

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.15393 of 2020
(Heard through VC)

Varsha Parappa Totagi

.. Petitioner

Vs.

1.The District Collector
Chennai District
Chennai.

2.The Tahsildar
Egmore-Nungambakkam Taluk
Chennai

.. Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order in Procs.C4/1538/2020 dated 01.10.2020 passed by the 2nd respondent, quash the same as null and void and consequently directing the 2nd respondent to issue Nativity Certificate to the petitioner.

For Petitioner : Mr.R.C.Paul Kanagaraj
for Mr.K.Kannan

For Respondents-1&2 : Mr.V.Shanmugasundar
Special Government Pleader

O R D E R

The writ petition is directed against the order passed in Procs.C4/1538/2020 dated 01.10.2020 by the 2nd respondent, refusing to grant Nativity Certificate to the petitioner.

2. The petitioner is an aspirant of medical education. She was born on 13.05.2002 in Chennai. She belongs to Backward Class community having Tamil as her mother tongue. Originally, she resided in Chennai till her second grade and subsequently, went to Dubai along with her parents, as her father got transferred to Dubai. Thereafter, she continued her education in Dubai upto Grade 10 and came back to Chennai to complete her 11th and 12th standards from S.B.O.A. School, Chennai under CBSE pattern.

3. The petitioner has applied for NEET examination for this academic year. As Nativity Certificate is one of the documents to be submitted along with application for medical counselling, the petitioner applied for the same before the second respondent vide Application No.TN-3202007217108 dated 21.07.2020. The same was returned on the ground that the petitioner did not pursue her studies for the last five years preceding 12th standard examination. In this regard, the petitioner pointed out that her mother's date of birth is 20.09.1980, who was born in Tiruvannamalai and she has enclosed the birth certificate of her mother. Her mother had studied in the Corporation School, Chennai District and was married to the father of the petitioner, which was registered before the District Registrar, Chennai North and the Marriage Certificate is also produced. Though the second respondent had issued Nationality Certificate and Community Certificate, he refused to issue Nativity Certificate, without which, the petitioner will not be able to attend the medical counselling.

4. The petitioner had her education in Dubai due to the avocation of her father. After a direction from this court to consider her application at the earliest, the second respondent passed the impugned order dated 01.10.2020 rejecting the application of the petitioner on the ground that there was no proof of stay of the petitioner in Tamil Nadu for the last five years and the said order was communicated to the petitioner only on 06.10.2020.

5. A counter affidavit has been filed by the second respondent on the same grounds as that of the impugned order.

6. The learned counsel for the petitioner would submit that the petitioner herself was born in Chennai and upto her second Grade, she had studied in Chennai only. The mother of the petitioner was also born in Tamil Nadu at Tiruvannamalai and her birth certificate has also been produced. The marriage of petitioner's parents was solemnised at Chennai and the same was registered with the District Registrar, Chennai North. The parents of the petitioner also owns a house in No.5 (Old No.9/2) Bakthavatchalam Colony 2nd Street, Vadapalani, Chennai - 600 026 and has been paying property tax. The petitioner's mother's Aadhar card and the Family card, all are in the same address. The Electoral Roll and Census list having contained the name of mother and the petitioner and the other utility services, namely LPG purchase receipts have also been produced to show their continuous residence in Tamil Nadu. The impugned order also mentions about the enquiry being conducted in this regard.

7. As admitted by the petitioner, she had her schooling till second grade and thereafter, she went to Dubai to study

upto 10th standard and came back to Chennai for her 11th and 12th standards and completed her +2 in the year 2020. The only reason found by the Tahsildar is that, the details of the father of the girl has not been mentioned. During arguments, it was mentioned that the father of the petitioner belongs to Karnataka and the marriage of their parents was a love marriage. The impugned order also refers to the guidelines of the government regarding issuance of the Nativity/Residential certificate.

8. Clause (1)(a) says "Nativity means, a place by virtue of one's birth". In this regard, admittedly, the petitioner was born in Chennai and she assumes Chennai as her native by virtue of her birth. She had also resided in Chennai till her second standard and she was taken to Dubai only due to the avocation of her father.

9. In G.O. Ms. No.2388 dated 27.11.1990 issued by the Revenue Department, instructions and guidelines for issuance of Nativity Certificate has been prescribed.

(i) As per clause (1), "the parents/guardians of the applicant students or the applicants themselves should have permanently resided continuously for a period of 5 years in Tamil Nadu for obtaining Nativity Certificates". As mentioned earlier, the mother of the petitioner was born in Tamil Nadu and has been residing in Tamil Nadu having studied in Chennai and got married also in Chennai. Therefore, one of the parents has been continuously living in Tamil Nadu and in proof of the same, the birth certificate, marriage certificate, school certificate of the mother and also the Aadhar and Family Cards have been produced. The property tax receipts also indicates that the petitioner's mother has been living in the property belonging to the family in Chennai and for the proof of their living, LPG receipts have also been produced.

(ii) Clause (2) - "Whether the applicant has resided in Tamil Nadu continuously for 5 years should be supported by documentary evidence". This criteria has also been fulfilled by the petitioner, as she was born and studied till her second standard, during which time, she would have attained six years and she had been residing in Tamil Nadu for a period of five years.

(iii) Clause (3) - "For proof of continuous stay for 5 years in Tamil Nadu, the certificate issuing officers may verify the family card (ration card), Electoral Roll, Census List, if census has been taken recently and if the applicant or his parent owns property, documents relating to such property such as sale deed, house tax receipts, etc."

Even this criteria has been satisfied by the petitioner, as she has produced the sale deed dated 08.05.2002 standing in the name of her mother and the property tax receipts therefor.

(iv) Clause (4) - "Besides, the transfer certificate from the school in which the student last studied may be verified to know whether the applicant has studied in Educational Institutions in Tamil Nadu for the last five years continuously."

10. As per the transfer certificate, admittedly the student had studied only for two years in Chennai i.e. 11th and 12th standards and the five years continuous period of education is not there. Excepting for this reason, all other criteria, are proved to the satisfaction of the authorities by the petitioner. The Nativity Certificate is also rejected by the respondent only on the ground that the petitioner did not have the continuous five years period of education in the last five years.

11. When the petitioner has satisfied the other criteria, the continuous education of five years preceding the application, cannot be a ground to reject the same. It is not the will or wish of the petitioner to go and study outside the State. It was only due to the avocation of her father, she had to be away from Tamil Nadu. If this rule is to be strictly applied, the wards of the parents, who are born, brought up and living for generations together in Tamil Nadu, if he/she on account of his/her jobs had to move to various States, will deprive the son or daughter of the soil, their nativity. If the parents are staying outside Tamil Nadu on account of their avocation, it does not mean that they disown their native State. Perhaps that is the reason why in the guidelines in G.O. Ms. No.2388, in clause (7), it is mentioned as follows:

"(7) The birth place of the parent, place of residence of the parent or grand father, permanent assets, mother tongue, place of education, place of marriage of the applicant/parents, the period of stay in and outside Tamil Nadu may also be taken into consideration before issuing nativity certificate."

The above said clause itself is only to enable those parents, who have to stay outside the State for various reasons to be considered as a native of Tamil Nadu.

12. In this case, the birth place of one of the parents has been given as Tamil Nadu. Mother is having a permanent residence in Chennai. She also has a permanent asset and her mother tongue is admittedly Tamil, the mother had studied in Tamil Nadu and her marriage was solemnised in Chennai and they stayed here till the petitioner was 6 or 7 years old. If the

said criteria are considered by the authorities, the petitioner has to be considered only as a native of Tamil Nadu and she is entitled to a Nativity Certificate. When the guidelines issued by the government are so complete and elaborate, the second respondent ought to have considered the same in its letter and spirit.

13. The Nativity Certificate is mandatory for applying for medical seat, only in order to curtail the seats that should go to the residents of the State and not to be hijacked by other State students. That is the reason, the authorities, while issuing the Nativity Certificate, have to consider such aspects in mind and consider the applications. In this case, when the permanent residence of the petitioner and her parents is in Chennai and it was only for a temporary period, on account of his job he has gone to Dubai, if the petitioner is denied Nativity Certificate, it is not known, which other State in India, would accept them as their native and issue a Nativity Certificate. If the Nativity Certificate is not produced, such student may have to claim only those seats earmarked for "All India quota" and not under any other category, based on communal reservation etc. The Policy of the Government is only to disentitle the candidates belonging to other States or in other words, to give priority to the own State candidates i.e. Tamil Nadu quota.

14. In this regard, it is worthwhile to refer to the judgment of this court in M.Goutham vs The Secretary, Government of Tamil Nadu and others decided in W.A. No.1495 of 2018 etc. In paragraph 103 of the said judgment, the Hon'ble Division Bench of this court held as follows:

"103. When the State Policy is on nativity, and not place of residence, from the material on record, arguments have been advanced on the basis of the residence, and not nativity,. Residence is not equivalent to nativity. A person may reside in one State, but he is not native of that State. Residence and nativity are not convertible terms."

15. As stated in the above judgment, merely because a person has been absent from the State on account of employment, etc. he/she will not lose his/her permanent residence in the State and that is not the intention or the policy of the Government.

16. In view of the above, the order of the second respondent dated 01.10.2020 made in Procs.C4/1538/2020 is set aside. The second respondent, namely the Tahsildar, Egmore-Nungambakkam Taluk, Chennai, is directed to issue a Nativity Certificate to the petitioner forthwith, considering the documents that have been filed already before him/her, to

enable the petitioner to apply for medical counselling, the last date of which is 12.11.2020.

17. With the above direction, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Asr

To

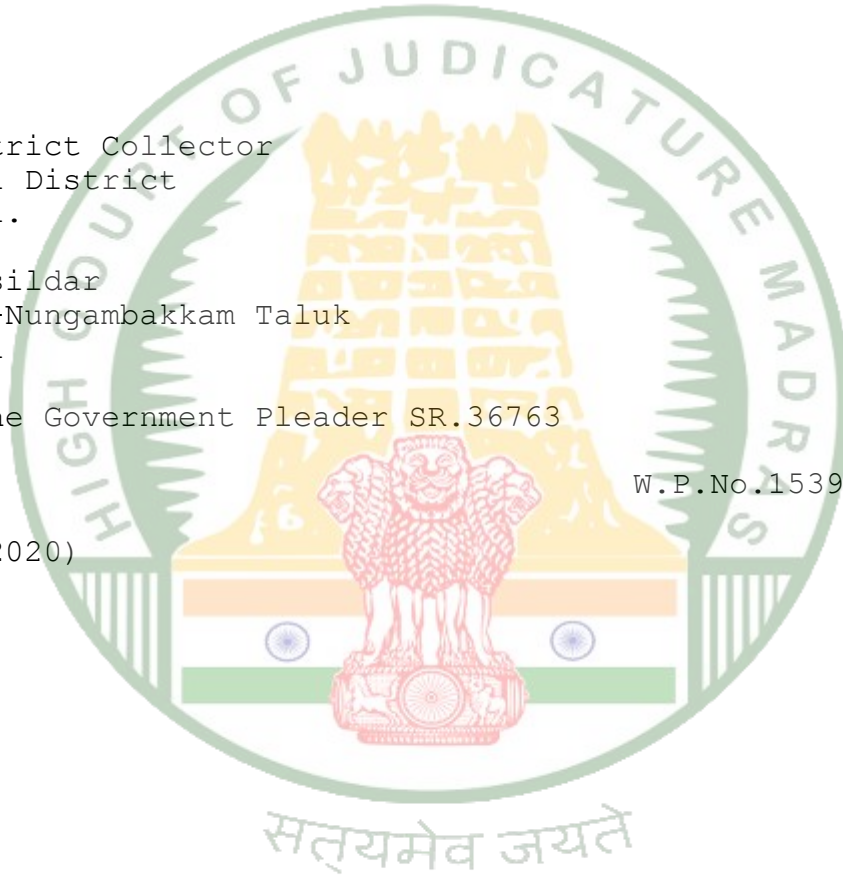
1.The District Collector
Chennai District
Chennai.

2.The Tahsildar
Egmore-Nungambakkam Taluk
Chennai

+1cc to the Government Pleader SR.36763

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SV(CO)
CB(11/12/2020)



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