

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.16389 of 2018

and WMP.Nos.19543 and 19544 of 2018

M.Goutham

..Petitioner

Vs

- 1.The Secretary/Addl. DME
Selection Committee
Directorate of Medical Education
162, Periyar E.V.R. High Road, Kilpauk
Chennai 600 010
- 2.The State of Tamil Nadu
Rep. by its Secretary
Ministry of Health & Family Welfare
Fort St. George, Chennai
- 3.The Tamil Nadu Dr.M.G.R. Medical
University, Rep. by its Registrar
No.69, Anna Salai, Chennai - 600 032
- 4.Medical Council of India
Rep. by its Secretary
Pocket - 14, Sector - 8, Dwarka Phase -1
New Delhi - 110 077

.. Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Mandamus, directing the respondents to include petitioner's name in the rank list for MBBS/BDS courses 2018 - 2019 (Government quota) at appropriate place as per applicable rules on the respondents to call the petitioner for MBBS/BDS counselling and consider petitioner's name as against the available MBBS/BDS Government quota seats in Tamil Nadu.

For Petitioner : Mr.C.S.K. Sathish

For Respondents 1 & 2: Mr.Manishankar, AAG
Assisted by
Mr.T.N.Rajagopalan, GP
For Respondent No.3 : Mr.P.R.Gopinathan

For Respondent No.4 : Mr.V.P. Raman

ORDER

The petitioner has come forward with the present writ petition to issue writ of mandamus, directing the respondents to include petitioner's name in the rank list for MBBS/BDS courses 2018-19 (Government quota) at appropriate place as per applicable rules on the basis of 424 marks scored by him in NEET exam-2018 and consequently direct the respondents to call the petitioner for MBBS/BDS counseling and consider petitioner's name as against the available MBBS/BDS Government quota seats in the Tamil Nadu.

2. The case of the petitioner is that he was born at Karur on 05.06.2000 and belongs to Kongu Vellalar, a Backward Class community. The petitioner submits that he studied 10th class in CBSE syllabus at Kottayam and completed his 12th std in the year 2017. The petitioner further submits that he secured 424/720 marks in the NEET (UG) Exams -2018. It is submitted by the petitioner that his name was not included in the ranking list and he is not aware of his ranking. He has further stated that his enquiry with regard to non inclusion of his name went unheeded. With regard to this, he has made representation to the authorities concerned and since there is no response, he has approached this Court by way of the present Writ Petition for the above said relief.

3. According to the petitioner, his father and mother have studied only upto 8th standard and that in view of Nativity Certificate dated 14.05.2018 issued by the Village Administrative Officer, Kottayam, Kerala, it is clear that the petitioner is a resident of Tamil Nadu and he prays that his name may be considered for counseling. According to the word "nativity" it refers to the place of birth and when a person is born at Tamil Nadu, it can be considered as origin of Tamil Nadu and his father was working in Kerala and that the petitioner being child and no other option but to study in Kerala and that alone could not give any right to the respondents to disapprove his seat in Tamil Nadu. The petitioner is a native of Tamil Nadu and for that the petitioner has produced a Ration Card in terms of clause 3(f) of Prospectus for admission to MBBS/BDS

Course of the year 2018-19.

4. In reply, it has been stated that the petitioner has studied in Kottayam District, Kerala and his entire education was completed at Kottayam. The petitioner has not enclosed any certificate as required in Clause 3(f) of the Prospectus. The candidate should be a native of Tamil Nadu to invoke Clause 3(f) of the Prospectus. When a student studied at Kottayam and even going by the Certificate dated 14.05.2018, it is clear that the petitioner is said to be residing in Kerala for 20 years.

5. According to the respondents, firstly, the said certificate dated 14.05.2018 was issued by the Village Administrative Officer, Kottayam, Kerala and secondly, it is stated therein that the petitioner is residing in Kerala for 20 years. Therefore, the candidate does not belong to the State of Tamil Nadu. Further, according to the respondents, the place of birth cannot give right of nativity and it is further submitted that it is open to the petitioner to have his case considered under the All India quota, but not in the State of Tamil Nadu quota.

6. Heard both sides and perused the materials available on record.

7. It is not in dispute that the petitioner was born in Tamil Nadu as per the Birth Certificate dated 13.11.2000. The fact that petitioner has studied 10th Std in the year 2015 and completed 12th std in the year 2017 from Kerala, is not in dispute. Even though the petitioner has produced Ration Card (Smart Card) of the year 2017, which is prior to the date of the certificate dated 14.05.2018, the case of the petitioner cannot be considered as candidature from the native of Tamil Nadu. The nativity certificate, at no stretch of imagination, can be based on the birth place. Birth place is where a person who lives along with brothers and sisters, but the place of the person where the education has been done and lived alone, can be taken into account for the purpose of nativity. The respondents have also produced Citizens Charter 2015, wherein it is clearly stated that a student who resides more than 5 years, has to be considered as domicile of that place. In this case, even though the candidate was born in Tamil Nadu, his entire schooling was at Kerala and the nativity certificate will have to be looked from that angle from where the education has been imparted.

8. It is relevant to extract Clause 3(f) of the Prospectus which deals with nativity.

"Candidates who are Native of Tamil Nadu, but studied from standard VI to Standard XII outside

Tamil Nadu either partly or completely in one or more States should produce the true copies of their parent's certificate such as Birth Certificate/SSLC/10th / 12th/Degree/Diploma/Professional course and Ration Card/Passport to substantiate their place of birth in Tamilnadu to establish the relationship between the parent and the candidate along with the Nativity Certificate of the candidate. Otherwise, they will be considered under Open Category."

9. The nativity certificate dated 14.05.2018 issued by the Village Officer, Kottayam, would make it clear that the petitioner was residing only in Kerala and that the said certificate has been obtained only for the purpose of medical counseling for the year 2018. As the petitioner and his parents are residing in Kerala and the student has studied in the State of Kerala and not in the State of Tamil Nadu, the petitioner can be treated as a candidate for the purpose of NEET outside the State of Tamil Nadu. In this case, in the so-called Certificate issued by the Village Officer, the wordings, "for the last 20 years, he is temporarily residing at Krishna Kripa, Puthanangady, Kottayam", would mean that the candidate/parent was permanently residing there, as the word "temporarily" cannot be for 20 years and the said word what has been incorporated in the said certificate for the purpose of NEET and the genuineness of the certificate itself is doubtful, is the contention of the learned counsels for the respondents, which cannot be brushed aside by this Court.

10. In the present case, the petitioner has not only selected the State of Kerala as the examination centre, but also the address is mentioned as Kerala. The Birth Certificate can no stretch of imagination, can be construed as Nativity Certificate. Even though the petitioner has mentioned in the confirmation page that the State to which the petitioner belongs to, is Tamil Nadu, as the petitioner has not satisfied Clause 3 of the Prospectus issued by the State of Tamil Nadu for admission to course, the petitioner would not be entitled to the relief sought for in the Writ petition.

11. The Apex Court, while considering the case of Minor P.Rajendran & others Vs.State of Madras and Others reported in (1968) 2 SCR 786: AIR 1968 SC 1012 has held that the dictionary meaning of the word "nativity" is the place of birth. If we read the Prospectus more particularly Clause 3(f) of the Prospectus, in the present case on hand, the nativity cannot be construed as the place of birth. In the said case, before the Supreme Court, Rule 8 therein, was challenged and the Supreme Court held that, it was not clear as to what exactly "nativity"

means. Hence, they produced documents to show that the nativity can be construed as place of birth. In the present case on hand, such construction is not possible as the entire prospectus, more particularly in Clause 3(f), it is seen that the intention is to provide seats to the students who studied in the State of Tamil Nadu and the nativity certificate would mean not the place of birth, but the place of residence for several years of the candidate, if studied in the state of Tamilnadu.

12. In this case, admittedly, the student has studied in the State of Kerala and none of the Clauses, more particularly Clause 3(f) is not attracted to the facts of the case on hand and that the petitioner is deemed to have construed to have applied NEET -UG as candidate outside the State of Tamil Nadu and hence the relief prayed for by the petitioner cannot be granted. Accordingly, the writ petition is dismissed. No Costs. Consequently, connected Miscellaneous petitions are closed.

13. The learned counsel for the petitioner, after orders have been pronounced, stated that the petitioner's case may be considered atleast in the in the open category, as he has secured 424/720 marks. The purpose of condition in the Prospectus is to ensure that the genuine residence and the nativity of the person of Tamil Nadu, has to get a seat. If the petitioner is interested, he can try his chance in the All India Quota and cannot try to usurp the seat due to a candidate actually hails from the State of Tamil Nadu. As the petitioner has given a Nativity Certificate issued by the State of Tamil Nadu, dated 25.08.2018 and that there is a Certificate issued by the Village Officer, Kottayam dated 14.05.2018, stated supra, the veracity of both the said Certificates issued by the State of Tamil Nadu needs to be examined, as, as stated supra, no person can reside temporarily on permanent basis at Kerala.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary/Addl. DME
Selection Committee
Directorate of Medical Education
162, Periyar E.V.R. High Road, Kilpauk
Chennai 600 010

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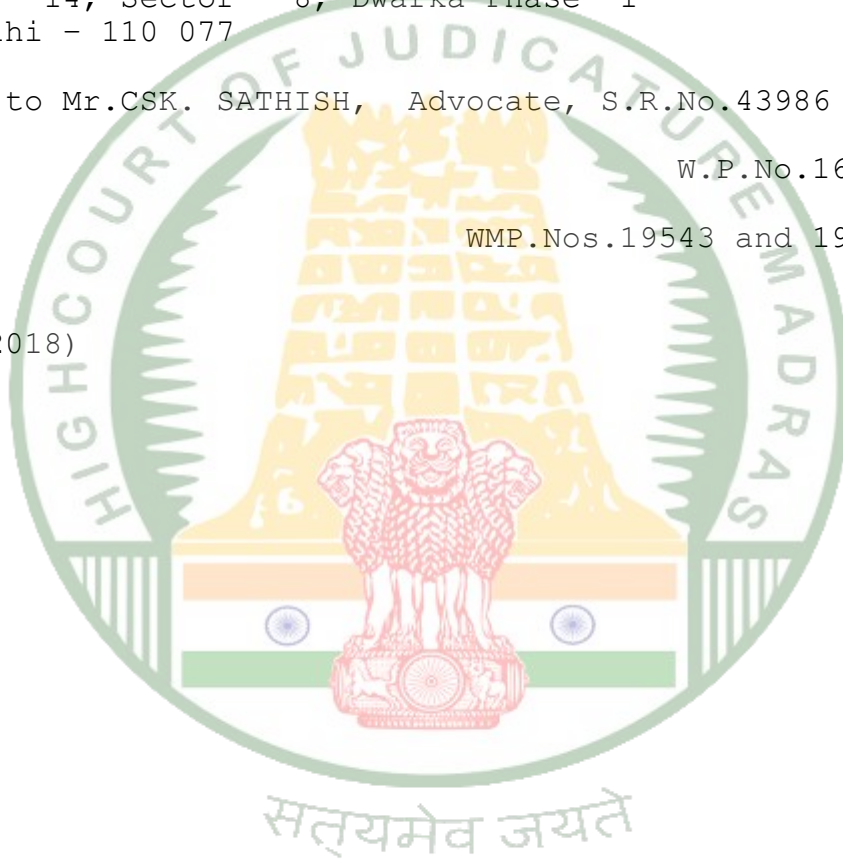
4.Medical Council of India
Rep. by its Secretary
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New Delhi - 110 077

+2cc to Mr.CSK. SATHISH, Advocate, S.R.No.43986 & 43987

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MP I(CO)
TR(07/07/2018)



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