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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.20765 OF 2019

AND

W.M.P.NO.19938 OF 2019

Minor N.Karunya Vignesh
rep.by his father and natural guardidan
R.Nagarajalu

... Petitioner

Vs.

1. The Union Territory of Puducherry,
rep.by its Chief Secretary,
Chief Secretariat,
Puducherry.
2. The Deputy Collector (Revenue) North,
Revenue Complex, Ground Floor,
505, Kamaraj Salai, New Saram,
Puducherry 605 013.
3. The Tahsildar cum Executive Magistrate,
Government of Puducherry,
Taluk Office,
Oulgaret, Puducherry.
4. The Centralized Admission Committee (CENTAC)
Government of Puducherry,
Pondicherry Engineering College Campus,
Pillaichavady,
Puducherry 605 014.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to Call for records of the 2nd respondent in his proceedings No.8187/ DCR (N)/ A2/ 2015/ 1348 dated 04.07.2019 confirming the order of 3rd respondent in his proceedings No.12989/ TOO/ A/ ESTT/ 2019 dated 03.06.2019 and quash the same as illegal and consequently direct the 2nd and 3rd respondent to issue Nativity Certificate for the petitioner.



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For Petitioner : Mr.R.Shivakumar
for Mr.K.M.Vijayan Associates

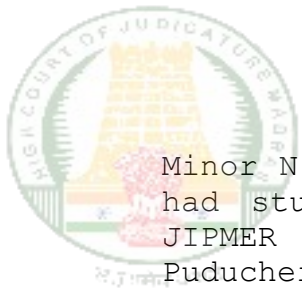
For Respondents : Mr.C.T.Ramesh
Additional Government Pleader
(Pondicherry)

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to Call for records of the 2nd respondent in his proceedings dated 04.07.2019 and quash the same as illegal and consequently direct the 2nd and 3rd respondent to issue Nativity Certificate for the petitioner.

2. The case of the petitioner is that in order to pursue his higher studies, he is applying to professional courses in Puducherry Union Territory and the admission to professional courses in Puducherry Union Territory is controlled by the 4th respondent herein and as per the prospectus of the 4th respondent for the academic year 2019-2020. As per general information, the applicant should annex Nativity Certificate to avail the benefit of domicile category. In that aspect, the Department Head had issued necessary integrated service certificate which has certified that the petitioner's father permanent address is Kuga Illam, New No.63, Old No.38, Mariamman Koil Street, Pudupet, Lawspet(PO), Puducherry 605 008, which was recorded in his service register. Based on the above certificate, the petitioner's father had applied to the 3rd respondent for getting nativity certificate and an enquiry was conducted in the said application. Though the petitioner submitted all documents inclusive of ration card, aadhar card, etc., the 3rd respondent has rejected the application by stating that the petitioner's father is not residing in Puducherry for five continuous years. Therefore, the petitioner has preferred the appeal before the 2nd respondent and the said appeal was also rejected by the proceedings of the 2nd respondent on 04.07.2019. Therefore, the petitioner having no other effective alternate remedy, approached this Court by filing this writ petition.

3. The learned counsel appearing for the petitioner submitted that petitioner's father Thiru.Nagarajalu was native of Puducherry and completed his school and collegiate education in Puducherry. Later he got appointment in Andaman Lakshadweep Harbour Works at Port Blair and then shifted his residence to Chennai. Thereafter the petitioner's father got married with Tmt.Sivagami of Puducherry on 12.11.2001 and the petitioner



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Minor N.Karunya Vignesh was born on 26.09.2002 at Chennai and he had studied from I Std to IV Std at Kendriya Vidyalaya No.I, JIPMER Campus, Puducherry by staying along with his mother in Puducherry and after that he and his mother shifted their residence to Port Blair and he studied there from V Std to XII Std until February 2019. Further the petitioner is residing outside the Puducherry due to the employment of his father and such act cannot be termed as if he is resident of the another State, more particularly when his father's employment is under the Union Government. Moreover the petitioner declared Puducherry as his home town and the Head of Department / employer of the petitioner's father has also issued integrated service certificate by showing his permanent address in Puducherry. However, ignoring the said service certificate, rejecting the petitioner's application is not sustainable. In addition, the petitioner's father and his family members were also granted Community Certificate and other benefits only in Puducherry. Therefore, the act of 3rd respondent in rejecting the request for nativity certificate, shows non application of mind on the part of the 3rd respondent. Furthermore, the rejection order is contrary to G.O.Ms.No.64, dated 25.05.2006 of the Chief Secretariat, Education I Department, issued by the Government of Pondicherry, wherein in Clause 3(d) it is clearly stated held that the children of natives of the Pondicherry Union Territory who have declared any place in the Pondicherry Union Territory as their home town and also certified by their respective Heads of Office. Also, nativity certificate in the prescribed format has to be enclosed along with the admission application. In the present case on hand as held in the said clause, the petitioner's father has obtained integrated service certificate from the Head of Office and therefore, the 3rd respondent rejecting the request for nativity certificate of the petitioner is non est in the eye of law.

4. The learned Additional Government Pleader (Pondicherry) appearing for the respondents submitted that aggrieved by the order of the third respondent, rejecting his claim for issue of Nativity / Residence Certificate, for the purpose of admission in Higher Education through CENTAC, the petitioner has filed an appeal before the second respondent herein and in the meanwhile he has also filed W.P.No.17833 of 2019 to dispose of the appeal filed by the petitioner. In compliance with the directions of this Court, the 2nd respondent has issued notice to the petitioner for enquiry and the petitioner also appeared before the 2nd respondent and sought to issue nativity certificate. The 2nd respondent having gone through all the material evidences, rejected the claim of the petitioner to issue residence / nativity certificate by observing that mere possession of evidences like ration card, EPIC card cannot be acceded as those



alone are not the sole criteria for issuance of the said certificate and the residential status has to be established only based on the records coupled with field enquiry. As far as the present case is concerned, the petitioner is not residing in the given address continuously for the past five years and the field enquiry also reveals the same. As per the extant provisions for issue of the said certificate, continuous residence for the past five years is mandatory.

5. The learned counsel further submitted that though it is the contention of the petitioner that his son is eligible for the said certificate as per G.O.Ms.No.64 dated 25.05.2006 issued by the Education Secretariat. It is submitted that it only applies to the private professional educational institution in the Union Territory of Pondicherry. Moreover, the nativity / residence certificates are being issued by the Revenue Department based upon the guidelines / instructions of Revenue Department and whereas, the Government Order relied upon by the petitioner is issued by the Education Secretariat. Even then, the petitioner cannot claim nativity / residence certificate for his son as the said G.O.Ms.No.64, is pertaining to Pondicherry Private Professional Educational Institutions only and therefore, placing reliance on the said G.O., is not sustainable. Therefore, the claim made by the petitioner is not genuine and hence, the respondents had rightly rejected the request made of the petitioner for issuance of nativity certificate and prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. As per G.O.Ms.No.64, dated 25.05.2006 of the Chief Secretariat, Education I Department, issued by the Government of Pondicherry, in Clause 3(d) it is clearly stated that the children of natives of the Pondicherry Union Territory who have declared any place in the Pondicherry Union Territory as their home town and also certified by their respective Heads of Office. Also, nativity certificate in the prescribed format has to be enclosed along with the admission application. In the present case on hand as held in the said clause, the petitioner's son has obtained integrated service certificate from the Head of Office as stated in the Information Brochure issued by the CENTAC and therefore, the respondents rejecting the request for nativity certificate is non est in the eye of law. Eventhough the petitioner submitted all documents inclusive of ration card, aadhar card, etc., the 3rd respondent has rejected the application by stating that the petitioner's father is not residing in Puducherry for five continuous years. That



apart, the communal status of the petitioner has also been confirmed by the revenue authorities and accordingly, a permanent community certificate has also been issued by the competent authority in favour of the petitioner's father including the parents of the petitioner's father.

8. Insofar as the issue of nativity is concerned, without being a native person of a State, the permanent communal status could not have been conferred by the competent authority. If one wing of the authority of the State or the instrumentality of the State conferred a communal status and nativity status to a person, another wing of the very same instrumentality of the State cannot reject an other equivalent certificate unmindful of the earlier certificate issued by the state without any valid reason. In a case of this nature, the 3rd respondent has outrightly rejected the request of the petitioner by citing the reason that the petitioner's father has not been residing for a continuous period of 5 years. Therefore, the reasons cited by the respondents for rejection of the claim of the petitioner, in the considered opinion of this Court, are unlawful and unjustifiable. Further it is to be pointed out that the petitioner's father is in the service of the Union Government which is a transferrable job and in such circumstances, the petitioner's father and so also the petitioner is entitled to have the place of the native of his father as his native and in that backdrop, he is entitled for nativity certificate. Therefore, necessary interference or indulgence is warranted in this case.

9. In the result, the Writ Petition is allowed and the proceedings in No.8187/ DCR(N)/ A2/ 2015/ 1348 dated 04.07.2019, confirming the order of the 3rd respondent in his proceedings No.12989/ TOO/ A/ ESTT/ 2019 dated 03.06.2019, is set aside and the respondents are directed to issue nativity certificate in favour of the petitioner within a period of four weeks from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To

1. The Chief Secretary,
Union Territory of Puducherry,
Chief Secretariat,
Puducherry.
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Revenue Complex, Ground Floor,
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Pondicherry Engineering College Campus,
Pillaichavady,
Puducherry 605 014.

+1cc to M/s.K.M.Vijayan Associates, Advocate, S.R.No.62930

+1cc to the Government Pleader(Puducherry), S.R.No.63729

W.P.No.20765 of 2019

SSI (CO)
RLP (07/02/2022)