherein the following condition has been specifically included:- "x. It will be for the candidate to obtain the appropriate visa for a country wherein one intends to study further under award from the Scheme and the Visa issuing authorities may see that only such type of visa be issued which only permits the candidate to pursue specified course abroad and thereafter the candidate returns to India. In case candidate is applying for admission in any University in the United States of America, the candidate is required to obtain J-1 VISA only. The State Department of USA keeps a list of Designated Sponsor Organizations for J-1 visas for students. Government of India will render no assistance to a candidate for obtaining Visa."

21. Having heard the learned counsel for the parties, it is apparent that the petitioners have proceeded on the basis of the original scheme, which required them to obtain a Visa that would require them to return to India after completion

of the course. As observed, an F-1 Visa would also comply with the aforesaid condition as the petitioners would not be permitted to stay in USA on an F-1 Visa after they had completed their course. The petitioners have acted in terms of the said scheme and spent a considerable amount of effort in securing admission to the Auburn University. In these peculiar circumstances, this Court is of the view that the concern of the respondents could be addressed by directing the petitioners to submit an undertaking to this Court that the petitioners would not apply for change of F-1 Visa status after proceeding to the USA. The petitioners would also ensure that a personal security bond is furnished by a surety in this regard.

22. The respondents would undoubtedly be entitled to insist that the students proceed to USA only on a J-1 Visa, as a condition for grant of scholarship. However, it cannot be disputed that the scheme as advertised did not contain any such specific condition. The respondents have amply clarified the requirement of a J-1 Visa in the scheme as published for selection year 2017-2018 and thus there is now no scope for any further controversy in this regard. However, since the scheme advertised earlier did not contain any such specific requirement, this Court is of the view that the ends of justice would be served if the petitioners are permitted to pursue their course with the Auburn University by proceeding to USA on a F-1 Visa, albeit, on a firm commitment to return to India after completion of their course.

23. In view of the above, the respondents are directed to process the petitioners' application for disbursement of scholarship without insisting on the petitioners' obtaining a J-1 Visa. The petitioners can proceed overseas on an F-1 Visa subject to the petitioners' furnishing an undertaking by way of an affidavit to this Court within a period of two weeks affirming that the petitioners would return to India immediately on completion of their course and would further not travel to USA for a further period of two years (as is the attendant condition for a J-1 Visa). The petitioners would also arrange a surety to furnish a personal bond for the petitioners' complying with their undertaking. The petitioners are also cautioned that any failure to adhere to the undertaking would invite punitive measures including for contempt of Court.

24. The petition and the pending application are disposed of with the aforesaid directions.