

(2018) 08 RAJ CK 0245
In the Rajasthan High Court
Case No : Civil Writs No. 18421 of 2018

Yatin Golecha @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 23-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 08 RAJ CK 0245

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : A.K. Sharma, Vishnu Kant Sharma, SK Gupta, YS Jadaun

Final Decision : Dismissed

Judgement

This petition has been filed with the following prayers:

â??(I) issue an appropriate writ, order or direction declaring admissions given to private respondents no. 4 to 7 to be illegal, arbitrary, unjustified and

unconstitutional and the same be kindly quashed and set-aside and;

(ii) By an appropriate writ, order or direction the respondents be directed to treat all such candidates who failed to submit complete documents till the

time of verification i.e. 30.6.2018 ineligible and to prepare the Merit List for State Quota seats afresh strictly in accordance with the guidelines and

further the petitioner be given admission in MBBS Course in Jhalawar Medical College on the basis of the marks obtained in NEET;

(iii) Issue any appropriate writ, order or direction as may be deemed just and proper in the facts and circumstances of the case be kindly passed in

favour of the humble petitioner.â??

Mr. A.K. Sharma, Sr. Counsel with Mr. V.K. Sharma, for the petitioner submitted that the petitioner with ancestry in the State of Rajasthan applied

for a seat in NRI quota at the Jhalawar Medical College. And as per the guidelines

for admission under NRI quota in Medical / Dental Colleges in the State of Rajasthan, priority was to be given to the NRI students with ancestral background in the State of Rajasthan, where the candidate himself/herself/parents/grandparents had resided in the State of Rajasthan at least for a period of 5 years at any time. Mr. AK Sharma submitted that however while admitting students under the NRI quota in the Jhalawar Medical College, the petitioner's case was not appropriately considered and he was arbitrarily overlooked inasmuch as respondents no. 4, 5, 6 & 7 not eligible to be admitted in MBBS, 2018 under NRI quota, as defined in the guidelines for admission were instead admitted. Mr. AK Sharma submitted that the guidelines for admission under NRI quota provide that if students did not have their parents as NRIs and themselves were also not so, their NRI nearest relatives were to be considered for sponsoring their admission in the NRI quota provided the nearest relative had bonafidely treated him/her as a ward. For the purpose, nearest relatives were defined to include the following:

- (i) Either the real brother or the real sister of father i.e. real uncle and real aunt.
- (ii) Real brother and sister of mother i.e. real maternal uncle and maternal aunt.
- (iii) Father and mother of father i.e. grand-father and grand-mother
- (iv) Father and mother of mother i.e. maternal grand-father and maternal grandmother
- (v) First degree-paternal and maternal cousins
- vi) Such person should be NRI.

It was submitted that the sponsors of respondents no. 4, 5, 6 & 7 for NRI quota were neither their parents nor nearest relatives. The sponsor NRIs did not fall in the aforesaid categories, consequent to which the respondents 4 to 7 could not have been considered for allotment of seats under NRI quota in Jhalawar Medical College or elsewhere. It was submitted that if the admissions in the NRI quota had been lawfully made as per the guidelines for admission in MBBS, 2018, in terms of his merit, the petitioner would have found a place in Jhalawar Medical College in the quota in issue in the first round of counselling itself. However, he was denied admission, consequent to which he had to opt for and was given admission in the NRI quota at the Bhilwara Medical College. Mr. A.K. Sharma submitted that the resultant illegality in the facts of the case stated above cannot be

sustained and accordingly action of the respondents in wrongly denying the petitioner admission in NRI quota at Jhalawar Medical College for MBBS,

2018 deserves to be quashed and set-aside with consequential directions.

Mr. SK Gupta, AAG appearing for NEET UG Medical & Dental Admission / Counselling Board, 2018 submitted that admissions to MBBS each

year including in the year 2018 have to strictly adhere to the time-lines fixed by the Apex Court. It has been submitted that thereunder the last

date for admission into MBBS, 2018 is 31st August, 2018. To adhere thereto in completing admission process, the first round of counselling for

admission into Jhalawar Medical College and elsewhere including for the NRI quota was completed on 5.7.2018. The petitioner was not found

comparatively meritorious in the first round counselling for the NRI quota seats. Subsequently 4 seats in MBBS 2018 in NRI quota at the Jhalawar

Medical College were found vacant. They were notified and open for all those who fancied their chances for admission. The petitioner did not

participate in the second round of counselling in the NRI quota. If he was overlooked for any alleged illegality and arbitrariness in admissions in NRI

quota in Jhalawar Medical College in the first round of counselling, he could have participated in the second round of counselling in the vacant

NRI quota seats in Jhalawar Medical College. This he did not do.

The second round of counselling in respect of 4 vacant seats in Jhalawar Medical College was commenced on 9.8.2018 and completed on 12.8.2018.

Those candidates successful at NEET, 2018 examination and who applied therefore were considered on comparative merit, and have since paid

their fee, were admitted and are attending classes. He submitted that all admitted in NRI quota in MBBS 2018 at Jhalawar Medical College are more

meritorious than the petitioner.

It was submitted that in these circumstances the petition having been filed on 16th August, 2018 subsequent to the conclusion of second round of

counselling, admissions and commencement of classes on 1st August, 2018, this petition is liable to be dismissed on the ground of laches. Mr. SK

Gupta submitted that doctrine of laches attracts to equitable jurisdiction such has been invoked in this petition under Article 226 of the Constitution of

India, where intervening delay resultant from the petitioner's lethargy about his putative legal and even fundamental rights leading to creation of

third party rights as has been occasioned in this case with all seats under NRI quota at Jhalawar Medical College having been filled up by more

meritorious candidates on or about 12.8.2018 is fatal. Mr. SK Gupta further submitted that even otherwise on equity the jurisdiction of this Court ought

not to be exercised as admittedly the petitioner has been admitted in MBBS, 2018 in Bhilwara Medical College and suffers no irreparable injury or

manifest injustice. Mr. SK Gupta then submitted that if at all assuming without admitting that in the first round of counselling for admission in NRI

quota at Jhalawar Medical College some errors may have occurred with regard to identifying the students entitled to be admitted to the NRI quota,

such errors were neither deliberate nor an outcome of malafides but appear to have been occasioned by doctors ill advisedly engaging in interpretation

best left to experienced legal advisers. There was no malafide against the petitioner nor it has been even so pleaded. It was submitted that the

respondents will in future take care to obtain legal opinion from the Advocate General / Addl. Advocate General prior to admitting any student in the

NRI quota in the State of Rajasthan in situations where any doubt even remotely obtains with regard to the eligibility to avail the said quota.

Heard. Considered.

This Court exercises equitable extraordinary jurisdiction under Article 226 of the Constitution of India. Delay and laches are relevant consideration for

entertaining of a petition, more so if such delay / laches in the interregnum entails creation of third party rights to undo which would be wholly

unjust, inequitable and entail irreparable harm to others. In the instant case even if certain students were wrongly considered in the NRI quota for

admission into the Jhalawar Medical College in the first round of counselling and the petitioner left out, in view of the admitted facts that 4 seats in the

NRI quota subsequently obtained in Jhalawar Medical College and were notified on the website of the NEET UG Medical and Dental Admission /

Counselling Board, 2018, the petitioner was free to apply therefor despite having been admitted to the Bhilwara Medical College in the first round

counselling. This he did not do and for this reason, the respondents cannot be held responsible. Aside of the aforesaid, it also on record, as stated by

Mr. SK Gupta that none, who is less meritorious than the petitioner has been admitted in the NRI quota in MBBS, 2018 at the Jhalawar Medical

College.

The issue of alleged wrong admission of students in NRI quota in the Jhalawar Medical College despite their not being entitled to admission in the said

quota as agitated in this petition is also under consideration of this Court in S.B. Civil Writ Petition No. 18422/2018. That aspect will be dealt with in

the aforesaid petition as indeed it is a serious matter where the quota for NRIs is allegedly being misused to allow admissions to those whose

sponsors do not fall within the definition of "near relative", as set out in the instructions for admission into MBBS, 2018.

For the present, I would be disinclined for reasons recorded above to exercise the extraordinary equitable jurisdiction in this petition.

The petition is accordingly dismissed.

A copy of this order be made available to Mr. SK Gupta, for transmission to the Chairman NEET UG Medical & Dental Admission / Counselling

Board, 2018.