
(2010) 03 MP CK 0089
In the Madhya Pradesh High Court

Hanish Kukreja

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyam Avam Shulk Ka Nirdharan) Adhiniyam, 2007 — Section 13

Citation : (2010) ILR (MP) 1534 : (2010) 2 MPHT 522 : (2011) 2 MPLJ 80 : (2010) 2 MPLJ 422

Hon'ble Judges : Viney Mittal, J;Prakash Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.

In this writ petition, the petitioner has prayed for a direction for holding his NRI sponsorship to be valid and further holding his admission in B.E. course under Non-Resident Indian (NRI) quota as valid.

The petitioner had made an application for admission in B.E. first year course in the respondent No. 5 Institute of Engineering and Technology, Indore against NRI quota. The petitioner was offered provisional admission against NRI quota on 14-8-2009. The petitioner was sponsored by his first cousin, i.e., his mother's sister's son, who is an NRI. His admission was later on cancelled. The petitioner alleges that the cancellation was not communicated to him. He, therefore, approached this Court by way of the present writ petition.

The writ petition was opposed by the respondent Nos. 3 and 4, i.e., Rajeev Gandhi Technical University and Engineering Courses Counselling Authority (ECCA), by taking the plea that the admission offered by the respondent No. 5 to the petitioner was provisional admission and on verification, it was found that the petitioner was not eligible under the NRI category as the first cousin is not covered under NRI's who can stand sponsor as per admission (Reservation to

Non-Resident Indian) Regulation, 2009. They stated that the petitioner was informed about the rejection of his admission vide notice dated 20-8-2009.

The respondent No. 5 by submitting the reply before this Court took the stand that the name of the petitioner was included in the provisional list of admission subject to production and verification of documents and on verification respondent No. 4 ECCA had rejected the petitioner's case.

Learned Counsel appearing for the petitioner submitted that the first cousin, of the petitioner who is an NRI was eligible to sponsor the petitioner and rejection of admission of the petitioner against the NRI quota is unsustainable. He further submitted that the rejection order was not communicated to the petitioner.

Learned Counsel appearing for the respondents submitted that the admission of the petitioner was provisional and on scrutiny of the documents, he was not found entitled to get admission under the NRI quota, therefore, the admission was rejected. They further submitted that the first cousin is not covered as eligible sponsor NRI.

We have heard learned Counsel for the parties and perused the record.

The Admission (Reservation to Non-Resident Indian) Regulations, 2009 ("NRI Regulation, 2009" for short) have been framed u/s 13 of the Madhya Pradesh Niji Vyavsayik Shikshan (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 and have been published in the M.P. Gazette extra-ordinary dated 15th July, 2009. The applicability of these regulations is not disputed by the petitioner.

The Regulation 3 which is relevant for the present controversy provides that:

3. Applicability.- These regulations shall be applicable to students who are seeking admissions against 15% seats reserved for Non-Resident Indian subject to the following conditions:

(a) At least one of the parents of such students should be Non-Resident Indian and shall ordinarily be residing abroad as Non-Resident Indian;

(b) The persons who sponsors the student for admission should be a first degree relation of the student and should be ordinarily residing abroad as a Non-Resident Indian;

(c) 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 bonafide treated the student as a ward and such guardian shall file an affidavit indicating the interest shown in the education affairs of the student and also his relationship with the student and such person also should be a Non-Resident Indian and ordinarily residing abroad.

Undisputedly, the claim of the petitioner is not covered by Clauses (a) and (c) of Regulation 3. The petitioner has based his claim upon Clause (b) of the

Regulation 3.

The Clause (b) of Regulation 3 though states that the sponsor should be a first degree relation of the student, but the regulation nowhere provides the relations which are covered under the "first degree relation" for the purpose of the regulation.

The Regulation 10 provides for reference to the State Government, if any question arises relating to interpretation of the regulation and it further provides that the decision of the State Government there on will be final.

Since the first degree relation has not been defined under the NRI Regulation of 2009, therefore, this Court had passed the following order dated 19-1-2000, referring the matter to the State Government, for its decision on the question of interpretation of the words "first degree relation of the student":

The Admission Rules were published in the State Gazette dated July 15, 2009 known as Admission (Reservation to Non-Resident Indian) Regulations, 2009. Regulation No. 10 provides that if any question arises relating to the interpretation of those regulations, the same shall be referred to the State Government, whose decision thereon shall be final.

In the present matter, the question of interpretation of the words "first degree relation of the student" had cropped up, therefore, taking into consideration the scope and effect of the Rules, we refer the matter to the State Government for its decision.

The petitioner and the respondent Nos. 3, 4 and 5 shall appear before the respondent No. 2 on January 27, 2010 with a copy of this order and their respective pleadings with a request to the Competent Officer to decide the issue within ten days from the date of their appearance and send the same to this Court without loss of any time.

The matter be listed for consideration after the decision of the State Government is received.

In pursuance to the aforesaid directions of this Court, a committee was constituted. The committee defined the first degree relationship as under:

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The Directorate of Technical Education of the State thereafter, passed the order dated 2-2-2010, accepting the aforesaid definition of first degree relationship given by the committee.

In view of the definition of first degree relationship given by the Committee and accepted by the State following relations are covered under the "first degree relationship":

- (a) Father and Mother of the candidate.
- (b) Real brother and sister of the candidate.
- (c) Father and Mother of father/mother of the candidate.
- (d) Real brother and sister of father/mother of the candidate.

In the present case, the sponsor of the petitioner, i.e., the first cousin of the petitioner (Mausi's son) is not covered under the above definition and, therefore, he is not an eligible NRI sponsor and consequently, no error has been committed by the respondents in rejecting the admission of the petitioner against NRI quota on the ground that he has not been sponsored by the NRI covered by the provisions of the regulation.

It is also worth noting that by the notice dated 14-8-09, Annexure P-1, only provisional admission was granted. It was mentioned in the notice that the candidate will be allowed admission on producing all necessary documents and on subsequent verification of documents by ECCA, Rajeev Gandhi Proudhyogik Vishwavidyalaya, Bhopal. The petitioner also gave an undertaking that the admission offered to him was purely provisional, which did not bind the institute to confirm the admission and that the admission will be verified by ECCA, Bhopal and if the petitioner's case is not considered, the admission will be treated to be withdrawn. The record also indicates that the petitioner after cancellation of his admission in the respondent No. 5 College, participated in the counseling conducted in the respondent No. 4 College and took admission in the respondent No. 4 College on 23-9-09, therefore, in the changed circumstances also his claim does not survive.

The contention of the learned Counsel for the petitioner that the petitioner was not informed about the cancellation of admission is not correct Annexure R-3/1, dated 20-8-09, filed along with reply of respondent Nos. 4 and 5, indicates that a general notice was issued by the respondent No. 5, containing the names of the candidates in NRI category whose admission after scrutiny was approved or rejected by ECCA Bhopal. The petitioner's name figures in the list of candidates whose admissions were rejected. The said notice was duly published and no other candidate has come forward making a complaint of non-publication of such a notice, therefore, the grievance of the petitioner in this regard, cannot be accepted.

In view of the aforesaid analysis, we do not find any merit in this writ petition and the petition is accordingly dismissed.

No order as to cost.