
(2021) 09 BOM CK 0027

Bombay High Court

Case No: Writ Petition No. 1679 Of 2021

Avani Sudhir Vaishnav

APPELLANT

Vs

Union Of India And
Others

RESPONDENT

Date of Decision: Sept. 15, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 12, 226

Hon'ble Judges: R. D. Dhanuka, J; R. I. Chagla, J

Bench: Division Bench

Advocate: Y. S. Jahagirdar, Vyom Shah, Virendra Pereira, Anagh Pradhan, Divya Shah, R. V. Govilkar, Ashutosh Gole

Final Decision: Disposed Of

Judgement

R.D. Dhanuka, J

1. Rule. Mr. Govilkar, learned counsel for the respondents waives service. By consent of all parties, writ petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the

impugned communication dated 9th June, 2020 issued by the respondent no.1(a) and also the communication dated 22nd March, 2021 issued by the

respondent no.1(b) rejecting the application/ representation made by the petitioner for No Objection Certificate for $\tilde{\text{A}}\hat{\text{c}}\hat{\text{a}},\neg\tilde{\text{E}}\text{œ}$ No Objection to Return to India

Certificate $\tilde{\text{A}}\hat{\text{c}}\hat{\text{a}},\neg\hat{\text{a}},\text{c}$ (for short $\tilde{\text{A}}\hat{\text{c}}\hat{\text{a}},\neg\tilde{\text{E}}\text{œ}$ NORI Certificate $\tilde{\text{A}}\hat{\text{c}}\hat{\text{a}},\neg\hat{\text{a}},\text{c}$).

Some of the relevant facts for the purpose of deciding this petition are as under :-

3. Sometime in the year 2011, the petitioner enrolled herself in a private deemed university namely D.Y. Patil Medical College for pursuing the

Bachelor of Medicine / Surgery degree (MBBS). It is the case of the petitioner that since she was not interested in practicing as a Doctor, she did not

enroll her in a Government college which provides medical education at very subsidized or no fees in return for a mandatory bond. In the year 2017,

the petitioner completed her one year internship mandated under the MBBS course and graduated with her MBBS degree with distinction in her

university exams and accomplished first rank under the Maharashtra Medical Councils Act. The Registration is valid for a period of five years.

4. The petitioner and her family applied for the United States Citizenship and Immigration Services, formed under the Department of Homeland

Services of USA (for short USCIS) for availing family Immigration. The Aunt of the petitioner i.e. real sister of the petitioner's father is a

citizen of the United States of America. She has sponsored and applied for the family based immigration as per US Laws by filling petition I-130 with

the US immigration authorities some time in 2004. It is the case of the petitioner that her family's application was approved by USCIS on 15th

October, 2009. The petitioner started looking for professional opportunities for doing academic research in USA in alignment with the petitioner's

and her family's plans to immigrate to the USA and in furtherance of her academic inclinations. The multi-faceted research programs available in

USA enable graduates to gain experience to conduct research, observe, teach and consult in connection with research projects.

5. It is the case of the petitioner that during the period between 20th June, 2017 and 20th June, 2019, the petitioner accepted an internship, which was

offered to her by Hospital for Special Surgery in US. This role did not involve patient contact or clinical privileges. In the month of August 2017, the

petitioner applied for a J-1 Visa (Research Scholar Visa). The employer of the petitioner issued DS-2019 work authorization forms extended annually.

It is the case of the petitioner that the petitioner cannot reside in USA on J-1 Research Scholar Visa beyond five years.

6. On 20th May, 2019, the petitioner's family's interview at the US Embassy in Mumbai was finally scheduled. However, since the petitioner

was engaged with research work, upon her request it was postponed to April 2020. In the month of August/September 2019, the twin sister of the

petitioner i.e. Aditi Vaishnav also completed her MBBS degree and was also engaged in research work. She also applied for US Green Card and

attended her interview at the US Embassy in Mumbai. She was asked to furnish a NORI Certificate to complete her immigration process, since she

possessed J-1 Visa. Same condition was made applicable to the petitioner also.

7. The petitioner was required to obtain NOC from the respondent no.1(b) in case of Medical Professionals and Doctors and respondent no.1(a) in

other cases. On 9th March, 2020, the petitioner being a Medical graduate, applied to respondent no.1(b) for seeking NOC for NORI Certificate.

8. It is the case of the petitioner that in the Month of April, 2020, due to covid-19 pandemic, the US Consulate had suspended all immigration

interviews, the US Government also in meanwhile froze the issue of Green Cards. The interview of the petitioner thus could not be conducted. On

13th May, 2020, in view of temporary suspension of Visa interviews and as J-1 Research Scholar Visas are only valid for a period of five years from

the date of its issue, the mentor of the petitioner advised her to apply for a J-1 Clinical Visa so that she could continue to stay in USA and pursue a

research focused clinical program.

9. It is the case of the petitioner that acting upon an incorrect advise, the petitioner availed the SON Certificate from the respondent no.1(b). Vide

letter dated 15th May, 2020, the respondent no.1(b) recorded that they did not have any remarks on the type of visa that may be granted to the

petitioner. On 19th May, 2020, the respondent no.1(a) rejected the application made by the petitioner on the basis of an alleged policy of the

respondent no.1(b) refusing to issue NORI Certificate to Medical Professionals. On 15th June, 2020 and 27th July, 2020, the petitioner sought a review of her application made to the respondent no.1(a). On 28th July, 2020, the respondent no.1(a) rejected the review application made by the petitioner on the ground that she was a medical degree holder.

10. In the month of August 2020, the petitioner filed a Writ Petition (L) No. 4336 of 2020 in this Court. On 10th October, 2020 and 26th October, 2020,

the petitioner obtained legal advice that she would not be able to get a J-1 Clinical Visa due to her pending immigration status. She was advised by her

lawyer that she did not require a SON Certificate in view of her interest in pursuing research carrier and her intent to not apply for J-1 Clinical Visa

and to pursue Clinical practice. She also intended to immigrate to USA on Green Card. The petitioner accordingly surrendered her SON Certificate

and requested the respondent no.1(b) to return the bond submitted by her.

11. On 13th October, 2020, the petitioner withdrew the said Writ Petition bearing (L) No. 4336 of 2020 with liberty to file a fresh petition. Pursuant to

the said liberty, the petitioner filed this Writ Petition on 31st October, 2020. On 5th November, 2020, the respondent no.1(b) confirmed the cancellation

of the Surety Bond submitted by the petitioner. It was mentioned in the said letter that the petitioner had not used her SON Certificate.

12. On 11th December, 2020, this Court called upon the respondents to inform this Court as to which Department of Union of India was entrusted

with issuance of NORI Certificate and scrutiny of petitioner's position. On 17th December, 2020, this Court noted that in the case of Dr.Sunil

Kiran Noothi v/s. Union of India decided by the Aurangabad Bench of this Court, a distinction is made between the Medical Professionals and a

Research Scholar and no contrary decision was shown by the respondents. The respondent no.1(b) was directed to examine the case of the petitioner

in the context of her being a research scholar and not medical professional and the decision so taken was to be placed on record.

13. On 22nd December, 2020, the petitioner through her advocates requested the respondent no.1(b) to allow the petitioner to make a representation

before arriving at a decision after re-examining her matter as per the order dated 17th December, 2020. The respondent no.1(b), however did not

grant any hearing though the petitioner had followed up by a request vide letter dated 5th January, 2021.

14. On 28th January, 2021, the respondent no.1(b) contended in its affidavit that the policy guideline of the respondent no.1(b) did not permit NOC for

NORI Certificate to be issued to Medical Professional except above 65 years of age and there was no distinction between the Research Scholar and

the Medical Professional for this purpose. On 22nd February, 2021, this Court directed the respondent no.1(b) to place its decision concerning NORI

Certificate on record.

15. On 22nd March, 2021, the respondent no.1(b) addressed a communication of its alleged decision after re-examining the case of the petitioner once

again and rejected the request of the petitioner for NOC for NORI Certificate on the ground that there was no distinction between a Research

Scholar and a Medical Practitioner. The petitioner thereafter amended this writ petition to bring the said letter dated 22nd March, 2021 on record and

to impugn the same.

16. Mr.Jahagirdar, learned senior counsel for the petitioner invited our attention to various documents annexed to the writ petition, to some of the

averments made by the respondents in their affidavit in reply in the additional affidavit filed by the petitioner and the judgment of the Aurangabad

Bench of this Court in case of Sunil Kiran Noothi vs. Union of India (2017) 2 BCR 642 in Writ Petition No.8095 of 2026 delivered on 20th December,

2016.

17. It is submitted by the learned senior counsel that though the petitioner has obtained her MBBS Degree, she has not engaged in clinical practice

thereafter whether in India or outside India. She has not practiced medicine. She is a Research Scholar who is currently working in United States of

America (USA) on the basis of Specialized J-1 Visa (Research Scholar Visa). The petitioner was not required to obtain Specialized of NEED (SON)

or Exceptional NEED Certificate from the Government of India as is required in the case of Medical Graduate going Overseas to study on J-1

(Physician) Visa. SON or ENC certificates obtained by the petitioner to return to India and practice medicine after completion of their education /

Visa is not under any obligation.

18. It is submitted that the remarks on DA Form 2019 Forms submitted annually by the employer of the petitioner and further issued by the US

Government enabling the petitioner to study and continue her research work in USA would clearly indicate that the the research work of the petitioner

does not include patient contact or clinical privilege and that she is a Research Scholar. He invited our attention on various research articles published

by the petitioner. He submits that the petitioner is ready and willing to surrender her license to practice medicine in India. The petitioner requires NOC

for NORI Certificate from the respondents for waiving Home Residence Requirement (HRR) imposed by USA. HRR requires of persons in J-1 Visa

to return to India and stay for two years after completion of study in USA after expiry of Visa.

19. It is submitted that obtaining NORI Certificate from the Government of India is necessary in case of doctors/medical professional or NOC from

the respondent no.1(a) in other case. He submitted that US Government treats J-1 Visa differently for Doctors and Professionals / Research

Scholars. J-1 Visa obtained by the petitioner permits her to reside as a Research Scholar in USA for practice of five years unlike seven years in case

of Visa clearance pursuant to SON Certificate. J-1 Visa issued by the US Government would also indicate that the petitioner is being treated as

Research Scholar and that she will not have the benefit of clinical privilege or contact the patient diagnosis / contact during her entire tenure of

conducting research work in USA.

20. It is submitted that the US Government has treated the petitioner as NON and clinical exchange participant having no form of patient care involved. He submits that since the petitioner has not practiced medicine and is interested in research work and not having obtained J-1 Clinic Visa on the basis of SON on ENC Certificate, the petitioner is not bound by the condition under the respondent no.1 (b) (b) (b)s administrative instructions to return to India and practice medicine. The condition for providing of written assurance is squarely applicable for obtaining a J-1 (Clinical Visa) which is apparent from the fact that the US Government treats J-1 Visa differently of Doctors / Professionals / Research Scholars.

21. Learned senior counsel placed reliance on the judgment delivered by the Aurangabad Bench of this Court in case of Sunil Kiran Noothi (supra) and would submit that this Court in the said judgment has considered the alleged policy of administrative instructions of the respondent no.1(b) and has held that in case any Doctor engaged in Research work and neither practicing as Doctors / Medical Practitioners nor intending to practice, cannot be a ground to deny the application for NORI Certificate. He submits that the said judgment of this Court has not been impugned by the respondents before the Hon'ble Supreme Court.

22. Learned senior counsel also strongly placed reliance on the order passed by this court in this writ petition on 17th December, 2020 after adverting to the judgment delivered by the Aurangabad Bench of this Court in case of Sunil Kiran Noothi (supra) and observing that the Aurangabad Bench of this Court in case of Sunil Kiran Noothi (supra) has made a distinction between the medical practitioners and research scholars. No contrary decision is shown of this Court by the respondents. He submits that by the said order, this Court had directed the Ministry of Health and Family Welfare to examine the case of the petitioner in respect of NORI Certificate in the context of assertion of the petitioner that the petitioner is not the medical practitioner but a Research Scholar.

23. Learned senior counsel invited our attention to the communication dated 22nd March, 2021 from the respondent no.1(b) rejecting the request of

the petitioner for grant of NOC to NORI Certificate. He submits that the administrative instructions as far as issuance of NORI Certificate is

concerned did not make a distinction of Research Scholars and Medical Practitioners. He submits that in the same communication, the respondent

no.1(b) has rejected the application of the petitioner on the basis of their administrative instructions without applying a distinction between a Research

Scholar or the Medical Practitioner. The said communication dated 22nd March, 2021 is not in compliance with the directions given by this Court vide

order dated 17th December, 2020.

24. Learned senior counsel invited our attention to paragraph 4 of the communication dated 22nd March, 2021 and also some of the averments in the

affidavit in reply and would submit that administrative instructions governing the issue of NORI Certificate did not make any distinction on the basis of

experience of the Doctor. The respondents in the said communication has informed that NORI Certificate will not be issued under any circumstances

except for the applicant aged above 65 years.

25. Learned senior counsel invited our attention to the averments in paragraph 7 of the affidavit in reply filed by the respondents notarized on 28th

January, 2021 and would submit that it is admitted by the respondents that the petitioner had gone to USA as a Research Scholar on J-1 Visa. He

submits that it is admitted that NORI Certificate is a certificate issued by the Home Country to the applicant certifying that he is under no obligation to

return to India.

26. Learned senior counsel invited our attention to the contention raised by the respondents in paragraph 8 of the said affidavit that the Union of India

has taken a policy decision in view of the fact that there are about 20.5 lakh Doctors in India and there is shortage of about 4.00 lakhs Doctors. Large

number of Doctors have migrated to other countries and consequently there is shortage of professionals. The Government has taken a policy decision

not to issue NORI Certificate to the professionals under any circumstances except if the applicant is more than 65 years of age. In paragraph 9 of the

said affidavit, it is contended that the policy does not make any distinction between the practicing Doctors and Research Scholars. He reiterated his

statement that the petitioner does not wish to practice as a Doctor and is ready and willing to surrender his license to practice medicine in India.

27. It is submitted by the learned senior counsel that since the petitioner has applied for green card, issuance of NORI Certificate would be necessary.

He submits that the petitioner has no objection if the respondents even issue a conditional NORI Certificate with an endorsement that the petitioner

would not practice medicine in USA.

28. Learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of Hari Krishna Mandir Trust vs. State of

Maharashtra (2020) 9 SCC 356 and in particular paragraphs 102 to 104 and would submit that in appropriate cases in order to prevent injustice to the

parties, Court may itself pass an order and to give directions which the Government or the public authorities should have passed, had it properly and

lawfully exercised its discretion. He submits that the Court is duty bound to issue a writ of mandamus for enforcement of a public duty. High Court is

not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief, question of fact

may fall to be determined in a petition under Article 226 of the Constitution of India. High Court has jurisdiction to try the issues both of fact and law.

He submits that if this Court comes to the conclusion that the respondents have failed to exercise their duties, this Court itself can pass an order and

issue such directions to issue NOC for NORI Certificate instead of remanding the matter back to the respondents.

29. Mr. Govilkar, learned counsel for the respondents on the other hand vehemently submits that it is not obligatory or duty on the part of the

respondents to issue any such NORI Certificate to the petitioner. He submits that even if it may be the requirement of the US Government for NORI

certificate for issuing a green card in favour of the petitioner, the respondents are not under any obligation to issue any such NORI Certificate in

favour of the petitioner to comply with the conditions imposed by the US Government. He distinguished the judgment of the Hon'ble Supreme

Court in case of Hari Krishna Mandir Trust (supra) on the ground that neither it is the public duty on the part of the respondents to issue NORI

Certificate nor the legal duty on the part of the respondents to issue NORI Certificate and thus no writ of mandamus can be issued against the

respondents. It is submitted that the father of the petitioner is also a Doctor. He did not go to USA on J-1 Visa. He submits that the petitioner had

applied for green card. Her J-1 Visa was not considered. He strongly disputed the statement made by the learned senior counsel for the petitioner that

the petitioner though had passed MBBS Degree in India had not come in any patient contact.

30. Insofar as the prayer for writ of certiorari prayed by the petitioner in the writ petition is concerned, he submit that no such relief can be granted in

favour of the petitioner since the impugned communication issued by the respondents is within the parameters of law. The writ of certiorari can be

issued against a judicial decision.

31. Learned counsel invited our attention to a letter dated 28th June, 2017 from the respondents to Dr. Sunil Kiran Noothi and would submit that after

adverting to the judgment delivered by the Aurangabad Bench of this Court in case of Sunil Kiran Noothi (supra), the respondents have already

rejected the said application for NORI Certificate submitted by the petitioner in that writ petition on the ground that the NORI Certificate is required

by the US Government and if such certificate is issued would defeat the Government of India's endeavour to bridge the gap of medical

professionals in the country and utilize fully the clinical experience of trained medical personnel in specialties / super-specialties and to increase their

number in India, and thus would be against public interest, NORI Certificate is not issued since August, 2011 except in cases where the applicant is

more than 65 years of age. He submits that the policy does not make any distinction between the medical practitioners and Research Scholar for this purpose.

32. It is submitted that the said petitioner in that matter did not challenge the said order passed by the respondents rejecting the application for NORI

Certificate. The petitioner was fully aware of the said decision taken by the respondents in Sunil Kiran Noothi (supra) after considering the order

passed by the Aurangabad Bench of this Court in case of Sunil Kiran Noothi (supra) and still applied for J-1 Visa under alleged wrong advice.

33. Mr. Jahagirdar, learned senior counsel in his rejoinder argument invited our attention to the circular issued by the Ministry of External Affairs,

Government of India annexed at Exhibit-L to the petition and would submit that the said circular itself prescribes the procedure for issuing NORI

Certificate. He submits that the argument of the learned counsel for the respondents that it is neither mandatory duty nor legal obligation to issue any

such NOC for NORI Certificate is contrary to the said circular issued by the Ministry of External Affairs. The respondents could not justify the

argument that if the respondents have not objected to issue NORI Certificate to the Doctor above of age of 65 years, then why such NORI

Certificate cannot be issued in favour of the degree holder in medicine who is willing to give undertaking not to practice medicine in India or in the

USA. The writ of mandamus is thus maintainable against the respondents. Since the impugned orders passed by the respondents are perverse and

contrary to law, writ of certiorari prayed by the petitioner is maintainable.

REASONS AND CONCLUSIONS

34. The question that arises for consideration of this Court is whether respondents have mandatory duty or any legal obligation on the part of the

respondents to issue NOC for NORI Certificate to the petitioner who has applied for green card to the US Government for permanently settling in US

for the purpose of research work and having undertaken not to practice medicine in India or in US or not.

35. It is not in dispute that the petitioner has obtained her MBBS degree in India. The petitioner had accepted an internship which was offered to her

by the Hospital for Special Surgery in US during the period between 20th June, 2017 and 20th June, 2019. The petitioner was granted J-1 Visa

(Research Scholar Visa). Under the said J-1 Visa (Research Scholar Visa), the petitioner cannot reside in US beyond five years. In the affidavit in

reply filed by the respondents and more particularly in paragraph 7, it is admitted that the petitioner went to the USA as a research scholar on J-1

Visa.

36. It is admitted in the reply that it is the condition that the USA Visa holder has to return to his home country and physically stay there for two years,

after expiry of the programme for which J-1 Visa was issued which is called as Home Residence Requirement (HRR). The NORI is also a

requirement of the USA for waiver of this condition of HRR. NORI is a certificate issued by the home country to the applicant certifying that he is

under no obligation to return to India.

37. A perusal of the circular issued by the Ministry of External Affairs, Government of India annexed at Ex. 'L' clearly indicates that the said

circular provides for the procedure for issuing NORI Certificate. The said circular provides that the applicant who is in India should submit application

for issue of NORI Certificate at the CPV Division (Consular-I Section), Ministry of External Affairs, New Delhi. For those who are applying from a

third country where they are currently staying, the concerned Mission/Post should issue NORI Certificate by accepting all the documents prescribed

in the said circular. We are thus not inclined to accept the submission of the learned counsel for the respondents that the respondents are neither under

legal obligation nor under any moral obligation to issue any such NORI Certificate. The prayer for writ of mandamus prayed by the petitioner for an

order and direction against the respondent 1(a) to issue NOC for NORI Certificate in favour of the petitioner is thus maintainable.

38. Insofar as submission of the learned counsel for the respondents that no writ of certiorari can be issued in this matter is concerned, the

respondents have not disputed that both these respondents are Departments under Union of India. Even if any quasi judicial orders are passed or if the

mandatory duty and legal obligation on the part of the Government or other authorities falling under Article 12 of the Constitution of India, the writ

petition under Article 226 of the Constitution of India is maintainable. If such order is in breach of legal and mandatory duty, the writ of certiorari can

be issued by the Court exercising power under power under Article 226 of the Constitution of India.

39. It is the case of the petitioner that the petitioner has completed her MBBS course in India without any Government aid and always wanted to do

research. She is desirous to do research in the United State of America and had accordingly obtained J-1 Visa. Her family members are already

issued green card by the USA authorities. The petitioner has already surrendered her Statement of Need (SON) to the respondent no.1(a) by her e-

mail dated 10th October, 2020. The petitioner also requested the respondent no.1(b) to cancel surety bond submitted by the petitioner along with SON

Certificate. The respondent no.1(b) has already cancelled surety bond submitted by the petitioner in view of the petitioner not using the SON. The

respondent no.1(b) has informed about such cancellation of such surety bond to the petitioner vide letter dated 5th November, 2020.

40. In the writ petition, the petitioner has annexed several documents in support of her contentions that the petitioner has published several research

articles in USA and is very active in the field of research. The research of the petitioner has been appreciated by the USA Government. In the

affidavit in reply filed by the respondents, these factual aspects have not been disputed by the respondents at all.

41. Supreme Court in case of Hari Krishna Mandir Trust (supra) has held that in appropriate cases, in order to prevent injustice to the parties, the

Court may itself pass an order or give directions which the government or the public authorities should have passed, had it properly and lawfully

exercised its discretion. The Court is duty bound to issue a writ of Mandamus for enforcement of a public duty. This duty must be shown to exist

towards the applicant. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the

petitioner's right to relief questions of fact may fall to be determined. It is held that in a petition under Article 226, the High Court has jurisdiction to try

issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles.

42. In our view, since the MBBS degree was conferred by the University controlled by the Ministry of Health and Family Welfare and Ministry of

Education, whether NOC for NORI Certificate should be issued or not to an applicant having possessed such MBBS degree for obtaining green card

in USA is within the powers of the respondents, which power is coupled with duty. The principles laid down by the Hon'ble Supreme Court in

case of Hari Krishna Mandir Trust (supra) applies to the facts of this Court. Thus, this Court has ample power under Article 226 of the Constitution of

India to issue writ of mandamus against the respondents for compliance with mandatory duty and obligation to issue NOC for NORI Certificate in

accordance with law.

43. During the course of the arguments, learned counsel for the respondents led emphasis on the issue that a large number of students having passed

medical degree in India and have become doctors go abroad thereby there being shortage of about 4 lakh doctors and that also being a factor

considered while taking the policy decision not to issue NORI to the medical professional under any circumstances except if applicant is more than 65

years. The petitioner in this case has not only averred that the petitioner has not come in contact with any patient but has also agreed to give an

undertaking that the petitioner will not practice medicine in India or in USA and would only do research work and the respondents may impose such

condition in the NORI certificate. The submission of the learned counsel for the respondents that there is being shortage of the medical doctors who

migrate to other countries after obtaining the medical degree from India is of no significance in the facts of this case and more particularly in view of

the undertaking given by the petitioner. The petitioner had taken admission in the private medical college. The undertaking given by the petitioner is

accepted.

44. The respondents failed to appreciate that the petitioner was issued J-1 Visa under the Research Scholar category which is provided to the students

for the purpose to develop their research based skills and to promote exchange of ideas. The petitioner did not obtain J-1 Visa for graduate medical

education/training visa necessary for medical graduates aspiring to undergo medical training and healthcare. The petitioner has already surrendered

her SON certificate, has not applied for nor intends to apply for J-1

Physician visa and does not have any obligation to return to India to

practice in medicine. There is no obligation imposed by the Indian law, rules or governing authorities mandating that the petitioner is required to

practice as a doctor in India for any period of time.

45. Aurangabad Bench of this Court in case of Sunil Kiran Noothi (supra) has considered the submission of the respondents herein that there is acute

shortage of Doctors, Nurses, Paramedical Staff and Health Workers in India. It was contended before the Aurangabad Bench by the respondents that

there was increasing trend in the Indian Doctors of not returning to India after completion of their study/training in U.S.A. and preferring to stay back

in U.S.A. only causing acute shortage of Doctors in the country. The respondents had also contended that because of acute shortage of Medical

Practitioners in India, the policy decision has been taken by respondent no. 1(b) that NORI certificate should not be issued to the Medical Practitioner

except in the case where the age of such a Medical Practitioner is over 65 years.

46. This Court in the said judgment took notice of the fact that the petitioner before obtaining degree of MBBS was inclined towards research work

leading to the thesis on various medical subjects. The petitioner in that matter also had travelled to USA on J-1 (Research Scholar) Visa. In this case

also the petitioner has brought on record that the petitioner has published various research articles in USA and the said research work was

appreciated. This Court noticed that the petitioner therein had actually neither practiced as a Doctor/Medical Practitioner, nor intended to practice as

such. It is held that the policy decision taken by respondent no. 1(b) of not issuing NORI certificate to any Doctor for the purpose of stemming brain

drain of Doctors and to cope up with the acute shortage of Doctors in India, could not be made applicable to the petitioner.

47. This Court also noticed that it was obvious that even if he resides in India, he is not going to render his services to the citizens of India as a Doctor

because of his inclination in research work. It may be stated that research work requires special aptitude, intelligence, dedication, perseverance and

deep concentration. There may be a number of Doctors holding medical qualifications included in the Schedules to the Indian Medical Council Act,

1956. All of them cannot work as research persons. It is held that there may be very few persons, who would have the inclination to go for research

work instead of practicing medicine. The Research Scholar cannot be equated with a Doctor/Medical Officer. In the circumstances, the refusal on the

part of the respondents in issuing NORI Certificate in favour of the petitioner, making it difficult for him to prosecute his research work does not

appear to be fair, reasonable and proper. The research work taken up by the petitioner is likely to help the entire mankind.

48. It is held that it was expected of the respondents to encourage the petitioner for doing the research work by issuing NORI Certificate instead of

creating technical hurdles in his commendable research project. At the most, the respondents could have imposed a condition that in case the petitioner

starts practicing medicine, the NORI Certificate would stand cancelled and he would be required to come back to India. This Court accordingly held

that the policy decision taken by respondent No.1 (b) of not issuing NORI Certificate to the person holding medical qualifications cannot be made

applicable to the petitioner who is a Research Scholar and not a Medical Practitioner. This Court directed the respondents to take decision on the

claim of the petitioner for issue of NORI Certificate within three months from the date of the said order on its own merits keeping in mind the fact that

the petitioner is a Research Scholar and not a Medical Practitioner.

49. In our view the principles laid down by this Court (Aurangabad Bench) in case of Sunil Kiran Noothi (supra) squarely applies to the facts of this

case. Merely because the respondents therein refused to allow the claim of the petitioner therein inspite of the decision of this Court (Aurangabad

Bench) in case of Sunil Kiran Noothi (supra) and he did not challenge the decision of the respondents therein would not be a precedent for the

respondents to reject the claim of the petitioner for grant of NORI Certificate on similar ground.

50. This Court by an order dated 17th December, 2020 in this petition after adverting to the said judgment of Aurangabad bench of this High Court in

case of Sunil Kiran Noothi (supra) observed that no contrary decision was shown to this Court and directed the Ministry of Health and Family

Welfare to examine the case of the petitioner in respect of NORI Certificate in the context of the assertions of the petitioner that the Petitioner is not

a Medical Practitioner but a Research Scholar. The reasons recorded in the communication dated 22nd March, 2021 refusing to consider the claim of

the petitioner for issuance of NORI certificate on the ground that under the policy guidelines of Ministry of Health and Family Welfare, there is no

distinction between a medical practitioner and a research scholar for this purpose is contrary to the principles laid down in case of Sunil Kiran Noothi

(supra) and the said interim order dated 17th December, 2020.

51. During the course of the arguments, learned counsel for the respondents submits that the relaxation in case of applicant having age of 65 years

having medical degree can be considered for issuance of NORI certificate on the premise that at the age of 65 years, such applicant would be hardly

able to practice medicine on the basis of such degree in India. In the facts of this case, the petitioner has already volunteered and has given

undertaking that she will not practice medicine in India or in USA. The respondents thus could not have refused to issue NORI Certificate on the

ground of her case not falling under an exception carved out in the said Policy. The Aurangabad Bench of this Court has already provided sufficient

safeguard in the facts of that case by directing the respondents to impose the condition that in case the petitioner start practicing NORI certificate,

NOC certificate would stand cancelled and he would be required to come back to India.

52. In our view, the respondents can impose condition in the NOC for the NORI Certificate that in case the petitioner starts practicing medicine in

USA, the NORI Certificate would stand cancelled and she would be required to come back to India. This Court in the said judgment has already

taken a view that such policy decision taken by the respondent no.1(b) not to issue NORI certificate to a person holding medical qualification cannot

be made applicable to the petitioner who is a research scholar and not a medical practitioner.

53. Neither in the affidavit in reply filed by the respondents nor across the bar, the respondents disputed the factual aspect pleaded in the petition

regarding her research work. The petitioner intends to carry out research work exclusively in USA and does not practice in medicine. The distinction

carved out by this Court (Aurangabad Bench) in the said judgment in case of Sunil Kiran Noothi (supra) between the medical practitioner and the

research scholar has been totally overlooked by the respondents in the impugned decision dated 22nd March, 2021 under the guise of policy decision

taken by the Ministry of Health and Family Welfare. In our view, the said policy decision is not applicable to a research scholar not intending to

practice medicine in India or abroad.

54. In our view, the decision taken by the respondents in refusing to issue NOC for NORI Certificate is in breach of their mandatory duty and legal

obligation to issue such certificate which certificate can be issued only by the respondents for releasing the students having obtained medical degree

from their obligation not to return to India and none else. In view of the stand already taken by the respondents not to issue NOC for NORI

certificate, we are not inclined to remand the matter back to the respondents for reconsideration. The Court has ample powers to issue a writ of

mandamus to direct the respondents to issue NOC for NORI certificate or NORI certificate itself.

55. We accordingly, pass the following order :-

(a) The impugned communication dated 28th July, 2020 rejecting the review application filed by the petitioner is quashed and set aside.

(b) The review application filed by the petitioner for NOC for NORI certificate is allowed.

(c) The application filed by the petitioner for NOC for NORI Certificate made by the petitioner on 9th March, 2020 is allowed.

(d) The communication dated 22nd March, 2021 issued by the respondents to the petitioner is quashed and set aside.

(e) The respondent no.1(a) is directed to issue NOC for NORI Certificate in favour of the petitioner within four weeks from today. It shall be made

clear in the said NORI Certificate that in case the petitioner starts practicing medicine in USA, NORI certificate would stand cancelled and she would

be required to come back to India.

(f) The concerned authority shall issue NORI certificate based on the NOC that shall be issued by the respondent no.1(a) within one week from the

date of issuance of such NOC in favour of the petitioner.

(g) Writ petition is disposed of in the aforesaid terms. Rule is made absolute accordingly in the aforesaid terms.

(h) The parties to act on the authenticated copy of this order. There shall be no order as to costs.