

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION (LODG.) NO. 6671 OF 2020

Avani Sudhir Vaishnav

... Petitioner

V/s.

Union of India and Anr.

... Respondents

with

WRIT PETITION (LODG.) NO. 6666 OF 2020

Aditi Sudhir Vaishnav

... Petitioner

V/s.

Union of India and Anr.

... Respondents

Mr. Y. S. Jahagirdar, Senior Advocate a/w. Mr. Vyom Shah a/w. Mr. Virendra Pereira, Mr. Sachin Mahagavkar and Mr. Anagh Pradhan i/b. Divya Shah Associates for the Petitioner in WPL 6671/2020

Mr. Prasad Dhakephalkar, Senior Advocate a/w. Mr. Vyom Shah a/w. Mr. Virendra Pereira, Mr. Sachin Mahagavkar and Mr. Anagh Pradhan i/b. Divya Shah Associates for the Petitioner in WPL 6666/2020

Mr. R.V. Govilkar a/w. Mr. Ashutosh Gole for the Respondents in both matters

***CORAM : NITIN JAMDAR &
MILIND N. JADHAV, JJ.***

DATE : 17 DECEMBER 2020

P.C. :-

Heard the learned Counsel for the parties.

2. The learned Senior Advocates for the Petitioners have placed before us the decision of the Division Bench of this Court in *Dr. Sunil Kiran Noothi v/s. Union of India* (Writ Petition No. 8095 of 2016 dtd. 20.12.2016) where, in identical circumstances, the Division Bench had passed certain orders in favour of the Petitioner therein. The learned Senior Advocates contend that this decision makes a distinction between a Medical Practitioner and the Research Scholar and upon making such distinction, the authorities were directed to reconsider the claim of the Petitioner for grant of NORI Certificate. Paragraphs 16 and 17 of the judgment of the Division Bench read thus :-

“16. From the above mentioned facts, it is clear that though the petitioner has obtained degree of M.B.B.S. and has got himself registered as a practitioner under the Karnataka Medical Registration Act, 1961, he actually neither practised as a Doctor/Medical Practitioner, nor intends to practise as such. If that be so, the policy decision taken by respondent no. 1(b) of not issuing NORI certificate to any Doctor for the purpose of stemming brain drain of Doctors and to cope up with the acute shortage of Doctors in India, cannot be made

applicable to the petitioner. It is obvious that even if he resides in India, he is not going to render his services to the citizens of India as a Doctor because of his inclination in research work. It may be stated that research work requires special aptitude, intelligence, dedication, perseverance and deep concentration. There may be a number of Doctors holding medical qualifications included in the Schedules to the Indian Medical Council Act, 1956. All of them cannot work as research persons. There may be a very few persons, who would have the inclination to go for research work instead of practising medicine. The Research Scholar cannot be equated with a Doctor/Medical Officer. In the circumstances, the refusal on the part of the respondents in issuing NORI Certificate in favour of the petitioner, making it difficult for him to prosecute his research work as contained in the letter (Exhibit-D), dated 20.08.2013, does not appear to be fair, reasonable and proper. The research work taken up by the petitioner is likely to help the entire mankind. Therefore, it was expected of the respondents to encourage the petitioner for doing the research work by issuing NORI Certificate instead of creating technical hurdles in his commendable research project. At the most, the respondents could have imposed a condition that in case the petitioner starts practising medicine, the NORI Certificate would stand cancelled and he would be required to come back to India. In our view, the policy decision taken by respondent No.1 (b) of not issuing NORI Certificate to the person holding medical qualifications cannot be made applicable to the petitioner who is a Research Scholar and not a Medical Practitioner.”

“17. In the above circumstances, the Writ Petition deserves to be allowed partly and it is accordingly

allowed. The Respondents are directed to reconsider the claim of the Petitioner for grant of NORI Certificate in view of the fact that he is not a Medical Practitioner and is a Research Scholar. Respondent No.1(b) shall take decision on the claim of the Petitioner for issue of NORI Certificate within three months from today on its own merits keeping in mind the fact that the Petitioner is a Research Scholar and not a Medical Practitioner. In case Respondent No.1(b) allows the claim of the Petitioner, after considering the merits thereof, he shall communicate his decision to Respondent No.1(a), who, in turn, shall take decision on the claim of the Petitioner for issue of NORI Certificate within three months from the date of receiving communication from Respondent No.1(b)."

Upon a query to the learned Counsel appearing for the Respondent - Union of India as to which will be the authority who would consider the claim as envisaged in paragraph 17 as above, the learned Counsel for the Respondent - Union of India informs us that it would be the Ministry of Health and Family Welfare. The learned Counsel also submits that there are other circulars which have bearing on the case which needs to be placed on record.

3. In the decision in the case of *Sunil Kiran Noothi*, a distinction is made between the Medical Practitioner and a Research Scholar. No contrary decision is shown to us. Considering the case made out by the Petitioners, we direct the Respondents – Ministry of Health and Family Welfare to examine the case of the Petitioners in respect of NORI Certificate in the context of the assertions of the

Petitioners that the Petitioners are not the Medical Practitioners but a Research Scholars. The decision so taken be placed on record by the Respondents.

4. To enable the Respondents to do so and also to file reply affidavit, stand over to 20 January 2021.

MILIND N. JADHAV, J.

NITIN JAMDAR, J.