

**BVNJ:**  
**22/02/2018**

**W.P.No.7724/2018 C/W. W.P.**  
**Nos.8182, 8184, 8204, 8206,**  
**8207, 8507, 8508, 8509, 8556,**  
**8569, 8571, 8573 & 8698 of 2018**

The petitioner in W.P.No.7724/2018 has assailed Rule 5 of the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institutions Rules, 2006 (hereinafter referred to as "2006 Rules" for the sake of brevity), insofar as it stipulates that "no candidate shall be eligible for Government Seats unless he is a citizen of India" as being illegal, discriminatory, arbitrary and in violation of Articles 14 and 15 of the Constitution of India (Constitution) and contrary to the provisions of the Indian Citizenship Act, 1955 (hereinafter referred to as "the Citizenship Act"). The petitioner in the aforesaid writ petition as well as petitioners in all other writ petitions have sought a direction to the Karnataka Examination Authority (hereinafter referred to as "the

Authority” for the sake of convenience) to permit the petitioners to appear in Common Entrance Test-2018 (CET-2018) and to participate in the counseling process for selection of a Government seat in Under Graduate Engineering Courses in various Government and Private Engineering Professional Colleges (both aided as well as unaided) in the State. A declaration is also sought to the effect that petitioners are eligible to apply and appear in CET-2018 and are entitled to secure admission in the aforesaid engineering colleges to pursue B.E. Engineering Course.

2. In these writ petitions, the petitioners are either students or minor students represented by their respective parents who are all born overseas i.e., not in India and registered as Overseas Citizens of India (hereinafter referred to as “OCI” for short) and also possess OCI card. Their grievance in short is that, although under criteria prescribed under Rule 5 of 2006

Rules, they are eligible to apply to the Under Graduate Engineering Course insofar as their educational qualification in the State of Karnataka is concerned, they are aggrieved by the fact that, despite having an OCI card are unable to apply under the said Rules by way of online application as the said online application form has only two columns regarding citizenship i.e., whether a citizen of India or not and does not take into consideration OCI. Therefore, in W.P.No.7724/2018, there is a challenge to Rule 5 of 2006 Rules and in all other petitions they have sought permission to apply and to appear in CET-2018 entrance examination and to select a seat of their choice in the counseling to be held by the Authority.

3. I have heard learned counsel for the petitioners, learned Addl. Advocate General for the State of Karnataka along with learned Addl. Government Advocate and learned counsel for the

Karnataka Examination Authority as well as perused the material on record.

4. Petitioners' counsel contended in unison that although the petitioners are born outside the territory of India i.e., overseas and do not possess an Indian Passport, nevertheless, having regard to Sections 7A and 7B of the Citizenship Act, they are OCI and they possess OCI card and therefore, there is no impediment for them to apply under the 2006 Rules. It is contended that the Parliament has amended Citizenship Act, so as to recognise and confer certain rights on overseas citizens of India and the object and purpose of the same is to enable such persons to have the benefit of *inter alia* educational opportunities in India. That, when the Central Government has expanded the opportunities for such persons *inter alia* to be educated in India by amending the Citizenship Act, the 2006 Rules framed by the State Government

cannot be interpreted contrary to the intention of the Parliament as well as the Central Government. It is further contended that, in the previous years certain persons similarly situated as the petitioners, had approached this Court and interim orders have been granted permitting them to appear in the entrance test and they have selected the seats of their choice and they are prosecuting their studies in B.E. course.

5. My attention has been drawn to the online admission form to point out that in the said form, there is a specific question as to whether, the candidate is a citizen of India or not and when once the negative is stated, the petitioners are unable to proceed further with the online application. In the circumstances, they seek permission to submit their applications by hand or offline.

6. Petitioners' counsel further contended that all these petitioners have studied for the requisite number of years in the State of Karnataka and therefore, they have complied with the other conditions or requirements stipulated in Rule 5 of 2006 Rules concerning domicile, but only because they were not born in India and although they are recognised as Overseas Citizens of India, by the Central Government, but the State Government has denied them an opportunity of submitting their respective applications for appearing in the CET-2018 examination.

7. *Per contra*, learned Addl. Advocate General, appearing for the State drew my attention to Part II of the Constitution, which deals with Citizenship and he submitted that it is only those persons who are recognised in terms of Sections 5 to 8 and 10 could be citizens of the State and it is in that light, Rule 5 categorically states that unless a candidate is a Citizen

of India, he shall not be eligible to apply for Government seat under 2006 Rules.

8. Learned Addl. Advocate General also drew my attention to an order of the Division Bench of this Court in the case of ***Soundarya Muthumari vs. Union of India & others (W.P.No.23448/2017 & connected writ petitions, disposed of on 07/07/2017)*** (*Soundarya Muthumari*) to contend that the Division Bench has held while referring to Rule 5 of 2006 Rules that the said Rule is not arbitrary or violative of Article 14 of the Constitution. In view of the dictum of the Division Bench, there is no substance in the challenge made to the said Rule by the petitioners or in seeking interim direction in these writ petitions. That insofar as previous years are concerned, there was no order of the Division Bench, which was passed, but as far as this year is concerned,

the Division Bench has upheld Rule 5 and therefore, the petitioners cannot challenge the same.

9. Learned counsel for the petitioners, by way of reply, drew my attention to the fact that the said judgment of Division Bench is rendered in the context of National Eligibility cum Entrance Test ("NEET" for short), which is meant for MBBS/BDS course, whereas the petitioners herein are seeking permission to apply for Under Graduate Engineering Courses. They contend that NEET is a separate scheme by itself and the order passed by the Division Bench in the case of *Soundarya Muthumari* may not apply to these petitions as there is a specific challenge to Rule 5 of 2006 Rules in the instant case. Further, they submitted that even in the scheme of NEET, the Central Government has permitted not only Indian Nationals, but also Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs), Persons of Indian Origin (PIOs) as well as



Foreign Nationals to appear for NEET-2018. Therefore, their contention is that pending disposal of these writ petitions, petitioners may be permitted to appear for the CET-2018 under 2006 Rules as the last date to submit the application form is **26/02/2018** as has been permitted in the previous years by this Court by way of interim orders. It is further submitted that the earlier interim orders granted by this Court are not vacated nor assailed before the Division Bench and the beneficiaries of those orders have not only appeared in the entrance test, but have also selected a seat of their choice and they are prosecuting their undergraduate course in Engineering.

10. Learned counsel for the Authority endorses the submission made by learned Addl. Advocate General and submits that so long as Rule 5 of 2006 Rules remains as it is on the statute book, petitioners herein are not eligible to apply for CET-2018.

11. Having heard learned counsel for the respective parties, the question to be considered at this stage is as to whether the petitioners are entitled to an interim order so as to enable them to apply under 2006 Rules, as Rule 5 states that a candidate who is not a citizen of India is not eligible to apply under the said Rule for Government Seats. Part II of the Constitution deals with Citizenship, wherein Article 11 enables the Parliament to regulate the right of citizenship by law. It states "*Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.*" Pursuant to Entry 17 of List I (Union List) of VII Schedule of the Constitution, which deals with "citizenship, naturalization and aliens," the Citizenship Act has been enacted for the acquisition and determination of Indian Citizenship. The said Act is in

force since 30<sup>th</sup> December, 1955. Recently, the said Act has been amended and a part dealing with overseas citizenship has been inserted to the said Act, the amendment is by way of insertion of Section 7A to 7D. Earlier Section 7A was inserted with effect from 03/12/2004 by virtue of Act 6 of 2004. Section 7A deals with Registration of Overseas Citizen of India Cardholder. In fact, Section 2(1)(ee) in the Citizenship Act defines 'Overseas Citizens of India' to mean, a person registered as an Overseas Citizen of India by the Central Government under Section 7A. Section 7B deals with conferment of rights on Overseas Citizen of India Cardholder. The said section reads as under:

**"7B. Conferment of rights on Overseas Citizen of India Cardholder.-(1)**  
Notwithstanding anything contained in any other law for the time being in force, an Overseas Citizen of India Cardholder shall be entitled to such rights, other than the rights specified under sub-section (2), as the Central

Government may, by notification in the Official Gazette, specify in this behalf.

(2) An Overseas Citizen of India Cardholder shall not be entitled to the rights conferred on a citizen of India—

- (a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;
- (b) under article 58 of the Constitution for election as President;
- (c) under article 66 of the Constitution for election as Vice-President;
- (d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;
- (e) under article 217 of the Constitution for appointment as a Judge of the High Court;
- (f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;
- (g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the

eligibility for being a member of the House of the People or of the Council of States, as the case may be;

- (h) under sections 5, 5A and section 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the Legislative Assembly or the Legislative Council, as the case may be, of a State;
- (i) for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may, by special order in that behalf, specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament.”

Section 7B(1) begins with a non-obstante clause and states that notwithstanding anything contained in any other law for the time being in force, an Overseas Citizen of India Cardholder shall be entitled to such

rights other than the rights specified under subsection (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf. At this stage itself, it may be mentioned that the petitioners are not seeking any rights under subsection (2) of Section 7B, nor are they entitled to any such rights as OCI, but their rights are as per the notification issued by the Central Government from time to time under Section 7B(1) of the Citizenship Act.

12. In this regard, learned counsel for the petitioners drew my attention to the notification issued by the Central Government on 11/04/2005, which confer rights on overseas citizens of India on parity with non-residents of India in respect of all facilities available to them. Reliance is also placed on the latest notification issued by the Central Government dated 05/01/2009, wherein overseas citizens of India have been entitled to appear for the All India Pre-Medical test

or such other test to make them eligible for admission in pursuance of the provisions contained in the relevant Acts. The said notification reads as under:

**“MINISTRY OF OVERSEAS INDIAN AFFAIRS  
NOTIFICATION**

New Delhi, the 5<sup>th</sup> January, 2009

**S.O.36(E).**- In exercise of the powers conferred by sub-section (1) of Section 7B of the Citizenship Act, 1955 (57 of 1955) , and in continuation of the notifications of the Government of India in the Ministry of Home Affairs number S.O.542(E), dated the 11<sup>th</sup> April, 2005 and in the Ministry of Overseas Affairs S.O.12(E), dated the 6<sup>th</sup> January, 2007, the Central Government hereby specifies the following rights to which the persons registered as the overseas citizen of India under Section 7A of the said Act, shall be entitled, namely:-

- (a) a parity with non-resident Indian in respect of,-
  - (i) entry fees to be charged for visiting the national monuments, historical sites and museums in India;
  - (ii) pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:-
    - (i) doctors, dentists, nurses and pharmacists;
    - (ii) advocates;
    - (iii) Architects;
    - (iv) Chartered accountants;

- (b) to appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.**

[F.No.OI-15013/13/2008-DS]  
D.N.SRIVASTAVA, Jt. Secy."

(emphasis by me)

It is in the above context, petitioners counsel have submitted that when overseas citizens of India have the eligibility to appear in NEET or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts, the said 2006 Rules cannot insist that a person must be a citizen of India so as to apply under Rule 5 of 2006 Rules. In other words, the contention of petitioners is that the expression "Citizen of India" cannot be interpreted in a strict manner, but having regard to the amendment made to the Citizenship Act by Parliament, pursuant to Article 11 of the Constitution. That the said expression must be given an expansive interpretation so as to include even an overseas citizen of India. It is



also noted that the claim made by the petitioners herein is based on Article 14 of the Constitution inasmuch as they contend that there is a discrimination between the petitioners who have OCI card and are overseas citizens of India over the years and those persons who are citizens of India in terms of Part II of the Constitution and the Citizenship Act i.e., who are born in India or have been naturalized in India. It is significant to note that the fundamental right under Article 14 is not restricted to only citizens of India. Any person can claim right to equality under Article 14 of the Constitution although such a person is not actually a citizen of India, whereas certain other fundamental rights of the Constitution have been conferred on only citizens of India.

13. From the above discussion, what emerges is, the fact that the petitioners are seeking an expansive interpretation to the expression "Citizen of

India” in Rule 5 so as to include overseas citizens of India or in the alternative contend that the said expression cannot disentitle the petitioners who are overseas citizens of India from applying under Rule 5 of 2006 Rules. I find that *prima facie* there is considerable force in the challenge made to Rule 5 of 2006 Rules in the context of seeking an expansive interpretation of the expression “citizen of India” found therein inasmuch as the Parliament, exercising power under Article 11 of the Constitution, has intended to expand the expression “citizenship” to include what is called as “overseas citizenship” by amending the Citizenship Act. The object appears to be, to confer rights to overseas citizens of India as are available to the Indian citizens except to the extent exempted under sub-section (2) of Section 7B of the Act by issuance of a notification under Section 7A of the Citizenship Act. The petitioners herein are not claiming any right under sub-section(2)

of Section 7B of the Act. They are claiming their rights pursuant to the notification issued from time to time by the Central Government on the strength of sub-section (1) of Section 7B of the Citizenship Act.

14. Further, in earlier years, this Court has granted interim orders to such students to appear in the entrance test and pursuant to the interim orders granted by this Court, they have appeared in such test and selected a seat of their choice and are pursuing their Under-Graduate studies in Engineering. Neither the State nor the Authority has sought for vacating the said interim orders nor assail the same.

15. In *Soundarya Muthumari*, OCI card holders sought eligibility to apply for admission to first year MBBS/BDS Course and sought for admission for the academic year 2017-18 under various categories of seats including Government seats under 2006 Rules.

In the said case, the State contended that they are eligible to be considered only under the category of Non-Resident Indian (NRI) quota. However, learned Addl. Solicitor General appearing for Union of India submitted that OCI card holders are also eligible to be considered for Government seats. The question considered by the Division Bench was, in which category of OCI card holders were eligible to be considered for admission to first year MBBS/BDS Course in Karnataka State for the academic year 2017-18. The Division Bench referred to Section 7B of Citizenship Act and two notifications dated 11/04/2005 and 05/01/2009 as well as the impugned Rule 5 of 2006 Rules. The Division Bench observed that OCI card holders are not eligible to be considered under the NRI quota as they are non-resident Indians, though they are entitled to be considered on par with non-resident Indians and they are also not eligible to be

considered under the category of Government seats in view of the bar under Rule 5 of 2006 Rules to apply for Government seats. In paragraph Nos.13 and 14, the Division Bench has held as under:

“13. In the result, we hold that *Overseas Citizens of India cardholders* who are NEET UG 2017 qualified shall be entitled to be treated on par with *Non-Resident Indians* in the matter of admission to I year MBBS/BDS course for the academic year 2017-18. Further, if they are eligible for admission under various categories of seats as per the relevant Acts and/or Rules governing admission to I year medical/dental course in Karnataka for the academic year 2017-18, they shall be considered for admission under all such categories of seats.

14. All *Overseas Citizens of India* cardholders who are NEET UG 2017 qualified and who have applied for admission to I year MBBS/BDS course to *Karnataka Examinations Authority*, whether they are petitioners herein or not, shall be entitled to the benefit of this order.”

16. Further, the order of the Division Bench does not pertain to a challenge made to Rule 5 of the 2006 Rules as such. The said order is in the context of the eligibility of the OCI students to appear in NEET, but in these petitions a specific challenge has been made to Rule 5 of the 2006 Rules. Also, the Division Bench has not taken note of the amendments made to Citizenship Act pursuant to Article 11 of the Constitution. Further, education is a subject in Entry 25 of List III (Concurrent List) of the Constitution, which includes *inter alia* Technical and Medical education subject to Entries 63, 64, 65 and 66 of List I. When the Central Government has permitted OCI students to participate in NEET, which is an entrance test for Medical/Dental courses, there is no reason to disentitle or disable such students from entrance test being held for engineering courses. If an OCI student is enabled/empowered to appear in NEET by the

Central Government, the 2006 Rules framed by the State Government cannot be interpreted in a manner, which is repugnant to the Central Government's Policy in such matters. Therefore, there is *prima facie* case made out by the petitioners regarding the interpretation to be given to Rule 5 of 2006 Rules in view of the amendments made by the Parliament to Citizenship Act and the latest notification dated 05/01/2009 issued by the Central Government pursuant to Section 7B (1) of Citizenship Act, in view of Article 246(1) of the Constitution of India. The Division Bench in its judgment has not taken into consideration the aforesaid aspects of the case. Hence, I am of the considered view that petitioners are entitled to interim orders in these writ petitions.

17. In the circumstances, the respondent/ Examination Authority is directed to receive the applications to be submitted by the petitioners herein by hard copy on or before **26/02/2018**. The said

respondent/Authority is directed to process the said application forms and also to permit the petitioners to participate in other related activities, such as counseling and selection of a seat without insisting on the aspect regarding citizenship of the petitioners.

The said interim order is subject to the result of these writ petitions.

On account of paucity of time, office is directed to make available operative portion of this order to learned counsel for petitioners, learned Addl. Government Advocate and learned counsel for the Karnataka Examination Authority.

**Sd/-  
JUDGE**

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