
(2022) 04 BOM CK 0134
In the Bombay High Court
Case No : Writ Petition (L) No. 4267 Of 2022

Siddesh Ramesh Veer

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 28-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 04 BOM CK 0134

Hon'ble Judges : A. S. Chandurkar, J;G. A. Sanap, J

Bench : Division Bench

Advocate : Y. S. Jahagirdar, Vishwajeet Kapse, Y. S. Bhate, Ajinkya Badar, Abhay Patki, S. B. Gore

Final Decision : Allowed

Judgement

A. S. Chandurkar, J

1. Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The petitioner is aggrieved by the communication dated 02/02/2022 that has been issued by the first respondent-Union of India through its Under Secretary, (IC & IH) Ministry of Health and Family Welfare whereby the petitioner's request for issuance of No Objection Certificate for "No Obligation To Return To India" (NORI) has not been accepted in view of guidelines dated 03/08/2021.

2. The petitioner has completed his Post Graduation in the medical field and has obtained MD degree from Smolensk State Medical Academy, Russia. The petitioner claims to have interest in pursuing medical research and research project management prospects. In September 2011 the petitioner passed the Foreign Medical Graduate Exam (FMGE) and received his National Medical Commission registration in May 2013. The petitioner between June 2013 to April 2017 had visited the United States of America (USA) on a visitor Visa status for meeting his mother who is a green card holder. During that time the petitioner

applied for non-immigrant J-1 (Research Scholar) Visa so as to work on research programmes in the USA. The petitioner was offered Research Scholar position at various institutions and the petitioner intends to continue such research work. With that object in mind it is the case of the petitioner that an Indian citizen is required to change his Visa status from J-1 (Research Scholar) Visa to H1B Work Visa for waiving the condition of two years physical presence in India after the end of Visa period. For securing such waiver a No-Objection certificate indicating NORI issued by the Ministry of Health and Family Welfare, Government of India is necessary so that his Visa status could be changed from J-1 (Research Scholar) to H1B work Visa. The petitioner has since obtained such No-Objection certificate from the second respondent-State of Maharashtra. However similar request made to the Ministry of Health and Family Welfare has been turned down which fact has been informed to the petitioner by the communication dated 02/02/2022. It is this communication that is the subject matter of challenge in this writ petition.

3. Shri Y. S. Jahagirdar, learned Senior Advocate for the petitioner submitted that the rejection of the petitioner's request for issuance of No-Objection for NORI certificate was without any reason. The only mention found in the impugned communication is to the guidelines issued by the Ministry of Health and Family Welfare on 03/08/2021. Referring to the said guidelines it was submitted that NORI certificate was not to be issued in general. The same could be issued to a person attaining 65 years of age or a person satisfying the conditions mentioned therein. The said conditions were : (a) if Statement of Need (SON) had not been issued previously; (b) if the applicant was a Foreign Medical Graduate and had not qualified the eligibility test as per the IMC/NMC Act and (c) if the applicant did not have MCI/MNC/ State Medical Council registration. It was submitted that under Clause-C condition (a) had been satisfied as SON had not been issued previously to the petitioner. As regards conditions (b) and (c) it was stated that the petitioner was a Foreign Medical Graduate. Though he had qualified for the eligibility test-FMGE in September 2011, the petitioner had on 21/01/2022 surrendered his MCI/NMC medical license and registration. As a result though the petitioner had qualified in the eligibility test, he had surrendered his medical license and registration as a result of which the petitioner would not be in a position to practice as a medical doctor in India. Even otherwise it was submitted that the petitioner had never practiced as a medical doctor in India. Thus on reading clause (c) in its entirety there was no justifiable reason to deny the petitioner the No-Objection certificate for NORI. It ought to have been seen that it was not permissible for the petitioner to apply for a fresh J-1 (Research Scholar) Visa since his current J-1 (Research Scholar) Visa could operate only for the maximum period of five years.

4. As regards the stand taken by the first respondent that the rejection of the request for No-Objection certificate was based on a policy decision, it was submitted that the object behind the said policy was to prevent medical professionals from migrating to other countries resulting in shortage of medical

professionals in India. It was urged that since the petitioner never practiced as a doctor in India and was solely interested in undertaking research work, there was no reason to refuse to grant the No-Objection since by granting such No-Objection the policy of the first respondent would not be violated. The policy was aimed at preventing medical professionals who were practicing in the medical field as doctors in India to continue to render services in the country. Since the petitioner was solely interested in research study and had neither practised medicine either in India or in the USA, the No-Objection certificate could not have been refused by relying upon such policy decision. The learned Senior Advocate placed reliance on the decisions in Writ Petition No.8095/2016 (Dr Sunil Kiran Noothi vs. Union of India) decided on 20/12/2016 at the Aurangabad Bench of this Court as well as the judgment in Writ Petition No.1679/2021 (Avani Sudhir Vaishnav vs. Union of India and anr.) decided on 15/09/2021. After considering a similar stand of the first respondent as taken in the present writ petition it was held by this Court that where a medical student desires to pursue research activity, a No-Objection certificate for NORI was liable to be issued. It was urged that the condition as imposed by the Court in Avani S. Vaishnav (supra) while directing issuance of No-Objection certificate could also be imposed in the present writ petition if the prayers made by the petitioner were to be granted. It was thus prayed that the impugned communication be set aside and the first respondent be directed to issue a No-Objection certificate for NORI to the petitioner.

4. Shri Y. S. Bhate, learned counsel for the first respondent opposed aforesaid submissions. Relying upon the affidavit in reply filed on behalf of the Under Secretary, Ministry of Health and Family Welfare it was submitted that the refusal to grant the No-Objection certificate was in accordance with the Office Memorandum dated 03/08/2021 laying down the guidelines in that regard. Since the petitioner did not satisfy condition (iii) of Clause-C thereof and especially since the petitioner had qualified in the eligibility test as per the IMC/NMC Act and had MCI registration, the refusal to grant the No-Objection certificate could not be faulted with. The policy decision in question sought to safe-guard the interest of general public at large by intending that medical professionals do not leave the country resulting in shortage of such medical practitioners in India. It was submitted that there were about 10.5 lakh doctors in the country while there was a shortage of about 4 lakh doctors. Moreover the said policy did not make any distinction between medical practitioners who actually practice medicine and those who undertake medical research.

The said guidelines not being under challenge, it was not permissible for the petitioner to seek issuance of No-Objection certificate for NORI especially when the same was denied by the first respondent in view of guidelines dated 03/08/2021.

It was then urged that the decision in Avani S. Vaishnav (supra) delivered on 15/09/2021 was rendered per incuriam for the reason that the guidelines dated

03/08/2021 were not considered by the Division Bench while deciding that writ petition. As regards the decision in *Dr Sunil Kiran Noothi (supra)* it was submitted that this Court had directed the respondents therein to re-consider the said petitioner's request for grant of No-Objection certificate for NORI. On such re-consideration the respondent had refused to grant the No-Objection certificate sought by that petitioner. The said petitioner however did not further challenge the rejection of the No-Objection certificate. Hence it was submitted that the said decision also did not assist the case of the petitioner. While urging that the Courts would be slow in interfering with actions taken on the basis of a policy decision, the learned counsel placed reliance on the decision in *Vasavi Engineering College Parenjts Association vs. State of Telangana and ors.* (2019) 7 SCC 172 as well as the judgment of learned Single Judge of the Karnataka High Court in *Bushra Abdul Aleem vs. Government of Karnataka, Department of Health and Family Welfare and ors.* ILR 2020 Kar 963. It was thus submitted that there was no case made out by the petitioner to invoke writ jurisdiction in his favour. The writ petition therefore was liable to be dismissed.

6. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documents placed on record. At the outset it would be necessary to refer to certain relevant undisputed factual aspects which have bearing on the prayers sought in the writ petition.

The petitioner has graduated from a medical school at Smolensk State Medical Academy in June 2010 and possesses a Masters degree in Medicine. In September 2011 the petitioner passed the FMGE and received his Medical Council of India registration number in May 2013. The petitioner visited the United States of India from June 2013 to April 2017 on a visitor's Visa for meeting his mother who was a green card holder and also for exploring opportunities to undertake academic research. Thereafter he applied for non-immigrant J-1 (Research Scholar) Visa which was issued to him. Various certificates eligibility for Exchange Visitor Status issued by the US Department of State indicates the petitioner's visitor category to be "Research Scholar" in the field of Pediatrics. The last such certificate dated 16/09/2020 records "No patient contact" by the petitioner. Residence in the USA on a J-1 (Research Scholar) Visa beyond the period of five years is not permissible and it is on that basis that the petitioner on 28/10/2021 had made a request to the second respondent for grant of No-Objection certificate for issuance of NORI. The same was accordingly granted on 29/11/2021 by the second respondent. A similar request was made by the petitioner to the first respondent on 28/10/2021 that was received by it on 10/12/2021. The first respondent on 17/12/2021 called upon the petitioner to furnish information/documents for examining his request. The information sought was as to whether any SON certificate had been issued to petitioner, whether the petitioner had cleared FMGE conducted by NBE and whether he possessed MCI/ State Medical Council registration. In response thereto the petitioner on 24/12/2021 stated that he had not obtained the SON certificate from the Government of India. He had passed his FMGE in September 2011 and had

received his MCI registration in May 2013. He further stated that that he did not have any State Medical Council registration. He also stated that as he did not intend to practice medicine in future and that he was ready to surrender his MCI registration. According to him he was not practicing as a Physician in the USA nor did he intend to do so in future in the USA or in India. His medical education was not sponsored by any Authority and was completed from his own funds. He further stated that he did not have any immediate family relative in India and that his mother and wife were residing in USA. Thereafter on 21/01/2022 the petitioner surrendered his NMC/MCI medical license and registration by stating that he did not intend to practice as a medical doctor any time in future. Thereafter on 23/01/2022 the petitioner informed the first respondent that his J-1 (Research Scholar) Visa was to expire on 01/05/2022 and hence he requested for expeditious consideration for grant of No-Objection certificate for NORI. It is in this context that on 02/02/2022 the first respondent informed the petitioner that the request as made by him could not be acceded to in view of the guidelines issued on 03/08/2021.

7. Since the petitioner's request for grant of No-Objection certificate for issuance of NORI certificate has been turned down in view of the guidelines issued by the first respondent on 03/08/2021, it would be necessary to refer to the relevant portion of the said guidelines. Insofar as issuance of NORI certificate is concerned, reference to the same can be found in Clause-C which read as under :

C. 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.

As per Clause-C, NORI certificate is not to be issued in general.

It may be issued to a person attaining age of 65 years and also to a person satisfying the condition stated in Clause-(iii) It is an admitted position that SON certificate has not been issued to the petitioner as per Clause-C (iii) (a). The petitioner is a Foreign Medical graduate as required by Clause-C (iii) (b). He had qualified the eligibility test as per the IMC/NMC Act and as per Clause-(iii) (c) he had MCI/NMC registration. It is in the context of Clause-C that the prayer for grant of No-Objection certificate for NORI would have to be considered.

8. The rejection of the request for grant of No-Objection certificate for NORI is in view of the guidelines dated 03/08/2021 and according to the first respondent the same is a policy decision based on matters applicable to the medical profession. In the reply filed by the first respondent it is stated that since there is a shortage of doctors in the country, the Central Government has taken a policy decision of not issuing NORI certificate to medical professionals. On perusal of the guidelines dated 03/08/2021 it is clear that NORI certificate is not to be issued in general. In other words, issuance of such certificate is not to be treated as a routine matter but the same can be issued on the fulfillment of Clauses (ii) and (iii) thereof. Clause-C would have to be read as a whole. While the Scheme contemplated by Clause-C is that such certificate is not to be issued in a routine manner, it is liable to be issued in cases where requirements of Clauses (ii) and (iii) are satisfied. However grant of NORI certificate cannot be restricted to the cases falling in Clauses (ii) and (iii) thereof. There could be exceptional cases that are not general in nature and yet without doing any violence to the policy in general, NORI certificate could be granted. For it would not be possible to visualise each possible contingency while framing the policy and hence the primary concern ought to be whether grant of NOC would violate the policy as a whole. A rational view of the matter deserves to be taken without the same being against the guidelines dated 03/08/2021.

8. At this stage reference can be made to the decision of the Division Bench in *Avani S. Vaishnav* (supra) which decision has been accepted by the first respondent and NORI certificate has been issued to the petitioner therein pursuant to the judgment dated 15/09/2021. The facts of that case indicate that the petitioner had completed her medical graduation in India. The said petitioner applied for J-1 Visa (Research Scholar) Visa in August 2017 and the same was valid for a period of five years. The petitioner sought No-Objection certificate for NORI since she was interested in undertaking research work in the USA. In that context the first respondent relying upon the policy decision that was similar to the guidelines issued on 03/08/2021 in the present case refused to grant No-Objection certificate for NORI certificate to the petitioner. While challenging the same, it was urged on behalf of the petitioner that there was no distinction between a Research Scholar and medical practitioner in the said Scheme. The Division Bench after referring to the earlier decision in *Sunil Kiran Noothi* (supra) held that the said petitioner had completed her MBBS course in India without any Government aid and was interested in doing research. The said petitioner had been issued SON certificate and as the petitioner was not using the same, the surety bond had been cancelled. After noting that the said petitioner did not obtain J-1 (Research Scholar) Visa for pursuing graduate medical education/training and that she had already surrendered her SON certificate, it was held that there was no obligation for the petitioner return to India and practice in medicine. The policy aimed at stemming brain drain of doctors so as to cope up with the acute shortage of doctors in India could not be made applicable to the petitioner. Considering the fact that the petitioner intended only to undertake

research work and as the petitioner had given an undertaking that she would not practice medicine in India or the USA, this Court by imposing such condition for grant of No-Objection certificate directed conditional issuance of NORI certificate.

9. We find that the decision in *Avani S. Vaishnav (supra)* supports the contention of the petitioner that since he desired merely to undertake work of research and had no desire to practice medicine, the guidelines dated 03/08/2021 would not come in the way of the petitioner in being issued the No-Objection certificate for NORI. It is true that the guidelines dated 03/08/2021 were not the subject matter of consideration in the said decision. However it is also undisputed that the earlier policy that was considered by the Court in the said decision is on the same lines as Clause-C of the guidelines dated 03/08/2021. In effect, similar conditions as prescribed under Clause-C of the guidelines dated 03/08/2021 were considered by the Division Bench. The submission made on behalf of the first respondent that the said decision was per incuriam for that reason cannot be accepted. It would be relevant to note that the first respondent has accepted the decision of this Court in *Avani S. Vaishnav (supra)* and complied with the same. As a State Authority it would not be open for the first respondent to now contend that the ratio of the aforesaid decision could not be applied to the present case. We are of the view that ratio of the said decision squarely applies to the present case and the petitioner would be entitled to relief on similar lines. We also agree with the view taken in the said decision that in an appropriate case the High Court under Article 226 of the Constitution of India in order to prevent injustice to the parties may itself issue appropriate directions which the Government or the public Authority ought to have passed on a proper and lawful exercise of discretion. As stated earlier, the J-1 (Research Scholar) Visa issued to the petitioner is to expire by 01/05/2022. Residence in the USA on such J-1 Visa beyond the period of five years is not permissible and it is in that backdrop that the petitioner has sought the No-Objection certificate for issuance of NORI. The Court was justified in placing reliance on the decision of the Honourable Supreme Court in *Hari Krishna Mandir Trust vs. State of Maharashtra (2020) 9 SCC 356*. In the facts of the present case as we find that the petitioner is entitled for grant of relief without offending the guidelines dated 03/08/2021 the ratio of the decisions relied upon by the learned counsel for the first respondent cannot be made applicable to the case in hand.

10. Hence for all these reasons we are satisfied that the first respondent was not justified in denying the No-Objection certificate for issuance of NORI certificate to the petitioner in the facts of the present case. By issuing such No-Objection certificate there would be no violence done to the guidelines dated 03/08/2021 and especially Clause-C thereof. Necessary safe-guards in tune with those guidelines can be imposed on the petitioner.

11. Accordingly the following order is passed :

(a) The communication dated 02/02/2022 issued by the first respondent refusing to issue No-Objection certificate for grant of NORI certificate to the petitioner is

quashed and set aside.

(b) The application moved by the petitioner on 28/10/2021 for grant of No-Objection is allowed. The first respondent is directed to issue No-Objection certificate for grant of NORI certificate within a period of two weeks from today. It shall be stated in the NORI certificate that if the petitioner commences medical practice in the United States of America the said certificate would stand cancelled and the petitioner would be required to return to India.

(c) The concerned Authority shall within a period of one week from issuance of the No-Objection certificate in favour of the petitioner issue NORI certificate to the petitioner. The learned counsel for the respondent No.1 shall communicate this order to the respondent No.1. The respondent No.1 thereafter shall take necessary steps to inform the Consulate General of India, Chicago, Illinois, United States of America of this judgment. The same be done expeditiously prior to 30th April 2022.

The writ petition is allowed in aforesaid terms. Rule is made absolute accordingly with no order as to costs.

The parties shall act on the authenticated copy of this order.