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W.P.No.22318 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 07.12.2021

Reserved On: 25.11.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22318 of 2021

And

W.M.P.Nos.23552 and 23553 of 2021

M.Liya (Minor)

Rep. by Febin Basheer

Mother and Natural Guardian

... Petitioner

Vs.

1.Union of India

Rep. by the Union Territory of Puducherry,
Rep. by its Chief Secretary,
GoubertSalai,
Puducherry.

2.Government of Puducherry

Centralized Admission Committee (CENTAC)
Pondicherry Engineering College Campus,
Puducherry.

3.The Deputy Collector (Revenue),

Government of Puducherry,
Sub Taluk Office,
Mahe – 673 310.

4.The Deputy Tahsildar (Revenue),

Government of Puducherry,
Sub Taluk Office,
Mahe – 673 310.



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5.The Village Administrative Officer,
Government of Puducherry,
Palloor,
Mahe.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus after calling for the concerned records from the 3rd and 4th respondent, quash the order of the 3rd respondent dated 30.09.2021 bearing No.720/DCRM/A.1/2021/690 and the order of the 4th respondent dated 27.07.2021 bearing No.200/STOM/T3/2021 as illegal, arbitrary and contrary to law and consequently direct the 3rd and 4th respondent to issue residential/residency certificate pursuant to the online application no.PBMRD0000403701 dated 07.07.2021 within the time frame stipulated by this Hon'ble Court and further direct the 2nd respondent to consider the application of the petitioner for admission to non NEET professional courses on the basis that the petitioner is resident of Union Territory of Puducherry.

For Petitioner : Mr.Balan Haridas

For Respondents : Ms.N.Mala
Government Pleader (P)



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ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus after calling for the concerned records from the 3rd and 4th respondents, to quash the order of the 3rd respondent dated 30.09.2021 bearing No.720/DCRM/A.1/2021/690 and the order of the 4th respondent dated 27.07.2021 bearing No.200/STOM/T3/2021 as illegal, arbitrary and contrary to law and to consequently direct the 3rd and 4th respondent to issue residential/residency certificate pursuant to the online application no.PBMRD0000403701 dated 07.07.2021 within the time frame stipulated by this Court and to further direct the 2nd respondent to consider the application of the petitioner for admission to non NEET professional courses on the basis that the petitioner is resident of Union Territory of Puducherry.

2.The learned appearing for the petitioner submits that the petitioner is native of Kerala State and resident of Mahe District, Puducherry. She made an application to Pondicherry Government for issuance of Residential Certificate in order to participate in the NEET (UG) examination.



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3.It is the further case of the petitioner that her parents have been living in Pallor village since 1996 and her mother did her pre-degree examination in University of Calicut during June 2002 and, thereafter, she did B.Sc. Degree in Botany in Mahatma Gandhi Government Arts College, Mahe and got B.Sc. Degree from Pondicherry University in May 2003 thereafter, she completed her M.Sc. in Mahe Government College in the year 2005 and further she joined B.Ed. Course in Sri Narayana College of Education, Mahe and got her degree in June 2006 awarded by the Pondicherry University. Thereafter, she got married to one Dr.C.K.Abdul Basheer, who belongs to Cheruparamba, Kolavallur Village, Thalassery Taluk, Kannur District, Kerala. Even after marriage, she was residing along with her parents at Pallor and she has three children through the wedlock and she was living with her parents continuously at Pallor. Adjacent to Pallor, the border of Kerala State begins and the nearest town from Palloor is Thalasserry, which is about 7 Kilometers. Thereafter, from 1st to 7th Standard her daughter/petitioner studied in Chinmaya Vidyalaya, Kannur, which is about 30 Kms from Palloor and further she was admitted in Excel Public School in Chalakkara, Mahe from 8th Standard. Due to her inability to continue in the said school, she was



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again admitted at Chinmaya Vidhyalaya, Kannur. She completed SSLC in the said school and joined Excel Public School, Chalakkara, Mahe for +2 Course and completed the course in April 2021 and claims that she resided along with her mother permanently in Mahe, Union Territory of Pondicherry.

4.After completing her higher studies, the petitioner applied for Residence Certificate, Community Certificate and Migration Certificate to the authorities concerned. The 4th respondent issued Community Certificate and Migration Certificate, however denied issuance of Residence Certificate. Challenging the said rejection, this Writ Petition is filed by the petitioner.

5.The learned counsel appearing for the petitioner would submit that admittedly the petitioner's mother is a resident of Mahe and her mother owned a property and she filed a proof before the Revenue Officials for the purpose of securing Residence Certificate in favour of the petitioner and in ration card her name is clearly revealed. Further as per the guidelines, if any one of the parents is permanently residing in Mahe Union, Pondicherry, they are entitled to Residence Certificate.



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Further the guidelines itself makes it clear that rejecting the claim for Residence Certificate without disclosing any reason is non est in law and further the 3rd and 4th respondents failed to consider the affidavit of the member of the gram panchayat which clearly stated that house at Purakkalam had been rented out by the petitioner's father and he is not residing in the said place and residing along with his wife in Pallor village and the Revenue Officials of the Kerala State only stated the father of the petitioner is residing in Kerala and mother also residing along with her husband. In the absence of such material rejecting Residential Certificate is non est in law and residence of any one of the parents in Mahe is sufficient to issue Residential Certificate. In the present case, the petitioner and her mother resided along with her grandmother at Pallor which is sufficient to issue Residential Certificate in favour of the petitioner. Accordingly, he prayed for allowing the writ petition.

6.This Court heard the submissions made by the learned Government Pleader (Pondicherry) appearing for the respondents.

7.The fact in the present case is not in dispute. The mother of



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the petitioner admittedly made application for issuance of Residential Certificate in favour of her daughter namely Liya, who is minor aged about 17 years. Further, the petitioner's mother is resident of Pallor village since 1996, living along with her mother. She did school education and higher education in Mahe. That also not disputed and she obtained Master degree in the year 2005 and B.Ed. Degree in the year 2006 awarded by the Pondicherry University. Subsequently, petitioner's mother got married in the year 2003 to Dr.C.K.Abdul Basheer who belongs to Cheruparamba, Kolavallur Village, Thalassery Taluk, Kannur District, Kerala. As per the practise of the community belonging to North Malabar region, even after marriage the petitioner's mother is residing along with her parents in Pallor and out of the wedlock blessed with three children and adjacent to Pallor, the border of Kerala State begins and she admitted her children including the petitioner in Kerala School. Accordingly, petitioner claim that she is continuously residing in her grandmother's house.

8.The father of the petitioner is a resident of Kerala and all the documents produced by the petitioner reveals that she is resident of Kerala and no document was produced to establish that her father is



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residing along with her in Palloor village. Merely because the petitioner's mother claim that her husband is residing in Kerala that cannot be reason for denying Residence Certificate of the petitioner.

9.It is relevant to mention that the grandmother i.e., the petitioner's mother's mother made application for inclusion of granddaughter and grandsons name in the ration card on 11.11.2019 and the Authority conducted inspection on 27.01.2021 and in his inspection report observed that the children studied in Kannur and their father is a Doctor working at Medical Centre in Mambaram and he is not staying along with the petitioner's mother at Palloor. Thereafter the petitioner's mother made application for Residence Certificate and the same was rejected. It is also relevant to mention that the petitioner's grandmother made application for inclusion of granddaughter name in the ration card, however, did not take any steps to include the petitioner's father's name in the ration card. That being the admitted position, the claim of the petitioner's mother that as per the custom in the community, son – in – law used to stay along with wife in the mother – in – law house, goes very much against the materials and the admitted position and further mere production of the voter ID card of the petitioner's mother will not substantiate the



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residence of the petitioner in Mahe and as per the Scheme namely, Circular of the Revenue Department No.6260/C2/Rev/ 2003 dated 06.10.2003, mere production of the documents is not sufficient and the Authority is vested with power for ascertaining the physical residence of the applicant. There is mechanism provided for determination of the residents in the Union Territory of Pondicherry in Circular of the Revenue Department No.6260/C2/Rev/ 2003 dated 06.10.2003 and the relevant portion reads as follows:

"(2)Further the certificate-issuing authorities are instructed to strictly adhere to the following instructions in deciding the resident status of the applicants, namely:-

(i)While computing the period of actual residence, temporary absence for education, job etc., shall be ignored. In cases where the parents have gone abroad for the purpose of employment, then the residence of Grand parents in the U.T. of Pondicherry may also be taken for the issue of Residence Certificate for study purpose only to their Grand Children in exceptional and genuine cases, where



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the children reside with grand parents and are studying in recognized educational institutions in the U.T. Of Pondicherry.

(ii)The actual and physical residence of the applicant/parent/ Guardian is essential. But, mere possession of evidences like Ration Card, EPIC Card or previous certificate etc. are not the sole criteria for issuance of the Residence Certificate. At the same time, such evidences should not be totally ignored. After detailed enquiry, if it is found that such evidences are false or obtained on false representation of facts, immediate action has to be taken by the certificate-issuing authorities (Tahsildar/ Dy.Tahsildar) to inform the appropriate authorities to cancel them. It shall also be brought to the knowledge of the concerned Deputy Collector (Revenue)/ Joint Secretary (Revenue) for follow up action.”

10.When the Authority is vested with the power for ascertaining



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the physical residence of the applicant, this Court finds that except some documents no material documents which have a bearing in establishing the residence of the petitioner were produced by the petitioner's mother to substantiate that the petitioner is residing along with her mother in Pallor village. Hence, the claim of the petitioner is liable to be rejected. This Court is not inclined to interfere with the order passed by the fact finding Authority. Once the fact finding Authority comes to a conclusion, this Court cannot re-appreciate the entire material and substitute its view to that of the fact finding Authority. Hence, the claim made by the petitioner cannot be granted.

11.Hence, this writ petition is dismissed. No costs.
Consequently, the connected miscellaneous petitions are closed.

07.12.2021

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No



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M.DHANDAPANI,J.
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**Pre-delivery Order in
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