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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **W.P.(C) 12263/2024 & CM APPL. 50961/2024**

Between: -

DEVADARSINI UMAPATHY
AGED ABOUT 18 YEARS
PLOT NO.49, S1, GR BUILDERS,
BABU NAGAR 2ND MAIN ROAD,
MEDAVAKKAM, CHENNAI - 600100.

...PETITIONER

(Through: Mr. Amol Chitale, Mr. V. P. Raman, Ms. Sonia Dube, Ms. Kanchan Yadav, Mr. Seshasayee, K. Mr. Tanishq Sharma and Ms. Saumya Sharma, Advs.)

AND

MEDICAL COUNSELLING COMMITTEE
REP. BY ITS SECRETARY
NIRMAN BHAVAN, RAJPATH AREA,
SECRETARIAT, NEW DELHI - 110002

...RESPONDENT NO.1

ALL INDIA INSTITUTE OF MEDICAL SCIENCES (AIIMS)
REP. BY ITS NODAL OFFICER (MBBS ADMISSION- 2024)
ANSARI NAGAR, NEW DELHI- 110029

...RESPONDENT NO.2

UNION OF INDIA
REP. BY ITS SECRETARY
TO GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI- 110001

...RESPONDENT NO.3

THE NATIONAL MEDICAL COMMISSION
REP. BY ITS SECRETARY
POCKET 14, SECTOR - 8, DWARAKA,
NEW DELHI - 110007.

...RESPONDENT NO.4

*(Through: Mr. Aproov Kurup, CGSC with Mr. Arnav Mittal, G.P. along with Mr. Shaurya Agarwal, Adv. for R-1 & 3.
Mr. T. Singhdev, Ms. Anum Hussain, Mr. Abhijit Chakravarty, Mr. Bhanu Gulati, Mr. Aabhaas Sukhramani and Mr. Tanishq Srivastava, Advs. for R-4.)*

+ **W.P.(C) 11755/2024, CM APPL. 48881/2024, CM APPL. 51307/2024 & CM APPL. 59331/2024**

Between: -

MS PRISHA KHULLAR
D/O SHRI MANIK KHULLAR,
R/O 156, JOR BAGH, NEW DELHI-110003

...PETITIONER

(Through: Mr. Praveen Kumar, Mr. Sunil Mr. Suman, Mr. Sonu, Mr. Sarthak, Advs.)

AND

UNION OF INDIA
THROUGH SECRETARY
VERSUS
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN,
NEW DELHI- 110011

...RESPONDENT NO.1

MEDICAL COUNSELLING COMMITTEE
DIRECTORATE GENERAL OF HEALTH SERVICES,
GOVERNMENT OF INDIA
NIRMAN BHAWAN,
NEWDELHI-110011

...RESPONDENT NO.2

ALL INDIA INSTITUTE OF MEDICAL SCIENCES (AIIMS)
EXAMINATION SECTION,
CONVERGENCE BLOCK,
ANSARI NAGAR,
NEW DELHI- 110608

...RESPONDENT NO.3

(Through: Mr. Ajay Jain, SPC with Mr. Krishna Sharma, Mr. Harshit Batra, Mr. M. N. Mishra and Mr. Manoj Gautam, Advs. for R-1 & 2. Mr. Anand Varma, Ms. Apoorva Pandey and Mr. Ayush Gupta, Advs. for AIIMS.)

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Reserved on: 08.10.2024
Pronounced on: 16.10.2024

J U D G M E N T

The issue involved in these writ petitions pertains to whether the right of admission to the MBBS course for Overseas Citizen of India [OCI] Cardholders, who have obtained their OCI Cards prior to 04.03.2021, are to be considered under the seats reserved against the Indian National Category or the Foreign National Category. An identical question is involved in both these petitions, hence, the same are being adjudicated by way of this common judgment. For the sake of convenience, the foundational facts are primarily taken from W.P.(C) 12263/2024. However, wherever necessary, references to the pertinent facts from W.P.(C) 11775/2024 shall also be made.

2. The petitioner was born in India on 24.01.2006 in Tiruchirappalli, Tamil Nadu. Thereafter, she pursued her schooling from Kindergarten up to 7th standard from the United States of America. Subsequently, she returned to India and continued her education, from 8th standard to 12th

standard. Subsequently, the petitioner has acquired citizenship of the United States of America on 12.05.2021, following which she obtained her OCI Card on 12.07.2021.

3. The petitioner, being desirous of securing admission to the Bachelor of Medicine and Bachelor of Surgery [MBBS] course at an Institute of National Importance [INI], applied for National Eligibility cum Entrance Test – Undergraduate [NEET-UG] 2024. The petitioner submitted her online application, wherein she disclosed herself to be a Foreign National. The examination was held on 05.05.2024, and the results were declared on 26.07.2024.

4. Based on the result and the merit list, the petitioner submitted her claim for admission in accordance with the brochure-prospectus issued by the respondent-AIIMS. Clause 4 therein, postulates reservation of one hundred and twenty-five (125) seats for Indian Nationals and seven (7) seats for Foreign Nationals. The relevant portion of the brochure-prospectus reads as under:-

“4.0. Number of Seats & Reservation

A. AIIMS, New Delhi:

One hundred and twenty-five (125) seats for Indian Nationals and Seven (7) seats for (Foreign Nationals) are available for admission to MBBS course. The policy of reservation of the Government of India is applied at AllMS. The reservation roster (including 5% reservation for Persons with Benchmark Disability) will be maintained by Medical Counseling Committee and shall be applied to AllMS, New Delhi.”

5. The core grievance of the petitioners in the instant case pertains to the allocation of the seven seats, which have been reserved for the Foreign Nationals, have been allegedly filled by certain students improperly and erroneously, who have obtained their OCI Cardholding status prior to 04.03.2021. According to the petitioner(s), the same stands in violation of the directions passed by the Supreme Court in ***Anushka***

*Rengunthwar v. Union of India*¹, and has adversely impacted the prospects of the petitioner in securing an admission under the Foreign National Category.

Submissions on behalf of the petitioners

6. Mr. Amol Chitale, learned counsel for the petitioner, submits that the action of the respondents in considering students who had acquired OCI Cards prior to 04.03.2021 under the Foreign National Category is illegal and contrary to the legal provisions governing the OCI Cardholders. He contends that by including these OCI Cardholders within the Foreign National Category, the respondents have permitted ineligible candidates to occupy seats reserved mainly for the Foreign Nationals, thereby depriving the petitioner of her legitimate right of fair consideration.

7. He submits that if the decision in *Anushka (supra)* is appreciated in the right perspective, it would clearly demonstrate that the respondents ought not to have considered OCI Cardholders prior to 04.03.2021 within the Foreign National Category. Instead, candidature of such individuals should have been confined to the Indian National Category. The petitioner has drawn the attention of this Court to Clause 5, Eligibility (B) of the respondent-AIIMS brochure-prospectus, contending that it was well understood by the respondent-AIIMS that OCI Cardholders, who have acquired the Card before the said Notification, would be entitled to all the rights, privileges, and benefits available only under the Indian National Category.

8. He submits that, contrary to the position outlined in the respondent-AIIMS brochure-prospectus, the respondent-AIIMS, subsequent to the commencement of the admission process, abruptly altered the established

¹ 2023 SCC Online SC 102.

criteria *vide* Notification dated 21.08.2024. In the said Notification, the respondent-AIIMS apparently changed its stance to include OCI Cardholders holding foreign passports within the Foreign National Category, alongside Foreign Nationals, thereby deviating from the criteria set forth in the earlier brochure-prospectus. He, therefore, submits that the inclusion of OCI candidates under the Foreign National Category is in clear violation of the directions issued by the Supreme Court, as well as the initial brochure-prospectus issued by the respondent-AIIMS itself.

9. Learned counsel further submits that the respondents, through their internal communications, interpretations and notices, cannot deprive the petitioner of her vested right to be fairly considered under the Foreign National Category. To substantiate his contention, he places further reliance on the brochure-prospectus issued by the respondent-AIIMS for admission to the Institute of National Importance Combined Entrance Test [**INI-CET**] for the July 2024 session. Learned counsel specifically drew the attention of this Court to Section IV of the brochure-prospectus, which delineates the eligibility criteria for the INI-CET, asserting that it unequivocally states that no candidate shall be eligible for both the Indian National and Foreign National Categories.

10. According to learned counsel, a reading of both the brochure-prospectuses, i.e. for the Under-Graduate and Post-Graduate courses, issued by the respondent-AIIMS, clearly affirms that the decision of the Supreme Court does not entitle OCI Cardholders, who obtained their Cards prior to 04.03.2021, to claim a position in the Foreign National Category. He places reliance on Clause 4(c) of the Post-graduate INI-CET brochure-prospectus, which specifically addresses the eligibility of the OCI candidates. According to him, this clause states that the eligibility of such candidates is governed by the decision in *Anushka (supra)*. Furthermore, he clarifies that as per the brochure-prospectus, the

OCI candidates who were born before 04.03.2021 and secured their Cards prior to that date shall be treated as Indian Nationals and are eligible for Open Category [unreserved] seats for Indian Nationals, but not for seats allocated to Foreign Nationals.

11. While placing reliance on the e-mail communication dated 09.08.2024, learned counsel for the petitioner submits that the respondent-AIIMS has clarified that the contents of the INI-CET brochure-prospectus regarding OCI candidates are in compliance with the directions in *Anushka (supra)* and the same is to be read in consonance with the MBBS brochure-prospectus.

12. He further submits that if the OCI candidates who acquired their Cards before 04.03.2021 are correctly placed under the Indian National Category, it would reduce competition within the Foreign National Category, thereby significantly enhancing the petitioner's prospects of securing an MBBS seat at the respondent-AIIMS.

13. Mr. Praveen Kumar, learned counsel for the petitioner appearing in W.P.(C) 11755/2024, submits that the petitioner in this case had renounced her OCI Card on 10.04.2024 and thus confines her claim to the Foreign National Category. Learned counsel argues that the respondent-AIIMS, as clarified in its brochure-prospectus, categorically considers OCI Cardholders prior to 04.03.2021 within the Indian National Category. Therefore, at a later stage, the respondent-AIIMS cannot deviate from its position without any justification. He further refers to paragraph 55 of the decision in the case of *Anushka (supra)*, explaining that the Supreme Court unequivocally held that OCI Cardholders prior to 04.03.2021 must be considered within the Indian National Category.

14. Learned counsel drew the attention of the Court to the reply filed by the respondent-AIIMS in the petition, specifically paragraphs 8 and 11, which according to him, affirm that the respondent-AIIMS's position

is consistent with the decision of the Supreme Court. According to him, any alteration in the terms of admission or counselling done midway undermines the substantive rights of the candidates, effectively depriving them of their legitimate expectations and entitlements as established by the governing criteria.

15. In order to buttress his contention, he relies on the decision of a Division Bench of this Court in the case of *Varun Kumar Agarwal v. Union of India*². He categorically draws attention of this Court to paragraph nos. 14, 15, and 16 of the said decision, wherein, the respondent-AIIMS was similarly found to have altered the admission process midway, and the Division Bench of this Court held the same to be not permissible.

Submissions on behalf of the respondents

16. Mr. Ajay Jain, SPC, appearing in W.P.(C) 11755/2024, and Mr. Apoorv Kurup, CGSC, representing the authority in W.P.(C) 12263/2024, i.e. learned counsel for the respondents, vehemently oppose the submissions made by the learned counsel for the petitioners.

17. Mr. Jain, learned counsel, submits that the petitioners have no locus to agitate the instant writ petition as no vested rights of the petitioners have been infringed upon. He further submits that the petitioners are currently being assessed under the Foreign National Category based on their merit, and beyond this, they do not possess any further rights. Learned counsel refers to the decision in *Anushka (supra)*, asserting that the Supreme Court permitted the OCI Cardholders who obtained their Cards prior to 04.03.2021 to be treated at par with the Indian Nationals and be considered under the Indian National Category. However, he submits that the Court did not impose any restrictions on

² 2011 SCC OnLine Del 1133

OCI Cardholders regarding their eligibility to seek admission under the Foreign National Category as well.

18. Mr. Apoorv Kurup, learned counsel, submits that there exists no deviation from the impugned brochure-prospectus and the Notification dated 21.08.2024. He submits that, according to the brochure-prospectus, the respondent-AIIMS has neither impliedly nor explicitly stated that OCI Cardholders who obtained their Cards prior to 04.03.2021 are exclusively eligible for admission under the Indian National Category. While citing paragraph 11 of the affidavit filed on behalf of the Union of India, he asserts that the criteria applied to the current OCI Cardholders were consistent with those followed in previous academic years, wherein OCI Cardholders prior to 04.03.2021 were permitted to participate for the Indian Citizens/NRI's/Foreign National Category.

19. He also asserts that the decision of the Supreme Court in *Anushka (supra)* should be interpreted within the context of the facts of that case, emphasizing that it does not mandate that all OCI Cardholders prior to 04.03.2021 must solely be considered for Indian National Category. He further clarifies that the decision of the Supreme Court merely provided that OCI Cardholders prior to 04.03.2021 can also be considered for Indian National Category. However, he contends that if, in the present case, the OCI Cardholders choose to claim seats under the Foreign National Category, their claim cannot be denied.

20. He also refers to Communication No. *F.8-2/2024(Misc. 251)-Acad.-II* dated 13.08.2024 from AIIMS to the Director General of Health Services, Ministry of Health and Family Welfare. While placing reliance on this communication, he contends that respondent-AIIMS has maintained a consistent position in line with the decision in the case of *Anushka (supra)*. He reiterates that the Notification dated 04.03.2021 does not preclude OCI Cardholders from asserting their rights concerning

Indian National Category, as clarified by the Supreme Court in *Anushka (supra)*. He further states that the decision remains non-committal on this aspect.

21. To substantiate his contention, he places reliance on the decision in the case of *Bhavnagar University v. Palitana Sugar Mill (P) Ltd*³. He submits that a judgment serves as an authority only for what it explicitly decides and not for what can be inferred or deduced from it. He asserts that the interpretation in the *Anushka (supra)* decision, upon which the petitioners rely, cannot be extrapolated to suggest that OCI Cardholders who obtained their Cards prior to 04.03.2021 must be exclusively considered for the seats allocated to Indian citizens.

22. Mr. Anand Verma, learned counsel who appears for the respondent-AIIMS, also opposes the instant writ petitions and clarifies that the candidates having OCI Card prior to 04.03.2021 will be allowed for seats otherwise earmarked for the Indian Nationals. However, since the said candidates are essentially foreigners, holding passports of foreign nations, they cannot be denied admission under Foreign National Category as well.

23. He further submits that the stipulation in the brochure-prospectus issued by the respondent-AIIMS for MBBS 2024 had been so provided so as to avoid ambiguity regarding the eligibility of Indian and Foreign candidates pursuant to the decision of the Supreme Court in *Anuskha (supra)* and *Pallavi v. Union of India*⁴, wherein the decision of the respondent-AIIMS to treat a candidate holding a OCI Card dated 02.11.2015 as an Indian National was set aside and the petition of the candidate seeking treatment as a Foreign National was allowed.

³ (2003) 2 SCC 111

⁴ 2023 SCC OnLine SC 1089

24. He then contends that pursuant to the decision in *Anuskha (supra)*, the OCI Cardholders who have obtained their Cards prior to 04.03.2021 are eligible as both Indian and Foreign candidates. He submits that the apposite view is evidently explicit *vide* the meeting dated 02.10.2024, which was convened pursuant to the directions passed by this Court on 26.09.2024. To substantiate the aforesaid position of the respondent-AIIMS, he places reliance on the Minutes of the said meeting dated 02.10.2024.

25. Learned counsel for the respondents further submits that in the instant cases, the candidates who have been currently allotted seats under the Foreign National Category have not been impleaded as parties. Consequently, unless those candidates, whose rights may be adversely affected, are made parties to the proceedings, no relief can be granted to the petitioners.

26. I have heard the learned counsel appearing for the parties and have perused the record.

Analysis

27. Based on the submissions so advanced by the petitioners, the case of the petitioners seems to be that:-

- i. The respondent-AIIMS has acted in violation of the directions of the Supreme Court passed in the case of *Anushka (supra)*, by permitting OCI Cardholders who obtained their Cards prior to the Notification dated 04.03.2021, to participate in the admission process under the Foreign National Category.
- ii. *Vide* impugned Notification dated 21.08.2024, the respondent-AIIMS has modified the terms and conditions outlined in the admission brochure-prospectus issued in August 2024.

28. Hence, the issues that warrant consideration of this Court are enumerated as under:-

- a) Whether the Supreme Court, in the case of *Anushka (supra)*, has restricted the OCI Cardholders who had obtained their OCI Cards prior to 04.03.2021, to be exclusively considered under the Indian National Category?
- b) Whether the impugned Notification dated 21.08.2024 contravenes or amends the terms of the original brochure-prospectus?

Issue (a)

29. *Vide* Notification S.O. 1050(E) dated 04.03.2021, the Ministry of Home Affairs, exercising its powers under section 7B of the Indian Citizenship Act of 1955 (57 of 1955) [**Citizenship Act**], has amended certain rights and entitlements of the OCI Cardholders.

30. Pursuant to the aforesaid Notification, the OCI Cardholders who have been pursuing their studies in India, for the purpose of competitive examinations such as NEET, were shifted from the Indian National Category to the Foreign National Category.

31. It is observed that prior to 04.03.2021, the OCI Cardholders, for the purposes of education, among other aspects, were treated at par with the Indian Citizens under the Citizenship Act. The said status came to be amended by the Ministry of Home Affairs *vide* Notification S.O. 1050(E) dated 04.03.2021. The relevant portion of the said Notification reads as under:-

“4) parity with Non-Resident Indians in the matter of,-
(i) inter-country adoption of Indian children subject to the compliance of the procedure as laid down by the competent authority for such adoption;
(ii) appearing for the all India entrance tests such as National Eligibility cum Entrance Test, Joint Entrance Examination, (Mains), Joint Entrance Examination (Advanced) or such other tests to make them eligible for admission only against any Non-Resident Indian seat or any supernumerary seat;

Provided that the OCI cardholder shall not be eligible for admission against any seat reserved exclusively for Indian citizens.

(iii) Purchase or sale of immovable properties other than agricultural land or farm house or plantation property; and

(iv) Pursuing the following professions in India as per the provisions contained in the applicable relevant statutes or Acts as the case may be, namely:-

(a) doctors, dentists, nurses
and pharmacists;

(b) advocates;

(c) architects;

(d) chartered accountants;”

32. As gleaned from the arguments presented by learned counsel for the parties, *qua* the Notification dated 04.03.2021, the OCI Cardholders, who were previously treated at par with the Indian Citizens, were sought to be now reclassified under the category of Foreign Nationals at par with Non-Resident Indians. Aggrieved by this change, certain students had approached the Supreme Court, ventilating their grievance that the said Notification has altered their status from being treated as Indian citizens for admission purposes in educational institutions, thereby placing them under the Foreign National Category.

33. In obtaining a bird's-eye view of the various types of seats available as per the brochure-prospectus issued by the respondent-AIIMS for the MBBS 2024 program, it is essential to clarify the relevant terms. The two broad categories of seats available at AIIMS are under the Indian National Category and the Foreign National Category. Under these two categories, there are broadly three types of individuals eligible for seat allocation, i.e. Foreign Nationals, OCI Cardholders, and Indian Citizens. According to the brochure-prospectus and the impugned Notification dated 21.08.2024, under the Foreign National Category, only Foreign Nationals and OCI Cardholders are eligible to apply. Indian Citizens and those classified under the Indian National Category, such as Non-

Resident Indians [NRIs] and NRI-sponsored individuals, are not permitted to apply under the Foreign National Category.

34. Elaborating further, a 'Foreigner' refers to an individual who is not a citizen of India. The legal framework governing foreigners in India is provided under the Foreigners Act, 1946. This Act regulates the entry, presence, and departure of foreigners in the country. An Overseas Citizen of India is generally understood as an individual who is currently a citizen of another country but was a citizen of India at, or at any time after, the commencement of the Constitution of India. Additionally, children and spouses of OCI Cardholders are granted certain benefits, aligning with the privileges extended to OCI individuals. The OCI's have to register themselves by an application under the procedure as prescribed under the Citizenship Act and obtain an OCI Card.

35. An Indian citizen is typically defined as an individual born in India or to Indian parents between 26th January 1950 and 1st July 1987, subject to other conditions. While the Citizenship Act, 1955, covers various other provisions and exceptions, those specific clauses are not relevant to the present controversy.

36. Prior to the Notification dated 04.03.2021, OCI Cardholders were granted all the benefits of Indian Nationals and treated at par with them for various purposes, including admissions to educational institutions. However, with the issuance of the Notification dated 04.03.2021, the government altered the status of OCI Cardholders by classifying them as Foreign Nationals, based on their possession of a foreign passport. This reclassification resulted in the withdrawal of many benefits that were previously accorded to OCI Cardholders under Indian law.

37. Aggrieved by this Notification, certain OCI Cardholding students approached the Supreme Court, which has considered the grievance of the petitioners.

38. The Supreme Court, in the case of *Anushka (supra)*, recognized that many OCI Cardholders, prior to the Notification, had a legitimate expectation of being treated as Indian citizens for the purpose of admissions into prestigious institutions, based on their earlier status. The sudden, retroactive change in their legal status was deemed to have violated their legitimate expectations. To address this issue, the Supreme Court granted relief to OCI Cardholders who were either born before or obtained their OCI status prior to 04.03.2021, allowing them to continue enjoying benefits at par with Indian Nationals as provided under the pre-existing Notifications dated 11.04.2005, 05.01.2007, and 05.01.2009. However, the Court made it clear that the impugned Notification was a matter of public policy and could not be entirely struck down. Instead, the Court modified the application of the Notification to be prospective, holding that all individuals born or who obtained their OCI Cards post 04.03.2021 would be mandatorily treated as Foreign Nationals. Thus, the relief was limited to those affected before the change, preserving their right to avail the earlier rights, while enforcing the new classification moving forward. The relevant findings of the decision are extracted hereunder:-

“67. Therefore in the factual background of the issue involved, to sum up, it will have to be held that though the impugned Notification dated 4-3-2021 is based on a policy and in the exercise of the statutory power of a Sovereign State, the provisions as contained therein shall apply prospectively only to persons who are born in a foreign country subsequent to 4-3-2021 i.e. the date of the notification and who seek for a registration as OCI cardholder from that date since at that juncture the parents would have a choice to either seek for citizenship by descent or to continue as a foreigner in the background of the subsisting policy of the Sovereign State.

68. In light of the above, it is held that Respondent 1 in furtherance of the policy of the Sovereign State has the power to pass appropriate notifications as contemplated under Section 7-B(1) of the Citizenship Act, 1955, to confer or alter the rights as provided for therein. However, when a conferred right is withdrawn, modified or altered,

the process leading thereto should demonstrate application of mind, nexus to the object of such withdrawal or modification and any such decision should be free of arbitrariness. In that background, the impugned Notification dated 4-3-2021 though competent under Section 7-B(1) of the 1955 Act suffers from the vice of non-application of mind and despite being prospective, is in fact “retroactive” taking away the rights which were conferred also as a matter of policy of the Sovereign State.

69. *Hence, the notification being sustainable prospectively, we hereby declare that the impugned portion of the notification which provides for supersession of the Notifications dated 11-4-2005, 5-1-2007 and 5-1-2009 and Clause 4(ii), its proviso and Explanation (1) thereto shall operate prospectively in respect of OCI cardholders who have secured the same subsequent to 4-3-2021.*

70. *We further hold that the petitioners in all these cases and all other similarly placed OCI cardholders will be entitled to the rights and privileges which had been conferred on them earlier to the Notification dated 4-3-2021 and could be availed by them notwithstanding the exclusion carved out in the Notification dated 4-3-2021. The participation of the petitioners and similarly placed OCI cardholders in the selection process and the subsequent action based on the interim orders [Radhika Thappeta v. Union of India, 2021 SCC OnLine SC 3418]’ [Lakshana Mukundan v. Union of India, 2021 SCC OnLine SC 3412]’ [Aedla Amulya Reddy v. Union of India, 2021 SCC OnLine SC 3413]’ [Suraj Jai Sriramdas v. Union of India, 2021 SCC OnLine SC 3414]’ [Rajitha Savya Reddy v. Union of India, 2021 SCC OnLine SC 3416]’ [Chiraag Goya v. Union of India, 2021 SCC OnLine SC 3419] passed herein or elsewhere shall stand regularised.*

71. *Notwithstanding the fact that we have held the impugned Notification dated 4-3-2021 to be valid with specific prospective effect in view of the power available to Respondent 1 under Section 7-B(1) of the 1955 Act, keeping in perspective the wide ramification it may have in future also on the Indian diaspora and since it is claimed to be based on the policy decision of the Sovereign State, we expect that the same would be examined in the higher echelons of the Executive with reference to the rights already created.”*

39. Subsequent to the decision of **Anushka** (*supra*), another almost similar controversy emerged before the Supreme Court in **Pallavi** (*supra*). The petitioner, therein, made her application for the AIIMS entrance examination. At the time of making her application, the petitioner listed herself as an OCI Cardholder and appeared in the examination in that capacity under the Foreign National Category. However, upon the

declaration of results, she was categorized under the Indian National Category, despite having listed herself as a Foreign National due to her OCI status. Proceeding with the admission procedure under protest, she approached the Supreme Court.

40. In its decision, the Supreme Court noted the decision in *Anushka (supra)* and has held the relief in *Anushka (supra)* had only granted a benefit upon the aggrieved to be treated at par with Indian Nationals. The petitioner in *Pallavi (supra)* was, therefore, granted the relief of being considered under the policy which was applicable subsequent to 04.03.2021. i.e., being treated under the Foreign National Category. The relevant portion of the said decision reads as under:-

“16. A plain reading of the notification undoubtedly leads one to conclude that it withdraws the eligibility or privileges which had been hitherto conferred upon OCI Card holders regarding their parity with Indian nationals for appearing in All India examinations such as NEET. This meant that after the date of issuance of that notification, i.e. 04.03.2021, such OCI card holders could not claim the privilege of eligibility for admission in any competitive entrance examination “any seat reserved exclusively for Indian citizens” was an abrupt notifications all these notifications were somewhat softened by of the retroactive application facially was that all OCI Card holders who had planned their academic careers based upon pre-existing notifications dated 11.04.2005, 05.01.2007 and 05.01.2009 were held to be eligible to continue with that privilege in terms of the judgment in Anushka (supra)...

17. It is evident that the ruling held that notification (dated 04.03.2021) operated arbitrarily because firstly it indicated non-application of mind in not saving accrued rights. The application of proviso to Clause 4 (ii) of the notification of 04.03.2021 was held to have no nexus with the objects sought to be achieved. The court also held that those who are born prior to 2005 and residing in India had received their education in India and had pursued by having some advantages and disadvantages like other children who are citizens of India, and could not be denied their right to participate in NEET examinations or such similar examinations. It was also held that no additional advantage was granted to such class of people merely because they were born abroad and importantly, court took note of the amendment which introduced concession to OCI Card holders. Therefore, the Court concluded that when the right conferred was

withdrawn and altered, in the process leading to such change, should demonstrate application of mind, nexus to the object of such withdrawal or modification and any such decision had to be free of arbitrariness. In the light of this conclusion, the court held that the notification saved from the vice of non-application of mind and was in fact retroactive. It was in these circumstances that the Court held that only those persons who obtained OCI Cards after 04.03.2021 were rendered ineligible in terms of the notification.

*18. In the present case, although the OCI Card relied upon by the petitioner on 04.08.2022, the fact that she was in fact issued the OCI registration card first, on 02.11.2015. In such circumstances, the petitioner's eligibility to claim the benefit of OCI card holder in terms of the ruling in *Anushka(supra)* is undeniable. The rejection of her candidature at this stage, i.e. on 19.06.2023 is not supportable in law. She is consequently directed to be considered in remaining counselling rounds by the AIIMS and all participating institutions for PG Medical seats. It is clarified that the consideration would be regarding seats that are unfilled on the date of this judgment whether reserved for SC/ST/OBC or other categories and such as specially earmarked for Bhutanese candidates etc. if they can be filled by other candidates, like her. Furthermore, this facility should be open to the petitioner as well as other candidates based upon the available records of those issued OCI cards prior to 04.03.2021 and who can participate in such counseling having regard to their performance in the NEET test, and their ranking.”*

41. A synchronous reading of the two decisions in *Anushka (supra)* and *Pallavi (supra)* indicates a consistent principle, i.e. the legitimate expectation of an individual cannot be violated. Consequently, the Court has extended relief to the aggrieved parties by holding that any alteration of status shall be applied prospectively and granted them the benefit from the earlier Notification. This principle becomes even clearer when one considers paragraph 17 of *Pallavi (supra)*, which states: “*It was in these circumstances that the Court held that only those persons who obtained OCI Cards after 04.03.2021 were rendered ineligible in terms of the notification.*”

42. Thus, from the decisions of the Supreme Court, it is evident that while the change in public policy was upheld as valid, the Court recognized that certain individuals had their legitimate expectations violated by the unforeseen amendments in the policy. As a remedy, the

Court extended the benefit to OCI Cardholders who obtained their Cards prior to 04.03.2021, allowing them to be treated at par with Indian Nationals under the regulations in force before the policy amendment. A conjoint reading of these decisions indicates that such OCI Cardholders retain the right to be treated as Indian Nationals for the purposes of admission and other benefits. There is no mandatory imposition or restriction on these individuals to avail this benefit. The OCI Cardholders were also at liberty to be subject to the new policy, which applies mandatorily to only those who have obtained their OCI status after 04.03.2021.

43. As aptly pointed out by the learned counsel for the respondents, a judgment serves as an authority solely for what it explicitly decides and not for what may be inferred from its provisions. This fundamental principle of law is firmly established in various decisions of the Apex Court, including the case of *Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University*⁵.

44. Upon juxtaposing the general legal understanding of the terms surrounding the controversy, the decisions of the Supreme Court in *Anushka (supra)* and *Pallavi (supra)*, and the submissions advanced by the parties, this Court is of the considered opinion that under the prevailing legal framework, the petitioners' submission cannot be countenanced that the Supreme Court, in the case of *Anushka (supra)*, has restricted OCI Cardholders who obtained their OCI Cards prior to 04.03.2021 to be exclusively considered under the Indian National Category.

45. Therefore, the submissions put forth by the learned counsel for the petitioners are misplaced and unacceptable. If acceded to, they would

⁵ (2008) 9 SCC 284

effectively withdraw the vested rights of OCI Cardholders and Foreign citizens to be considered for seats reserved for meritorious Foreign Nationals. Thus, issue number a) flows in favor of the respondents.

Issue (b)

46. With respect to the issue of whether the impugned Notification dated 21.08.2024 contravenes or amends the terms of the original brochure-prospectus. It is pertinent to first examine the relevant clauses outlined in both the brochure-prospectus for the Under-Graduate and Post-Graduate courses.

47. With respect to the Post-Graduate INI-CET Course, the relevant portion of the brochure-prospectus reads as under:-

<p><i>B. OVERSEAS CITIZEN OF INOIA (OCI) & NON RESIDENT INDIANS (NRI) (Common to AllMS, New Delhi): There is no specific quota for OCI & NRI student at AllMS. "As per judgment of Hon'ble Supreme Court of India in the Writ Petition No.891 of 2021 dated 3rd February, 2023, the OCI card holder, prior to notification dated 04/03/2021 and those who have born before the date of the said notification would be entitled for the rights, privileges & the benefits as has been provided to them vide notifications dated 11/04/2005 and 05/01/ 2009" hence all terms and conditions applicable for Indian national give in the prospectus will be applicable to them.</i></p>
<p><i>C.FOREIGN NATIONALS (Applicable to AllMS, New Delhi only): Foreign candidates are required to have obtained a minimum of 60% marks in aggregate in the subjects of ENGLISH, PHYSICS, CHEMISTRY and BIOLOGY in their Intermediate/Pre-Degree in Science or an equivalent examination to be eligible for admission to the M.B.B.S. Course at AllMS, New Delhi. Foreign Nationals who wish to get admitted in MBBS course at AllMS, New Delhi have to clear NEET”</i></p>

48. With respect to the Post-Graduate INI-CET Course, the relevant portion of the brochure-prospectus reads as under:-

“Section IV. Eligibility for appearing in INI-CET

The eligibility criteria are mentioned under this section are limited to application and examination component of INI-CET. Kindly note that eligibility criteria for admission into postgraduate courses in different INIs may vary and applicants must read Part B of the prospectus of each for INIs for details.

No candidate can be eligible for seats under both INDIAN NATIONAL and FOREIGN NATIONAL categories.

B. For Foreign Nationals

Foreign Nationals shall include candidates who are NOT citizens of India.

A candidate must possess MBBS degree for MD/MS/DM-6yrs/MCH-6yrs and BDS degree for MDS courses and must have completed the required period of 12 months compulsory rotating Internship/Practical training on or before as per mentioned in the Part A of Section-IV at Page-4.

Candidates are required to obtain a certificate of grading system from applicable University/ Institution to determine the value of grading in percentage. The marks calculated accordingly must be filled in "Marks Column" for Completion of Application for July 2024 Session of INI-CET before due date.

*The **eligibility** of applicants with respect to the minimum marks in aggregate in all the MBBS/BDS professional examinations will be **55% aggregate** or equivalent.*

No Objection Certificate (NOC) Foreign National: *The No Objection Certificate (NOC) obtained from Ministry of Health and Family Welfare, Govt, of India, should be submitted to the Examination Section on or before dates as mentioned in **Important Dates Tab**. Kindly note that no objection certificate obtained solely from Ministry of External Affairs is NOT considered as valid NOC for INI-CET.*

C. For Overseas Citizen of India (OCI)/ PIO:

Eligibility of OCI/PIO candidates will be based on the decision of the Hon'ble Supreme Court of India in Writ Petition (Civil) 891/ 2021 dated February 03, 2023.

1. Candidates born before 04.03.2021 and who have secured the OCI card before 04.03.2021 shall be considered INDIAN NATIONALS and will be eligible ONLY for open category (unreserved) seats for INDIAN NATIONALS. They will not be eligible for consideration for seats for Foreign Nationals.

2. OCI/PIO card holders who are not to be considered as Indian Nationals based on the decision of the Hon'ble Supreme Court of India in Writ Petition (Civil) 891/ 2021 dated February 03, 2023

shall be considered as FOREIGN NATIONALS. They will not be eligible for consideration for seats for Indian Nationals. OCI candidates are not required to obtain NOC, however must upload the scan copy of OCI card on or before date(s) mentioned in Important Dates Section of Prospectus Part-A. The earliest issued, valid OCI card must be uploaded on the portal. Any attempt at hiding a valid older OCI card or uploading only a newer card will be considered as providing false information and the candidature may be cancelled.”

49. Upon traversing the clauses and sections provided in the brochure-prospectus issued by the respondent-AIIMS, it is seen that in the MBBS brochure-prospectus, the only clause with respect to the OCI Cardholders is that *“as per judgment of Hon'ble Supreme Court of India in the Writ Petition No.891 of 2021 dated 3rd February, 2023, the OCI card holder, prior to notification dated 04/03/2021 and those who have born before the date of the said notification would be entitled for the rights, privileges & the benefits as has been provided to them vide notifications dated 11/04/2005 and 05/01/ 2009” hence all terms and conditions applicable for Indian national give in the prospectus will be applicable to them.”*

50. Whereas the brochure-prospectus for the Post-Graduate course explicitly prohibits OCI Cardholders who obtained their Cards prior to 04.03.2021 from being considered in the Foreign National Category, such restriction does not appear to be present in the MBBS course brochure-prospectus.

51. It is evident that the conditions stipulated for students in both courses are different. After the results of the entrance examination were declared, the petitioners herein applied for admission to the respondent-AIIMS under the Foreign National Category. Notably, there were certain students admitted under this category, who had obtained their OCI Cards prior to 04.03.2021.

52. Against the same, the petitioners in the instant case have made multiple representations and certain legal proceedings before another High Court. Pursuant to the representations made, respondent-AIIMS, in

reply to a clarification sought by the Directorate General of Health Services *vide* e-mail dated 13.08.2024 has stated as under:-

“Sir,

With reference to the email dated 12th August, 2024, regarding the aforementioned subject, I would like to inform you that the eligibility criteria of OCI / PIO candidates will be determined in accordance with the decision of the Hon’ble Supreme Court of India the Writ Petition No. 891 of 2021 dated 3rd February, 2023. It is clarified that there is no specific quota for OCI and NRI students at AIIMS. According to the judgment of the Hon’ble Supreme Court of India in the aforementioned petition, OCI cardholders who were issued their cards before the notification dated 4th March, 2021 are entitled to the rights, privileges and benefits as outlined in the notifications dated 11th April, 2005 and 5th January, 2009. Consequently, all terms and conditions applicable to Indian nationals as stated in the prospectus will also apply to such OCI / PIO candidates.”

53. Subsequent thereto, the respondent-AIIMS has issued the impugned notice dated 21.08.2024, which reads as under: -

“Ref. U-11011/01/2024-MEC

Dated:21-08-2024

NOTICE

Kind Attention: Candidates

*This is hereby informed that as per the instructions received from the competent authorities of AIIMS, the eligibility criteria for ‘**Foreign National Seat Quota**’ of AIIMS is as given below:*

*For AIIMS ‘**Foreign National Quota**’, following candidates as **Eligible:***

- 1. Foreign Nationals.*
- 2. OCI Candidates (with foreign passports/citizenship & paying fees in foreign currency)*

*Following Candidates are **Not Eligible:***

- 1. Indian Nationals*
- 2. NRI*
- 3. NRI Sponsored.*

It is pertinent to mention here that if any candidate is allotted a seat (by MCC counselling software) in AIIMS Foreign quota, who does not fulfill the above-mentioned eligibility criteria, then admission of

the said candidate will be cancelled at the level of AIIMS itself at the time of reporting.

54. Therefore, it is evident that there is no apparent inconsistency between the original brochure-prospectus for the MBBS program and the impugned Notification dated 21.08.2024. However, regarding the brochure-prospectus for the Post-Graduate program, it is observed that the conditions stipulated venture beyond the original intent of the Supreme Court in *Anushka (supra)*. As the Post-Graduate program is not under challenge in the present writ petition, the Court refrains from making any further observations on the matter.

55. However, during the earlier hearing of the instant petitions, as reflected in the affidavit dated 17.09.2024 submitted by the respondent-AIIMS, it is noted that in paragraph 11, the respondent-AIIMS has taken the position that the clause in the brochure-prospectus clearly maintains the stance that any candidate possessing an OCI Card issued prior to 04.03.2021 shall be considered an Indian National, whereas candidates possessing an OCI Card issued subsequent to 04.03.2021 shall be treated as Foreign Nationals as per the decision in *Anushka (supra)* and that the decision in *Pallavi (supra)* created certain ambiguity and thus, the respondent-MCC need to obtain certain clarification from the Supreme Court.

56. The summary position of the respondents, however, as on 24.09.2024 is as follows:-

- a) AIIMS prescribed its eligibility criteria in its brochure-prospectus for the MBBS course, 2024, whereas a separate eligibility criterion was prescribed by the respondent-MCC in its notice dated 21.08.2024.

- b) MCC is a body constituted under DGHS and is responsible for tasks related to counselling and seat allocation in medical colleges. Thus, its notice is binding on AIIMS.
- c) The DGHS, *via* letter dated 24.08.2024 further informed AIIMS that the MCC had inferred the eligibility criteria from the notice dated 21.08.2024.
- d) The notice dated 21.08.2024, challenged by the petitioner, does not explicitly address the classification of OCI Cardholders as Indian or Foreign Nationals based on the issuance date of their OCI Card.
- e) This ambiguity stems from the prospective nature of the Notification dated 04.03.2021, and the notice fails to clarify this distinction.
- f) Additionally, this ambiguity is exacerbated by the judgment of the Supreme Court in *Pallavi (supra)*, wherein the treatment of Pallavi's candidature as an Indian National, despite holding an OCI Card prior to 04.03.2021, was found untenable in law.
- g) Therefore, MCC ought to seek necessary clarification from the Hon'ble Supreme Court in order to avoid future disputes on this issue.

57. Given the apparent confusion regarding the clauses and the fact that both respondents, as on 26.09.2024, did not seem to align in their understanding of the same, the Court directed them to reconsider their respective positions and reach a consensus on the issue raised in the instant writ petition. *Vide* order dated 26.09.2024, it was directed that any intradepartmental miscommunication should not hinder the common objective of granting admission to meritorious students. To clarify ambiguities and address inconsistencies, the Court directed the respondents to arrive at a consensus regarding the petitioners' admission and present the same before the Court. The said order reads as under:-

“W.P.(C) 12263/2024, CM APPL. 50961/2024

- 1. As per the grievance raised by the petitioner, certain candidates who have obtained an OCI Card prior to 04.03.2021, should be excluded from consideration for allotment of seat against Foreign National Quota.*
- 2. The submission is opposed by the learned counsel who appears for respondent no.1. The respondents have also placed their counter-affidavit on record. Both the respondents, as of now, do not seem to be on the same page. The Court, therefore, directs the respondents to re-consider their stand and to arrive at consensus as to what is the understanding of the official respondents with respect to the issue raised in the instant writ petition. It is imperative to do so as both the respondents are discharging the common object for admitting meritorious students as per extant regulations. Any intradepartmental conflict amongst official stakeholders must be avoided for fulfilling the objectives of good governance.*
- 3. Let the aforesaid exercise be done within four working days from today.*
- 4. In the meantime, respondent no.1 is also directed to assist the Court as to whether, if the petitioner’s contention is accepted, the petitioner would be able to get a seat against the Foreign National Quota.*
- 5. Let the aforesaid aspect be brought on record on the next date of hearing.”*

58. Pursuant to the same, the respondents have placed on record an affidavit dated 04.10.2024. As per the affidavit, in compliance with the order dated 26.09.2024, the respondents convened a meeting on 02.10.2024, which was attended by senior officials from various government departments. The meeting was held to deliberate on the eligibility of OCI Cardholders for Foreign and Indian Category in NEET UG/PG counselling, conducted by the Medical Counselling Committee [MCC]. The relevant portion of the minutes of the meeting is extracted below for reference:-

<i>Meeting Name:</i>	<i>Meeting to Discuss the eligibility of OCI Candidates on Foreign Seats of AIIMS New Delhi.</i>
<i>Discussion: (Items/Knowledge Shared)</i>	
<i>1. The Chairperson welcomed everyone and apprised the</i>	

meeting's agenda and purpose of meeting which was eligibility of OCI candidates on Foreign and Indian seats in NEET UG/PG Counselling which is conducted by MCC of DGHS. The reference was brought to W.P. 12263 of 2024 in the matter of 'Devadarsini Umopathy Versus Medical Counselling Committee and Ors' before the Hon'ble High Court of Delhi. He mentioned about the difficulty being faced by MCC, AIIMS and other institutions which have offer seats to foreign nationals due to lack of clarity in the order passed by the Hon'ble Supreme Court of India in "Anushka Rengunthwar VS Union of India & Ors" \ WP(C) No 891 of 2021.

2. Ld. ASG pointed out to legal opinion in which MCC of DGHS had sought clarification and legal opinion was provided. The emphasis was laid on the question relating to OCI/Foreign National Citizen and their right to participate in NEET UG counselling at par with Indian Citizens. She was of the opinion, that Review Petition should be filed for review of final order and judgment in

"Anushka Rengunthwar VS Union of India & Ors' WP(C)No 891 of 2021. However, the judgment must be complied with in its letter and spirit.

3. Dr. Girija Prasad Registrar AIIMS New Delhi mentioned about the 7 candidates which already have been admitted on the Foreign National seats in NEET UG Counselling. It was mentioned by him that all the 7 candidates are OCI and have their OCI cards prior to 04.03.2021. It was mentioned that since allotment authority for the above-mentioned seats is MCC of DGHS the admission order was generated by the office based on the documents provided.

4. Ld. ASG was of the view that as per the decision passed by the Hon'ble Supreme Court in Anushka Rengunthwar VS Union of India & Ors", WP(C)-No 891 of 2021, candidates having OCI cards prior to 04.03.2021 will have to be allowed on seats for Indian citizens however since they are essentially foreigners holding passports of foreign countries, they cannot be denied admission on foreign seats since, OCI cardholders have already been admitted on the foreigners' seat for the current year, on the basis of their inter-se merits, their admissions cannot be said to be bad in law.

5. Dr. Girija Prasad AIIMS New Delhi pointed out that since admission process for the foreign seats had already been carried out the academic classes has already begun. It was also mentioned that since MCC is the allotment authority it will be better to concur with the rules and policy being followed by the MCC. Dr. Girija Prasad, AIIMS New Delhi pointed out that since admission process

for the foreign seats had already been carried out as per MCC's merit list and the said 7 students were granted admission in last week of August 2024 and have been attending classes since 02 September 2024 the admissions already granted may not be disturbed.

6. It was also mentioned that for PG and other Courses, AIIMS New Delhi conducts its own examinations for INIs and clarification is required from the Ministry as to the principle to be followed for admission to foreign students, so that OCI card holders prior to 04.03.2021 do not seek admission in categories of both Indian and foreign nationals, depending on rank.

Decision Made:

It has been decided by all the authorities that in the current year OCI students shall be treated permitted on seats for foreigners in addition to being eligible for seats for Indian citizens and Union will approach the Hon'ble Supreme Court of India for the Purpose of clarification.

59. Upon perusal of the minutes of the meeting, it is evident that the respondents have decided that for the current year, OCI students shall be permitted to apply for seats under the Foreign National Category in addition to being eligible for seats reserved for Indian citizens. Furthermore, it is seen that the Union seeks to approach the Supreme Court of India to seek clarification on the issue, by way of filing a review petition.

60. Be that as it may, the clarification/decision taken by the respondents in the meeting dated 02.10.2024 appears to be consistent with the Supreme Courts' decision in *Anushka (supra)*. Moreover, when juxtaposing the decision reflected in the minutes with the brochure-prospectus for the Under-Graduate MBBS course, it is evident that the minutes merely clarify what is already stipulated within the brochure-prospectus are not in conflict with or deviate from its provisions. It is also noted that neither the minutes of the meeting nor the impugned Notification dated 21.08.2024 have altered the original terms and conditions set out in the brochure-prospectus.

61. The Court concurs with the learned counsel for the petitioner that once the admission procedure has commenced under certain terms and conditions, those conditions should not be altered midway through the

process. The learned counsel has aptly placed reliance on a decision of this Court in the case of *Varun Kumar Agarwal (supra)*, which held that the conditions stipulated in the brochure-prospectus serve as guidelines for all parties involved and must be followed strictly in both letter and spirit. Moreover, any modification to the brochure-prospectus by way of a corrigendum is impermissible unless the brochure-prospectus explicitly reserves the institution's right to make such amendments. The relevant portion of the decision is as follows:-

“16. We have referred to the aforesaid decisions only to highlight that the conditions stipulated in the prospectus are guidelines for all concerned and everyone is required to follow the same in letter and spirit and not act in transgression. The hopes and aspirations of the students, who came within the zone of merit, cannot be scuttled by changing the prospectus by way of introducing a corrigendum. A change in the conditions of the prospectus can be conceived of and allowed if such power is specifically reserved while making the prospectus public as in that case, no one can think of having a right. In that event, the same could be capable of change. In the case at hand, in the absence of a power reserved in the prospectus, in our considered opinion, the same could not have been altered by way of corrigendum. It is interesting to note that by issuing a corrigendum, the scenario of results changed because further results were published and more candidates were called. This, according to us, is nothing but an accommodation. The AIIMS may have been conferred the privilege of institutional preference, but that would not enable AIIMS to change the prospectus in the manner it has been done. Thus, the action of the AIIMS on this score is vitiated and despite the laboured attempt by the learned counsel for the AIIMS, we cannot give the stamp of approval to the action of the institution.”

62. Upon consideration of the material facts and documents placed on record, the Court is of the considered opinion that the impugned Notification dated 21.08.2024, when read in conjunction with the brochure-prospectus issued for the Undergraduate MBBS programme, is purely clarificatory in nature. Although certain ambiguities may have arisen due to confusion among the respondents regarding the intent of the judgments in *Anushka (supra)* and *Pallavi (supra)*, there has been no alteration or amendment to the original terms of the brochure-prospectus.

Therefore, it is evident that the impugned Notification merely provided further clarification regarding the admission procedure. Moreover, the final clarification provided by the respondents seems to be in accordance with the judgments of the Supreme Court, in both letter and spirit. Accordingly, in the absence of any alteration to the admission process, issue number (b) is also decided in favor of the respondents.

63. While parting with the controversy agitated in the instant writ petitions, the Court takes cognizance of the significant responsibilities borne by the respondent-AIIMS, an Institution of National Importance. The Court acknowledges that the respondent-AIIMS, with its vast resources, responsibilities and prestigious standing, serves a dual role as both a premier healthcare provider and an esteemed educational institution, producing some of the finest medical professionals in the country. Given these responsibilities and its prestigious standing, the respondent-AIIMS is expected to maintain the highest standards of clarity and precision, especially in matters as crucial as admissions. However, upon reviewing the documents submitted and the arguments advanced by the respondent-AIIMS, it is evident that both respondent-AIIMS and the respondent-MCC failed to present a coherent and unequivocal understanding of the extant rules and regulations regarding the admission process for OCI candidates. The brochure-prospectus lacked the clarity expected from an institution of this stature. The Court observes, with concern, that this is not an isolated incident. Instances of ambiguity in AIIMS' admission guidelines have surfaced repeatedly, causing confusion and distress among aspiring students.

64. The Court, through an extensive interpretative process, has ultimately acceded to the stand taken by the respondent-AIIMS. However, it must be noted that such an exercise could have been entirely obviated had the respondent-AIIMS demonstrated a higher degree of

diligence from the outset. The present litigation is not adversarial in nature, but rather one arising from interpretative concerns in an area of ambiguity, that stemmed directly from the ambiguity caused by the respondent-AIIMS. Had the relevant rules been articulated with greater clarity or had the respondent-AIIMS sought timely clarification from the appropriate authorities, this protracted legal process could have been avoided altogether. The absence of such diligence created a grey area in the admissions framework, prompting the petitioners to pursue claims they might not have otherwise entertained.

65. The Supreme Court in *Saurabh Chaudri v. Union of India*⁶ remarked that the younger generation, who nurtures fond hopes and aspirations for their future professional careers, should experience the process of exploring higher education options as a pleasurable and fulfilling endeavor. These students should not be subjected to unnecessary mental anguish due to avoidable administrative lapses or procedural ambiguities. While the Court is inclined to view the lapse in clarity by the respondent-AIIMS as a *bonafide* error, it nevertheless reminds the respondent-AIIMS that given its national importance and the respect it commands, they must exhibit greater diligence and coherence in formulating and communicating its policies. Such diligence was imperative to uphold the standards of transparency that befit an Institution of National Importance.

66. There appears to be an application i.e., CM Appl. 59331/2024, filed by the petitioner in W.P.(C) 11755/2024 to implead the seven candidates selected against the Foreign National Category. The respondents, in their affidavit dated 04.10.2024, indicate that all seven candidates in the OCI Foreign National Category have acquired their OCI

⁶ (2003) 11 SCC 146

Cards prior to 04.03.2021. Had any issues flowed in favor of the petitioners, it would have necessitated the impleadment of these students, as no relief to the petitioners could be granted without including the students who have been currently selected. However, given that the petitioners have failed to establish that the impugned Notification is either bad in law or that it has altered the admission procedure through the impugned Notification, the Court finds it unnecessary to implead the seven students who have been granted admission.

67. In view of the aforesaid, the instant petitions, along with pending applications, stand dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 16, 2024//P