IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.16292 of 2020
and W.M.P.No.20381 of 2020

Vardhini Parthasarathy .. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.

3. The Secretary,
National Medical Committee,
Pocket 14, Sector 8,
Dwaraka, New Delhi-110 077.

4. The Tahsildar,
Alandur Taluk Office,
1st Main Road, Nanganallur,
Chennai-600 061. .. Respondents

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the fourth respondent comprised in application TN-3202010134102 dated 13.10.2020 (the impugned letter) wherein, the petitioner's application for Nativity Certificate was rejected on the reason "based on VAO and RI report" and quash the same as illegal and arbitrary and consequently, direct the fourth respondent to issue a Nativity Certificate to the petitioner without undue delay.

For Petitioner : Mr.Sathish Parasaran, Senior Counsel
for M/s.N.V.Balaji

For Respondents :Mr.V.Shanmugasundar,
Special Government Pleader
for RR1 and 4

Mr.Abdul Saleem for R2

Mr.M.S.Seshadri for R3

O R D E R

The petitioner, who is a medical aspirant, laid challenge to the order of the fourth respondent dated 13.10.2020 rejecting the Nativity Certificate in application TN-3202010134102 "based on VAO and RI report" as illegal and arbitrary and consequently, to direct the fourth respondent to issue a Nativity Certificate to the petitioner without undue delay.

2. The petitioner was born on 17.04.2002 in Hyderabad, where her maternal uncle was working, in whose house her mother stayed for delivery. The petitioner's mother was diagnosed with cancer forcing them to move to Chennai for undergoing treatment at Adyar Cancer Institute. From the year 2004, the petitioner along with her mother was to stay with the petitioner's maternal grandmother at Bangalore, where her mother breathed last on 03.09.2006. The petitioner was four years old at that time. The petitioner was to stay with her maternal grandmother and uncle at Bangalore till 29.02.2016 and to complete 8th Standard. When her maternal uncle moved to Srirangam, Tiruchirappalli in March 2016, she had to come over with them to pursue her studies from 9th Standard. The petitioner claimed that since March 2016, she has been living in Srirangam. While so, her name has been included in the ration card held by her paternal grandfather in Nanganallur, Chennai. Besides the ration card, she was given Aadhar card bearing No.9674 5676 0872 containing the said address of her paternal grandfather.

3. The petitioner states that she, having lost her mother to cancer, was always ambitious to become a Doctor. She passed the National Eligibility-cum-Entrance Test (NEET) by securing 575 marks out of 720 in her maiden attempt. The petitioner fulfils all eligibility criteria for seeking admission in MBBS/BDS Course, such as, age, citizenship, marks in school subjects and also NEET, etc. One other criterion to seek admission in medical courses in the Tamil Nadu State is that the candidate must be a native of Tamil Nadu. The clause governing "Nativity", as stated in the Prospectus is relevant and the same is extracted hereunder:

"4h. Candidates who are Native of Tamil Nadu, but have studied from VI Standard to XII Standard

> outside Tamil Nadu either partly or completely in one or more States should produce the Nativity Certificate and Community Certificate of the candidates along with the true copies of their parent's certificates such as Driving Licence, Ration Card/Passport, SSLC/10th, 12th Mark Sheet and Transfer Certificate (any one Certificate will suffice). The Community Certificate of the parents should be enclosed to claim Communal Reservation. In case, parents are not literate, then No Graduation Certificate for parents/First Graduation Certificate of the candidates, from the Revenue Authority of competent jurisdiction should be submitted to substantiate their parent's place of birth in Tamil Nadu along with the above mentioned certificates. If the candidates do not submit the above mentioned certificates, then the candidate's application will be summarily rejected."

4. As per the above condition, the petitioner has to submit the nativity certificate along with the other documents and hence, she submitted an online application bearing No.TN-32020100810025 on 08.10.2020 with the fourth respondent. The said application was rejected on the same day on the ground that she did not furnish the birth certificate. Attaching the birth certificate, she again applied vide application No.TN-3202010134102 on 13.10.2020, which was rejected stating "based on VAO and RI report", which is impugned in this writ petition.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing on behalf of the respondents.

6. It is the submission of the learned counsel for the petitioner that both the parents of the petitioner were born and brought up in Chennai and they have completed their education till post-graduation in Chennai, which is more than the stipulated period of five years. The father of the petitioner was issued with the nativity certificate dated 08.10.2020, which would support the case of the petitioner, with respect to her nativity. According to the learned counsel for the petitioner, the petitioner cannot claim the nativity of any other State, in view of her birth and her stay in other States, on account of the calamity in the family and thus, the impugned order makes the petitioner "Stateless person". It is objected by the learned Special Government Pleader that the nativity certificate of the father was obtained very recently only for the purpose of creating document in support of the nativity claim of the petitioner. The learned counsel for the petitioner also

emphasised that the impugned order was passed in gross violation of principles of natural justice.

7. The learned counsel for the second respondent submits that the candidates have to produce the nativity certificate before the last date of submission of the application in order to claim the benefit of seat under the State Government quota. Upon query, the learned counsel admits that if the nativity certificate issued by the competent authority, in terms of the conditions stipulated in the Prospectus, the second respondent would comply with the directions of this Court in allowing the petitioner to participate in the counselling.

8. Though the learned Special Government Pleader submitted that the petitioner has been living in Srirangam Town and ration card produced by her at the Chennai address is for the year 2005-2009 and it was issued to the grandfather of the petitioner and also in the absence of production of the Smart Card given in the place of the old ration card, she has to apply with the jurisdictional Tahsildar alone, it is to be stated that when the father of the petitioner, who is one of members mentioned in the family card, was issued with the nativity certificate dated 08.10.2020 by the very same fourth respondent, the petitioner cannot be denied the same benefit on the ground that she has been living along with her maternal uncle at Srirangam. If at all the fourth respondent states that the petitioner ought to have filed the application before the jurisdictional Tahsildar at Srirangam, the application could have rejected on that ground and directed the petitioner to approach the said authority then itself. The only reason for rejection is "based on VAO and RI report" and after the passage of this much time, now the petitioner cannot be asked to approach any other authority. This Court is of the view that any single parent, for the welfare of the child, is entitled to bring up his/her child with the aid of a suitable person in the family. Merely on that ground, the place of residence cannot be severed from that of the parent. Nevertheless, be it Srirangam or Chennai, both are within the state of Tamil Nadu. It cannot be the reason for denying the nativity certificate and it is not possible for the petitioner to apply in all places.

9. Before proceeding further, it is pertinent to note that the Government passed G.O.Ms.No.2388, Revenue Department, dated 27.11.1990, framing the following guidelines for issue of Nativity Certificates :

> "i) The parents/guardians of the applicant/students or the applicants themselves should have permanently resided continuously for period of five years in Tami Nadu.

ii) Permanently residing for a period of five years should be supported by documentary evidence.

iii) The family ration card, Electoral Roll, Census list, if taken recently, documents like sale deed, tax receipt etc. relating to the property owned by either of the parents or by the applicant may be verified.

iv) The Transfer Certificate issued by the School authorities where the applicant had studied last may be verified to know whether he was in the state for five years.

v) Enquiry in the Village/place of residence of the neighbours/Village Administrative Officers regarding continuous residing.

vi) To ensure that wrong or incorrect address had not been furnished to obtain the certificates.

vii) The birth place of the parent, place of residence of the parent/father, permanent asset, mother tongue, place of education, place of marriage of the applicant/parents, the period of stay in and outside Tamilnadu can also be considered before issuing certificate."

10. The "Manual of Revenue Administration" published on 14.09.2001 by the Special Commissioner and Commissioner of Revenue Administration states as follows :

"Chapter XII : GENERAL

2. NATIVITY/RESIDENTIAL CERTIFICATE

1. (a). Nativity means a place by virtue of one's birth

(d) Residence denotes a place a person staying regularly.

2. a) The applications for these should bear one Rupee Court Fee stamp. These certificates are issued for getting admission in the school and to seek job opportunities.

e) Nativity Certificate is issued subject to the applicant proving continuous residence for five years and above.

f) Residence certificate is issued if one lives in a place for more than one year.

3. The following guidelines have been prescribed for issue of Nativity Certificates. ...."

11. This Court considered the above said Government Order in the order dated 11.11.2020, in W.P.No.15393 of 2020 (Varsha Parappa Totagi V. The District Collector, Chennai District) and observed the following :

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 educaiton, place of marriage of the applicant/parents, the period of stay in and outside Tamil Nadu may also be taken into consdieration 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."

12. As observed in the order dated 11.11.2020 above, when one of the parents of the candidate has been living out of the parent State on account of employment, etc., it cannot be stated that they lost the nativity of the State. It is pertinent to note that post LPG (Liberalization, Privatization and Globalization) from the year 1991, the persons have to move to various places, not only within the country, but outside the country to eke out a decent livelihood. Though on account of their avocation, they may get citizenship of other country, but their birth, on account of which, their nativity would not vanish and they always have their roots in the place of their birth. That may be the reason, Clause (viii), namely, "the birth place of the parent, place of residence of the parent/father, permanent asset, mother tongue, place of

education, place of marriage of the applicant/parents, the period of stay in and outside Tamilnadu can also be considered before issuing certificate" has been incorporated. The authorities cannot give a restrictive interpretation to the guidelines, but it should be stretched to give a constructive meaning. Even if the Tahsildars have doubt to expand the meaning, they could seek instructions from the higher officials of the Revenue Department, instead of making the applicants to run from pillar to post.

13. The objection of the learned Special Government Pleader that most of the documents pertaining to the claim of the nativity of the petitioner have been obtained recently and thus, the same could not be entertained. The said objection deserves to be overruled for the simple reason, firstly, that Clause (ii) of G.O.Ms.No.2388, dated 27.11.1990, relying upon which the nativity certificates have been issued by the revenue officials, mandates that "permanently residing for a period of five years should be supported by documentary evidence", which would have necessitated the petitioner to file the application seeking for the certificates required to be submitted for the claim of admission in MBBS/BDS Course.

14. The very purpose of issuance of the G.O.Ms.No.2388, dated 27.11.1990 is to protect and uplift the native students by giving them preference in admission and to avoid the natives of other soil to grab the opportunities of Tamil Nadu candidates. Though the jurisdictional Tahsildar has to issue the nativity certificate, since the house of the father of the petitioner is located within the jurisdiction of the fourth respondent and the petitioner, being the daughter, cannot be isolated from her father, and the fourth respondent cannot shirk his duty to issue the said certificate.

15. The present case is a classic example, where, the mental agony of the petitioner, a native by virtue of her parents, has been furthered, by mechanically dismissing the application of the petitioner. This Court is of the view that the G.O.Ms.No.2388, issued in the year 1990, i.e., on 27.11.1990, has to be revisited to suit the present scenario. Otherwise, the very intention of conferment of powers for the issuance of such certificates at the hands of the revenue officials would be lost.

16. In the result, the impugned order dated 13.10.2020 is set aside and the fourth respondent is directed to issue Nativity Certificate to the petitioner forthwith. The said exercise shall be completed on or before 23.11.2020. Thereafter, the petitioner shall be permitted by the second respondent to upload the certificate on or before 25.11.2020 and consequently, the second respondent is directed to consider the

petitioner under the Tamil Nadu State quota and give her ranking for counselling on that basis.

17. Considering the exigencies expressed by the petitioner and other similarly placed candidates before this Court, the Principal Secretary to the Government, Revenue Department, Government of Tamil nadu and the Commissioner of Revenue Administration, are directed to suitably amend the G.O., and issue revised guidelines to meet the contingencies as that of the petitioner and others, as indicated above. This Court is also of considered view that the Revenue Department shall convene training sessions for the officials to enable them to exercise their power judiciously and take just decisions, just before the declaration of results of the public examinations leading to the filing of applications in large numbers seeking certificates like, income, nativity, etc., from the revenue officials.

18. The Principal Secretary, School Education Department, Government of Tamil Nadu, shall issue suitable directions to the officials and teachers of the School Education Department to create awareness among the students of High Schools and Higher Secondary Schools run by the State Government, Government Aided and Private Schools, be it State Board or the Central Board, to apply for the mandatory certificates to pursue higher education, at least in the beginning of the year, in which, the students may seek higher education, which would avoid these kind of matters being decided at the eleventh hour and also the students do not suffer mental agony and distress.

19. This writ petition is allowed accordingly. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Secretary,
   Selection Committee,
   Directorate of Medical Education,
   162, Periyar EVR High Road,
   Kilpauk, Chennai-600 010.

3. The Secretary,
   National Medical Committee,
   Pocket 14, Sector 8,
   Dwaraka, New Delhi-110 077.

4. The Tahsildar,
   Alandur Taluk Office,
   1st Main Road, Nanganallur,
   Chennai-600 061.

Copy to :

5. The Principal Secretary to Government,
   Revenue Department,
   Government of Tamil Nadu,
   Secretariat, Fort St. George,
   Chennai-600 009.

6. The Principal Secretary,
   School Education Department,
   Government of Tamil Nadu,
   Secretariat, Fort St. George,
   Chennai-600 009.

7. The Commissioner of Revenue Administration,
   Chepauk, Chennai-600 005.

+1cc to Mr.Balaji, Advocate, sr no.37459

GN(CO)
RMP(24/11/2020)