

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P.No.18916 of 2020
and
W.M.P.Nos.23490 & 23492 of 2020

J.N.Ashmina

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by its Secretary,
Department of Health & Family Welfare,
Fort St.George, Chennai - 600 009.
2. The Director of Medical Education,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai - 600 010.
3. The Secretary,
The Selection Committee,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai - 600 010.
4. Tamil Nadu Dr.M.G.R.Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai - 600 032.
5. National Medical Commission,
Pocket 14, Sector & Dwaraka,
Phase I, New Delhi - 110 007.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 3rd respondent Selection Committee to consider the petitioner for admission to the MBBS Degree course - 2020 as a Native of the State of Tamil Nadu (BC Rank No.1383).

For Petitioner: Mr.Issac Mohanlal, Senior Counsel
for Issac Chambers

For Respondents: Mr.E.Manohara, Spl.G.P
(for R.1 & R.2)
Mr.Abdul Saleem, SC
(for R.3)
Mr.V.P.Raman, SC
(for R.5)

ORDER

(This matter is taken up through Video Conferencing)

The petitioner, an aspirant to do medical course appeared in the NEET examination and cleared the same with 96.99% and applied for MBBS Course 2020 under Government and Management quota in BC category.

2.The 3rd respondent Selection/Committee has also issued a call letter asking her to attend the counseling for allotment of MBBS seat under Government quota, scheduled on 03.12.2020. On certificate verification, the Committee had certain doubts with regard to the nativity, since she did her schooling in Trivandrum, referred her to an Expert Team and the Expert Team orally informed that since she completed her higher secondary course in the State of Kerala, she cannot be treated as a native of Tamil Nadu and is not entitled for the MBBS admission in Tamil Nadu under the Government quota. Since the 3rd respondent has not passed any order to that effect, the petitioner approached this Court for issuance of writ of mandamus directing the third respondent/Select Committee to consider her as a native of the State of Tamil Nadu and to take a decision.

3.In support of her contention, the petitioner has also produced her nativity certificate and other certificates to establish that she is only native of Kanyakumari District, State of Tamil Nadu. She also filed the certificates of her parents in support of her reliance.

4.This Court after prima facie satisfying with the materials placed in this Writ Petition had passed an order of interim direction dated 14.12.2020 directing the 3rd respondent to permit the petitioner to participate in the counseling. But when the petitioner approached the counseling, she was informed that all the vacancies have been filled up and she has to wait for some time till the seats from the All India quota gets reverted to the State quota. This Court on 17.12.2020 passed further orders based on the representations made on behalf of the respondents. Thereafter, the petitioner was permitted for counseling but no decision was taken by the 3rd respondent, and raised certain objections with regard to the nativity of the petitioner.

5. Admittedly, the petitioner was born in a hospital at Trivandram and also did her schooling in Trivandrum. However, she is native of Kanyakumari District of Vilavancode Taluk and her father G. Jeyasingh is a permanent resident of Kanyakumari District and as her mother was working at Trivandram therefore she completed her schooling in a school at Trivandrum which is very near to Kanyakumari District.

6. As per the prospectus, for admission to MBBS/BDS Degree Courses in Tamil Nadu Government Medical and Dental College. The eligibility criteria regarding the nativity is mentioned as follows;

"4. Nativity:

- (a) Candidates should be a Native of Tamil Nadu.
- (b) The Certificate of Nativity in Tamil Nadu should be issued by the competent authority only in the specified format given in the prospectus (Annexure II) and supported by a photocopy of Passport / Ration Card / Birth Certificate. If the copy of the supporting document is not produced, then the application form will be rejected. Nativity Certificate submitted after the deadline will also be summarily rejected.
- (c) Candidates belonging to other States and residing in other States cannot claim nativity of Tamil Nadu.
- (d) Candidates who have applied for NEET UG - 2020 as a candidate from other State cannot now change his claim as a native of Tamil Nadu.
- (e) Permanent Residence Certificate in lieu of Nativity Certificate will not be accepted.
- (f) Nativity Certificate obtained prior to the last date of receipt of filled in application alone will be accepted and sending the Nativity Certificate separately will not be entertained.
- (g) Candidates who are Native of Tamil Nadu and have studied from Standard VI to Standard XII in schools of Tamil Nadu should also produce Nativity Certificate and Community Certificate issued by the competent authority along with the true copies of their parent's certificates such as Driving Licence, Ration Card/Passport, SSLC / 10th, 12th Mark Sheet or Transfer Certificate (any one Certificate will suffice) apart from Community Certificate to claim the communal reservation. In case, parents are not literate, then No Graduation Certificate for parents / First Graduation Certificate of the candidate, from the Revenue Authority of competent jurisdiction, to substantiate their parent's place of birth in Tamil Nadu along with the above mentioned certificates. If a candidate do not submit the above mentioned certificates and if he/she had studied Standard VI to

Standard XII completely in Tamil Nadu, then the candidate will be considered under Open Category only.

(h) 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 parent's should be enclosed to claim Communal Reservation.

By referring Clause (h) of the Prospectus, Mr.Issac Mohan Lal, learned Senior counsel stated that even those persons who have studied outside Tamil Nadu either partly or completely should produce the nativity certificate and community certificate of the candidate along with the certificates of their parents.

7.In this case, the petitioner has obtained a nativity certificate from the competent authority namely Zonal Deputy Tahsildar of Vilavancode Taluk, Kanyakumari District. In the said certificate, dated 09.10.2020, the Authority has certified that the petitioner is a native of Tamil Nadu by birth. By referring this certificate with the birth certificate, the learned Government Advocate raised an objection that admittedly when she was born at Trivandrum, the nativity certificate of the petitioner showing that she is a native of Tamil Nadu is doubtful.

8.Mr.Abdul Saleem, learned Government Advocate appearing for the 3rd respondent and Mr.E.Manoharan, learned Special Government Pleader appearing for the other official respondents, by referring a provision under Clause 4(g) and 4(h) of the prospectus, submitted that the petitioner ought to have enclosed all other certificates of her and the certificates pertaining to her parents also.

9.Mr.Issac Mohan Lal, learned Senior counsel submits that merely because she was born in a hospital at Trivandrum, she cannot be treated as native of Kerala and in this case she never claimed herself to be a native of Kerala and her parents are all along residing at Kanyakumari District in Tamil Nadu and having all certificates to establish that they are native of State of Tamil Nadu. He also relied upon a decision of the Division Bench of this Court in W.A.No.1495 of 2018 in the case of M.Goutham Vs. The Secretary/Addl.DMBE & others dated 09.08.2018 which order was referred in another decision of this Court in

W.P.No.15393 of 2020 in the case of Varsha Parappa Totagi Vs. The District Collector & another dated 11.11.2020 and the operative portion of the said order reads as follows;

"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."

10. Regarding nativity, certain guidelines have been framed by the Government vide G.O.Ms.No.2388 Revenue Department dated 27.11.2020 which reads as follows;

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

As per the above Government Order, the requirement for a nativity certificate, one must have resided in the place for 5 years. In this case, the petitioner and her parents are residing in Tamil Nadu in Vilavancode Taluk, Kanyakumari District, for more than 5 years and the competent Authority has also issued nativity certificate in favour of the petitioner. Apart from the nativity certificate, she has also produced all other certificates to establish that she is native of Kanyakumari District.

11. Thashildhar, Vilavancode, the competent Authority for issuing nativity certificate has issued a nativity certificate to the petitioner and apart from the same she has also produced her Community Certificate, Ration and Smart card and Aadhar Card to establish that she is a resident of Tamil Nadu from her childhood. She has also produced the Birth Certificate, Community Certificate, Nativity Certificate, Ration and Smart card, Aadhar Card and voter ID of her parents which would disclose they are native of Tamil Nadu. It is also not in dispute that the petitioner has not applied in any other State to claim nativity and even several documents are available to show that she is a native of Tamil Nadu and therefore the 3rd respondent ought to have considered the other relevant records. The documents in her favour and her parents establish her nativity without any doubt and therefore, the petitioner is entitled for an admission in the State of Tamil Nadu as native of Tamil Nadu.

12. Accordingly, this Writ Petition stands allowed and the third respondent is directed to consider the petitioner for admission to the MBBS/BDS Degree course, 2020, as a native of State of Tamil Nadu. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

mrm

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Department of Health & Family Welfare,
Fort St. George, Chennai - 600 009.
2. The Director of Medical Education,
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162, Poonamalle High Road,
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5. National Medical Commission,
Pocket 14, Sector & Dwaraka,
Phase I, New Delhi - 110 007.

+1cc to Mr.V.P.Raman, Advocate, S.R.No.1151

W.P.No.18916 of 2020

jp(CO)
rv(03/02/2021)

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