

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 03.04.2017

Delivered on :: 24 .04.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P. Nos.39988 and 40566 of 2016

Kandapalli Pavan ... petitioner in both Writ Petitions
Vs

- 1 The Union of India
Rep. by the Chief Secretary to Government
Government of Union Territory of Puducherry
Puducherry.
- 2 The Secretary to Govt.
Department of Revenue and Disaster
Management Government of Union Territory of
Puducherry Puducherry.
- 3 The Deputy Collector-cum-
Addl. District Magistrate Revenue and
Regional Administrator Yanam Puducherry.
- 4 The Deputy Tahsildar
(Revenue) Yanam Puducherry.... respondents in both
Writ Peititons

W.P.No.39988 of 2016 filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the impugned orders of the third respondent dated 7.4.2016 bearing ref: No.80/ Certificates/DTRY/2015/11 and that of the 4th respondent dated 7.4.2016 bearing ref: No.80/Certificates/ DTRY/2015/12 and quash the same.

W.P.No.40566 of 2016 filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the file of the 4th respondent herein relating to the impugned order dt 13.4.2016 bearing Ref. No.80/Certificates/DTRY/2015/20 and quash the same and consequently direct the respondents to issue the Community Certificate to the petitioner as Most Backward Class origin (Rajaka Community).

For petitioner : Mr.D.Bharatha Chakravarthy,
for M/s.Sai Bharath and Elan

For Respondents :Mrs.ReenaIshwariya, A.G.P. (Puducherry)

COMMON ORDER

K.K.SASIDHARAN, J.

Introductory:-

The Regional Executive Officer cum Additional District Magistrate, Yanam, cancelled the nativity certificate of the petitioner notwithstanding the voluminous documents produced by him, including the nativity certificates issued earlier, primarily on the ground that his name was included in the ration card relating to his residential house at East Godavari District, Andhra Pradesh. The Deputy Tahsildar, Revenue, Yanam, rejected the application filed by the petitioner to issue community certificate on the ground that he is not a permanent resident of Yanam, as on 19 February 2001. Feeling aggrieved by the adverse orders passed by the Additional District Magistrate and the Deputy Tahsildar, (Revenue), Yanam, the petitioner is before this Court.

Brief facts:-

2. The petitioner is the son of Mrs.K.Bhavani, a native of Yanam and Thiru.K.Venkateswara Rao, belonging to Nangavaram Village of East Godavari District, Andhra Pradesh. Their marriage took place in the year 1991. The petitioner was born on 18 May 1992 at Yanam. His birth was registered before the Registrar of Birth, Yanam Municipality. Thereafter, his brother K.Satish was born on 31 January 1996. The birth of K.Satish was also registered before the Registrar of Birth, Yanam Municipality. The petitioner had his early education at Yanam. Subsequently, he joined Narayana Junior college, Hyderabad for his intermediate studies and thereafter, pursued engineering course in Siddartha Engineering College. The petitioner completed his B.Tech course in the year 2013. The name of the petitioner was entered in the ration card at Yanam. The revenue authorities have issued him nativity certificate on multiple occasions besides community certificate.

3. The name of the petitioner was shortlisted for appointment to the post of police constable. The petitioner, therefore, made an application for a fresh nativity and community certificate. The Deputy Tahsildar (Revenue), on receipt of application, entertained doubt with regard to the nativity and community status of the petitioner. The matter was

referred to the Regional Executive Officer cum Additional District Magistrate, Yanam. The Additional District Magistrate notwithstanding the documents produced by the petitioner, cancelled the nativity certificate, holding that the petitioner was a native of Andhra Pradesh. The Deputy Tahsildar on his part declined to issue community certificate on the ground that the petitioner was not a native of Puducherry as on 19 February 2001. Challenging the adverse orders, the petitioner has come up with these Writ Petitions.

Rival submissions :-

4. The learned counsel for the petitioner contended that the petitioner has been residing at Yanam right from his birth. His family was given all the benefits by the Government of Puducherry. The father of the petitioner was a Dhobi by profession and he continued to do the said job by migrating from Andhra Pradesh to Yanam. According to the learned counsel, only for a brief period, and that too for education, the petitioner was out of Yanam. However, his intention was to settle down only at Yanam. According to the learned counsel, the temporary residence for the purpose of education at Hyderabad would not amount to relocation in the State of Andhra Pradesh. The learned counsel placed reliance on a string of documents produced by the petitioner to prove his community and social status.

5. The learned Additional Government Pleader (Puducherry) contended that the name of the petitioner was included in the family ration card maintained at the residence of his father at East Godavari District. According to the learned Additional Government Pleader, the petitioner created documents to make it appear as if he is a native of Yanam. The enquiry conducted by the revenue authorities proved that the petitioner has been residing in the State of Andhra Pradesh and his claim was not genuine.

Analysis:-

6. The petitioner is the son of Mrs.K.Bhavani, who is a native of Yanam. It is the case of the petitioner that after marriage, his father Thiru.K.Venkateswara Rao, who was working as a Dhobi, shifted his residence to Yanam and pursued his avocation.

7. The petitioner was born on 18 May 1992. His birth was registered before the Registrar of Birth, Yanam. The petitioner was enrolled as a student of MGG Boys Higher Secondary School, Yanam.

8. The petitioner obtained residence certificate from the jurisdictional Tahsildar for his education. There are series of other documents evidencing the residence of the petitioner at Yanam. The certificates obtained by the petitioner earlier are now disowned by the Regional Executive Officer and the Deputy Tahsildar on the ground that those certificates were obtained fraudulently. The successor Tahsildar cannot be heard to say that the earlier certificate was obtained fraudulently without adequate materials to support the finding.

The issue:-

9. The core question is as to whether by joining a college in the State of Andhra Pradesh, and temporary residence outside Yanam in connection with higher education, the petitioner would lose his nativity status at Yanam.

10. The petitioner has produced the following documents to prove his nativity status at Yanam.

Sl.No.	Date	Description of document
1	18.05.1992	Birth Certificate issued by Yanam MUnicipality
2	03.07.1997	Residence certificate issued by the Deputy Tahsildar, Yanam
3	25.03.1999	Certificate issued by the Mandal Revenue Officer, indicating that the name of the petitioner is found in the ration card relating to the residential house of his father in Uppalaguptam Mandal at Nangavaram Village, Puducherry.
4	10.5.2007	Secondary School Certificate
5	9.7.2004	Study certificate issued by MGGB High School
6	28.06.2007	Community certificate issued by Deputy Tahsildar, Yanam
7	6.7.2009	Nativity certificate issued by the Deputy Tahsildar, yanam
8	6.7.2009	Community certificate issued by the Deputy Tahsildar, yanam
9	9.7.2009	Identity card issued by employment exchange, yanam
10	8.10.2015	Driving license issued by the Licensing Authority, Yanam
11	9.10.2015	Nationality certificate issued by the Deputy Tahsildar, Yanam

Sl.No.	Date	Description of document
12	9.10.2015	Nativity certificate issued by the Deputy Tahsildar, Yanam
13	29.8.2016	Community certificate issued by the Thasildar, Uppalaguptam, indicating that the father of the petitioner along with family, migrated to Yanam, seeking livelihood about twenty years ago.
14		Passbook issued to the petitioner by the Yanam Branch of Puducherry State Cooperative society
15		Family Ration card issued by the Regional Executive Officer at Yanam
16	6.2.2012	Endorsement made by Social Welfare Department for supply of free saree, lungi and towel to the family of the petitioner.
17	15.7.2006	Endorsement made with regard to supply of bicycle to the family of the petitioner under social welfare scheme.
18		Aadhaar card of the petitioner
19		Aadhaar card of the mother of the petitioner
20		Aadhaar card of the father of the petitioner
21		Aadhaar card of the brother of the petitioner
22		Identity card issued by the Election Commission to the petitioner
23		Identity card issued by the Health Department, Yanam to the petitioner under the Health Insurance Scheme
24		Interview card sent by the Police Department at Yanam address of the petitioner.

11. The Additional District Magistrate, in his order dated 7 April 2016 referred to the guidelines issued by the Government of Puducherry. The guideline proceeds as if the actual and physical residence of the applicant/ parent/guardian is essential. According to the circular, mere possession of evidence like ration card, EPIC Card or previous certificates are not the sole criteria for issuance of residence certificate. However, such evidence should not be totally ignored.

12. The voluminous documents produced by the petitioner were ignored by the Additional District Magistrate, Yanam, solely on the ground that his name was found in the ration card relating to his family house in the State of Andhra Pradesh.

13. The Additional District Magistrate proceeded as if inclusion of the name of the petitioner in the Family ration card is not a piece of evidence to prove the actual residence at Yanam. Even after saying so, the Additional District Magistrate rejected the claim of the petitioner for residency certificate on the ground that his name was included in the ration card relating to the family house at Andhra Pradesh.

14. The order passed by the Additional District Magistrate does not contain any material as to how he came to the conclusion that the earlier certificates were fraudulently obtained by the petitioner.

15. The nativity status of a person would not be lost solely on account of his involuntary migration to a neighbouring state for education. In case, migration was in connection with education, it would not deny the nativity status in the State from where he migrated. Similarly, in case migration to Puducherry is only for the purpose of education, such candidate would not be entitled to the nativity status at Puducherry.

16. In the subject case, the petitioner produced sufficient materials to show that he was born at Yanam and that his permanent residence was at Yanam. The certificates and documents referred to above clearly show that the petitioner has been residing at Yanam ever since his birth. It was only during the period 2007-2013, the petitioner was out of Yanam. It was a temporary absence on account of his higher education outside Yanam. There was no intention to leave Yanam permanently and the same is evident from the return of the petitioner after completing education. The petitioner was very much available at Yanam as on 19 February 2001 which is the crucial date for determining the backward community status.

17. The Union Territory of Puducherry described as "the living monument of French culture in India" edges the coromandel coast. There are three outlying regions, Karaikkal, Yanam and Mahe. The Yanam region is situated in East Godavari District, Andhra Pradesh. This commune is bounded in the South by the Godavari river and on the East by the Tributaries of the said river. Because of the concessions given by the Government of Puducherry, there is a tendency to migrate from Andhra Pradesh to Yanam. In case a particular family is migrated to Yanam and has been residing there continuously for at least five years, with an intention to settle, the members of the family are entitled to the residential status. The residence must be with

an intention to settle down and not a casual one. Similarly, if it is made out that the family has been residing at Puducherry prior to 19 February 2001, the family members are entitled to the backward community status in case the community is included as a backward community in the list published by the Government of Puducherry pursuant to the recommendation made by the Backward Commission.

18. There is no question of cancelling the nativity certificates after a period of twenty years on the ground that earlier certificates were obtained fraudulently. There is no material forthcoming as to how the petitioner obtained fraudulent certificates. The then Tahsildar conducted enquiry and issued the nativity certificate. It is not open to the revenue officials to cancel the residential and nativity status certificate issued by the then Tahsildar or Regional Executive Officer in a casual manner. The status declared in those certificates cannot be changed subsequently by conducting a fresh enquiry. This is not a case of community certificate which was later found to be false. The declared residential status cannot be taken away solely on the ground that the name is found in the ration card relating to the residential house at Andhra Pradesh.

19. The Regional Executive Officer cum Additional District Magistrate, without any valid materials, cancelled the nativity certificate issued to the petitioner. The Deputy Tahsildar who is a subordinate of the Additional District Magistrate, followed his orders and rejected the application submitted by the petitioner for community certificate. We are therefore of the view that the orders impugned in the Writ Petitions are liable to be set aside.

Disposition:-

20. In the result, the order dated 7 April 2016 on the file of the Additional District Magistrate, Yanam, and the related order dated 13 April 2016 on the file the Deputy Tahsildar, Yanam, are quashed. The Deputy Collector, Yanam, and the Tahsildar, Yanam, are directed to issue nativity and community status certificates to the petitioner within a period of one week from the date of receipt or production of a copy of this order.

21. In the upshot, we allow the Writ Petitions. No costs. Consequently, W.M.P.No.34046 of 2016 is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To

- 1 The Chief Secretary to Government
Government of Union Territory of Puducherry
Puducherry.
- 2 The Secretary to Government
Department of Revenue and Disaster
Management Government of Union Territory of
Puducherry Puducherry.
- 3 The Deputy Collector-cum-
Addl. District Magistrate Revenue and
Regional Administrator Yanam Puducherry.
- 4 The Deputy Tahsildar
(Revenue) Yanam Puducherry.
5. The Tahsildar
Yanam Puducherry

+2 ccs to M/s.Sai Bharath & Ilan Advocate sr 24592,24593
+2 ccs to Government Pleader for puducherry sr 24693,
24698

W.P. Nos.39988 and 40566 of 2016

vsn(co)
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