

Kum. Ashwika Pankaj Bagayatkar & Ors. Vs Union Of India & Ors

Court: Karnataka High Court At Bengaluru

Date of Decision: Feb. 1, 2025

Acts Referred: Karnataka Selection Of Candidates For Admission To Government Seats In Professional Educational Institutions Rules, 2006 &" Rule 5

Constitution Of India, 1949 &" Article 371J

Hon'ble Judges: Anu Sivaraman, J; Vijaykumar A. Patil, J

Bench: Division Bench

Advocate: Yathish S, H. Shanthibhushan, M.N. Sudev Hegden.K. Ramesh

Final Decision: Disposed Of

Judgement

Anu Sivaraman, J

1. The petitioners, who are the aspirants for participation in KCET examinations, are before this Court seeking the following directions:

a. Issue a writ in the nature of Mandamus directing the State of Karnataka (Respondent No.2 and Karnataka Examinations Authority

(Respondent No.3) to permit the Petitioners to compete in the KCET-2025 examination for engineering and medical further participate in the

counseling and selection procedure and allotment of seats in admission to engineering, medical, architecture, yoga and Naturopathy,

Veterinary, farm science, B.Pharm and other professional courses in any Government/Aided/Unaided/Private in the state of Karnataka for

the academic year 2025-2026 purely on the merit and ranking in general category in the imminent KCET-2025 examination.

b. Issue direction to the Respondent No.1 and 2 Union of India and Karnataka State government and the Respondent No.3 Karnataka

Examination Authority shall take all steps as are necessary to refund the additional amount if collected during the application procedure

when compared to general merit (citizen) and further facilitate and effectuate the aforesaid directions, forthwith and without any delay in

the matter, keeping in view the fast approaching KCET-2025-26.

c. Order or Direction, permitting the Petitioners to participate in the online counseling process, seat selection and allotment of seats for the

year 2025-26 for admission to engineering, medical, architecture, yoga and naturopathy, veterinary, farm science, B.Pharm, and other

professional courses as per the Information Bulletin for Application Cum Verification Module for Both Government and Private seats.

Annexure-A.

2. It is submitted by the learned counsel appearing for the writ petitioners that the petitioners are persons holding foreign passports along with OCI

cards. It is submitted that the provisions in the prospectus issued by respondent No.3 - KEA states that no candidate shall be eligible for admission to

Government Seats unless he is a Citizen of India and satisfies any one of the following conditions. It is further provided that eligibility for OCI / PIO

candidates for Government seats shall be as per the directions of the Government. Further, it is submitted that clause 8 of the prospectus provides that

no candidates shall be eligible for admission to Government Seats unless he is a citizen of India. It is further submitted that a notification had been

issued by the Central Government on 04.03.2021 providing that rights available to Indian citizens would not be extended to OCI card holders.

However, it is contended by the learned counsel for the petitioners that the question with regard to eligibility of OCI card holders to participate in the

selection as citizens is concluded by the judgment of the Hon'ble Supreme Court in Anushka Rengunthwar and Others vs. Union of India and

Others reported in (2023) 11 SCC 209. It was clearly held by the Apex Court that the OCI card holders would be entitled to rights and privileges

which had been conferred on them earlier to the notification dated 04.03.2021 and that could be availed by them notwithstanding the notification.

3. It is contended that in an earlier round of writ petition before this Court also the eligibility of OCI card holders for admission to Government seats

had been considered and it had been held that OCI card holders are even eligible for admission to Government seats under the quota set apart in terms

of Article 371J of the Constitution of India. It is submitted that in the instant case the petitioners are seeking only permission to participate in the

selection to Government seats under the general quota.

4. Having considered the contentions advanced, we notice that the judgment of the Apex Court which is relied on by the learned counsel for the

petitioners i.e., in Anushka Rengunthwar's case (supra), covers the legal issue raised here. Para No.65 and 67 of the said judgment reads as under:

65. In the above circumstance, keeping in view, the object with which the 1955 Act was amended so as to provide the benefit to Overseas

Citizen of India and in that context when rights were given to the OCI cardholders through the notifications issued from time to time, based

on which the OCI cardholders had adopted to the same and had done things so as to position themselves for the future, the right which had

accrued in such process could not have been taken away in the present manner, which would act as a ""retroactive"" notification. Therefore,

though the notification ex facie does not specify retrospective operation, since it retroactively destroys the rights which were available, it is

to be ensured that such of those beneficiaries of the right should not be affected by such notification. Though the rule against retrospective

construction is not applicable to statutes merely because a part of the requisite for its action is drawn from a time antecedent to its passing,

in the instant case the rights were conferred under the notification and such rights are being affected by subsequent notification, which is

detrimental and the same should be avoided to that extent and be allowed to operate without such retroactivity.

66 x x x x x.

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

04.03.2021 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 04.03.2021 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.

5. In the above circumstances, we are of the opinion that the inclusion of the provision in the prospectus to the effect that OCI card holders would not

be eligible for admission to Government seats cannot be countenanced.

6. Learned AGA appearing for respondent No.2 - State and the learned counsel appearing for respondent No.3 - KEA also submit that the OCI card

holders would be eligible to participate in the competitive examinations as also for selection to Government seats as well in terms of the judgment of

the Apex Court. It is submitted that Rule 5 of the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational

Institutions Rules, 2006, specially Rule 5 thereof would have to be appropriately amended to accommodate OCI card holders also, as being eligible to

participate in selection to Government seats under the Rules in the light of what is held by the Apex Court in Anushka Rengunthwar's case. It is

further submitted that in the light of the judgment of the Apex Court in Anushka Rengunthwar's case, persons like the petitioners who are the OCI

card holders will also be considered for admission to Government seats, provided that they have all other eligibility as provided in the Rules.

7. The said submissions are recorded.

It is clarified that OCI card holders like the petitioners will be permitted to participate in the examination and the selection procedure for Government

seat in KCET-2025 for professional courses. The State Government and the KEA are directed that to take appropriate steps to see that the 2006

Rules as well as the admission brochure are properly amended or clarified to that effect.

8. The KEA as well as State Government will take appropriate steps to see that this aspect of the matter is given wide publicity and web hosted so

that OCI card holders are not disabled from participating in the selection process.

The writ petition is accordingly disposed of.