

**BEFORE THE APPELLATE AUTHORITY CONSTITUTED UNDER THE
MADHYA PRADESH NIJI VYAVSAYIK SHIKSHAN SANSTHA (PRAVESH
KA VINIYAMAN AVAM SHULK KA NIRDHARAN) ADHINIYAM, 2007, (AS
AMENDED)**

Presided over by Justice Alok Verma.

- (i) Appeal No.20/2019
Shri Eshaan Mehta ...Appellant
- V/s
Admission and Fee Regulatory Committee & Ors.Respondent
- (ii) Appeal No. 21/2019 ...Appellant
Shri Yash Dixit
- V/s
Admission and Fee Regulatory Committee & Ors.Respondent
- (iii) Appeal No. 22/2019 ...Appellant
Shri Hardik Nigodia
- V/s
Admission and Fee Regulatory Committee & Ors.Respondent
- (iv) Appeal No. 23/2019 ...Appellant
Shri Satyam Pandey
- V/s
Admission and Fee Regulatory Committee & Ors.Respondent
- (v) Appeal No. 24/2019 ...Appellant
Shri Vijendra Kumar Merawat
- V/s
Admission and Fee Regulatory Committee & Ors.Respondent
- (vi) Appeal No. 25/2019 ...Appellant
Ms. Priya Rani
- V/s
Admission and Fee Regulatory Committee & Ors.Respondent
- (vii) Appeal No. 26/2019 ...Appellant
Shri Parag Sharma
- V/s
Admission and Fee Regulatory Committee & Ors.Respondent

(viii) Appeal No. 27/2019

...Appellant

Shri Mohammad Bahauddin

V/s

Admission and Fee Regulatory Committee & Ors.Respondent

(xi) Appeal No. 28/2019

...Appellant

Shri Tanuj Goyal

V/s

Admission and Fee Regulatory Committee & Ors.Respondent

O R D E R

(Date: 12th March, 2019)

1. This common order shall govern disposal of Appeal Nos.20/2019, 20/2019, 21/2019, 22/2019, 23/2019, 24/2019, 25/2019, 26/2019, 27/2019 and 28/2019.
2. These appeals are filed under Sec. 10 of Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk ka Nirdharan), Adhiniyam, 2007 (hereinafter referred to as "the Act of 2007) challenging order of the Admission and Fee Regulatory Committee (herein after referred to as "AFRC") No.AFRC/Sectt/2019 dated 02/01/2019.
3. This matter relates to admission by various Medical Colleges under Non-resident Indian quota. In Civil Appeal No. 4060/2009 by its judgment dated 25.7.2009, the Hon'ble High Court allowed/fixed 15% quota for admission to those students who were sponsored by NRI. In the year 2017, a list was forwarded to various Medical colleges by Director, Medical Education, M.P., and Bhopal (herein after to as "DME") who qualified in NEET UG Examination 2017. It was expected that the Committee at college level would examine their documents and allow their admission under NRI quota on verifying genuineness of NRI who sponsored the candidate.

4. The admission given to various students was challenged in writ petition No.14826/2017 before the High Court in which, the Hon'ble High Court issued a direction to DME to requisition records of all the students from Medical Colleges, examine them with a view to ascertaining whether the candidates were given admission under NRI quota properly and genuinely.
5. In compliance thereof, the DME examined cases of 114 students and found that out of 114 students, admission of 107 students was not in accordance with norms fixed by the High Court and Supreme Court. The DME cancelled admission of as many as 107 students on the ground that they do not belong to NRI category or they did not satisfy the necessary requirements for fulfilling in the NRI category.
6. Some of such students went before Hon'ble High Court. Shivani Singh was one of such petitioner whose writ petition No.14826/17 was disposed off by Hon'ble High Court by order dated 18.5.2018 along with bunch of other petitioners. Hon'ble High Court referred the matter to AFRC. The relevant portion of the order passed by the High Court in Shivani Singh case (supra) is reproduced below:-

.....

"67. In view of the aforesaid analysis and facts and without interfering in the impugned order dated 28.11.2017, we accordingly direct the DME to place the report before the Admission and Regulatory Committee for further proceedings and action strictly in accordance with the provisions of the Act 2007 and the Rules framed there under. It is further directed that as the petitioners are already before this Court and the fact of referring the matter to the Admission and Fee Regulatory Committee, by this order, is within their knowledge, no further or separate notice is required to be

issued to them in respect of the enquiry by the Admission and Fee Regulatory Committee and the petitioners are directed to appear before the said Committee on 31.05.2018 where after further proceedings shall be taken up by the Committee in accordance with law. While doing so, it is further directed that the Admission and Fee Regulatory Committee shall consider the validity of the admissions granted by the private colleges under the NRI quota seats on the same basis as has rightly been done by the State itself in its report, that is, in accordance with the guidelines laid down by this Court in the case of Anshul Tomar (supra) which are based on the directions issued by the Supreme Court in the case of P.A. Inamdar (supra) and Ruchin Bharat (Supra). It is made clear that the directions issued by the DME to the colleges in the impugned order dated 28.11.2017 shall remain in abeyance till the matter is finally decided by the Admission and Fee Regulatory Committee and shall be subject to the final orders passed by it.

68. Before parting with the case, we think it necessary to clarify that this Court has not expressed any opinion in respect of the validity or otherwise of the admissions granted to individual petitioners or to the fact as to whether they fall within the category of NRI as prescribed in Regulation 6(2) of the Regulations of 2017 and the broader criteria prescribed and approved in the case of Anshul Tomar (supra), and, therefore, the Admission and Fee Regulatory Committee would be at liberty to examine each case individually in respect of the facts of each case and take an independent decision in that regard".

7. In view of observations as above, When the matter reached before the AFRC, a problem arose as to what would be the criterion for fixing the norms by the Committee, considering validity and propriety of admission of the students in NRI quota. The Secretariat went through the legal provisions and directions issued by the Hon'ble Apex Court and High Court from time to time and placed the matter before the AFRC for taking into consideration the following aspects of the matter.

8. So far as the legal provisions are concerned, the State Government in medical education department notified regulations known as मध्यप्रदेश में सहायता न पाने वाले निजी चिकित्सा महाविद्यालयों एवं दंत चिकित्सा महाविद्यालयों में एम.बी. बी.एस. तथा बी.डी.एस. पाठ्यक्रम में प्रवेश की पात्रता, प्रवेश की रीति एवं स्थानों के आरक्षण (अनिवासी भारतीय के लिए स्थानों का आरक्षण सम्मिलित है) के लिए विनियम, 2017 है। hereinafter referred to as “Regulation, 2017”. Regulations 6(2) of these regulations provides as under:-

"अनिवासी भारतीय नागरिक के आरक्षण के लाम हेतु अभ्यर्थी को स्वयं अनिवासी भारतीय होना आवश्यक होगा।"

9. It is apparent that the regulations provide that the applicant himself should be a Non- Resident Indian. However, in case of Shivani Singh (supra), the Hon'ble High Court observed that while cancelling the admissions of the various students, the DME did not follow the definition given in regulation 6(2) referred to above and followed the criteria as approved by the Hon'ble High Court in Anshul Tomar Vs. State of M.P. writ petition No.13393/7 disposed off by order dated 8.4.2008 and also criteria fixed by Hon'ble Apex Court in case of Ruchin Bharat Patel Vs. Parents Association for the medical Students and others disposed off by the Hon'ble Apex Court on 13.11.2006.
10. In the following year i.e. 2018, the Government notified rules governing admission to Private Medical Colleges. The rules were called Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018, (hereinafter referred to “the Rules 2018”). Under these rules, the definition of NRI applicant is given in Rules 2- [k which is quoted below:-

"अनिवासी भारतीय अभ्यर्थी से अभिप्रेत है ऐसा अभ्यर्थी जो अनिवासी भारतीय अथवा अनिवासी का फर्स्ट डिग्री ब्लड (first degree blood) रिश्तेदार अथवा अनिवासी भारतीय पर आश्रित हो" ;

11. Though these rules are not applicable on the students whose validity of the admissions is consideration under before the AFRC still it can be used by analogy and to judge mind of the Government.
12. So far the case law is concerned, the Hon'ble Apex Court in case of P.A. Inamdar Vs. State of Maharashtra, (2205) 6 SCC 537. In para 131 of this case the Hon'ble Apex Court observed that -

.....

“NRI seats

131*. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indian (“NRI” for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain to a certain number of students under such quota by charging a higher amount of fee. In fact, the term “NRI” in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be mad available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by NRIs only

and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy² to regulate”.

13. In case of Ruchin Bharat Patel (supra), the Hon'ble Apex Court fixed following criteria for admission of students under NRI quota:-

“In view of the peculiar circumstances of the case, for this year we are taking a practical view of the situation and we feel that the students to these colleges may be admitted under the following directions and we make it clear that this is exclusively for this year only as a one time arrangement because of the peculiar circumstances of the case:-

- 1) *The students be admitted as NRIs in NRI quota as against 15% : At least one of the parents of such students should be an NRI and shall ordinarily be residing abroad as an NRI;*
- 2) *The person who sponsors the students for admission should be a first degree relation of the student and should be ordinarily residing abroad as an NRI;*
- 3) *If the student has no parents or near relatives or taken as a ward by some other nearest relative such students also may be considered for admission provided the guardian has bonafide treated the student as a ward and such guardian shall file an affidavit indicating the interest shown in the affairs of the student and also his relationship*

with the student and such person also should be an NRI, and ordinarily residing abroad.

14. From these criteria it is apparent that court observed the quota for NRI students should be limited to 15% of total seats, with the admission criterion as follows:-

- (i) One of the parents *of* such student should be of NRI and shall ordinarily be residing abroad as an NRI.
- (ii) The person who is sponsoring to the student should be first degree relation of the student and should be ordinarily residing abroad as an NRI.
- (iii) And in case the student does not have an NRI in category (i)& (ii) as his sponsor then, if an NRI had taken him as ward and submits affidavit to the effect indicating the interest, such student may also be considered for admission provided the guardian has treated the student as ward.

15. On the basis of these guidelines, the matter was examined by Hon'ble High Court, in case of Anshul Tomar (supra). In this case the Court record with approval the criteria fixed by Pravesh Niyantran Samiti (Medical Education), Mumbai herein after referred to as "Mumbai Committee").

16. Basing on directions issued in case of Ruchin Bharat Patel (supra), the Committee fixed following criteria:-

"10. At this juncture, it is worth noting that Pravesh Niyantran Samiti (Medical Education) Mumbai while dealing with the issue relating to admissions to be granted admissions in NRI seats dealt with the eligibility facets.

After reproducing the paragraph from Ruchin Bharat Patel (supra) the Committee opined thus:-

“Based upon the decision of Hon’ble Supreme Court referred herein above dated 13th November 2006 has laid down a criteria for admission in NRI quota, the Samiti decides and resolves the criteria for granting the admissions in NRI as under:-

1) If the mother or father of student is NRI and residing abroad ordinarily, then, either of the situations so held will be considered to be proper.

2) If the first degree relation of the student is NRI and residing abroad ordinarily, then in such circumstances also, qua this year, should be considered eligible. It is natural that such definition would include the real brother and sister over and above the mother-father of the first degree relation.

As per the definition revised by the Hon’ble Apex Court, interpretation of clause 3 thereof as not made limited but if made in a broad perspective, then, it is clear that the person who wanted to consider such student as ward (playa), then, he be considered to be proper subject to compliance of the following conditions:

He should be the nearest relation.

a) In the definition of the nearest relation, committee has considered following relative having blood relations.

i) Rear brother and sister of father i.e. real uncle and real aunt.

ii) Real brother and sister of mother i.e. real maternal uncle and maternal aunt.

iii) Father and mother of father i.e. grand father and grand mother.

iv) Father and mother of mother i.e. maternal grand father and maternal grand mother.

v) First degree – paternal and maternal cousins.

vi) Such person should be NRI.

b) Such persons should ordinarily be residing abroad.

c) Such person should have looked after such student as the guardian of the student and evidence to that effect must have been produced before the committee by such person.

d) *There should be affidavit with aforesaid fact.*

The samiti directs the AMUPMDC and the Institutes/Colleges to follow the above guidelines strictly while granting the admissions in NRI quota in respect of the First Year Health Science course for the academic year 2007-08 and onwards”.

17. From these criterion, it is again apparent that the person who sponsors the students should be either one of the parents or person who is in first degree relationship with the students. The definition of first degree relation is given by “Mumbai Committee” itself and which would include real brother and sister and apart from parents of these students and no other relation. The third category of those students who have no parents or near relatives as NRI and in that case the definition of nearest relation include grand parents, both maternal and paternal, uncle and aunts both maternal and paternal and their children were included.
18. However, High Court allowed petitions of all the petitioners in Anshul Tomar case. According to the writ petition filed in this case, the petitioner did not fall within the category fixed by Mumbai Committee. The petition provides description about some of petitioners which is as under:-

“14. Mr. Chintan Kumar Joshi: He has been admitted to RD Gardi Medical College, Ujjain against NRI quota. He has also a major at the time of admission. His parents are also alive,. He claims to be ward of NRI who according to him is his mother’s sister, but he could not submit any proof of that relationship. There is also nothing to show that the said NRI, except paying for this admission to medical college, had in any way supported or ever looked after him.

12. Ajay Virambhai Vakatar: He has been admitted against NRI quota in RD Gardi Medical College, Ujjain. He was also major at the time of admission. He claims to be a ward of NRI who according to his own version but was only a person from his father’s village. There is nothing to support that the said NRI has ever supported or looked

after him except, that he has paid his fees for admission in medical college. Moreover, the said NRI was actually a British citizen. But he might be of Indian origin. Father of this candidate is also alive and has been supporting him.

15. Sunil Kasundriya: He had been admitted to RD Gardi Medical College, Ujjain against NRI quota. He was a major at the time of admission. His parents are also alive. His father runs a shop. He also claims to be ward of NRI. Even according to him, that NRI is not related to him but his grand-father's rakhi sister. The so-called NRI is actually a U.S. citizen. However, she may be of Indian origin. There is nothing to support that she had to any way ever looked after him or supported him otherwise than by payment of his fee for this admission in medical college".

19. And it is apparent that in case of Ajay Vikrambhai Wakatar, sponsoring NRI was a resident of same village and not related to the student. In case of Sunil Vasundria, the sponsor was rakhi sister of grand father and so on.
20. The High Court allowed petition of these candidates by taking a broader view of Clause-3 in case of Ruchin Bharat Patel (Supra).
21. As per High Court order in case of Shivani Singh Vs. The State of M.P. and others (W.P.No.14826/2017) the Court has given liberty to AFRC to examine each case individually in respect of the facts of each case and take an independent decision, with the direction as under:-

"The Committee shall consider the validity of the admissions granted by the Private Colleges under the NRI quota seats on the same basis as has rightly been done by the State itself in its report, that is, in accordance with the guidelines laid down by this Court in the case of Ansul Tomar (Supra) which are based on the directions issued by the Supreme Court in the case of P.A.Inamdar (Supra) and Ruchin Bharat (Supra)."

22. It is necessary to mention here that the State has approved the case of Shri Kuldeep Kungwani where the sponsor himself given affidavit that she is not related by blood to the candidate and is his father's friend's mother.
23. In view of the above, to maintain parity and in order to avoid discriminatory treatment in the matter of admission in NRI quota of students similarly situated, it would be proper to consider the cases of students under review.
24. Under this situation, if we refer the Rules of 2018, which provide that the student should be a dependant on an NRI but does not provide that the sponsor should be related to him, also we take into consideration that the students have already completed one year and therefore in crux and spirit of judgments including Anshul Tomar(Supra), Ruchin Bharat Patel(Supra) and Shivani Singh Vs. State of M.P.and others (WP No.14826/2017) where courts have taken broader approach in Category (iii) in favour of the students.
25. The matter came for consideration before AFRC in its meeting on 28.8.2018. The AFRC fixed following criteria for assessing eligibility of candidates whose admissions were cancelled by Director, Medical Education, Bhopal:-

“Therefore, to maintain parity and in order to avoid discriminatory treatment in the matter of admission in NRI quota of students similarly situated, the criteria is proposed as under:-

- 1. The sponsor should have shown willingness/interest to bear all academic expenditure throughout the tenure of the course, by resubmitting an affidavit to that effect.***
- 2. The sponsor should be truly NRI, certified by Indian Consulate or Competent Authority.***

As decided in the meeting of the Committee held on 09.08.2018 minimum eligibility marks in qualifying

examination i.e. NEET-2017 examination should be ensured in respect of all candidates who have been granted admission under NRI quota."

26. Subsequently, in its meeting dated 26.9.2018, AFRC further clarified that under category II of criteria as above, the following would be considered as valid proof for being NRI:-
- (i) Certificate of Consulate General
 - (ii) Certificate issued by High Commission of India/Embassy of India.
 - (iii) Overseas Citizenship of India/PIO card issued by Competent Authority.
 - (iv) Foreign Passport Holder who are by birth India.
27. Now these appeals are filed challenging the order of the AFRC by which the AFRC found them not eligible to be admitted under NRI quota. The main contentions of all the appellants are, inter alia, that according to the documents submitted by them, they were also eligible to be admitted under NRI quota like other 96 candidates whose admissions were found in order by the AFRC. Accordingly, the appellants were heard and records of AFRC were perused and the appeals are disposed off as stated in following paras.
28. Before considering each appeal on its merit, we may briefly go through the definition which explain who can be an NRI or who can be an Overseas Resident of India. According to www.wikipedia.org, the term Non Resident Indian or NRI refers only to tax status of a person, who, as per section 6 of Income Tax Act, 1961 has not resided in India for a specific period for the purpose of his income tax liability. The tax rates are different for persons who are residents in India and for NRI. A resident in India required to stay in India for at least 182 days in a

financial year. The definition of NRI is given in clause (e) of Section 115(C) of Income Tax Act 1961. This definition has been incorporated in the Act of 2007 in section 2 (j). A Person of Indian Origin on other hand, is a foreign citizen except, a national of Pakistan, Afghanistan, Bangladesh, China, Iran, Bhutan, Sri Lanka and Nepal, who; (i). at any time held an Indian Passport or (ii) either of their parents/grand parents/great grand parents were born and permanently a resident in India as defined in Government of India Act, 1935 or other territories that became part of India thereafter; provided neither was at any time a citizen of the aforesaid countries (as referred above) or his spouse a citizen of India or a PIO. Apparently, the main difference between NRI and OCI is that NRI is a citizen of India carrying Indian Passport while an OCI or PIO is a foreign national, except of certain countries which are stated above, holding a foreign passport but having an Indian origin or Indian connection through spouse.

29. It may further be clarified that the AFRC did not made it essential requirement that the sponsor NRI or OCI is related to student by blood or first degree relation. It was also not made a basic criteria that sponsor should pay the fee in foreign currency to the institute concerned. Accordingly to maintain parity with other students whose admission was found in order by AFRC, these factors were also not taken by this Authority for deciding the appeal filed by the appellants. Now, I proceed to consider each appeal on merit.

30. **Appeal No.20/2019 - Shri Eshaan Mehta**

In this appeal, the appellant Shri Eshaan Mehta was given admission by Chirayu Medical College and Hospital, Bhopal. The sponsor was his mother's brother. The sponsor, according to appellant is residing in California, USA for the last 14 years and working there as an Engineer.

The appellant has submitted VISA which was issued on 2nd February, 2016, a certificate from Consulate General of India dated 10th January, 2019 in which it was stated that the sponsor Shri Abhishek Joshi is residing at the given address in Newyork and was staying there for more than 182 days and he enjoys the status of Non Resident Indian.

31. Shri Mishra appearing on behalf of respondent admits that afterward the appellant submits certificate from Consulate. The requirement of criteria fixed by AFRC are met with, and as such, his admission can be declared to be in order. Accordingly, this appeal is allowed. The order of the AFRC as well as that of Director t, Medical Education, M.P. Bhopal are set aside. The admission to Shri Eshaan Mehta is declared to be in order.

32. **Appeal No.21/2019 - Shri Yash Dixit**

The appellant, Shri Yash Dixit was given admission by Chirayu Medical College and Hospital, Bhopal. The sponsor is said to be an NRI in Bangladesh. The appellant produced rent agreement showing that his sponsor is living at Bangladesh. Copies of Passport and VISA, work permit, copy of NRE and NRO account entries, passport. However, certificate of consulate is not produced. Apparent from this, the sponsor NRI, in accordance with definition adopted in the Act above, he is residing and working in Bengladesh.

33. These documents are sufficient to prove his status as NRI. Accordingly, this appeal is allowed. The order of the AFRC as well as that of Director, Medical Education, and M.P. Bhopal are set aside. The admission to Shri Yash Dixit is declared to be in order.

34. **Appeal No.22/2019 - Shri Hardik Nigodia**

The appellant, Shri Hardik Nigodia was given admission by Chirayu Medical College and Hospital, Bhopal. According to the appellant, his sponsor is the cousin brother of his mother; who is living in Newyork,

USA and working as an Engineer. He has produced passport and copy of HBI VISA. Subsequent to the order passed by the AFRC, he has also submitted a certificate issued by the Consulate of India at Newyork. He has submitted before this Authority the original copy of the certificate. From these documents it appears that the sponsor is a genuine NRI according to the criteria fixed by AFRC in other cases.

35. Shri Mishra appearing on behalf of respondent also admits that after submission of NRI certificate from Consulate of India at Newyork, the criteria fixed by the AFRC is fully met with. Accordingly, this appeal is allowed. The order of the AFRC as well as that of Director, Medical Education, M.P. Bhopal are set aside. The admission to Shri Hardik Nigodia is declared to be in order.

36. **Appeal No.23/2019 – Shri Satyam Pandey**

The appellant Shri Satyam Pandey was given admission by Chirayu Medical College and Hospital, Bhopal. The AFRC placed his name in Appendix-F in which names of those candidates were placed who could not produced satisfactory documents to proof NRI status of the sponsor.

37. According to Shri Mishra appearing for the respondent, the appellant could not produce the document showing the continuous residence of the sponsor in Saudi Arabia and therefore the required criteria of 180 days could not be ascertained.

38. Now, before the Appellate Authority, the appellant produced self attested documents which include employment certificate by Maritime Industrial Services Arabia Co., Ltd., (MIS Arabia) in which it is stated that the Sponsor Shri Akhilesh Kumar Shukla was in the employment of the Co. from 5.10.2015 till the date of issue of this certificate i.e. 20th February 2019. The appellant has also produced the original certificate which kept in record and the original may be returned to the appellant after final order in this matter is issued.

39. Apart from the certificate of employment, he has filed various cards like employment card and residence card, showing that the appellant was in Saudi Arabia from 5.10.2015. The documents produced by the appellant along with certificate of employment issued by the company shows that the sponsor residing in Saudi Arabia in 2017 when sponsorship was made. Accordingly, after taking all the factors into consideration, it is apparent that his admission was proper and as such, this appeal deserves to be allowed and accordingly allowed.

40. The order in respect of his admission passed by AFRC as well as that of DME are hereby set aside and his admission is declared to be in order.

41. **Appeal No.24/2019 - Shri Virendra Kumar Merawat**

The Appellant Virendra Kumar Merawat was given admission by Chirayu Medical College and Hospital, Bhopal. His sponsor is Shri Anil Munawat who is working in Kuwait. According to the documents he produced, it is apparent that he entered the State of Kuwait on 11th January, 2017 and he had work permit to work there up to 10.1.2019. He has also filed this affidavit along with the affidavit of the candidate. There is no material on record to disbelieve these documents. As such, the sponsor in this case is a genuine NRI, and falls within the criteria fixed by AFRC. The AFRC placed his name in Appendix-F which indicated that he could not file proper documents before AFRC earlier. Taking into consideration the documents he filed before the Appellate Authority, it is apparent that his admission was proper and as such, this appeal deserves to be allowed and accordingly allowed.

42. The order in respect of his admission passed by AFRC as well as that of DME are hereby set aside and his admission is declared to be in order.

43. **Appeal No.25/2019 - Ms. Priya Rani**

The appellant Priya Rani was admitted by Chirayu Medical College and Hospital, Bhopal. Her sponsor was one Shri Arun Kumar who was a

Nepali citizen. As such, he claims himself as an Overseas Resident of India. However, as stated earlier, the overseas residents of India should be a citizen of a foreign country except certain countries notified by the Government which included Nepal also. Second and foremost requirement of being an overseas citizen of India is that forefathers of the sponsor should be of Indian origin. In this case, the sponsor Shri Arun kumar claims that his forefather Raghu Mahto hails from India and he is also a permanent resident of Village Orayia Bijlapola, Police Station Mahu Awa Distt. East Champaran and to prove this fact, he filed a certificate from Khoriya Gram Panchayat.

44. The AFRC while considering this certificate did not accept the certificate. The order passed by the AFRC does not give any reason for doing so. However, going through the certificate, I find that this certificate is not acceptable as this certificate does not show on what basis the certificate was issued by the Sarpanch of the Gram Panchyat. The source of information was not disclosed whether it was based on the records of the Gram Panchayat or on personal knowledge of the Sarpanch who issued the certificate or he enquired from some other person and in this case the name of the person should have been given which was missing. As such, even if it is assumed that the certificate was issued by the Gram Panchayat, it does not show the source of the knowledge and therefore not acceptable.
45. Accordingly, it is apparent firstly, the sponsor is a Neapali person and Nepali citizens do not fall within the definitions of overseas citizens of India and secondly, the Indian origin of the sponsor, is not proved. In this situation, it is difficult for this Authority to accept the sponsor as a genuine sponsor as such, the appeal filed by the appellant is devoid of any merit and liable to be dismissed.

46. However, considering the fact, the appellant has already completed one year of her study and if her admission is cancelled, her future would be affected without any fault on her part. Also, she had been given one seat in the institute which would go waste if her admission is cancelled. The fault appears to be on the part of the Institution. As such, the Appellate Authority thinks it proper to remand the matter back to AFRC for reconsideration and in its discretion, imposing reasonable fine on the Institution, in accordance with Section 4 sub section 9 (as amended by Act of 2013). Accordingly this appeal is disposed of and matter is remanded back to AFRC for its reconsideration. It is made clear that the AFRC shall reconsider the matter on its merit and will not be affected in any way by observations made by Appellate Authority hereinabove.

47. **Appeal No.26/2019 - Shri Parag Sharma**

The appellant Shri Parag Sharma was given admission by Index Medical College Hospital & Research Centre, Indore. His name was placed by AFRC in Appendix-F of impugned order which contains names of those students who, failed to provide satisfactory proof as NRI sponsor. In this case, his sponsor is Shri Suresh Chand Katara who claims to be an NRI working in Kenya. He filed a certified copy of the passport in which entries were made of his entry and exist from Kenya. From the entries in passport, it is apparent that in all he remained more than 180 days in Kenya in one financial year. He was also working there and as such, according to the criteria adopted by AFRC he was a genuine NRI. After going through the documents he has submitted before this Authority and before the AFRC, it is apparent that he was a genuine NRI in accordance with the criteria fixed by AFRC and as such, the appeal deserves to be allowed and accordingly allowed. The order of the DME and that of AFRC are set aside and his admission to the College is declared in order.

48. **Appeal No.27/2019 - Shri Mohammad Bahauddin**

In this case of Shri Mohammad Bahauddin, the sponsor is Shri Mohammad Alim Khan S/o Shri M.D. Ashwaque Khan. The AFRC did not consider the certificate of employment issued by Hyundai Engineering and Construction Co., the original copy of which has been filed by the appellant today before the Appellate Authority. The original document was matched with the photocopy which was already on record. According to the certificate of employment, the sponsor was in Kuwait and working there as welder from 8th January, 2014 to 31st July, 2017 which covers the period for which the sponsorship was made. The such, the AFRC erred in not considering his admission as valid according to the criteria fixed by it and as such taking into consideration of the certificate, this appeal is allowed. The order of the DME and that of AFRC are set aside and his admission to the College is declared in order.

49. **Appeal No.28/2019 - Shri Tanuj Goyal**

The appellant Shri Tanuj Goyal was given admission in L.N. Medical College, Bhopal. His sponsor was Shri Madan Kumar Agrawal S/o Shri Kunramal Agrawal. The sponsor Madan Kumar Agrawal obtained citizenship of Nepal and as such, claimed that he was an Overseas Citizen of India. To show his Indian Origin, his birth certificate was filed and also document was showing that presently he is a citizen of Nepal.

50. Shri Mishra appearing on behalf of AFRC submitted that sponsorship was not considered proper because in various documents name of the sponsor differ somewhere it was written as "Madanlal" and somewhere it was written as "Madan Kumar" and finally the appellant submitted the School Leaving Certificate issued by KD Shastri Senior Secondary School Moorigate, Hissar, Haryana in which it shows that he attended the school up to 16.5.1984. This read with his birth certificate shown his Indian origin. However, according to criteria fixed by Ministry of Home Affairs, Government of India, the citizens of Nepal are not given the

status of Overseas Citizens of India and as such, even if, the confusion regarding his name is cleared, and it is assumed that Madan Kumar and Madanlal is the same person, he cannot be treated as Overseas Citizen of India, and no benefit can be given to the appellant.

51. However, considering the fact, the appellant has already completed one year of his study and if his admission is cancelled, his future would be affected without any fault on his part. Also, he had been given one seat in the institute which would go waste if his admission is cancelled. The fault appears to be on the part of the Institution. As such, the Appellate Authority thinks it proper to remand the matter back to AFRC for reconsideration and if it in its discretion, it deems proper impose reasonable fine on the Institution, in accordance with Section 4 sub section 9 (as amended by Act of 2013). Accordingly this appeal is disposed of and matter is remanded back to AFRC for its reconsideration. It is made clear that the AFRC shall reconsider the matter on its merit and will not be affected in anyway by observation made by Appellate Authority hereinabove.
52. Subsequently, Appeal No.20/2019, Appeal No.21/2019, Appeal No.22/2019, Appeal No.23/2019, Appeal No.24/2019, Appeal No.26/2019 and Appeal No.27/2019 are allowed. The order passed by AFRC and that of DME in respect of these appellant are set aside and their admissions are declared in order. The appeal Nos.25/2019 and 28/2019 are disposed off by remanding the matter back to AFRC for reconsideration.
53. The appeals stand disposed off accordingly.

Sd/-
(Justice Alok Verma)
Appellate Authority