

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.No.20306 of 2020
and
W.M.P.Nos.25091 of 2020

Jeeva Rose Joji

... Petitioner

Vs.

1.The Selection Committee,
Directorate of Medical Examination,
No.162, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.

2.The Director,
National Eligibility cum
Entrance Test (UG) - 2020,
Ansari Nagar Ring Road,
New Delhi.

3.National Medical Commission,
Rep. by its Chairman,
Pocket 14, Sector - 8,
Dwaraka Phase-1,
New Delhi - 110 077

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the 1st respondent to issue allotment order to the petitioner based on the counseling for MBBS/BDS admissions - 2020 Government quota held on 01.12.2020 and the provisional allotment order forthwith.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.Abdul Saleem, SC
(for R.1)
Mr.V.P.Raman, SC
(for R.3)

ORDER

(This matter is taken up through Video Conferencing)

The petitioner, who is a medical aspirant to do MBBS course in the state of Tamil Nadu has filed this Writ of Mandamus to direct the 1st respondent to issue allotment order to the petitioner based on the counseling for MBBS/BDS admissions - 2020 Government quota held on 01.12.2020 and the provisional allotment order forthwith.

2. The case of the petitioner is that she is a resident of Gudalur Taluk, Nilgris District and studied from III Standard to X Standard in St.Thomas English High School at Gudalur, Nilgris and thereafter, she pursued the Higher Secondary in Morning Star Higher Secondary School at Gudalur, Nilgris.

3. She had participated in the NEET (UG)-2020 examination conducted by the 2nd respondent herein and secured 605 marks and stood 863rd in Tamil Nadu State Quota Rank and 17702 All India Rank. Based on which she had made an application to the 1st respondent herein for admission in MBBS/BDS course in the Government colleges and the respondent also issued Call Letter on 01.12.2020 and she attended the Counseling before the 1st respondent. After scrutiny of the documents they have verified whether she made any application in other States also, for which she produced a document, which is an application made by her for admission to the Professional Degree Courses in the State of Kerala. But, in the said application the Nationality/ Nativity is mentioned as Indian/ Keralite. Therefore, the 1st respondent/ Selection Committee has not passed any further orders on her application.

4. Mr.C.Prabakaan, learned counsel for the petitioner submits that during the counseling when the Authorities have verified whether she applied in any other State she bonafidely produced the application filed before Kerala and that application was made online and while filling the application the concerned person who uploaded the application, wrongly mentioned the Nativity as Kerala instead of Tamil Nadu and that mistake has been taken into consideration by the 1st respondent who rejected the candidature of this petitioner for admission to MBBS course in the State of Tamil Nadu. 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.

(I) Such candidates applying in the category 4(h) of the prospectus should also give an undertaking that they have not applied for any Educational Institution

in any other State, claiming the nativity of such State for admission in that course. If it is found later that the candidate has applied as a native of any other State other than Tamil Nadu, then the admission will be cancelled at any stage. Further, during the course of study even if it is subsequently found that any candidate had produced a false nativity certificate or given a false undertaking, it will result in expulsion of the candidate from the course and also initiation of criminal proceedings against the candidate as well as his/her parents as per provision of the law

(j) Other State candidates who have studied from VI Standard to XII Standard continuously in Tamil Nadu, will be deemed to be native of Tamil Nadu and will be considered under the Open Category.

(k) Community Certificate obtained from other States will not be considered for reservation and such candidates will be treated as open category

5. By referring to Clause (h), (i) and (j) of the prospectus, the learned counsel for the petitioner would submit that the petitioner herein is a resident of Tamil Nadu and she completed her entire schooling in Tamil Nadu. Hence, she fulfilled the eligibility criteria to get an admission in the Medical College as per the above said clauses (h), (I) and (j). However, she made an application to the State of Kerala, which application was not also subsequently pursued by her and in that application the concerned person who uploaded the same has made certain typographical error in the nativity column. Due to which all other supporting documents produced by the petitioner were not considered by the 1st respondent and thus rejected her admission for MBBS course.

6. Mr.Abdul Saleem, learned Standing Counsel for the 1st respondent relying upon the documents has contended that the admission to MBBS course in the state of Tamil Nadu is only for the persons who are the native of Tamil Nadu. Since, the petitioner herein made a claim as Keralite in her application enclosed in Page No.12 of the typed set of papers she cannot claim it as a matter of right for admission in the state of Tamil Nadu. In view of the the said application, the Selection Committee has not further required the petitioner to produce all other documents in support of her claim.

7. Mr.C.Prabakaran, learned counsel for the petitioner has also enclosed the letter of the Commissioner of Entrance Examination, Thiruvananthapuram dated 07.12.2020 addressed to

The Secretary, Selection Committee the 1st respondent herein which reads as follows:-

This is to certify that Ms.Jeeva Rose Joji, Application No.114708 (NEET Role No.2802009230) has registered for KEAM MBBS admission, 2020 from Commissioner for Entrance Examination.kerala.gov.in website, but has no further applied for any allotment and choice selection process for any Medical and Allied courses in any institutions through the Kerala Commissionerate for Entrance Examinations and I also certify that I will not participate in any of the allotment /mop up allotment to be conducted by Commissioner for Entrance Examinations.

8. As per the letter of the Commissioner of Entrance Examination, Thiruvananthapuram, this petitioner though made an application to Kerala has not pursued her application. This application which has been the reason for rejection of the petitioner is also an online application which according to the petitioner is made erroneously by the person who uploaded the same have typed it wrongly on the nativity column.

9. This court considered the rival submissions made and also perused the records produced by respective parties. From the records it appears that the petitioner is a resident of Gudalur, Tamil Nadu and she has studied from III to X standard in St.Thomas English High School, Gudalur and pursued her higher secondary course also in the state of Tamil Nadu. She has also produced the statement of marks in X Standard dated 06.05.2016 and Higher Secondary mark statement dated 16.05.2018. She has also obtained the Nativity Certificate from the Competent Authority as on 05.11.2020 and she has also enclosed Nativity Certificate of her father which has been issued by the Competent Authority as on 31.10.2017. All these documents would disclose that this petitioner is a native of Tamil Nadu and she is eligible to be admitted in the Medical College in Tamil Nadu.

10. However, she has wrongly made an application to Kerala, whether it is a typographical error or knowingly mentioned the nativity as Keralaite, on that sole ground the 1st respondent appears to have rejected all other documents which has been filed in support of this case. The application made by her for admission to the professional degree courses in the State of Kerala cannot be given importance for the reason, the Controller of Examination, State of Kerala has also addressed a letter to the 1st respondent stating that the petitioner has not further applied for any allotment and choice selection process

for any Medical and Allied courses in any Institutions in Kerala. This shows that the petitioner has not further pursued the said application.

11. Further, the issue with regard to Nativity Certificate has been decided by referring to the Division Bench order 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."

12. 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.

13. 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, 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 of her parents to establish that she is native of Nilgris District.

14. The Tahsildar, Nilgris, 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 Smart card and Aadhar Card to establish that she is a resident of Tamil Nadu from her childhood. She has also produced the Nativity Certificate and Smart card of her father which would disclose he is a native of Tamil Nadu. 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.

15. The writ petition is allowed and the respondents shall consider the case of the petitioner in the Government college in OC category. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dsa
To

- 1.The Selection Committee,
Directorate of Medical Examination,
No.162, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.
- 2.The Director,
National Eligibility cum
Entrance Test (UG) - 2020,
Ansari Nagar Ring Road,
New Delhi.
- 3.The Chairman,
National Medical Commission,
Pocket 14, Sector - 8,
Dwaraka Phase-1,
New Delhi - 110 077.

+1cc to Mr.C.Prabakaran, Advocate Sr.1716

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W.P.No.20306 of 2020

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