

(2014) 09 MP CK 0122
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5253/2014

Niharika Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Income Tax Act, 1961 — Section 115C, 6(1)
Representation of the People Act, 1951 — Section 116A

Citation : (2014) 4 MPHT 320 : (2014) 4 MPLJ 564

Hon'ble Judges : Shantanu Kemkar, J; M.C. Garg, J

Bench : Division Bench

Advocate : Sunil Jain, Sr. Advocate and Amol Shrivastava, Advocate for the Appellant; Mini Ravindran, Dy. Govt. Advocate, Advocate for the Respondent

Judgement

M.C. Garg, J.—By this writ petition, the petitioner is aggrieved by the action of the respondents whereby, after including the petitioner in the merit under NRI quota, the respondents published a 2nd merit list delisting the name of the petitioner as well as similarly situated candidate in spite of her being eligible for the said seat on the basis of merit as well as NRI status on the ground that the petitioner could not produce the relevant NRI certificate from the Indian Embassy as a proof of her father's NRI status as per the condition prescribed by the respondent No. 1 for taking admission for the relevant NRI seats. After filing of the aforesaid writ petition, the petitioner impleaded respondent Nos. 4 to 7, who are the students and who were selected under NRI quota but having lesser percentage on the plea that any decision in this matter may affect the interest of those students. The respondent Nos. 4, 5 and 6 were directed to be served through the Dean of the concerned college. The respondents were duly served through the Dean for which, an affidavit along with the service report has been placed on record by the petitioner dated 25-8-2014.

2. Insofar as the respondent No. 7 is concerned, at the outset, it has been submitted by the learned Counsel for the petitioner that the petitioner under

instructions would not claim any benefit with respect to the seat allotted to the respondent No. 7 even if, an adverse order was passed against the said respondent. As far as the respondent Nos. 4 and 6 are concerned, even though, served through the Dean of the college have not caused appearance.

3. The short facts of this case as pleaded by the petitioner are:--

"(i) That, the petitioner in response to the advertisement dated 13-6-2014 issued by the respondent No. 2 inviting applications for admission on NRI seats in MBBS/ BDS course in Govt. Autonomous Medical Colleges, in Bhopal/Indore/Gwalior/ Rewa/Sagar and Dental Colleges, Indore for the academic year 2014, being eligible for NRI status as her father who is Captain in Merchant Navy is holding NRI status as per Income Tax Act, 1961 applied for admission.

(ii) On inviting for counseling petitioner submitted all the relevant documents in physical form including the proof as to the status of her father as NRI. After scrutiny of the documents, she was placed at third place in the merit list published under NRI quota. But on the next day the list was cancelled and other merit list was published and the name of the petitioner and a similarly situated candidate was delisted. On enquiry the reason assigned by the respondent No. 2 that as per the condition for eligibility the petitioner was required to produce a certificate from the Indian Embassy regarding her father's NRI status. The father of the petitioner working in Merchant Navy is not entitled to such a certificate even though he is a NRI as per the legal definition. The father of the petitioner objected to this condition as being unreasonable and requested that his daughter's case may kindly be considered. The respondents did not accept the application of the petitioner on the ground that she has not produced a certificate of NRI status from the Embassy and thus, she is ineligible for admission. That, being aggrieved by this, the petitioner is filing this petition."

4. According to the learned Senior Counsel for the petitioner, action of the respondents in not having treated her father as NRI even though, he is fully qualified to be considered as NRI under the Income Tax Act, is not sustainable. It is submitted that, the condition for submission of NRI certificate issued by the Indian Embassy only, as a proof of NRI status of the applicants is arbitrary, and discriminatory since it does not provide for a case where the petitioner is not entitled to such a document from the Embassy although they are having NRI status as per the applicable laws. The impugned condition is thus discriminatory since the applicants who are wards of the persons who have an NRI status but do not reside within any particular country cannot provide any other document to prove their NRI status and can thus not be admitted for the NRI seats. The impugned actions of the respondents and incorporation of the condition, which requires to produce the NRI certificate are arbitrary, unreasonable, discriminatory and are in utter violation of the fundamental rights of the petitioner and are liable to be struck down. It is submitted that since the rules of the respondents are silent in regard to who constitutes as NRI for the purpose of admission and thus the definition should be imported from the relevant laws, which is the

explanation to Section 6(1) of the Income Tax, 1961.

5. The petitioner has relied upon the rules framed by All India Council for Technical Education wherein, definition of NRI has been given in Income Tax Act. A true copy of these Rules in Annexure P-8, which for the purpose of definition of NRI reads as under:--

"3.9. "NRI" in this context means Non Resident Indian as defined in Income Tax Act, 1961 with the following clarifications:--

An individual in Non-Resident when he is "not a resident" or who is "not ordinarily resident". A person is treated as "not ordinarily resident" when any of the following conditions is satisfied:--

If he/she has not been resident in India in nine out of ten preceding years; Or

If he/she has not been in India for a period of 730 days or more during the preceding seven years."

6. The petitioner also relies upon similar rules framed by the respondents for admission in unaided (Private) Medical and Dental Colleges in the State quota seats in which NRI has defined as under:--

"(m) "NRI" means Non-Resident Indian shall have the same meaning assigned to it in clause (e) of Section 115C of the Income Tax Act, 1961 (43 of 1961)."

7. It is submitted by the learned Senior Counsel for the petitioner that in this case, the petitioner alongwith her application form had filed relevant document showing the eligibility of the petitioner for NRI seat as her father, who is Captain in Merchant Navy is holding NRI status as per the Income Tax Act, 1961. It is also submitted that the petitioner obtained 91% marks in Central Board of Secondary Education examination. It is submitted that the petitioner had applied for admission in NRI seat in MBBS/BDS course in Govt. Autonomous College for the academic year 2014 as the petitioner was eligible for NRI quota for the reason that her father is a Captain in Merchant Navy and was holding NRI status as per Income Tax Rules, 1961.

8. It may be appropriate to take note of the relevant clause mentioned in the advertisement issued as per the Rules of admission in the Govt. Autonomous Colleges calling for admission form. As per the eligibility for the aforesaid purpose, it has been mentioned that:--

"Candidate should be himself/herself NRI or children or NRI for proof of NRI:-- NRI certificate of current year issued from Indian Embassy must be submitted.

(Sponsorship from NRI relatives other than father/mother shall not be considered)."

9. According to the learned Senior counsel for the petitioner, the petitioner was qualified for the aforesaid category as her father was holding NRI status in Income Tax Act as per the acknowledgment given by the Income Tax Department

available at page 39 of the paper book. The father of the petitioner was assessed as NRI. A self attested form issued by the Central Processing Center of the Income Tax Department has been filed on record, which is available at page 41.

10. The respondents have opposed the aforesaid writ petition by filing a detailed reply. According to them:--

"2. For applying admission in the NRI quota, certificate issued by the Embassy of India of the current year is the preliminary requirement. The certificate issued by the embassy of India is known as NRI certificate disclosing status as Non-Resident Indian. The petitioner is claiming admission in the NRI quota for which the preliminary requirement is the NRI certificate for the current year from the Embassy of India, which petitioner has failed to submit at the time of counseling. The filing of this certificate is mandatory as per Rules of Admission to Non Resident Indians (NRI) in MBBS/BDS courses in Government Autonomous Medical/Dental Colleges in the State of Madhya Pradesh. A copy of notification, dated 19-6-2014 to this effect clarifying the eligibility criteria for admission is annexed herewith as Annexure R-1.

3. That the counseling for admission was completed on 8-7-2014 at the time of counseling till 8-7-2014 the petitioner was unable to produce required NRI certificate for admission under NRI quota. The petitioner on 24-7-2014, at a belated stage, has submitted a certificate, which was issued by the Income Tax Department. It is respectfully submitted that the certificate issued by the Income Tax Department is only for the purpose of Income Tax Department. The certificate of Income Tax Department is not as per the requirement of the Admission Rules, which the process eligibility for admission, hence the certificate is not admissible and does not give any right to the petitioner for getting admission in MBBS course.

It is also pertinent to mention here that the certificate of the Income Tax Department which was produced before the Hon'ble Court by the petitioner is dated 24-7-2014 whereas the counseling for admission was already completed on 8-7-2014 itself. Copy of the Income Tax Department certificates of the petitioner is annexed as Annexure R-2."

11. The respondents quoted relevant clause of the notification pertaining to the eligibility of the NRI, which is reproduced here as under:--

"Eligibility:-- Candidate should be himself/herself NRI or Children of NRI for proof of NRI-NRI certificate of current year issued from Indian Embassy must be submitted (Sponsorship from NRI relatives other than father/mother shall not be considered)."

12. It will also be relevant to take note of sub-rule (3) of the admission to NRI in MBBS course which as per the affidavit of the respondents reads as under:--

"Preferences in seat allotment shall be given to NRI candidates who are themselves domicile/bona fide resident of M.P. State or Children or Parents who

are domicile/bona fide residents of M.P. State. Counseling and seat allotment will be done for domicile/bona fide resident of M.P. State candidates only in the first round of counseling.

In case of seats remaining vacant in UR category after allotment to NRI candidates who are domicile/bona fide resident of M.P. State, these seats shall be made available to the eligible NRI candidates, who are not domicile/bona fide resident of M.P. State according to merit list in the second round of counseling."

13. According to the learned Senior Counsel for the petitioner since the rules with respect to the admission of NRI in the Government College is silent about definition of NRI, it is necessary for the respondents to take help from the other statutes, i.e., the rules, which clearly defines what is NRI. It is submitted that since as per the rules framed by All India Technical Education as well as by the State of M.P. itself for the unaided (private) institutions, the petitioner being entitled to be considered in NRI quota for the purpose of grant of admission, the definition of NRI of those rules be applied for the petitioner and she be treated as NRI.

14. Reference has also been made to the certificate issued by the Income Tax Department declaring that the petitioner was NRI. The said certificate reads as under:--

Govt. of India Ministry of Finance (Deptt. of Revenue)

Office of the Income Tax Officer Ward-3 (1), Indore

Ayakar Bhawan (Annexe) Room No. 301, 3rd Floor, Residency Area, Opp. White Church, Indore, Telephone No. 731-2497378

Dated: 24-7-2014

NRI CERTIFICATE

TO WHOM SO EVER IT MAY CONCERN

This is to certify that Mr. Ashok Kumar Singh, holder of Passport No. G5381552 and PAN Card No. AGTPS4949M is assessed to income tax with this ward in the status of "Non-Resident Indian". From the perusal of the records, it is apparent that he is a "Non-Resident Indian".

(N. Sudhakaran Nair) Income Tax Officer-3 (1), Indore"

15. The petitioner has also relied upon the Statutory Interpretation written by Hon"ble G.P. Singh, the retired Chief Justice of M.P. High Court in its 7th Edition in the chapter of External Aids to construction. In which, it has been observed that:--

"4. Reference to other Statutes:

(a) Statutes in pari materia :

It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in *pari materia*, i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including "other statutes in *pari materia*". As stated by Lord Mansfield, "Where there are different statutes in *pari materia* though made at different times, or even expire, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other". In a case, the Court of Appeal, while holding that smuggled gold coins constituted "goods" within the meaning of Customs and Excise Act, 1952, referred to a whole series of Customs Acts starting in 1833, going on to 1876, 1893, 1932 and 1939 and observed that reading that reading through them it was plain that in the Customs Acts "goods" does include gold and silver coins and bullion for when they are to be excluded, they are excluded expressly by the words of the Acts.

The meaning of the phrase *pari materia* has been explained in an American case in the following words:-- "Statutes are in *pari materia* which relate to the same person or thing, or to the same class of persons or things. The word *pari* must not be confounded with the word *similis*. It is used in opposition to it intimating not likeness merely but identity. It is a phrase applicable to public statutes or general laws made at different times and in reference to the same subject". When the two pieces of legislation are of differing scopes, it cannot be said that they are in *pari materia*. Thus, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and the Bombay Land Requisition Act, 1948, were not held to be Acts in *pari materia* as they do not relate to the same person or thing or to the same class of persons or things."

16. On the strength of the aforesaid, learned Senior Counsel for the petitioner submits that in this case, when the rules of the State Government were silent with respect to the definition of NRI, the definition of NRI as provided for under the Income Tax Act and other Rules regarding private colleges be taken into consideration. In this regard, attention has also been invited to the circular issued by the Finance Ministry:--

"3. Thus, generally, Indian members of the crew of a foreign-going Indian ship would be Non-Resident in India if they are on board such ship outside the territorial waters of India for 182 days or more during any year. Accordingly, such seamen will be charges to tax in India only in respect of earnings received in India or the earnings for the period when they are working within the Indian waters on coastal ships, etc."

17. Learned Counsel for the petitioner also relied upon the judgment of Hon'ble the Supreme Court of India in the case of P. Prabhakaran Vs. P. Jayarajan, . Paragraphs 32 and 33 of the aforesaid judgment is relevant and is reproduced here as under:--

"32. It is rather unfortunate that the correctness of the view taken in Shri Manni Lal's case was not questioned in Vidya Charan Shukla's case and an attempt was made only to distinguish the case of Shri Manni Lal. While interpreting a provision of law and pronouncing upon the construction of a statutory provision the Court has to keep in mind that the view of the law taken by it would be applied to myriad situations, which are likely to arise. It is also well-settled that such interpretation has to be avoided as would result in creating confusion, anomaly, uncertainty and practical difficulties in the working of any system. A submission based on this principle was advanced before the three-Judge Bench in Vidya Charan Shukla's case, but unfortunately did not receive the attention of the Court forming an opinion that dealing with that submission (though forceful) would amount to indulging in "hypothetical and academic exercise".

33. We may just illustrate what anomalies and absurdities would result if the view of the law taken in Shri Manni Lal's case and Vidya Charan Shukla's case were to hold the field. One such situation is to be found noted in Para 39 of Vidya Charan Shukla's case. A candidate's nomination may be rejected on account of his having been convicted and sentenced to imprisonment for a term exceeding two years prior to the date of scrutiny of nomination. During the hearing of election petition if such candidate is exonerated in appeal and earns acquittal, his nomination would be deemed to have been improperly rejected and the election would be liable to be set aside without regard to the fact whether the result of the election was materially affected or not. Take another case. Two out of the several candidates in the election fray may have been convicted before the date of nomination. By the time the election petition comes to be decided, one may have been acquitted in appeal and the conviction of other may have been upheld and by the time an appeal under Section 116A of the RPA preferred in this Court comes to be decided, the conviction of one may have been set aside and, at the same time, the acquittal the other may also have been set aside. Then the decision of the High Court in election petition would be liable to be reversed not because it was incorrect, but because something has happened thereafter. Thus, the result of election would be liable to be avoided or upheld not because a particular candidate was qualified or disqualified on the date of scrutiny of nominations or on the date of his election, but because of acquittal or conviction much after those dates. Such could not have been the intendment of the law."

18. In the other judgment also referred to by the learned Counsel for the petitioner in the case of Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, . On the issue of interpretation and the statutes, it has been observed that:--

"30. To sum up, our conclusions are:--

(1) In Section 13(2)(i) proviso, the words "assessed by the Controller" qualify not merely the words "the cost of application" but the entire preceding part of the sentence, i.e., "the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application".

(2) The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent, (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount, which the tenant must pay or tender on the "first date of hearing" after the passing of such order of "assessment" by the Controller so as to satisfy the requirement of the proviso.

(3) Of necessity, "the date of first hearing of the application" would mean the date falling after the date of such order by Controller.

(4) On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

(5) If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

(6) While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.

31. The view of the law so taken by us advances the object sought to be achieved by the legislation, serves best the interests of landlord and tenant both, removes uncertainty in litigation and obscurity in drafting of the provision and also accords with the principles of justice and equity. Even if, it is an innovation, it is in the field of procedural law, without affecting the substantive rights and obligations of the landlord and the tenant and such innovation is permissible on the basis of authority and supported by principles of justice, good sense and reason. We have not touched the substantive rights of landlord and tenant, and are feeling satisfied with a do little in the field of procedure so as to effectuate the purpose of enactment."

19. On the strength of the aforesaid two judgments, learned Counsel for the petitioner submits that in this case, when there was a lacuna in the notification inviting application with respect to the definition of the NRI in respect to admission in Govt. Autonomous Colleges, the Court can fill up that lacuna by taking help from other statutes such as rules of AICTE and the rules framed by

the State Government regarding private unaided Medical or a Dental College, which clearly " goes to show that NRI would mean an NRI as defined under the Income Tax Act as such the petitioner falls in the definition of NRI because of her father being resident abroad for the period of more than 182 days being a Captain in Merchant Navy, the petitioner ought to have been considered as NRI and consequently, the action of the respondents in having not considered her eligible as NRI is not sustainable.

20. Having considered the submission of learned Counsel for the parties, we are of the considered view that the arguments advanced by the learned Senior Counsel for the petitioner cannot be accepted. In the present case, in the admission rules for the Govt. Autonomous Medical/Dental College, the Non-Resident Indian has not been defined; whereas, in the Rules relating to admission in private unaided colleges, the NRI has been defined as under:--

"Candidate should be himself/herself NRI or children or NRI for proof of NRI:-- NRI Certificate of current year issued from Indian Embassy must be submitted.

(Sponsorships from NRI relatives other than father/mother shall not be considered)."

21. In the circumstances, when there is conscious and deliberate omission of the definition of NRI in the Govt. Autonomous Admission Rules, the intention of the rule making body is very clear and in such circumstances, no reference or aid to other statutes is required to be taken. The intention of the rule making body is not to include a case like petitioner, who's father is permanently residing at India, but is treated to be NRI for Income Tax Act, as he is offshore for the period of more than 182 days. When such is the clear intention of the rule making body, making it necessary to file the certificate from Embassy, we cannot import the definition of the NRI from the other rules, which relates to Private Unaided Medical/Dental Colleges or from the Income Tax Act. We are of the considered view that the reservation of seats for NRI in the present case was only to provide benefit to NRI actually living abroad and not being NRI for the purpose of Income Tax only. The petitioner applied for the seat under the NRI quota knowing fully well the stipulation contained in bold line in the application form. It was nowhere stated that the NRI here means the person who is NRI for the purpose of Income Tax Act.

22. We, therefore, appreciate the submissions made on behalf of learned Dy. G.A. that the reservation meant in the present case for giving admission in Govt. Autonomous Colleges was for NRI who was in position to produce a certificate from the concerned Embassy with respect to his living abroad for the propose of his being considered as NRI and not for a person who was living in India but is offshore for 182 days or more and who is NRI for Income Tax purpose.

23. Having regard to the aforesaid, we are of the view that no relief can be granted to the petitioner in this case. As a result, the petition fails and is hereby dismissed.

C.C. as per rules.