



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09th DAY OF DECEMBER, 2020

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR. JUSTICE N.S.SANJAY GOWDA

WRIT PETITION No.27761/2019 (EDN-MED)

Connected with

WRIT APPEAL No.1177/2019 (EDN-RES)

IN W.P. No.27761/2019 :

BETWEEN:

1. PRANAV BAJPE
AGED 18 YEARS,
S/O. GIRIDHAR BAJPE,
5012, PRESTIGE SOUTH RIDGE,
MASKERAHALLI CROSS, BSK III STAGE,
BENGALURU - 560 085.
2. PRAGATHI SAMPATH
AGED 18 YEARS,
D/O. PRAHLADVARDAN SAMPATH,
FLAT NO.101, KARTHICK APARTMENTS,
HAL II STAGE,
BENGALURU - 560 008.
3. NIVEDITA VUPMANDLA
AGED 18 YEARS,
D/O. VAMSIDHAR VUPMANDLA,
A-10, 1505, ELITA PROMENADE,
18TH MAIN, J.P. NAGAR, 7TH PHASE,
BENGALURU - 560 078.
4. ANAGHA HARI BHARADWAJ
AGED 18 YEARS,
D/O. HARI CHARAN RAMACHANDRA RAO,
NO.221, 4TH MAIN ROAD, 6TH 'A' CROSS,
PANDURANGA NAGAR,
BENGALURU - 560 076.

5. MIRA MATHI
AGED 18 YEARS,
D/O. MATHIYAZHAGAN .P
545, 13TH MAIN, 23RD CROSS,
HSR LAYOUT, SECTOR-VII,
BENGALURU – 560 102.
6. ABIRAME GOPINATH
AGED 18 YEARS,
D/O. GOPINATH THAILAPILLAI,
156, 2ND MAIN, 1ST CROSS,
SADANANDA NAGAR, NGEF LAYOUT,
BENGALURU – 560 038.
7. JAYASHREE S YAJI
AGED 19 YEARS,
D/O. SITARAM V YAJI,
D.900, 4TH CROSS, 2ND MAIN,
SAHAKARANAGAR,
BENGALURU – 560 092.
8. ROHIT MUNIRATHINAM
AGED 19 YEARS,
S/O. MOHANVEL MUNIRATHINAM,
295, FERNS CITY, ORR,
DODDENAKUNDI,
BENGALURU – 560 037.
9. MANASA YARAGALLA
AGED 18 YEARS,
D/O. SIVA RAMA KRISHNA YARAGALLA,
VILLA 785, LANE 3S, PHASE III,
ADARSH PALM RETREAT, BELLANDUR,
BENGALURU – 560 103.
10. PUNITA KUNDUR
AGED 18 YEARS,
D/O. UMESH KUNDUR,
VILLA 311, ADARSH PALM RETREAT VILLAS,
ORR, BELLANDUR,
BENGALURU – 560 103.
11. SHIRIN LATURKUR
AGED 18 YEARS,
D/O. SANJAY KUMAR LATURKUR,
3438, 4TH CROSS, 10TH MAIN,
INDIRANAGAR 2ND STAGE,
BENGALURU – 560 038.

12. ANAGHA BHAT
AGED 18 YEARS,
D/O. DR. K.R. MADHAVA,
V-6, CORINTH VILLA,
HENNUR MAIN ROAD,
BENGALURU – 560 077.
13. KAVYA JAYAKUMAR
AGED 18 YEARS,
D/O. JAYAKUMAR RAMALINGAM,
133, RANKA HEIGHT APARTMENTS,
DOMLUR LAYOUT,
BENGALURU – 560 071.
14. ANIKA PREM
AGED 18 YEARS,
D/O. PREM KUMAR HARIKRISHNAN,
NO.41/96, SNEHA RESIDENCY,
SNEHA COLONY, CHIKKALASANDRA,
BENGALURU – 560 061.
15. AKUTI KHANNA
AGED 19 YEARS,
D/O. ANUJ KHANNA,
FLAT NO.415, SOBHA AQUAMARINE,
ORR, BELLANDUR,
BENGALURU – 560 103.
16. AKSHATA GOYAL
MINOR, AGED 17 YEARS,
D/O. AMIT GOYAL,
E 1003, ADARSH PALM RETREAT TOWER-4,
ORR, NEAR INTEL,
DEVARABISANAHALLI, BELLANDUR,
BENGALURU – 560 103
REPRESENTED BY HER MOTHER
AND NATURAL GUARDIAN
SHWETA GOYAL.
17. ANIKETH UMESH
MINOR, AGED 17 YEARS,
S/O. UMESH ANANTHIAH,
TOWER 6, M 301, ADARSH PALM RETREAT,
SARJAPUR ORR, BELLANDUR,
BENGALURU – 560 103
REPRESENTED BY HIS MOTHER
AND NATURAL GUARDIAN
SHUBHA NARASIMHAN.

18. NIDHI BASAVARAJ
MINOR, AGED 17 YEARS,
D/O. BASAVARAJ NANJUNDASWAMY,
99, 3RD MAIN, 10TH BLOCK, II STAGE,
NAGARABHAVI DODDENAKUNDI,
BENGALURU – 560 072
REPRESENTED BY HER FATHER
AND NATURAL GUARDIAN
BASAVARAJ NANJUNDASWAMY.
19. RADHIKA AJAY WANI
MINOR, AGED 17 YEARS,
D/O. AJAY GIRISHCHANDRA WANI,
1A, 402, AKME HARMONY,
ORR, BELLANDUR,
BENGALURU – 560 103
REPRESENTED BY HER MOTHER
AND NATURAL GUARDIAN
TRUPTI AJAY WANI.
20. VARUNI MAKAM
MINOR, AGED 17 YEARS,
D/O. M.S. JAYAPRAKASH,
FLAT NO.3A, 1534/F,
2ND A CROSS, J.P. NAGAR VI PHASE,
BENGALURU – 560 078
REPRESENTED BY HER FATHER
AND NATURAL GUARDIAN
M.S. JAYAPRAKASH.
21. SHIVANI PANDIT
MINOR, AGED 17 YEARS,
D/O. LOKESH PANDIT,
NO.27, CHAITANYA LAGROVE,
BROOKFIELD,
BENGALURU – 560 037
REPRESENTED BY HER FATHER
AND NATURAL GUARDIAN
LOKESH PANDIT.
22. RAM CHARAN REDDY DUDELA
MINOR, AGED 17 YEARS,
S/O. MADHU SUDAN REDDY DUDELA,
H.NO.37, 3RD A MAIN,
SOMESHWAR NAGAR,
YELAHANKA NEW TOWN,
BENGALURU – 560 065

REPRESENTED BY HIS FATHER
AND NATURAL GUARDIAN
D. MADHU SUDAN REDDY.

... PETITIONERS

(BY SRI AJOY KUMAR PATIL, ADVOCATE (V/C))

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS ADDITIONAL
CHIEF SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE SERVICES
(MEDICAL EDUCATION), VIKASA SOUDHA,
BENGALURU - 560 001.
2. THE DIRECTOR OF MEDICAL EDUCATION
GOVERNMENT OF KARNATAKA,
ANANDA RAO CIRCLE,
BENGALURU - 560 009.
3. KARNATAKA EXAMINATIONS AUTHORITY
SAMPIGE ROAD, 18TH CROSS,
MALLESWARAM,
BENGALURU - 560 012
REPRESENTED BY ITS EXECUTIVE DIRECTOR.
4. THE ADMINISTRATIVE OFFICER
KARNATAKA EXAMINATIONS AUTHORITY,
SAMPIGE ROAD, 18TH CROSS,
MALLESWARAM,
BENGALURU - 560 012.
5. THE UNION OF INDIA
REPRESENTED BY ITS
SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF OVERSEAS INDIAN AFFAIRS,
NORTH BLOCK,
NEW DELHI - 110 001.
6. THE UNION OF INDIA
REPRESENTED BY ITS
SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK,
NEW DELHI - 110 001.
7. THE MEDICAL COUNCIL OF INDIA
POCKET 14, SECTOR 8,

DWARAKA,
NEW DELHI – 110 077
REPRESENTED BY ITS SECRETARY. ... RESPONDENTS

(BY SRI DHYAN CHINNAPPA, ADDL. ADVOCATE GENERAL,
ALONG WITH SRI A.C.BALARAJ, ADDL.
GOVERNMENT ADVOCATE FOR R-1 & R-2 (V/C);
SRI N.K. RAMESH, ADVOCATE FOR R-3 & R-4 (V/C);
SRI SHASHIKANT, ASG FOR R-5 & R-6 (V/C);
SRI N. KHETTY, ADVOCATE FOR R-7 (V/C))

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT RULE 5 OF THE KARNATAKA SELECTION OF CANDIDATES FOR GOVERNMENT SEATS IN PROFESSIONAL COURSES RULES, 2006 IN SO FAR AS IT STIPULATES THAT "NO CANDIDATE SHALL BE ELIGIBLE FOR ADMISSION TO GOVERNMENT SEATS UNLESS HE IS A CITIZEN OF INDIA" IS INAPPLICABLE TO GMP SEATS/INSTITUTIONAL SEATS IN PRIVATE MEDICAL/DENTAL COLLEGES IN KARNATAKA AND NOT ENFORCEABLE AGAINST OCI CARDHOLDERS IN SO FAR AS GMP SEATS ARE CONCERNED VIDE ANNEXURE-A.

IN W.A. No.1177/2019 :

BETWEEN:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU – 560 001.
2. KARNATAKA EXAMINATIONS AUTHORITY,
SAMPIGE ROAD, 18TH CROSS,
MALLESWARAM,
BENGALURU – 560 012
REPRESENTED BY ITS
EXECUTIVE DIRECTOR.

3. THE ADMINISTRATIVE OFFICER
KARNATAKA EXAMINATIONS AUTHORITY,
SAMPIGE ROAD, 18TH CROSS,
MALLESWARAM,
BENGALURU - 560 012. ... APPELLANTS

(BY SRI DHYAN CHINNAPPA, ADDL. ADVOCATE GENERAL,
ALONG WITH SRI A.C.BALARAJ, ADDL. GOVERNMENT
ADVOCATE (V/C))

AND:

1. PRANAV V DESHPANDE, MINOR,
AGED 17 YEARS,
S/O. VENKATESH V. DESHPANDE,
76, MIG 2ND STAGE,
5TH MAIN, KHB COLONY,
BASAVESHWAR NAGAR,
BENGALURU - 560 079
REP. BY HIS FATHER
AND NATURAL GUARDIAN
VENKATESH V DESHPANDE.
2. SRICHARAN RAMANUJA IYENGAR
MINOR, AGED 17 YEARS,
S/O. RAMANUJA IYENGAR,
NO.83, 3RD MAIN, 9TH CROSS,
TALAKAVERI NAGAR LAYOUT
AMRUTHAHALLI ROAD,
BENGALURU - 560 092
REPRESENTED BY HIS FATHER
AND NATURAL GUARDIAN
RAMANUJA IYENGAR.
3. KUNAL KUSH AVALAKKI
AGED 18 YEARS,
S/O. SUDHIR G. AVALAKKI 334,
3RD STAGE II BLOCK,
BASAVESHWAR NAGAR,
BENGALURU - 560 079.
4. THE UNION OF INDIA
REPRESENTED BY ITS
SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF OVERSEAS INDIAN
AFFAIRS NORTH BLOCK,
NEW DELHI - 110 001.

5. THE UNION OF INDIA
REPRESENTED BY ITS
SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK,
NEW DELHI – 110 001. ... RESPONDENTS

(BY SRI AJOY KUMAR PATIL, ADVOCATE
FOR C/R-1 & R-3 (V/C);
R-2 IS SERVED & UNREPRESENTED;
SRI.C.SHASHIKANTHA, ASG FOR R-4 & R-5)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO a) ALLOW THE
WRIT APPEAL; b) SET-ASIDE THE ORDER DATED 10/04/2019,
PASSED BY THE LEARNED SINGLE JUDGE IN W.P.Nos.7376-
78/2019 (EDN-CET).

THIS WRIT PETITION AND WRIT APPEAL HAVING BEEN
HEARD AND RESERVED ON 09.11.2020, AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT, TODAY, **NAGARATHNA J.,**
PRONOUNCED THE FOLLOWING:

J U D G M E N T

Since, these matters raise common question of facts
and law, they have been connected together, heard and
disposed of by this common judgment.

BIRD'S EYE VIEW OF THE CONTROVERSY:

2. Writ Appeal No.1177/2019 is an appeal filed by
the State assailing the order of learned Single Judge dated
10/04/2019 in Writ Petition Nos.7376-78/2019. Writ
Petition No.27761/2019 has been filed by minor students

who are Overseas Citizens of India Cardholders ('OCI Cardholders' for the sake of convenience) assailing 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 convenience) made under The Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (hereinafter referred to as '1984 Act' for the sake of brevity) and Section 2(1)(n) of the Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fee) Act, 2006 (Act 8 of 2006 as amended by Act No.22 of 2017) ('2006 Act' for short) insofar as it inserts the words '**and includes persons of Indian origin and overseas citizen of India**' in the definition of "*Non-resident Indian*" as being repugnant to the provisions of the Citizenship Act, 1955 ('Citizenship Act' for short).

3. The petitioners have sought a direction against respondent Nos.1 to 4 in the Writ Petition to permit them to participate in the online counseling process for seat selection/allotment in Medical/Dental courses including Government quota seats and to seek admission in the Under-Graduate Bachelor of Medicine and Bachelor

of Surgery/Bachelor of Dental Surgery (MBBS/BDS) courses on the basis of their ranking in National Eligibility-cum-Entrance Test ['NEET' for the sake of convenience], in various Government and Private Medical/Dental Colleges in the State.

4. The learned Single Judge in the aforementioned writ petitions, out of which the writ appeal has been filed by the State, allowed the writ petitions in the following terms:

"In the above circumstances, these writ petitions succeed in the following terms:

(i) A writ of certiorari issues quashing the impugned Section 2(1)(n) of the Karnataka Professional Educational Institutions (Regulation of Admission & Determination of Fee) Act, 2006, as amended by Karnataka Act No.22 of 2017, to the extent it includes the 'Overseas Citizens of India' or 'Overseas Citizens of India Cardholders' within the definition of "Non-resident Indian";

(ii) A writ of Declaration issues to the effect that, the impugned Rule 5 of the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institution Rules,

2006, to the extent it prescribes Indian Citizenship, is not enforceable against the Overseas Citizens of India Cardholders;

(iii) A writ of Mandamus issues directing the Respondent-State and the Respondent-Karnataka Examinations Authority to permit the petitioners to register for CET-2019 as per the Notification dated 31.01.2019 issued by the Respondent-Karnataka Examinations Authority and further to permit their participation in the ensuing counseling of CET-2019 for selection and allotment of seats in BE/B.Tech/B.Arch. or such other professional courses in Government Colleges, Private Aided/Un-aided Colleges/institutions for the academic year 2019-2020 on the basis of their relative merit and ranking in the imminent CET-2019; and

(iv) The Respondent-Government and the Respondent-Karnataka Examination Authority shall take all steps as are necessary to facilitate and effectuate the aforesaid directions, forthwith and without brooking any delay in the matter, keeping in view the fast approaching CET-2019."

5. However, since, the State has preferred Writ Appeal No.1177/2019, the petitioners in Writ Petition No.27761/2019, who have sought similar prayers have got

their matter connected with the appeal filed by the State and that is how the appeal and the writ petition have been heard together.

BRIEF FACTS OF THE CASE:

6. Briefly stated, the facts are, the writ petitioners in both the cases are OCI Cardholders and have been registered as such under Section 7A of the Citizenship Act. They were all born abroad/overseas and not in India. They are all foreign passport holders but have been studying in India in the State of Karnataka for over ten years. When Notification dated 31/01/2019 was issued by the Karnataka Examination Authority ('Examination Authority' for short) inviting applications from eligible Karnataka candidates for the Academic Year 2019-2020, the petitioners in the writ petitions out of which the State appeal arises sought to apply and register online with the Examination Authority in order to appear for Common Entrance Test – 2019 ('CET – 2019' for short) for Bachelor of Engineering courses. They were, however, informed online that only citizens of India were eligible to be registered for the purpose of counseling by the Examination Authority. But, according to those petitioners, the Government of India through the Ministry of Home

Affairs, issued Gazette Notification dated 11/04/2005, conferring further rights on OCI Cardholders as per Section 7A of the Citizenship Act. Subsequently, another Notification dated 05/01/2009 was issued conferring certain rights on OCI Cardholders entitling them to appear in All India Pre-Medical Test or any other test so as to make them eligible for admission in pursuance of provisions contained in the relevant Acts.

7. According to the writ petitioners, as far as Academic Year 2017-2018 is concerned, the State Government did not permit OCI Cardholders to participate in online counseling for Government/private quota seats for MBBS/BDS courses. Aggrieved by the same, Writ Petition No.23448/2017 and connected Writ Petitions **(Soundarya Muthumari vs. Union of India and others)** were filed before this Court which were disposed of vide order dated 07/07/2017 stating that OCI cardholders shall be entitled to be treated on par with Non-resident Indians in the matter of admission for MBBS/BDS course for the Academic Year 2017-2018. Thereafter, C.C.C. Nos.1121/2017 and 1130-1132/2017 were filed by certain students, which were disposed of by order dated

27/07/2017. Further, pursuant to the undertaking given by State Government before this Court and in compliance of directions issued by the Division Bench dated 07/07/2017, many OCI Cardholders were allotted Medical Seats under General Merit category in the Academic Year 2017-2018 and are presently pursuing their MBBS course in the colleges allotted to them. Further pursuant to order dated 07/07/2017 passed in W.P.No.23448/2017, some of the petitioners therein preferred S.L.P. Nos.18381-390/2017 before the Hon'ble Supreme Court, which, by order dated 02/08/2017 disposed of the Special Leave Petitions permitting only the petitioners therein to choose Government seats in Private/Government Medical Colleges in the State. The said petitioners participated in the counseling and selected Government seats in Private/Government Medical Colleges and are prosecuting their studies in MBBS/BDS courses. In fact, the State had also filed S.L.P.Nos.21670-21693/2018 before the Apex Court which were subsequently dismissed as withdrawn by observing that the order dated 02/08/2017 passed by it would not be treated as a precedent. The aforesaid cases pertain to MBBS/BDS courses and not Engineering courses.

8. For the Academic Year 2018-2019, Writ Petition No.7724/2018 and connected matters were filed before this Court and by interim order dated 22/02/2018, this Court permitted OCI cardholders to participate in the counseling for selection of seats insofar as Engineering and such other courses. Against the interim order dated 22/02/2018, the State filed writ appeal but no stay was granted in the appeal. For the Academic Year 2019-2020, the grievance of the OCI Cardholders being the same, writ petitions were filed seeking the aforesaid reliefs which have been allowed by impugned order dated 10/04/2019 by the learned Single Judge. It is in respect of only Writ Petition Nos.7376-78/2019 that the State has preferred this appeal while in the connected matter, writ petitioners have sought for prayers similar to the earlier years, for the Academic Year 2019-2020. Hence, the matters have been heard together.

9. Before considering the contentions of learned Additional Advocate General, Sri Dhyan Chinnappa and learned Additional Government Advocate Sri. A.C.Balaraj, who appeared for the State; Sri. Ajoy Kumar Patil,

learned counsel for Respondent Nos.1 and 3 in writ appeal and for petitioners in connected writ petition; Sri. C.Shashikantha, learned Assistant Solicitor General for Union of India; Sri N.K.Ramesh, learned counsel for the Examinations Authority; and Sri.Khetty, learned counsel appearing for Medical Council of India, it would be useful to consider the following legal framework:

LEGAL FRAMEWORK:

10. It is necessary to notice the relevant Articles of the International Conventions which have a relevance to the case at hand.

A. Universal Declaration of Human Rights:

"Article 13:

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 15 :

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16 :

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 25 :

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

B. The International Covenant on Civil and Political Rights (ICCPR) :

"Article 2 :

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 24 :

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 26 :

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

C. Convention on the Rights of the Child:

As per the Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into

force 2 September 1990, in accordance with article 49, the following articles are relevant:

"Article 1:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. x x x

Article 7:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 28:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29:

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

11. The laws under consideration in these matters pertain to Entry 17 of List-I and Entry 25 of List-III of the

VII Schedule of the Constitution and they are extracted as under:

" Seventh Schedule of the Constitution :

List I :

Entry 17 : Citizenship, naturalization and aliens.

List III :

Entry 25 : Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labor."

12. Article 11 of the Constitution empowers the Parliament to regulate the right of citizenship by law. It reads as under:

"Article 11 - Parliament to regulate the right of citizenship by law -

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."

13. The Citizenship Act, 1955 has been enacted by the Parliament pursuant to Article 11 of the Constitution and the relevant provisions of the said Act read as under:

"2. Interpretation.—(1) In this Act, unless the context otherwise requires,—

(a) to (d)

(e) "minor" means a person who has not attained the age of eighteen years:

(ee) "Overseas Citizen of India Cardholder" means a person registered as an Overseas Citizen of India Cardholder by the Central Government under Section 7-A;

(f)

(g) "prescribed" means prescribed by rules made under this Act;

(2)

(3)

(4) For the purposes of this Act, a person shall be deemed to be of full age if he is not a minor and of full capacity if he is not of unsound mind.

x x x

4. Citizenship by descent.—(1) A person born outside India shall be a citizen of India by descent,—

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

- (a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or
- (b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

- (a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or
- (b) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his birth is

registered at an Indian consulate in such form and in such manner, as may be prescribed,—

- (i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, whichever is later; or
- (ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to subsection (1), any person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution

shall be deemed to be a citizen of India by descent only.

x x x

7A. Registration of Overseas Citizen of India Cardholder.—(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—

- (a) any person of full age and capacity,—
 - (i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or
 - (ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or
 - (iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or
 - (iv) who is a child or a grandchild or a great grandchild of such a citizen; or
- (b) a person, who is a minor child of a person mentioned in clause (a); or
- (c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

- (d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under Section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

Provided further that no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder under this sub-section.

- (2) The Central Government may, by notification in the Official Gazette, specify the date from which the existing Persons of Indian Origin Cardholders shall be deemed to be Overseas Citizens of India Cardholders.

Explanation.—For the purposes of this sub-section, “Persons of Indian Origin Cardholders” means the persons registered as such under notification number 26011/4/98 F.I., dated the 19th

August, 2002, issued by the Central Government in this regard.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.

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.

7C. Renunciation of Overseas Citizen of India Card.—(1) If any Overseas Citizen of India Cardholder of full age and capacity makes in prescribed manner a declaration renouncing the Card registering him as an Overseas Citizen of India Cardholder, the declaration shall be

registered by the Central Government, and upon such registration, that person shall cease to be an Overseas Citizen of India Cardholder.

(2) Where a person ceases to be an Overseas Citizen of India Cardholder under sub-section (1), the spouse of foreign origin of that person, who has obtained Overseas Citizen of India Card under clause (d) of sub-section (1) of Section 7-A, and every minor child of that person registered as an Overseas Citizen of India Cardholder shall thereupon cease to be an Overseas Citizen of India Cardholder.

7D. Cancellation of registration as Overseas Citizen of India Cardholder.—The Central Government may, by order, cancel the registration granted under sub-section (1) of Section 7A, if it is satisfied that—

- (a) the registration as an Overseas Citizen of India Cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or
- (b) the Overseas Citizen of India Cardholder has shown disaffection towards the Constitution, as by law established; or
- (c) the Overseas Citizen of India Cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was

to his knowledge carried on in such manner as to assist an enemy in that war; or

- (d) the Overseas Citizen of India Cardholder has, within five years after registration under sub-section (1) of Section 7A, been sentenced to imprisonment for a term of not less than two years; or
- (da) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette; or
- (e) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or
- (f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of Section 7A,—
 - (i) has been dissolved by a competent court of law or otherwise; or
 - (ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person:

Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.”

The Foreigners Act, 1946:

Section 2(a) defines '**foreigner**' as under:

“In this Act – (a) 'foreigner' means a person who is not a citizen of India.”

14. State law which have a bearing in the instant case are extracted as under:

STATE LAW:

A. The Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fee) Act, 2006 (Karnataka Act 8 of 2006, as amended by Act No.22 of 2017) (2006 Act):

The 2006 Act received the assent of the Governor on 24/04/2006. But it was implemented only from the Academic year 2014-2015. The relevant provisions read as under:

“2. Definitions.-(1) In this Act, unless the context otherwise requires,-

(a) “Admission” means admission made at the admission centre;

X X X

- (f) "Common Entrance Test Cell" means the agency of the State Government which conducts the common entrance test;

x x x

- (i) "Government seats" means all the seats in Government colleges, university constituent colleges, such number of the seats in Private Aided Professional Educational Institutions as may be notified by State Government and such number of the seats in unaided minority and non-minority professional educational institutions as may be notified by the State Government in accordance with the consensus arrived at between the private professional educational institutions and the State Government;

- (j) "General Category Seats" means the seats other than the reserved seats;

- (jj) "Institutional Seats" means the seats other than Government seats filled by Private unaided Professional Educational Institutions through common entrance test.

- (kk) "Karnataka student" means persons who have studied in such educational institutions in the State of Karnataka run or recognized by the Government and for such number of years as may be prescribed.

x x x

- (n) "Non-resident Indian" means a candidate born to a parent of Indian origin and residing

outside the country and who has passed the qualifying equivalent examination outside India;

x x x

4. Method of Admission in Unaided Professional Educational Institutions.- All seats in unaided professional educational institutions whether minority or non-minority imparting professional education in any discipline shall make admission through Common Entrance Test conducted by the State Common Entrance Test Committee:

Provided that in case Government of India or its agency conducts Common Entrance Test for any Professional Course then for such Courses, Centralized Counseling for admission shall be conducted by such agency and in such manner as may be prescribed.

4A. Method of admission in case of consensual agreement.- (1) Notwithstanding anything contained in this Act, in case if the State Government and the association of unaided professional educational institutions whether minority or non-minority agree to enter into a consensual arrangement or agreement with regard to sharing of seats and fixation of fee in respect of such seats in said unaided professional educational institutions, in such year, the admission to such number of seats as agreed upon by the State Government and the private professional educational institutions, shall be done by the

common entrance test committee as Government seats in accordance with such rules as may be prescribed by the Government regarding selection of candidates for admission to Government seats in Professional Educational institutions and reservation policy of the State including reservation under Article 371J. The remaining seats shall be filled through the Common Entrance Test conducted by the association of private professional educational institutions or association of religious and linguistic minority institutions on the basis of merit followed by centralised counselling, in a fair, transparent and non-exploitative manner as per the consensual agreement subject to such rules as may be prescribed. Subject to the consensual arrangement or agreement the State Government may, by notification, publish the seat matrix to be filled by the State common entrance test committee and the association of private unaided professional educational institutions in the manner as specified below, namely:-

- (A) Out of the total intake of Under-graduate Medical or Dental seats, in an unaided non-minority professional educational institutions:
- (i) not less than forty percent of the seats in case of Medical seats and not less than thirty five percent of the seats in case of Dental seats shall be filled up through Common Entrance Test conducted by State Common Entrance Test Committee;

(ii) not more than forty percent of the seats in case of Medical seats and not more than Forty five percent of the seats in case of Dental seats shall be filled up by the merit list of Common Entrance Test conducted by the Association of non-minority unaided Professional Educational Institutions;

(iii) not more than twenty percent of the seats shall be filled up by Non-Resident Indians/Management quota candidates;

(B) Out of the total intake of Post-graduate Medical/Dental seats, in an unaided non-minority professional educational institutions, across the pre-clinical, para-clinical and clinical disciplines which shall be done by rotation of disciplines every year in the following manner, namely:

(i) not less than thirty-three percent of the seats shall be filled up through Common Entrance Test conducted by State Common Entrance Test Committee;

(ii) not more than forty-two percent of the seats shall be filled up by the merit list of Common Entrance Test conducted by the Association of non-minority unaided Professional Educational Institutions; and

(iii) not more than twenty-five percent of the seats shall be filled up by Non-Resident Indians/Management quota candidates.

(C) Out of the total intake of Under-graduate Medical/Dental seats, in an unaided minority educational institutions:

- (i) not less than twenty-five percent of the seats shall be filled up through Common Entrance Test conducted by State Common Entrance Test Committee;
- (ii) not more than fifty-five percent of the seats shall be filled up by the merit list of Common Entrance Test conducted by the Association of minority unaided Professional Educational Institutions; and
- (iii) not more than twenty percent of the seats shall be filled up by Non-Resident Indians/Management quota candidates.

(D) Out of the total intake of Post-graduate Medical/Dental seats, in an unaided minority educational institutions, across the pre-clinical, para-clinical and clinical disciplines which shall be by rotation of disciplines every year:-

- (i) not less than twenty percent of the seats shall be filled up through Common Entrance Test conducted by State Common Entrance Test Committee;
- (ii) not more than fifty-five percent of the seats shall be filled up by the merit list of Common Entrance Test conducted by the Association of minority unaided Professional Educational Institutions; and

(iii) not more than 2[twenty five percent]2 of the seats shall be filled up by Non-Resident Indians/Management quota candidates.

(E) Out of the total intake of under-graduate engineering in unaided non-minority professional educational institutions,-

(i) not less than forty-five percent of the seats shall be filled up through Common Entrance Test conducted by State Common Entrance Test Committee;

(ii) not more than thirty percent of the seats shall be filled up by the merit list of Common Entrance Test conducted by the Association of non-minority unaided Professional Educational Institutions; and

(iii) not more than twenty-five percent of the seats shall be filled up by Non-Resident Indians/Management quota candidates.

(F) Out of the total intake of under-graduate engineering in unaided minority professional educational institutions,-

(i) Not less than forty percent of the seats shall be filled up through Common Entrance Test conducted by the State Government;

(ii) not more than thirty percent of the seats shall be filled up by the merit list of Common Entrance Test conducted by the Association of minority unaided Professional Educational Institutions; and

(iii) not more than thirty percent of the seats shall be filled up by Non-Resident Indians/Management quota candidates.

Provided that, in case of minority unaided professional educational institutions while filling institutional seats under clause (C), (D) and (F) not less than sixty-six percent of the seats shall be filled by minority students within the State belonging to minority to which the institution belong of the interse merit in the merit list of common entrance test.

Provided further that, in case the Government of India or its agency conducts common entrance test to any course of professional education the centralised counselling for allotment of seats shall be conducted by such agency as may be prescribed.

Provided also that, not less than thirty percent of the institutional seats shall be filled by Karnataka Students and if sufficient number of Karnataka students are not available such seats may be filled by others.

(2) Notwithstanding anything contained in this Act, in case of the State Government entering into consensual agreement under sub-section (2), the fee for admission to Government seats and in private unaided professional educational institutional seats shall be at such rate with such concessions or

Scholarship by the Institutions as agreed upon by such institutions and the Government in the Consensual Agreement.

Provided that the State Government and individual institution can also enter into consensual agreement with mutually acceptable conditions.

Provided further that any consensual agreement that has entered into between the State Government and the Association of private professional educational institutions and any notification issued or any consequential action taken by the State Government for the Academic Year 2015-16 before the commencement of the Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fee) (Amendment) Act, 2015 shall be deemed to be valid and effective as if they have been done or taken by the State Government in accordance with this Act.

4B. Method of Admission in Deemed University Institutions.- (1) In case Deemed University institution fails to follow UGC Regulations in making admission to Professional Education Courses, the Deemed University institutions shall constitute an association for conduct of Common Entrance Test for admission to their seats and such Deemed University Institutions shall make admission through Common Entrance Test for their Professional Educational Courses:

Provided that when there is no association of Deemed University Institutions, the deemed university institutions may opt to fill up other than Government seats, if any, through Common Entrance Test Committee or through association of un-aided Professional Educational Institutions. In case deemed university institution is a minority institution, it may opt to join the association of minority educational institutions or it may opt to fill up seats through Common Entrance Test Committee.

(2) The deemed university non-minority or minority Institutions, as the case may be, which do not follow UGC guidelines shall fill up such number of seats in their institution through Common Entrance Test Committee and Common Entrance Test conducted by association as may be notified by the State Government.

Provided that, in case Government of India or its agency conducts Common Entrance Test for any of the Professional Educational Courses then for such Professional Educational Courses, the Deemed Universities shall make admission on the ranking secured in that Test but the Centralized Counselling shall be conducted by such agency and in such manner as may be prescribed for admission in such Deemed University Institutions

(3) If Deemed University Institutions follow the UGC Regulations but agrees to consensual agreement with the State Government subject to such consensual agreement the seat sharing formula shall be not less

than 25 percent of the total intake both in Undergraduate and Post-graduate Medical Course to be filled up through Common Entrance Test Committee conducted by the State Government at such rate of fee with such concession and scholarship by such Institutions as may be agreed upon in the Consensual Agreement and not more than 25 percent of the total intake to be filled up by Non-Resident Indians/Management Quota by following merit by the institutions concerned. The remaining 50% shall be the Institutional seats to be filled up through Entrance Examination conducted by the Deemed University Institutions (as currently followed).

Provided further that, in case the Government of India or its agency conducts common entrance test to any course of professional education the centralised counselling for allotment of seats shall be conducted by such agency as may be prescribed on the basis of merit drawn from common entrance test. In case deemed universities fail to constitute association of deemed Universities counselling shall be done by such agency and in such manner as may be prescribed.

B. The Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 ('1984 Act'):

The aforesaid Act was enforced with effect from 28.08.2006.

Section 2 (e) of the said Act reads as under:

(e) "Government seats" means such number of seats in such educational institutions or class or classes of such institutions in the State as the

Government may, from time to time, specify for being filled up by it in such manner as may be specified by it by general 4 or special order on the basis of merit and reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and such other categories, as may be specified, by the Government from time to time, without the requirement of payment of capitation fee or cash deposit;

C. Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institutions Rules, 2006 ('2006 Rules'):

Rule 5 of the 2006 Rules reads as under:

5. Eligibility for Government Seats.—No candidate shall be eligible for admission to Government Seats unless he is a citizen of India and satisfies any one of the following conditions, namely,—

- (i) who has studied and passed in one or more Government or Government recognised educational institutions located in the State of Karnataka for a minimum period of SEVEN academic years commencing from 1st Standard to II PUC or 12th Standard as on 1st July of the year in which the Entrance Test is held and must have appeared and passed SSLC or 10th Standard or 12th Standard or equivalent examination from institutions located in the State of Karnataka.

Provided that in the case of a candidate who takes more than one year to pass a class or

standard, the years of academic study is counted as one year only.

- (ii) who has studied and passed I and II year Pre-University Examination or equivalent examination, within the State of Karnataka from an educational institution run or recognised by the State Government and either of his parents must have studied in an educational institution run or recognised by the State Government and located in the State of Karnataka for a minimum period of Seven years.
- (iii) who is a Horanadu Kannadiga:
Provided that the candidate shall appear for a simple Kannada language test conducted by the CET Cell to prove his or her ability to speak, read and write Kannada.
- (iv) who is a Gadinadu Kannadiga:
Provided that the candidate shall appear for a simple Kannada language test conducted by the CET Cell to prove his or her ability to speak, read and write Kannada.
- (v) whose parent is a defence personnel who has worked continuously in Karnataka for a minimum period of one year from 1st July of the previous year to 30th June of the year of admission and the candidate must have studied and passed the qualifying examination from any Government or Government recognised institutions located in Karnataka;

- (vi) whose parent is a serving defence personnel, who at the time of joining the defence service had declared the hometown as a place in the state of Karnataka, proof of such domicile having been produced by obtaining the extract from the Record Office of the Defence Unit;
- (vii) whose parent is a defence personnel who had served in Karnataka for at least one year and is posted on duty directly to the disturbed areas of Jammu and Kashmir or North-East and whose family is permitted by the Defence Authorities to continue to stay in Karnataka and such candidate has studied and passed the qualifying examination from any Government or Government recognised institution located in Karnataka.
- (viii) whose parent is an ex-serviceman, who at the time of joining the defence service had declared a place in Karnataka as the hometown, proof of such domicile having been produced from the Rajya Sainik Welfare Board;
- (ix) whose parent is an employee of the Union or Karnataka State Government undertaking or a joint sector undertaking, is liable to transfer anywhere in India as per terms and conditions of employment, has worked continuously for at least one year in Karnataka from 1st July of the previous year

to 30th June of the year of admission and such candidate has studied and passed the qualifying examination from any Government or Government recognised educational institution located in Karnataka.

(x) whose parent is a working or retired employee of the Union Government or employee of Union or Karnataka State Government undertaking or joint sector undertaking where such employee.-

(a) had declared to the employer at the time of joining any place in Karnataka to be his hometown; and

(b) had studied in any Government or Government recognised educational institutions located in Karnataka for not less than seven years; and

(c) was or is liable for transfer anywhere in India as per the terms and conditions of employment.

(xi) whose parent is a Member of Parliament elected from Karnataka;

(xii) whose parent is a serving or retired employee.-

(a) belonging to All India Service of Karnataka cadre; or

(b) of the Government of Karnataka who has served or is serving outside the State of Karnataka, during the period corresponding to the candidate's study outside the State from 1st standard to II

PUC or 12th standard examination.

- (xiii) whose parent is a Jammu and Kashmir migrant, proof of such migration shall be produced from the jurisdictional District Magistrate and Deputy Commissioner of any State of India:

Provided that such candidate shall satisfy the academic eligibility specified in Rule 3, in order to become eligible for admission to the seats reserved for the wards of Jammu and Kashmir migrants:

Provided further that notwithstanding anything contrary contained in this Rule, in case of a candidate who is a Diploma holder seeking admission to the third semester, second year, full-time and part-time degree courses mentioned in Schedule I, he must have.-

- (i) studied and passed final year Diploma as on 1st July of the Year in which admission is sought, in one or more Government or Government recognised educational institutions located in the State of Karnataka; and
- (ii) studied for seven academic years from 1st standard to final year diploma in one or more Government or Government recognised educational institutions located in the State of Karnataka; or

- (iii) either of the parents should have studied in institutions run or recognised by the State Government located in Karnataka for a minimum period of seven years.

It would also be useful to extract the Notifications issued pursuant to Section 7B of Citizenship Act, which are dated 11/04/2005, 05/01/2007 and 05/01/2009, and which read as under:

**“THE GAZETTE OF INDIA
EXTRAORDINARY
MINISTRY OF HOME AFFAIRS
NOTIFICATION**

New Delhi, the 11TH April 2005

S.O.542(K) In exercise of the powers conferred by Sub-section (1) of Section 7B of the Citizenship Act, 1955 (57 of 1955) the Central Government hereby specifies the following rights to which the persons registered as Overseas Citizens of India under Section 7A of the said act shall be entitled, namely:-

- (a) grant of multiple entry lifelong visa for visiting India for any purpose;
- (b) exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and

- (c) parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

(F.No.26011/2/2005-IC)
DURGA SHANKER MISHRA Jt.Secy."

x x x

**"MINISTRY OF OVERSEAS INDIAN AFFAIRS
NOTIFICATION**

New Delhi, the 5th January, 2007

S.O.12(E).-In exercise of the powers conferred by Sub-section (1) of Section 7B of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby specifies the following rights to which persons registered as Overseas Citizens of India under Section 7A of the said Act, shall be entitled, with effect from the date of publication of this notification in the Official Gazette, namely:-

1. Registered Overseas Citizens of India shall be treated at par with Non-Resident Indians in the matter of inter-country adoption of Indian children.

2. Registered Overseas Citizens of India shall be treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India.

3. Registered Overseas Citizens of India shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India.

(F.No.OI-16011/10/2006-DS)
MALAY MISHRA, Jt. Secy."

x x x

**"MINISTRY OF OVERSEAS INDIAN AFFAIRS
NOTIFICATION**

New Delhi, the 5TH 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 11th April, 2005 and in the Ministry of Overseas Affairs S.O.12(E), dated the 6th 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. 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.of 15013/13/2008-DS)

D.N.SRIVASTAVA Jt.Secy."

15. In the Information Bulletin for National Eligibility-cum-Entrance Test (UG)-2019 for admission to MBBS/BDS courses, in Chapter 3 dealing with Eligibility and Qualifications, Clauses 2 and 3(a) read as under:

"Chapter 3: Eligibility and Qualifications

1. X X X

2. **Eligibility for seats under the control of States/Deemed Universities/ Central Universities/ ESIC and AFMC including Delhi University (DU), BHU & AMU/central pool quota**

- i. Indian Nationals, Non Resident Indians **(NRIs)**, Overseas Citizen of India **(OCI)**, Persons with Indian Origin **(PIO)**, and Foreign Nationals are eligible for admission in Medical/Dental Colleges subject to rules and

regulations framed by the respective State Governments, Institutions and the Government of India as the case may be.

- ii. Foreign nationals may confirm their eligibility from the concerned Medical/Dental College/State.

3. **Eligibility for 15% All India Quota seats**

- a) Indian Nationals, Non Resident Indians **(NRIs)**, Overseas Citizen of India **(OCI)**, Persons with Indian Origin **(PIO)**, and Foreign Nationals are eligible for 15% All India Quota seats."

Clauses 4.2 and 4.3(a) of the aforesaid bulletin for the Academic year 2020-2021 reads as under:

"Chapter 4 - Eligibility And Qualifications

4.1) X X X

4.2) Eligibility for seats under the control of States/Deemed Universities/Central Universities/ESIC and AFMC including Delhi University (DU), BHU & AMU/central pool quota, AIIMS, JIPMER.

- i. Indian Nationals, Non Resident Indians **(NRIs)**, Overseas Citizen of India **(OCI)**, Persons with Indian Origin **(PIO)**, and

Foreign Nationals are eligible for admission in Medical/ Dental/ Ayurveda/ Siddha/ Unani/ Homeopathy Colleges subject to rules and regulations framed by the respective State Governments, Institutions and the Government of India as the case may be.

- ii. Foreign nationals may confirm their eligibility from the concerned Medical/ Dental/ Ayurveda/ Siddha/ Unani/ Homeopathy College/ State.
- iii. Notwithstanding anything stated above, the eligibility criteria to appear in NEET (UG) shall also be applicable to the candidates desirous to take admission in Undergraduate Medical Courses in concerned INIs like AIIMS.

4.3) Eligibility for 15% All India Quota seats

- a) Indian Nationals, Non Resident Indians (NRIs), Overseas Citizen of India (OCI), Persons with Indian Origin (PIO), and Foreign Nationals are eligible for 15% All India Quota seats.”

Reasoning of the learned Single Judge:

16. At the outset, it would be useful to refer to the reasoning and conclusion of learned Single Judge.

(i) On the question whether the definition of *Non-Resident Indian* under Section 2(1)(n) of 2006 Act is repugnant to 2009 Notification of Central Government, learned Single Judge considered the definition of *Non-Resident Indian* under Section 2(1)(n) of 2006 Act in light of Central Government Notification dated 05/01/2009 and the earlier Notification dated 11/04/2005 and held that a OCI Cardholder cannot be equated to a Non-Resident Indian in the matter of admission to professional colleges by an interpretation of the aforesaid two Notifications.

(ii) On the question whether impugned Section 2(1)(n) of 2006 Act is unconstitutional because of lack of legislative competence of the State Legislature, the learned Single Judge analysed Section 7A and 7B of the Citizenship Act and held that the he Notification of 2005 and 2009 impugned Section 2(1)(n) and 2(1)(l) of 2006 Act and Rule 5 of 2006 Rules and therefore were not enforceable.

(iii) Learned Single Judge also observed that Section 7B(1) of Citizenship Act deals with OCI card holders who are not citizens of India. That Section 7B(1)

of the Citizenship Act delegates power for issuance of Notifications granting rights to OCI card holders. That the said legislation is traceable to Entry-17 of List-I of VII Schedule of the Constitution which deals with "Citizenship, Naturalization and Aliens". Therefore, on the strength of the said entry in List-I, the Central Government is empowered to grant various rights to OCI card holders including educational rights. When such rights are granted in the matter of education to OCI card holders, the State Legislature has no competence to legislate on the specific educational rights granted by the Central Government by a Notification issued under Section 7B of Citizenship Act. Therefore, any amendment made to the Karnataka Act and Rules restricting the rights granted to the OCI card holders in the matter of education would be repugnant as the doctrine of 'occupied field' would apply under Article 254 of the Constitution.

(iv) On the question whether Rule 5 of 2006 Rules prescribing 'citizenship' as a condition for availing Government seats is unenforceable against OCI card holder is concerned, the learned Single Judge referred to Rule 5 of 2006 Rules which prescribes that Indian

Citizenship is a *sine qua non* for any student to lay claim for 'Government Seats' which is defined under Rule 2(1)(I) of 2006 Rules, would mean that the rights granted under 2009 Notification under Section 7B(1) of the Citizenship Act would be defeated.

(v) Also, the rights that are available under 2005 Notification and further under 2009 Notification issued by the Central Government under Section 7B(1) of Citizenship Act cannot be diminished or nullified by Rule 5 of the 2006 Rules. There is repugnance between Rule 5 of 2006 Rules with the Notifications of 2005 and 2009. Therefore, Rule 5 cannot be enforced against OCI cardholders, that it can be enforced against other foreigners who are not in any case, the petitioners. This is because Rule 5 of 2006 Rules is relatable to Entry 25 of List-III which deals with the subject-education which is in the Concurrent List and the principles of repugnancy under Article 254 of the Constitution would apply.

(vi) On the question whether the OCI cardholders are Indian citizens, learned Single Judge held that they are all 'foreigners', to mean a person who is not a citizen of

India, as per the definition under Section 2(a) of the Foreigners Act, 1946.

(vii) On the stand of the Central Government as to educational rights to OCI cardholders, reference was made to memo dated 18/03/2019, submitted on behalf of the Central Government and learned Single Judge observed that the said clarification is in conflict with the interpretation of Notification of 2005 and 2009. That on the one hand, the Notification of Central Government granting educational rights to OCI cardholders and the conference of such rights, cannot be made illusory by the State enactment or Rule. The State law cannot take away the rights granted by the Central Government to the OCI cardholders under Section 7B of the Citizenship Act through the Notification of 2005 and 2009. According to the learned Single Judge, the expression "in pursuance of the provisions contained in the relevant Acts" in paragraph "b" of the 2009 Notification cannot be construed to mean State law which has the effect of curtailing the effect of the rights granted to the OCI cardholders by the Central Government.

17. In the above circumstances, the learned Single Judge allowed the writ petitions on the terms extracted above.

SUBMISSIONS:

18. Learned Additional Advocate General appearing for the State submitted that learned Single Judge was not right in interpreting the Notification issued by the Ministry of Overseas Indian Affairs, dated 05/01/2009 contrary to the provisions of the 2006 Act as well as 2006 Rules of the State Government. Also, the said Notification issued under sub-section (1) of Section 7B of the Citizenship Act is in continuation of the Notifications of the Government of India, Ministry of Home Affairs, dated 11/04/2005 and 06/01/2007. But for the Notification dated 05/01/2009, OCI Cardholders were not even eligible to appear in any All-India Pre-Medical Test or such other tests. By Notification dated 05/01/2009, only eligibility to the OCI Cardholders was conferred upon so as to make them eligible for admission "in pursuance of the provisions contained in the relevant Acts". He contended that the relevant Acts are 2006 Act and 2006 Rules of the State Government and the OCI cardholders are eligible as per

the State enactment and Rules for admission to professional courses in the State.

19. Learned Additional Advocate General contended that when 2006 Act is read, Section 2(1)(n) thereunder defines "Non-Resident Indian" to mean a candidate born to a parent of Indian origin and residing outside the country and who has passed the qualifying equivalent examination outside India and includes persons of Indian origin and Overseas Citizen of India. Therefore, an OCI Cardholder is on par with a non-resident of India. Hence, an OCI Cardholder can seek admission only in the quota reserved for Non-Resident Indians and not in the Government or State Quota in the Medical/Dental or Engineering colleges in the State. He further submitted that it is the right of the State to determine the eligibility criteria under the relevant Acts and Rules of the State vis-à-vis admission to Medical and Engineering Courses and the eligibility for admission provided in terms of the Notification of the Ministry of Overseas Indian Affairs dated 05/01/2009 is in pursuance of the provisions contained in the relevant Acts, which are State enactments and Rules. Therefore, the eligibility to appear for admission has to be

in pursuance of the provisions contained in the relevant Acts, which are the State Acts and Rules made thereunder.

20. Learned Additional Advocate General placed reliance on the following two judgments in order to emphasize on the expression 'in pursuance of provisions contained in the relevant Acts' found in Clause 'b' of Notification dated 05/01/2009 issued by the Ministry of Overseas Indian Affairs, namely:

- ***Aircraft employees and Housing Co-operative Society Limited vs. Secretary, Rural Development and Panchayat Raj, Government of Karnataka Bangalore and Others, (1996) 11 SCC 475, para - 4.***
(*Aircraft Employees Society*);
- ***Bharat Aluminium Company vs. Kaiser Aluminium Technical Service Incorporation, (2016) 4 SCC 126, para -8.***
(*Bharat Aluminium Company*).

Learned Additional Advocate General submitted that importance has to be given to these words in the Notification dated 05/01/2009.

21. He next submitted that while the Notification dated 05/01/2009 is issued in terms of sub-section (1) of

Section 7B of the Citizenship Act, which is a subject found in Entry-17 of List-I, the 2006 Act and 2006 Rules have been made on the strength of Entry-25 of List-III (Concurrent List of the Seventh Schedule of the Constitution) and the State has the competency to provide for eligibility criteria for admission to professional courses in the State. That merely because a right is conferred on the OCI cardholders to participate in the admission process, would not give any vested right to the students who belong to the category of OCI Cardholders to seek admission in the professional colleges in the State. He further contended that insofar as the Medical courses are concerned, only 15% of the seats are reserved for All-India quota and the balance 85% seats are in the State quota even under the NEET scheme of 2019. Therefore, learned Single Judge was not right in interpreting the Notification dated 05/01/2009 by holding that there is no parity between OCI Cardholders and Non-Resident Indians and thereby, quashing Section 2(1)(n) of the 2006 Act and Rule 5 of the 2006 Rules as being not enforceable against OCI Cardholders. Thereby, learned Single Judge directed the Examination Authority to permit the OCI Cardholders

to participate in the 2019 counselling for selection of seats in B.E./B.Tech/B.Arch. or such other professional courses in Government Colleges, Private Aided/Un-aided Colleges/Institutions for the Academic Year 2019-2020 on the basis of their relative merit and ranking in the said CET-2019. Learned Additional Advocate General, sought for setting aside the impugned order of the learned Single Judge and for dismissal of the writ petition filed on behalf of the OCI Cardholders aspiring for an admission in a medical college in the State.

22. Learned Assistant Solicitor General appearing for the Central Government adopted the submissions of learned Additional Advocate General appearing for the State and contended that OCI Cardholders are not citizens of India, that for the sake of convenience, the said category of students has been included in the definition of "Non-Resident Indian". The Notification dated 05/01/2009 issued by the Ministry of Overseas Indian Affairs of the Central Government under sub-section (1) of Section 7B of the Citizenship Act does not confer anything more than permitting such OCI Cardholders to admission in the Entrance Test for various professional courses including

Medical/Dental and Engineering Courses and to seek admission in terms of the State enactments and the Rules made thereunder.

23. Learned Assistant Solicitor General further submitted that the OCI Cardholders have not sought for registration under the Citizenship Act, so as to become citizens of India. They are foreign passport holders, and they are not Indian citizens and hence, they cannot claim parity with Indian citizens in the matter of seeking admission to Medical/Dental and Engineering Courses in the State.

24. Sri N.K.Ramesh, learned counsel appearing for the Examinations Authority also supported the State Government.

25. Sri Khetty, learned counsel appearing for the Medical Council of India submitted that the Medical Council of India does not prescribe any eligibility regarding Nationality or Citizenship. That it has prescribed NEET which is an Entrance Test for Medical/Dental seats since the year 2016-2017 and every student aspirant of such a seat has to appear in such an examination before seeking

admission to Medical/Dental seats to any of the colleges in India.

26. *Per contra*, learned counsel appearing for the respondent – students in the writ appeal and for the petitioners in the connected writ petitions narrated chronologically the Parliamentary and State amendments made to the respective Laws in order to submit that the learned Single Judge has clearly held that there is repugnancy of the State Law vis-à-vis the Parliamentary or Central Law and hence, there is no merit in the appeal filed by the State. His submission is encapsulated as under:

(i) That on 03/12/2004 the concept of OCI cardholder was introduced by insertion of Section 7A-7D to the Citizenship Act. Thereafter, Notification under Section 7B of the Act was issued on 11/04/2005 giving parity between an OCI Cardholder and Non-Resident Indian.

(ii) Thereafter, on 28/02/2006, the 2006 Rules were enforced by the State Government, which were issued under the provisions of 1984 Act. Rule 5 of the 2006 Rules prescribed two-fold eligibility criteria for students seeking admission in Government quota seats; firstly, they must

be citizens of India and secondly, they must have studied for not less than seven years in the State.

(iii) The subsequent Notification issued by the Union of India is dated 05/01/2009. According to learned counsel for the petitioners, there is no parity between a Non-Resident Indian and an OCI Cardholder.

(iv) The 2006 Act was enforced by the State Government on 24/04/2006 to regulate admissions to private colleges. Subsequently, by Act 39 of 2015, Section 4A and 4B of the 2006 Act was amended. By Act 22 of 2017 with effect from 06/04/2017, definition of Non-Resident Indian in Section 2(1)(n) of the 2006 Act was also amended to include an OCI Cardholder within the said definition.

(v) In the interregnum, the Indian Medical Council Act had already been amended and Section 10D was introduced with effect from 04/08/2016 under which, NEET regime was applicable. Under NEET Scheme, all Medical/Dental Courses aspirants have to appear in the said examination. Also, Regulation 5A of Graduate Medical Education Regulation was amended with effect from 10/03/2017, providing for single window counseling. Under

NEET Scheme, 15% of the seats have been reserved for All-India quota, which are for colleges, which come under deemed universities, Central Universities, ESI colleges, AIMS and JIPMER University, Pondicherry.

(vi) As noted above, it was subsequently with effect from 06/04/2017 that the 2006 Act was amended by the State Government to redefine Non-Resident Indian to include PIO Cardholders as well as OCI Cardholders.

27. Learned counsel appearing for the OCI Cardholders/students submitted that under the NEET regime, Indian citizens, Non-Resident Indians, OCI Cardholders, and PIO Cardholders are all brought under the same umbrella and there is no distinction made. Therefore, the State Government could not have made such a distinction between Indian Citizens on the one hand and Non-Resident Indian, OCI and PIO Cardholders on the other which is contrary to the Central Government's Notification dated 05/01/2009 and also, the scheme of entrance test under NEET.

28. Learned counsel submitted that there is repugnancy between the State Law and Central Law, as

the Central Law has occupied the field and hence, the State Laws would have to yield to the Central Law. That learned Single Judge has interpreted the Notification dated 05/01/2009 issued under sub-section (1) of Section 7B of the Citizenship Act and the State Laws to hold that there is repugnancy between the State Law and the Central Law and hence, under Article 254 of the Constitution the Central Law would prevail on the basis of doctrine of occupied field.

29. Learned counsel submitted that there cannot be any amendment made to the State Law under the Rules contrary to the Central law namely (i) the Notification dated 05/01/2009 issued by the Central Government under Sub-section (1) of Section 7B of the Citizenship Act and the Scheme under NEET. Therefore, there is no merit in the appeal filed by the State and the order of the learned Single Judge would not call for any interference in the appeal.

30. Drawing our attention to the expressions "Non-Resident Indian", "Government Seats", "Institutional Seats" and "Karnataka Student" under Sections 2(1)(n), 2(1)(i), 2(1)(jj) and 2(1)(kk) of 2006 Act, learned counsel

Sri.Ajoy Kumar Patil, submitted that by virtue of the said amendments made to the 2006 Act in the year 2017 and bearing in mind Section 4A, 4B, 4C thereof, the OCI Cardholders will have to take admission only in the Non-Resident Indian quota and not in the Government quota. They are also not permitted to take seats even in the Institutional quota in the private colleges, which are also filled up by the Examination Authority in the State under the NEET Scheme if the interpretation made by the State is to be accepted. In other words, in Karnataka, the OCI Cardholders have to be admitted only in the Non-Resident Indian quota and not in the State quota or Institutional quota which is contrary to the NEET Scheme as well as notification dated 05/01/2009 issued under sub-section (2) of Section 7B of the Citizenship Act and hence, hit by Article 254 of the Constitution.

31. Learned counsel further submitted that, even otherwise the 2006 Rules is only with regard to the admission to the Government quota seats and those Rules cannot be applied to Institutional seats in private colleges, which are not Government quota seats. That under the consensual agreement, 40% of the seats are allotted to

the Institutions out of which, 30% is meant for Karnataka students and 10% for others. Therefore, the 2006 Rules, which are applicable for only 40% Government quota seats, cannot be made applicable to 40% Institutional seats in Medical admissions.

32. Learned counsel thus contended that OCI Cardholders cannot be included in the category of Non-Resident Indian under Section 2(1)(n) of the 2006 Act. The said provision as well as Rule 5 of the 2006 Rules are repugnant to the Central Government Notification dated 05/01/2009. This is because the object and purpose of issuing the Notification on 05/01/2009 is to expand the rights conferred on such students, who are OCI Cardholders in the matter of admission to Medical/Dental, Engineering and such other professional courses in the country. The parity between the OCI Cardholders and Non-Resident Indians in earlier Notification dated 11/04/2005 has been removed in the Notification dated 05/01/2009. A comparative reading of the same would clearly demonstrate that the parity on OCI Cardholders with Non-Resident Indian is in respect of only- (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. However, such a parity between the OCI Cardholders and Non-Resident Indians is not found in the matter of appearance in the All India Pre-Medical Test or such other Tests to make them eligible for admissions under the relevant Acts. Such being the position under the Central Law, the State could not have amended Section 2(1)(n) of the 2006 Act with effect from 06/04/2017 to extend the scope of definition of Non-Resident Indian to include OCI. This is contrary to the policy of the Central Government, which has removed the parity of OCI Cardholders with Non-Resident Indians by Notification dated 05/01/2009 and under the scheme of NEET for MBBS/BDS courses. Hence, the submission was, the contra position could not be effected by the State amendment made to Section 2(1)(n) of the 2006 Act by treating the OCI Cardholders on par with the Non-Resident Indians.

33. Learned counsel, Sri.Ajoy Kumar Patil, submitted that learned Single Judge was therefore justified in quashing Section 2(1)(n) of the 2006 Act insofar as the expression "and includes persons of Indian Origin and Overseas Citizen of India" of the 2006 Act is concerned and also holding that Rule 5 of the 2006 Rules is not applicable to OCI Cardholders. There being a clear repugnancy, Article 254 of the Constitution would apply under which doctrine of occupied field and laws of the Central Government including its Notification etc., would prevail over laws of the State Government.

34. Alternatively, learned counsel, Sri Patil, further contended that under Article 11 of the Constitution, Parliament alone has the competency to define Citizenship or to make Laws on Citizenship. This is because of Entry-17 List-I of Schedule VII of the Constitution, deals with the subject Citizenship and naturalization and aliens. Therefore, no State Law can make any provision touching upon Citizenship, contrary to the Central Law as the State Government has no competency to make any Law or amend any existing Law touching upon Citizenship. That by the amendment made to 2006 Act by redefining Non-

Resident Indian under Section 2(1)(n) of the said Act the State Government has attempted to do something indirectly, which could not have been done directly. Hence, there being no legislative competence to the State Government to amend Section 2(1)(n) of the 2006 Act, so as to include OCI Cardholders as Non-Resident Indians, the same has been rightly struck down by the learned Single Judge. Consequently, an OCI Cardholder can now seek admission not only in the All India quota, but also in the Institutional quota as well as Government quota under the State Law in respect of Medical/Dental seats as well as Engineering seats. He contended that there is no merit in the appeal filed by the State and the same may be dismissed.

35. With regard to the writ petitions filed by the OCI Cardholders seeking admission to Medical and Dental seats, learned counsel, Sri.Patil while reiterating the aforesaid submissions, drew our attention to a Scheme of NEET under which Indian citizens, OCI Cardholders and Non-Resident Indians are treated on par.

36. Learned counsel for the writ petitioners, drew our attention to paragraph 13 of the interim order passed by one of us (Nagarathna J.) on 22/02/2018, wherein it was observed that the petitioners are seeking an expansive interpretation of the expression "citizen of India" in Rule 5 of 2006 Rules so as to include overseas citizens of India or in the alternative they contended that the said expression cannot disentitle the petitioners who are overseas citizens of India from applying under Rule 5 thereof.

37. Learned counsel for the petitioners drew our attention to 'JoSAA-2017'—an acronym for "Joint Seat Allocation Authority" constituted by the Ministry of Human Resource Development to oversee joint seat allocation for the Engineering Courses on the basis of JEE examination, which deals with frequently asked questions regarding Engineering courses, wherein one of the questions asked was, whether PIO/OCI Cardholders are eligible for getting admission in NITs/IITs/Other-GFTIs based on JEE (Main) 2017 and HTs based on JEE (Advanced) 2017, which was answered in the affirmative. Similarly, with regard their

eligibility in the category of allotment of seats for persons with disabilities (PwD), it was answered in the affirmative.

38. Reliance was also placed on a communication dated 19/12/2016 of the Ministry of Health and Family Welfare, Government of India, to the Ministry of External Affairs to the effect that the OCI Cardholders have been made eligible to apply under NEET for admission to undergraduate medical courses in India and the candidates who qualify may be admitted as per their merit in their respective categories, i.e., Government Quota, Management Quota and NRI Quota, as per the fees prescribed.

39. Another communication dated 11/07/2017 relied upon, also states that OCI Cardholder students are eligible for admission in all the three quotas mentioned above and not merely in Non-Resident Indian quota which will be as per their merit.

40. Learned counsel Sri.Patil drew our attention to the fact that in the entrance examination conducted for AIIMS, the OCI Cardholders are also made eligible to appear for entrance examination on the same set of terms

and conditions applicable to the Indian citizens. Similar is the position with regard to the Jawaharlal Institute of Post-Graduate Medical Education and Research (JIPMER).

41. Even in the States of Maharashtra, Kerala and Tamil Nadu, the expressions "Non-Resident Indian" and "Overseas Citizen of India Cardholder" have been distinguished, but they may not be entitled to any kind of reservation which is permissible for only Indian nationals.

42. He submitted that in all other States such as, Uttar Pradesh, Delhi and Andhra Pradesh, the OCI Cardholders are permitted to seek admission as if they are citizens of India, but it is only in the State of Karnataka that they have been pigeonholed as Non-Resident Indians by amending Section 2(1)(n) of the 2006 Act in the year 2017, thereby restricting their choice of seats only to the Non-Resident Indian quota and making them ineligible to seek admission in the Institutional quota as well as the Government quota which is unjust and not in accordance with law.

43. Learned counsel for the petitioners also submitted that the judgment of the Division Bench dated 07/07/2017 should not be treated as a precedent.

44. Learned counsel, Sri Patil submitted, though the writ petitions are of the year 2019, the petitioners herein, who have appeared in NEET-2020, may be given the benefit for the year 2020-2021 also which is the current academic year by confirming the order of the learned Single Judge, so as to permit them to be admitted in the Institutional seats as well as State quota seats in Medical/Dental courses.

45. By way of reply, learned Additional Advocate General submitted that the petitioners in the writ petition are all foreigners who are OCI Cardholders. They are not citizens of India and they cannot be treated on par with Indian citizens. Therefore, they are treated on par with Non-Resident Indians. Whatever eligibility/facilities are provided for Non-Resident Indians would be provided for the OCI Cardholders. The OCI Cardholders can compete with other students, but only in the quota meant for them. Therefore, learned Single Judge was not right in enlarging the right of admission to OCI Cardholders. Hence, the writ petitions filed by the petitioners may be dismissed and the appeal filed by the State may be allowed.

POINTS FOR CONSIDERATION:

46. Having heard learned counsel for the respective parties, the following points would arise for our consideration:

- (i) Whether, the learned Single Judge was right in granting relief to the petitioners who are OCI Cardholders by holding that the amendment made to Section 2(1)(n) of 2006 Act is contrary to the Central Law and therefore, has to be struck down on the ground of repugnancy as per Article 254 of the Constitution?
- (ii) Whether, the learned Single Judge was right in granting relief to the OCI Cardholders on par with Indian Citizens by not restricting their rights to Non-Resident Indians and therefore permitting OCI cardholders to be counseled for both Government as well as Institutional Seats in respect of MBBS/BDS and Engineering courses in the colleges of Karnataka?
- (iii) Whether, the petitioners, who are seeking admission to MBBS/Dental and Engineering seats, are entitled to relief

under the provisions of Rule 5 of 2006 Rules?

(iv) Whether, the order of the learned Single Judge calls for any interference?

(v) What order?

Before proceeding further, it would be useful to refer to Articles 246 and 254 of the Constitution.

47. Article 246 deals with subject matter of laws made by Parliament and by the Legislatures of States.

(a) Clause (1) of Article 246 states that notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the VII Schedule (Union List). In this case, we are concerned with Entry 17 of List I, which deals with *inter alia*, citizenship.

(b) Clause (2) of Article 246 of the Constitution, states that notwithstanding anything in clause (3), the Parliament and the Legislature of any State also have the power to make laws with respect to any matters enumerated in List-III to the VII Schedule (Concurrent

List). Clause (3) thereof, states that the Legislature of any State has exclusive power to make laws for the State with respect to any matters enumerated in List-II of the VII Schedule (State List). However, clause (3) of Article 246, is subject to clauses (1) and (2) which begins with a *non obstante* clause.

(c) The power to legislate which is dealt with Article 246 has to be read in conjunction with the Entries in the three Lists of the Seventh Schedule, which are the fields of legislation which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the *vires* of a provision of a statute is assailed. In such circumstances, a liberal construction must be given to the entry by looking at the substance of the legislation and not its mere form. However, while interpreting the Entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two Entries, the doctrine of pith and substance is applied to find out the true character

of enactment and the entry within which it would fall. The doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. Also, in a situation where there is overlapping, the doctrine has to be applied to determine to which entry a piece of legislation could be related. If there is any trenching on the field reserved to another legislature, the same would be of no consequence. In order to examine the true character of enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree.

(d) In case of any conflict between entries, in List-I and List-II, the power of Parliament to legislate under List-I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance falls within any of the entries of List-II, the State Legislature's competence cannot be questioned on

the ground that the field is covered by Union list or the Concurrent list vide ***Prafulla Kumar vs. Bank of Commerce, Khulna, [AIR 1947 P.C.60] (Prafulla Kumar)***.

48. The entries in List I and List II to which the laws are under consideration are as under:

As already noted, Article 11 of the Constitution states that the Parliament has the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. This is pursuant to Entry 17 of List I, which deals *inter alia* with citizenship. The Constitution does not lay down comprehensive law relating to citizenship of India. The power is conferred on the Parliament under Article 11. It is in exercise of this power that the Parliament has enacted the Citizenship Act, which has provisions for acquisition and termination of citizenship. It is by virtue of the said power that Sections 7A to 7D have been incorporated, which deal with OCI Cardholders and with the passage of time, several amendments have been made to the

Citizenship Act. Thus, the provisions of the Citizenship Act are relatable to Entry 17 of List I.

Insofar as the subjects in List III of the Concurrent List are concerned, Article 246 has to be read along with Article 254, which deals with inconsistency in laws made by the Parliament and laws made by the Legislatures of States.

Entry 25 of List III of Concurrent List deals with Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; Vocational and Technical Training of labour.

It is not necessary to advert to Entries 63-67 of List I for the purpose of this case. What is relevant is that the subject 'education', which was earlier in the State List (List-II), with effect from 03/01/1977 vide 42nd Amendment of the Constitution, has been substituted earlier to Entry 25. Therefore, subject 'education' is now in the Concurrent List and both the Parliament as well as the State Legislature are empowered to pass law on the said subject. Hence,

doctrine of repugnancy applies under Article 254 of the Constitution.

49. The State law may be 'repugnant' to a Central law in any of the following ways:-

(i) When there is direct conflict between the State law and Central law, this may happen *inter alia* -

(a) Where one cannot be obeyed without disobeying the other.

(b) Two enactments may also be inconsistent although obedience to each of them may be possible without disobeying the other.

(c) The principle of implied repeal also called repeal by necessary implication may be applied to determine repugnancy for the purposes of Article 254(2) where the inconsistency appears on the face of the two statutes.

(ii) Though there may not be any direct conflict between the Union and the State Legislation, where it is evident that the Union Parliament intended its legislation to be a complete and exhaustive *code* relating to the subject, it shall be taken that the Union law has replaced State legislation relating to the subject.

(iii) Even where the Central Act is not exhaustive, repugnancy may arise if it occupies the same field as the State Act. No question of repugnancy arises unless the law made by Parliament and the law made by the State Legislature occupy the same field. If they deal with separate and distinct matters though of a cognate and allied character or their purposes are different, repugnancy does not arise. The test of 'pith and substance' has been applied to determine whether the State law has substantially transgressed on the field occupied by the law of Parliament. There is no repugnance where the encroachment is not substantial, or the subject-matter of the legislation is not the same.

(iv) The repugnancy which is alleged must exist in fact and not depend merely on a possibility. President's assent cannot cure possibility of future repugnancy.

(v) When a question of repugnancy arises under Article 254, every effort should be made to reconcile the two enactments and to construe them so as to avoid their being repugnant to each other and care should be taken to see whether the two really operate in different fields without encroachment.

(vi) The doctrine of covered/occupied field can be applied only to the entries of the List III (Concurrent List).

[Source – Shorter Constitution of India – Durga Das Basu – 14th Edition Reprint 2011]

Thus, in the instant case, the Notifications issued by the Central Government under Section 7B of the Citizenship Act, is a statute enacted by the Parliament, while the State law is under Entry 25 of List III of the Concurrent List, which deals on the subject 'education'.

50. Article 254 has been adverted to in ***Anitha Kishori D'Silva vs. The Land Acquisition Officer-cum-Assistant Commissioner, Mangalore and others, [ILR 2015 Kar. 3769]***, in the following manner:

"19. Clause (1) of Article 254 states that in case of repugnancy of a law made by a State legislature with the law made by the Parliament relating to a subject in the concurrent list (List III of Seventh Schedule), the law made by the Parliament would prevail and the State law would fail to the extent of repugnancy, whether the law made by the Parliament is prior to or subsequent to the State law.

20. Clause (2) engrafts an exception, which is to the effect that if the President assents to a law made by the State legislature which has been reserved for his consideration, then that law would prevail, notwithstanding the repugnancy to an earlier law made by the Parliament. But this exception is subject to a proviso. The proviso to clause (2) of the Article states that the Parliament can repeal or amend the repugnant law made by the State legislature even though it has become valid by virtue of the President's assent in respect of the same subject matter. Thus, while clause (1) of Article 254 is the general rule, clause (2) is an exception to clause (1) and the proviso to clause (2) qualifies the exception vide, ***Deep Chand v. State of U.P. (AIR 1959 SC 648)***. In other words, even after obtaining the assent of the President to a State law or enactment, which is inconsistent with the previous Parliamentary law, relating to a concurrent subject, would be that the State law would prevail in that State and overrides the provisions of the Central law in their applicability to that State only. But the predominance of the State Act or law may, however, be taken away if Parliament legislature under the Proviso to clause (2) enacts a new law or amends the existing

Central law. Vide ***Baraj v. Henry Ah Hoe, (AIR 1983 SC 150); HOECHST Pharmaceuticals Limited v. The State of Bihar [1983(4) SCC 45]; M. Karunanidhi v. Union of India [1979 (3) SCC 431]***.

21. The Parliament may not expressly repeal the State law but by necessary implication, the State law stands repealed to the extent of repugnancy as soon as the subsequent law creating repugnancy is made.

22. The special provision as contained in proviso to clause (2) of the Article 254 of the Constitution of India is an exception to the rule that Parliament cannot repeal a law passed by a State legislature. It is open to the Parliament to subsequently pass law adding to, amending, varying or repealing the State law made even with the assent of the President of India. The doctrine of repugnancy as contemplated under clause (2) of Article 254 of the Constitution of India is applicable only when the Parliament or Central legislature as well as the State legislature enact law on matters included in the concurrent list. The obtaining of the assent of the President of India of State law under clause (2) serves to cure repugnancy of the State law only with reference to an earlier Central law. It cannot

confer validity on the State law with reference to subsequent Central law or amendment made to Central law.

23. The proviso to clause (2) of Article 254 of the Constitution of India is a departure from Section 107 of the Government of India Act, 1935. Power of the Central legislature is enlarged enabling the Central legislature to enact a law adding to, amending, varying or repealing a law passed by the State legislature. The Central legislature has overriding and plenary power of legislation and in exercise of such authority it could amend, repeal, modify or add to any existing law. Law made by the Central legislature shall prevail.

24. Where the Central legislature passes an Act on the same matter within the meaning of proviso to clause (2) of Article 254, the State law, which was at variance with it, is rendered bad for repugnancy."

51. The relevant decisions of the Hon'ble Supreme Court under Article 254 of the Constitution are as under:-

(i) In ***Zaverbhai Amindas vs. State of Bombay, [AIR 1954 SC 752]***, the provisions of Essential Supplies [Temporary Powers] Act, including the re-

enactment of Section 7 in Act No.24 of 1946, as amended by Act.No.52 of 50 and the Bombay Essential Supplies [Temporary Powers] and the Essential Commodities and Cattle [Control] Enhancement of Penalties Act, (Act No.36 of 1947) came up for consideration. While adverting to Article 254(2) of the Constitution, His Lordship, Venkatarama Ayyar, J., held that the important thing to consider with reference to Article 254(2) is whether the legislation is "***in respect of the same matter***". If the later legislation deals not with the matters which form the subject of the earlier legislation but with other and distinct matters, though of a cognate and allied character then Article 254(2) will have no application. In other words, when there is a legislation covering the same ground both by the Centre and by the State, both of them being competent to enact the same, the law of the Centre should prevail over that of the State. Thus, the principle of implied repeal would apply if the subject matter of the later legislation is identical to the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment. In such a case, the later legislation made by the Parliament would prevail in respect of the same

matter as that of the State Law. In that case, it was held that the State Law i.e., Act No.36 of 1947 had to yield to the Parliamentary legislation namely Act No.24 of 1946 as amended by Act No.52 of 50. Thus, the test laid down by the Hon'ble Supreme Court is that of legislation in respect of the same matter.

(ii) The aforesaid decision of the Constitution Bench was referred to in ***Tika Ramji and others etc. vs. The State of Uttar Pradesh and others, [AIR 1956 SC 676]***, which is also a decision of the Constitution Bench. In that case, the validity of the U.P.Sugarcane (Regulation of Supply and Purchase) Act, (UP Act No.24 of 1953) and the Notifications issued by the UP Government were assailed. Parliament thereafter, had enacted the Essential Commodities Act, 1955 (Act No.10 of 1955) and in exercise of powers conferred by Section 3 of the said Act, the Central Government promulgated the Sugar Control Order, 1955 and the Sugarcane Control Order, 1955. Prior to that Parliament had enacted the industries (Development and Regulation) Act, 1951 (Act.65 of 1951). It was held that the State Act was repugnant to Act 65 of 1951 and Act 10 of 1955 and thus, void, by reason of such

repugnancy, after considering Entry 52 of List I, Entries 24 and 27 of List II and Entry 33 of List III. The Constitution Bench held that doctrine of repugnancy has to be considered when the law made by the Parliament and the law made by the State Legislature occupy the same field because if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise. The approach was to see whether the Parliament and State Legislature sought to exercise their powers over the same subject matter or whether the laws enacted by the Parliament were intended to be a complete exhaustive code or in other words, expressly or impliedly evinced an intention to cover the whole field. In the said case, the provisions of Act 65 of 1951 as amended by Act 26 of 1953, Act 10 of 1955 and the Sugar Control Order, 1955 with those of the impugned Act and the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, passed thereunder were compared. It was held that the impugned Act and the Notifications thereunder were *intra vires* the State Legislature and were binding on the petitioners therein, as the doctrine of repugnancy did not apply.

(iii) In ***Deep Chand vs. State of UP, [AIR 1959 SC 648]***, the question was whether the U.P. Transport Service (Development) Act, 1955 (Act IX of 1955) (U.P. Act), did not, on the passing of the Motor Vehicles (Amendment) Act, 1956 (100 of 1956) (Central Act) become wholly void under Article 254 (1) of the Constitution but continued to be a valid and subsisting law, supporting the scheme already framed under the U.P. Act. It was held that the U.P. Act was void from the date of the amending Act but actions taken before that date cannot be affected. It was held that if the pre-Constitution law exists for the post-Constitution period for all the past transactions, by the same parity of reasoning, the State law subsists after the making of the new law by the Parliament for the past transactions. Thus, it was held that Act 100 of 1956 i.e., the Central Act prevailed over the State Act from the date of the amendment of the Central Act, having regard to Article 254 (2) of the Constitution.

(iv) In ***M. Karunanidhi vs. Union of India, [AIR 1979 SC 898]***, the circumstances when repugnancy between law made by the State and Parliament would

arise have been re-stated. In that case it was held that Section 29 of Tamilnadu Public Men (Criminal Misconduct) Act, 1974 as substituted by Act 16 of 1974 was not repugnant to Section 161 of the Indian Penal Code or Section 5(1)(d) of Prevention of Corruption Act, 1947. In the said case, it was held as under:

“(3) Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List trenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

(4) Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Art.254 (2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions

of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Art.254.”

(v) In ***Rajiv Sarin vs. State of Uttarkhand, [(2011) 8 SCC 708]***, the provisions of the Kumaun and Uttarkhand Zamindari Abolition and Land Reforms Act, 1960, which is a State legislation (State Act) which has received Presidential assent and the provisions of the Indian Forest Act, 1927, which is a Central enactment, were considered to ascertain as to whether there was repugnancy of the former Act and it was held that the two Acts operated in different fields and in respect of distinct subjects and acquisition of forest land under them was also conceptually different. It was held that the State Act was not repugnant to the Central Act and therefore, Presidential assent under Article 254(2) (although it was obtained) was not required. It was held that for the applicability of Article 254, there must be direct conflict and both laws must be completely inconsistent or absolutely irreconcilable. The Parliamentary law must be

exhaustive, unqualified and cover the entire field. The subject matter of both legislations must be the same. In order to ascertain the subject matter of enactment under List III, doctrine of pith and substance would apply. It was held that the State Act being an enactment for agrarian reforms and the Indian Forest Act, 1927 dealing mainly with forests, the pith and substance of Forest Act, 1927, was different from the State Act therein and hence, they both could co-exist. The law as to the nature of President's assent under Article 254(2) was stated as follows:-

"The law as to the nature of the President's assent under Article 254(2) may be stated as follows:

- (a) Article 254(2) contemplates 'reservation for consideration of the President' and also 'assent'. Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnance between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.
- (b) The word 'assent' used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.

- (c) In case where it is not indicated that 'assent' is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.
- (d) However, it is not necessary that in every case the assent of the President in specific terms had to be sought and given for special reasons in respect of each enactment or provision or provisions.
- (e) The assent sought for and given by the President in general terms could be effective for all purposes unless specific assent is sought and given in which event it would be operative only to that limited extent. Thus, if the assent is sought and given in general terms it would be effective for all purposes."

52. Recently, in **West U.P.Sugar Mills Association vs. State of Uttar Pradesh, [2020 SCC Online SC 380]**, the Hon'ble Supreme Court noted that there was a conflict between the two decisions, one, in the case of **Ch.Tka Ramji vs. The State of Uttar Pradesh** (supra) and the other, in the case of **U.P. Cooperative Cane Unions Federations vs. West U.P.Sugar Mills Association [(2004) 5 SCC 430]**, when the matter was referred to a larger Bench on the factual matrix. It was

observed that there was no conflict between the two decisions.

53. In the instant case, in order to ascertain as to whether the State law is repugnant to the Central law, it would be useful to consider chronologically, the laws made by the Parliament as well as laws made by the State Legislature on the pertinent aspect regarding the rights of the OCI Cardholders in the matter of their admission to professional colleges in the State on the basis of an entrance test.

54. At the outset, the expression, "*law*" as defined in Clause (3) of Article 13 in Part III of the Constitution dealing with Fundamental Rights could be noticed. According to the said provision, the expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. Therefore, the definition of 'law' under Part III of the Constitution is a comprehensive one which could be borne in mind in the instant case.

55. Under Article 11 of the Constitution, Parliament can make any provision with respect to acquisition and termination of citizenship and all other matters relating to

citizenship. It is pursuant to the said provision as also on the basis of Entry-17 of List-I of the VII Schedule of the Constitution, that the Citizenship Act has been enacted and is in force since the year 1955.

56. With the implementation of economic reforms since the year 1991 in India, Indian economy has embraced liberalization and privatization and the same has resulted in globalization. As a result, many Indian citizens have gone overseas not only for study and research, but also for employment, trade and commerce and business. Also, over the decades after India became an independent nation, there have been thousands of Indian citizens who have gone abroad for various purposes and have become foreign citizens and have given up Indian citizenship, yet over the years, there is a yearning amongst the Indian Diaspora globally to maintain a connection with their country of origin. The Citizenship Act is the umbilical cord through which the Indian Diaspora the world over have a connection with India—their country of origin.

57. The pertinent problem in the instant case is in respect of children of Indian citizens, who were born overseas. Many Indian citizens have moved or translocated

abroad for various purposes. Some of them have had children who were born abroad and after their purpose of stay abroad is served they return to India. Such children born abroad have foreign citizenship which they have acquired as a result of birth overseas in the particular foreign country and they have not yet given up their foreign citizenship nor embraced Indian citizenship. Such children, who were minors when they filed these writ petitions before this Court, have sought remedies.

58. Keeping in view the legal complications and impediments, the Parliament has amended the Citizenship Act from time to time bearing in mind the provisions of the Constitution. Part II (Articles 5 to 11) of the Constitution of India deals with Citizenship. Article 5 deals with citizenship at the commencement of the Constitution. Rights of citizenship of certain Persons of Indian Origin outside India are dealt with in Article 8. Article 9 states that persons voluntarily acquiring citizenship of a foreign State shall not to be citizens of India. Article 10 speaks of continuing of the rights of citizenship. That every person who is or is deemed to be a citizen of India under Articles 5 to 8, subject to the provisions of any law that may be made by

Parliament, continues to be such citizen. The Parliament can regulate the right of citizenship by law as per Article 11.

59. In terms of Article 11 of the Constitution, the Parliament has enacted the Citizenship Act, to provide for the acquisition and determination of Indian citizenship. The acquisition of citizenship could be by various modes, namely:

- Citizenship by Birth (Section 3);
- Citizenship by Descent (Section 4);
- Citizenship by Registration (Section 5);
- Citizenship by Naturalisation (Section 6);
- Citizenship by Incorporation of Territory (Section 7);

The relevant provisions of the Citizenship Act shall be considered as under:

(a) Section 4 of the Citizenship Act was amended by Act No.6 of 2004 with effect from 03/12/2004. Section 4(1)(b), *inter alia*, states that a person born outside India shall be a citizen of India by descent, on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth. Provided, if either of the parents of a person referred to in clause (b) was a citizen of India by **descent only**, then that person shall not be a citizen of India by virtue of Section 4, unless— **(a)** his

birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or **(b)** either of his parents is, at the time of his birth, in service under Government in India. Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), a person shall not be a citizen of India by virtue of Section 4, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,— (i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), whichever is later; or (ii) with the permission of the Central Government, after the expiry of the said period. Provided, no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(b) Section 4(1A) of the Citizenship Act states that a minor who is a citizen of India by virtue of Section 4 (i.e., citizenship by descent), and is also a citizen of any other country (i.e., citizenship by birth), as in the instant case,

shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.

(c) For the purpose of this case, Section 5(1)(g) is relevant as it speaks of citizenship by registration. It states that subject to the provisions of that Section (Section 5) and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he (a person of full age) belongs to any of the categories mentioned therein. One of the categories states that a person of full age and capacity who has been registered as an OCI Cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

(d) Section 5(1A) states that the Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clause (g) of sub-section (1), up to a maximum of thirty days which

may be in different breaks. Section 5(4) states that the Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India. Section 5(5) states that a person registered under the said Section (Section 5) shall be a citizen of India by registration as from the date on which he is so registered. Section 5(1)(g) covering OCI Cardholder for the purpose of registration came into force from 06.01.2015.

(e) Section 7A deals with Registration of OCI Cardholder and Section 7B deals with conferment of rights on OCI Cardholder, Section 7C deals with renunciation of OCI Card and Section 7D speaks of cancellation of registration as Overseas Citizen of India Cardholder.

(f) Section 7A(1)(b) speaks that the Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an OCI Cardholder, *inter alia*, a person, who is a minor child of a person mentioned in Clause (a) thereof or a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India as per Section 7A(1)(c).

(g) Section 7A(3) begins with a *non-obstante* clause and it states that notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an OCI Cardholder.

(h) Section 7B(1) also begins with a *non-obstante* clause and it states that notwithstanding anything contained in any other law for the time being in force, an OCI 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. The rights which an OCI Cardholder is not entitled to are specified in sub-section (2) of Section 7B, which essentially deal with public employment and holding constitutional positions. Every notification to be issued under sub-section (1) of Section 7B has to be laid before each House of Parliament.

(i) Part VI of the Citizenship Rules, 2009 (hereinafter referred to as 'the Rules' for brevity sake) deals with registration, renunciation and cancellation of

Overseas Citizen of India. Form No.XXIX is the certificate of registration of Overseas Citizen of India Cardholder.

60. In view of the aforesaid discussion, the expression "citizen" in Rule 5 of 2006 Rules and the expression "Non-Resident Indian" to include OCI cardholders under 2006 Act, both of the State Government, in juxtaposition with Central Government Notifications of 11/04/2005 and 05/01/2009 in the matter of eligibility of OCI cardholders to appear for All-India Pre-Medical Test and to make them eligible for admission in pursuance of the provisions contained in relevant Acts (State Acts) i.e., Medical, Dental, Engineering and such other courses, would have to be considered.

61. It is pursuant to Section 7B of the Citizenship Act, the Central Government has, from time to time, issued notifications, which have been extracted above and Notification dated 05/01/2009 is under consideration in the instant case. The first of the three notifications dated 11/04/2005, *inter alia*, stated that the OCI Cardholders shall have parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and

educational fields, except in matters relating to the acquisition of agricultural or plantation properties. The same is very general in nature. On 05/01/2007, the OCI Cardholders were treated on par with the Non-Resident Indians in the matters of adoption of Indian children, tariffs in air fares in domestic sectors in India, payment of entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India. This Notification is specific in certain aspects and areas of activity.

62. In continuation of the aforesaid notifications, the Central Government issued another notification on 05/01/2009, which consists of two parts; the first part is to confer parity between OCI cardholders and Non-Resident Indians on certain rights, including the right to follow certain professions in India. The second part is to confer right on the OCI Cardholders to appear for All India Pre-Medical Test or such other tests so as to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.

63. The learned Single Judge has interpreted the aforesaid Notification and has observed that the parity of OCI Cardholders with Non-Resident Indians is conspicuous

by its absence in the matter of permitting the OCI Cardholders to appear in All-India Pre-Medical Test or such other tests so as to make them eligible for admission. However, this is in pursuance of the provisions contained in the relevant Acts.

64. The contention of learned Additional Advocate General, appearing for the State, is, the object of the said provision is only to confer eligibility to appear in All-India Pre-Medical Test or such other entrance tests for various professional courses in India. However, the eligibility for admission has to be in accordance with the relevant State law which is applicable. Thus, a distinction between eligibility for appearance in entrance test and eligibility for admission to a Medical/Dental or other professional courses was sought to be made. In this context, emphasis was laid on 2006 Act and 2006 Rules of the State to contend that they recognize OCI Cardholder as a Non-Resident Indian for the purpose of admission to a professional course by virtue of the amendment made to the Act and therefore, such OCI Cardholder can seek admission only in Non-Resident Indian quota in various Medical/Dental or Engineering courses in the State. In this

regard, it was also emphasized that under 2006 Rules, the pre-condition is that the student must be a citizen of India before he could become eligible to seek a seat in Government quota seats in the State and if he is not a citizen of India, he can be treated on par with a Non-Resident Indian and he is eligible to seek a seat in Non-Resident Indian quota only and not in the Government quota.

65. This contention was rebutted by the learned counsel appearing for the OCI Cardholders to contend that in view of the amendments made to the Citizenship Act and the Notifications issued under Sub-section (1) of Section 7B of the said Act, extending the rights of OCI Cardholders, the same would prevail over the State law, as under Article 246 of the Constitution of India, when once the Parliament makes a law or an amendment to an existing law or issues a notification or any other regulation or delegated legislation under a parliamentary enactment, they would prevail over the State law. Even having regard to the stipulations contained under Article 254 of the Constitution, in respect of a subject in List-III when the

field is occupied by a parliamentary law, the State Law would become repugnant to the parliamentary Law.

66. Therefore, if, on an interpretation of the Notification dated 05/01/2009 it is held that the parity of OCI Cardholders with Non-Resident Indians in the matter of appearance and eligibility for admissions in the Medical/Dental and Engineering Entrance Test is removed, the OCI Cardholders cannot be treated as a Non-Resident Indian. The said Notification having been issued on 05/01/2009, would prevail as it is a Notification issued under the Citizenship Act, which is a Parliamentary legislation and not State law. Then, whether, by way of an amendment to the Act or by Rules (State law), an OCI Cardholder can be treated on par with a Non-Resident Indian? The Notification dated 05/01/2009 issued under Section 7B of the Citizenship Act essentially is regarding aspects of citizenship which is a subject under Entry 17 of List-I of the Seventh Schedule and incidentally touches upon educational rights of OCI Cardholders.

67. But, in the year 2017 i.e., with effect from 20/04/2017, Section 2(1)(n) of the 2006 Act, which had been enforced on and from 18/11/2013, was amended so

as to include an OCI Cardholder within the nomenclature of Non-Resident Indian for the purpose of admission to professional educational institutions in the State. This amendment is pursuant to Entry 25 of List III of the VII Schedule of the Constitution.

68. Therefore, there is a two-pronged submission made by the learned counsel appearing for the OCI Cardholders/writ petitioners: firstly, if Notification dated 05.01.2009 has not treated the OCI Cardholders, who intend to appear for the entrance test for various Medical/Dental and other professional courses, on par with Non-Resident Indians, then on that score itself, it could be held that the OCI Cardholders need not seek admission only in the quota meant for Non-Resident Indian students in the professional institutions but are eligible to seek admission in institutional quota as well as State Government quota of seats. That is how the learned Single Judge has interpreted Notification dated 05/01/2009. We think that is the correct interpretation and therefore, on that score it is held that it is not necessary for an OCI Cardholder to seek admission to the Medical/Dental or Engineering colleges in the State only

under the Non-Resident Indian quota. Therefore, the petitioners would succeed by the said reasoning alone.

69. Secondly, petitioners' counsel contended that on the aforesaid interpretation of the learned Single Judge, by the application of the doctrine of occupied field in the context of repugnancy under Article 254 of the Constitution, it could be held that the amendment to Section 2(1)(n) of 2006 Act with effect from 20/04/2017 so as to include an OCI cardholder within the definition of *Non-Resident Indian* is repugnant, as Notification dated 05/01/2009 issued under Section 7B(1) of the Citizenship Act which is a Parliamentary legislation does not treat the OCI Cardholder as a Non-Resident Indian. The basis for such a contention is, if admission to professional educational institutions in the State is considered to be falling within the subject 'education' under Entry-25 of List-III of Seventh Schedule of the Constitution, when educational rights of OCI Cardholders are already delineated under the Notification dated 05/01/2009, the same has also to be construed as touching upon Entry 25 of List-III and therefore, the State cannot pass any law contrary to the Central law, particularly when it has not

received the assent of the President of India. Hence, the amendment to the definition under Section 2(1)(n) of 2006 Act with effect from 20/04/2017 which is a State Act is hit by the doctrine of occupied field by virtue of Notification dated 05/01/2009 having a supervening effect as any State law which is inconsistent with the Parliamentary law has to yield to the latter. In other words, the contention of the learned counsel for the writ petitioners/OCI cardholders is that, the OCI Cardholders have to be treated as citizens of India, particularly when they are minors and hence, full scope to the rights conferred to the OCI Cardholders must be recognised and given effect to is justified.

70. We find considerable force in the submission of the learned counsel for the writ petitioners, which is also consistent with the reasoning of the learned Single Judge and hence, the contentions made on behalf of the State through the learned Additional Advocate General cannot be accepted.

71. There is another angle to the case. The petitioners in the instant case are all OCI Cardholders who were minors at the time of filing the petitions. Such of

those minor OCI Cardholders who are born subsequent to 10/12/1992 to either of whose parents who was a citizen of India at the time of their birth, are conferred citizenship of India by descent. This is evident on a reading of Section 4(1)(b) read with Section 4(1A) of the Citizenship Act, as a minor who is a citizen of India by virtue of Section 4(1)(b) by descent and is also a citizen of any other country, such as OCI Cardholder as per Section 7A(1)(c), shall cease to be a citizen of India if he either renounces his citizenship on attaining full age or even if he does not renounce his citizenship or nationality of another country within six months of attaining the full age. Therefore, the status of minor children of citizens of India is protected by an amendment made to Section 4 of the Citizenship Act by insertion of Section 4(1A).

72. As already noted above, such an amendment to the Citizenship Act was made having regard to the exigencies and emerging situations, owing to several Indian citizens going abroad for work, business, research or other such purposes and they giving birth to children overseas. The status of such minor children born overseas to Indian parents is protected by an amendment made on

03/12/2004 to the Act and such children born on or after 10/12/1992 to citizens either of whose parents are citizens of India at the time of birth, become citizens by descent.

73. But, if the children are born on or after the commencement of the Citizenship (Amendment) Act, 2003, they shall not be citizens of India by virtue of Section 4 of the Citizenship Act, by descent, unless their birth is registered at an Indian consulate in such form and in such manner, as may be prescribed, (i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), whichever is later; or (ii) with the permission of the Central Government, after the expiry of the said period, provided the passport of the minor of another country is not held by such a minor. In the instant case, the aforesaid proviso in Section 4 of the Citizenship Act does not apply as the writ petitioners were all born prior to the Citizenship (Amendment) Act, 2003. Hence, under Section 4(1A) of the Act, they have the benefit of being foreign citizens and also being conferred citizenship of India by descent till the passing of six months on attaining the full age. Of course, it is clarified that this benefit of dual citizenship is given to only those

children who are born overseas to citizens of India till they attain majority.

74. If such children are born to citizens of India by descent, then certain other compliances have to be made under Section 4 of the Citizenship Act. If the children are born to citizens of India by descent, then the second proviso under Section 4(1) would apply, and the conditions mentioned in the said proviso have to be complied.

75. Hence, on a conjoint reading of the aforesaid provisions, it is held that the amendment made to Section 2(1)(n) of the 2006 Act, which is a State enactment, with effect from 20/04/2017 is under Entry 25 of List-III of the Seventh Schedule of the Constitution. This amendment was made by the State legislature, after the issuance of the Notification—under the Citizenship Act, a Parliamentary law—dated 05/01/2009. This Notification is issued under Section 7B of the Citizenship Act which is a Central law but is regarding the rights of OCI Cardholders including their right to admission in professional colleges in the country. The State law is made under Entry 25 of List III. Under the amendment to the State law i.e., 2006 Act, Non-Resident Indians and OCI Cardholders are treated on par.

But, Central Notification dated 05/01/2009 makes a distinction between the two categories. Hence, the Central law would prevail over the State amendment when viewed from the point of view of Article 246(1) of the Constitution. Also, if the amendment to 2006 Act is looked at from the angle of Entry 25 of List-III, then it would be hit by Article 254 of the Constitution, as the rights conferred on OCI Cardholders from the point of view of their educational rights is touched upon and Section 7B of the Citizenship Act empowers issuance of a notification on educational rights of OCI Cardholders and hence, it must be held to be repugnant. Hence, Notification dated 05/01/2009 would prevail over the State law. This is, in addition to the interpretation made by the learned Single Judge to the said Notification, which we affirm. Hence, inclusion of the expression OCI Cardholder in the definition of Non-Resident Indian under Section 2(1)(n) of the 2006 Act being contrary to Notification dated 05/01/2009 is held to be repugnant and has to yield to the Central law. Such an interpretation becomes clearer in view of the parity with Indian citizens.

76. Also, the expression 'citizen' in Rule 5 of 2006 Rules would take within its scope and ambit OCI Cardholders as they fall within Section 4(1)(b) read with Section 4(1A) of the Citizenship Act as they are citizens by descent provided they comply with the conditions mentioned therein. The petitioners herein, who were minors at the time of filing these petitions, had the benefit of a dual citizenship being conferred (i) on account of their birth in a foreign country and citizenship of that country where the birth had occurred and (ii) Citizenship of India as per Section 4(1A). This right is particularly conferred on minors so as to safeguard and protect their interests until they attain full age. Thus, in the instant case, the writ petitioners, to whom Section 4(1A) of the Citizenship Act is applicable, would fall within the nomenclature of 'citizens' in Rule 5 of the 2006 Rules. Therefore are entitled to the benefit of admission in the State quota seats also. The amendment to Section 4 is an instance of a benefit being conferred on citizens by descent (Section 4(1A)) which has to be read within the expression "Citizen" in Rule 5 of the 2006 Rules.

77. Supervening all these aspects is, the Scheme of National Eligibility cum Entrance Test (NEET) 2016, which is a screening examination for Medical and Dental course seats throughout India which is in vogue till date. Under the said Scheme, there is no distinction made in eligibility and qualification in respect of the seats under the control of the States, deemed universities, Central Universities etc., under which Indian nationals, Non-Resident Indians, OCI Cardholders, Persons of Indian Origin and foreign nationals and are treated on par. This is particularly so in the context of 15% of All-India quota of seats. But, when it comes to the seats under the control of States, it is subject to the laws framed by the respective State Governments. But, as discussed above, Article 246 would be applicable when viewed from the perspective of Entry-17 of List-I of Seventh Schedule of the Constitution and the State law has to be viewed from the perspective of the Parliamentary law. That is how Article 254 becomes applicable when the matter is viewed from the perspective of Entry-25 of List-III of Seventh Schedule of the Constitution.

78. Thus, an OCI Cardholder cannot be treated on par with the Non-Resident Indian under Section 2(1)(n) of 2006 Act (State law), on account of the interpretation given to Notification dated 05/01/2009 and the State law will have to yield to the Central law, due to applicability of doctrine of occupied field and having regard to the repugnancy under Article 254 of the Constitution.

79. Also, even where Section 4(1)(b) read with Section 4(1A) of the Citizenship Act is applicable, Section 2(1)(n) of the 2006 Act, which is a State law, must yield to the parliamentary or Central law, namely Citizenship Act having regard to Article 246(1) of the Constitution.

80. Thus, when the parity between the OCI Cardholder and Non-Resident Indian is removed, the concept of OCI Cardholder cannot be given a restricted meaning as Non-Resident Indian so as to restrict such admission only to Non-Resident Indian quota in the State quota of seats and not in the institutional quota or Government quota of seats under the NEET Scheme.

81. Therefore, we are of the view that the learned Single Judge was justified in interpreting Notification dated

05/01/2009 as prevailing over the State law whether 2006 Act or 2006 Rules. Therefore, we find no merit in the writ appeal. Hence, it is **dismissed**.

82. In view of the aforesaid discussion, we find merit in the writ petitions. Hence, the writ petitions filed by the petitioners are **allowed** in the following terms:

- (i) The impugned Section 2(1)(n) of the Karnataka Professional Educational Institutions (Regulation of Admission & Determination of Fee) Act, 2006, as amended by Karnataka Act No.22 of 2017, to the extent it includes the 'Overseas Citizens of India' or 'Overseas Citizens of India Cardholders' within the definition of "Non-resident Indian" is quashed;
- (ii) The impugned Rule 5 of the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institution Rules, 2006, to the extent it prescribes Indian Citizenship, is interpreted so as to include within the scope of the expression 'Citizen', OCI Cardholders as per Section 4 of the Citizenship Act and as per Notification dated 05/01/2009 issued under Section 7B of the said Act;
- (iii) The writ of Mandamus issued by the learned Single Judge directing the Respondent-State and the Respondent-Karnataka Examinations Authority to permit the petitioners (as per their choice) to register for CET-2019 as per the Notification dated

31/01/2019 issued by the Respondent-Karnataka Examinations Authority is confirmed. Further, the aforesaid Authority is directed to permit their participation in the ensuing counseling of CET-2020 or subsequent years, for selection and allotment of seats in BE/B.Tech/B.Arch., or such other professional courses in Government Colleges, Private Aided/Un-aided Colleges/ educational institutions for the Academic Year 2019-2020 on the basis of their relative merit and ranking in the imminent CET-2020 or subsequent years;

- (iv) Insofar as MBBS/BDS courses are concerned, NEET Scheme shall apply for the Academic Years 2019-20 as well as 2020-21 and a writ of mandamus is issued directing the respondent-State and respondent-Karnataka Examinations Authority to permit the petitioners and similarly situate candidates i.e., OCI Cardholders to register and to participate in the ensuing counseling being held for selection and allotment of seats for the Academic Year 2020-21 and subsequent years, on the basis of their relative merit and ranking;
- (v) The Respondent-Government and the Respondent-Karnataka Examinations Authority shall take all steps as are necessary to facilitate and effectuate the aforesaid directions, forthwith and without brooking any delay in the matter, keeping in view CET-2020 or subsequent years.

POST-SCRIPT:

83. Before parting, we would like to remind ourselves of the ancient Indian thought, namely "**Vasudhaiva Kutumbakam**", which means "*the world is a family*". Therefore, the minor children of Indian citizens born overseas must have the same status, rights and duties as Indian citizens, who are minors.

84. In view of the disposal of the writ appeal, pending interlocutory applications stand ***disposed of***.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Mvs/ S RK/-
Ct: R**