

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.07.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.19285 of 2016
and W.M.P.No.16767 of 2016

L.Sumitha Minor aged 17
Rep. By her natural guardian
and father V.Logamurthy. Petitioner
Vs.

- 1.The Union Territory of Puducherry,
Rep. By its Secretary,
Revenue Department,
Chief Secretariat, Goubert Avenue,
Puducherry - 605 001.
- 2.The Tahsildar,
Bahour Commune Panchayat,
Taluk Office Bahour,
Puducherry.
- 3.The Convenor,
Centralised Admission Committee
(CENTAC), Pondicherry Engineering,
College Campus,
Puducherry - 605 014. Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent culminated in No.1001/TOB/A1/CERT/2015-16 dated 17.04.2016, quash the same and consequently direct the 2nd respondent to issue the Residence Certificate to the petitioner within a time frame to the petitioner.

For Petitioner : Mr.V.VasanthaKumar
For Respondents: Mr.A.Tamilvanan,
Govt Advocate (Pondicherry) [R1 & R2]

O R D E R

The father of the petitioner has sworn to the affidavit on behalf of the minor viz., L.Sumitha and would state that he was born at Union Territory of Puducherry on 22.03.1969 and ever since his birth, he is a permanent resident of Union Territory, Puducherry and he did his Senior Secondary Course at Kanban Government Higher Secondary School, Nettapakkam,

also completed Higher Secondary Course at K.K.Government Higher Secondary School at Madakadipattu and also got his B.Sc. Degree in Agriculture in Pandit Jawaharlal Nehru College of Agriculture, at Karaikal and thereafter, he was employed in various companies in the field of Fertilizer Sector ever since from 1998 at various places across the State of Tamil Nadu and Union Territory of Puducherry and at present, he is working as Senior Regional Manager, in Indian Potash Limited, Chennai and his daughter had studied at Chennai. The deponent would further state that his daughter viz., L.Sumitha, was born on 31.08.1998 at St.Joseph Hospital, Pondicherry and she was issued with a birth certificate vide Sl.No.0182741 and the deponent was also issued with a family card No.096719 by the Government of Puducherry and he was also issued with an Identity Card as well as Aadhaar Card, all carrying the residential address of Union Territory of Puducherry. The deponent would further state that in pursuant to the application called for by the third respondent, his daughter had applied and it is not processed for the reason that she has to produce the Residence Certificate and hence, she applied for it and it was rejected vide impugned proceedings of the second respondent dated 17.04.2016 stating that the father and mother of the petitioner are not ordinarily residing at D.No.6, Pudunagar, 3rd Cross Street, Eripakkam, Nathamedu and therefore, the request of the petitioner for issuance of Nativity/Residence Certificate could not be complied with.

2. The matter was listed on 09.06.2016 for admission and this Court taking note of the submission, has granted an order of ad-interim direction directing the respondents to process the application of the petitioner dated 03.06.2016 and also made it clear that the result of the same need not be announced until further orders from this Court and that the interim order is subject to the result of the writ petition and the petitioner cannot claim equity at the time of final disposal of the writ petition and directed the listing of the matter on 16.06.2016. The matter was listed on 24.06.2016 under the caption 'for being mentioned' and it was clarified as "the parents of the petitioner continue to reside at Puducherry" and directed to be listed on 01.07.2016 and once again it was listed under the caption 'for being mentioned' on 01.07.2016 and it was clarified that admission of candidates under OBC category for MBBS and BDS Courses etc., for the academic year 2016-2017, is also subject to the result of the writ petition.

3. The learned counsel appearing for the petitioners has drawn the attention of this Court to the impugned proceedings and would submit that though the father of the petitioner submitted overwhelming document to show that she is a permanent resident of Puducherry and applied under Clause 2.5 of Information Bulletin 2016-2017 released by the third respondent, without affording any opportunity whatsoever, the

request for issue of Nativity/Residence Certificate came to be rejected and prays for appropriate orders.

4. Per contra, Mr.A.Tamilvanan, learned Government Advocate (Pudhucerry), who accepts notice on behalf of the respondents 1 and 2 has drawn the attention of this Court to the counter affidavit of the second respondent and would submit that a discreet enquiry was conducted and it reveal that the family of the petitioner had migrated to Tamil Nadu even in the year 2003 and continuously residing for the last 13 years and taking into consideration of the said fact, the Residence/Nativity Certificate prayed for by the petitioner came to be rejected. It is the further submission of the learned Government Advocate that the petitioner is also having an effective alternative remedy before the jurisdictional Deputy Collector and prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the materials before this Court.

6. A perusal of the typed set of document would show that the petitioner had enclosed the documents evidencing to show that they are the resident of Union Territory of Puducherry. But according to the second respondent, the family of the petitioner had migrated to Tamil Nadu in the year 2003 and residing continuously in the said State for the last 13 years and therefore, they have not fulfilled the criteria under Clause 2.5 of Information Bulletin 2016-2017 of the third respondent. It is also the submission of the learned counsel appearing for the petitioner that before passing the impugned order, a discreet enquiry was conducted and based on the report, the application submitted by the petitioner for issuance of Nativity/Residence Certificate came to be rejected.

7. It is pertinent to point out at this juncture that the documents relied on by the petitioner, which are enclosed as document Nos.1 to 8 in the typed set of documents, have not been called in question. But the second respondent has arrived at a decision that the petitioners are the resident of Tamil Nadu for the past 13 years based on the discreet enquiry report. In all fairness, the second respondent ought to have given a copy of the report to the petitioner so as to elicit her response before passing the impugned order. But he has not done so. The reasons assigned in the impugned order of the second respondent visits the petitioner with grave civil consequences for the reason that it has been concluded that the petitioner is not a resident of Union Territory of Puducherry. According to the learned counsel appearing for the petitioner the documents 1 to 8 enclosed in the typed set of documents would amply proved that she is a permanent resident of Union Territory of Puducherry and as such, she has fulfilled the norms under Clause 2.5 of the Information

Bulletin of the third respondent. Hence, on the sole ground, the impugned order warrants interference.

8. At this juncture, the learned counsel appearing for the petitioner would submit that in the first counseling conducted by the third respondent, the candidature of the petitioner was rejected on the ground that she did not produce the Residence Certificate. Since the second counseling is to commence on 25.07.2016, she may be permitted to participate in the said counseling and in response to the same, the learned counsel appearing for the petitioner would submit that unless and until, fresh enquiry is conducted and concluded, the petitioner is not entitled to get such relief.

9. In the light of the fact that the copy of the discreet enquiry report has not been furnished to the petitioner and that the petitioner has not been afforded with any reasonable and fair opportunity, this Court is of the view that the impugned order warrants interference.

10. In the result, this writ petition is partly allowed and the impugned order of the second respondent in No.1001/TOB/A1/CERT/2015-16 dated 17.04.2016 is set aside and the matter is once again remanded to the second respondent for fresh adjudication and she shall furnish the copy of the discreet enquiry report within a period of two weeks from the date of receipt of a copy of this order and it is open to the petitioners to submit their response within a period of one week from the submission of the discreet enquiry report and thereafter, the second respondent shall pass orders within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

11. Till the second respondent concludes the enquiry and announces the result of the same, the interest of the petitioner is to be protected and therefore, the third respondent is directed to permit the petitioner to participate in the second counseling to be held on 25.07.2016 and shall not declare the results of the same, until further orders from this Court and the petitioner cannot claim equity in the event of second respondent passing orders, which is adverse to her interest.

List the matter on 29.07.2016 for reporting compliance.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Union Territory of Puducherry,
Rep. By its Secretary,
Revenue Department,
Chief Secretariat, Goubert Avenue,
Puducherry - 605 001.

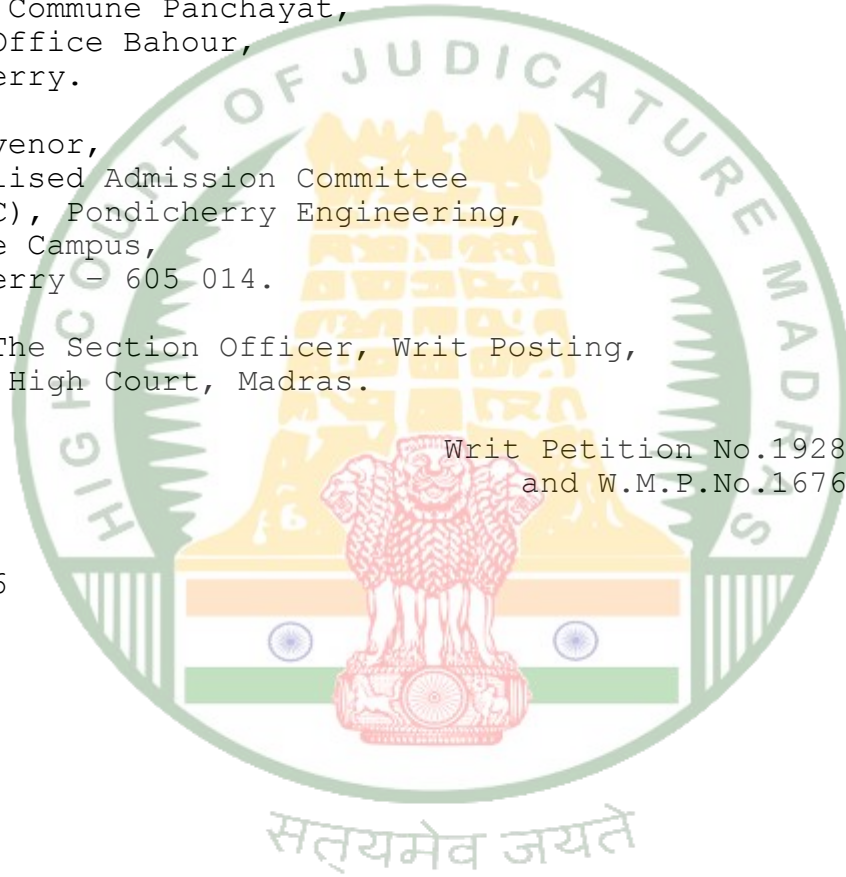
2.The Tahsildar,
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3.The Convenor,
Centralised Admission Committee
(CENTAC), Pondicherry Engineering,
College Campus,
Puducherry - 605 014.

Copy to: The Section Officer, Writ Posting,
High Court, Madras.

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KJI (CO)
EU 25.7.16



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