IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.10157 of 2023
And
W.M.P.Nos.10183 and 10185 of 2023

Minor Rashidha Shahul Hameed
Rep. by her Mother
Mrs.Akkila Banu ... Petitioner

Vs.

1.The Deputy Collector (Revenue),
Department of Revenue and Disaster Management,
Government of Puducherry,
Puducherry.

2.The Tahsildar
Taluk Office,
Revenue Department,
Government of Puducherry,
Puducherry – 605 008.

3.The Convenor,
Centralised Admission Committee (CENTAC),
Government of Puducherry,
Pondicherry Engineering College Campus,
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 the records of the second respondent in his proceedings No.1333/TOP/C/2023 Puducherry dated 20.03.2023 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the second respondent to issue nativity and residence certificate to the petitioner namely Rashidha Shahul Hameed based on her application dated 06.02.2023 within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Ms.N.Kavitha Rameshwar
For Respondents : Mr.J.Kumaran
Additional Government Pleader(Puducherry)

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings No.1333/TOP/C/2023 Puducherry dated 20.03.2023 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the second respondent to issue nativity and residence certificate to the petitioner namely Rashidha Shahul Hameed based on her application dated 06.02.2023 within a time frame to be fixed by this Court.

2.The case of the petitioner is the petitioner was born on

08.04.2006 at Puducherry and her parents also were born on Puducherry and are natives of Puducherry. The petitioner studied upto V Standard in Puducherry. Since, her father was employed at Kuwait, the petitioner was residing in Kuwait from 2016 and did her schooling in Carmel School, affiliated to Central Board of Secondary Education, New Delhi, India. The petitioner applied for registration through Centralised Admission Committee (CENTAC) inorder to appear for NEET UG examination. In order to apply for admission under the notification issued by CENTAC for the academic year 2023 – 2024, the petitioner has to produce nativity certificate. Hence, the petitioner applied for her nativity certificate vide application dated 06.02.2023, however, the second respondent rejected her request. Hence, this writ petition.

3.The learned counsel appearing for the petitioner submitted that the second respondent rejected the petitioner's request for issuance of nativity certificate on the ground that the petitioner is not a resident of Puducherry. She further submitted that the petitioner's grandparents are natives of Puducherry and the petitioner's parents are also natives of Puducherry and they have Aadhar Card and Voter Identity Card to prove that they are natives of Puducherry. She further submitted that the petitioner studied upto V Standard in Puducherry and thereafter also she studied in CBSE syllabus. Hence, the impugned order is not sustainable one.

4.Per contra, the learned Additional Government Pleader (Puducherry) submitted that for issuance of nativity certificate the Government of Puducherry has issued detailed guidelines, which makes clear that while computing the period of actual residence, temporary absence for education, job etc., shall be ignored. In case where the parents have gone abroad for the purpose of employment, then the residence of grandparents in the UT of Pondicherry may also be taken for the issue of residence certificate for study purpose only to their grandchildren in exceptional and genuine cases, where the children reside with grandparents and are studying in recognized educational institutions in the UT of Pondicherry. In the present case, the petitioner resided along with her parents at Kuwait did her schooling in Kuwait and hence, the petitioner is not entitled for nativity certificate.

5.Heard the arguments advanced on either side and perused the materials available on record.

6.Perusal of records reveal that the petitioner was born on 08.04.2006 at Puducherry and she studied upto V Standard in Puducherry. Thereafter, since her father was employed at Kuwait, she resided along her parents in Kuwait from 2016 and did her schooling in Carmel School, affiliated to Central Board of Secondary Education, New Delhi, India. Inorder to pursue her higher studies, she applied for nativity certificate, however, the same was rejected on the ground that she did not reside at Puducherry and she resided along with her parents at Kuwait and did her schooling in Kuwait.

7.In this regard, it is relevant to extract hereunder the relevant portion of the guidelines issued in Order No.6260/C2/Rev/2003 dated 06.10.2003 of the Revenue Department, Puducherry:

> "(i) While computing the period of actual residence, temporary absence for education, job etc., shall be ignored. In case where the parents have gone abroad for the purpose of employment, then the residence of grandparents in the UT of Pondicherry may also be taken for the issue of residence certificate for study purpose only to their grandchildren in exceptional and genuine cases, where the

> children reside with grandparents and are studying in recognized educational institutions in the UT of Pondicherry.”

8.In the present case, though the petitioner's father is employed in Kuwait, her grandparents are residing in Puducherry and the petitioner also did her primary schooling in Puducherry. Thereafter, even though she resided along with her parents in Kuwait, she did her schooling in CBSE syllabus.

9.The guidelines cited supra makes it clear that where the parents have gone abroad for the purpose of employment, then the residence of grandparents in the UT of Pondicherry may also be taken for the issue of residence certificate for study purpose only to their grandchildren in exceptional and genuine cases. In the present case, the petitioner resided along with her grandparents and studied upto V Standard in Puducherry. Hence, the impugned order is not sustainable one.

10.Further, this Court has considered similar issue in the decision made in W.P.No.16532 of 2021 dated 25.11.2021 and has held as follows:

"9.The facts in the case is not in dispute. The issue involved is in narrow compass. 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:

> ***"(1)DETERMINATION OF THE "<u>RESIDENTS</u>" IN THE UNION TERRITORY OF PONDICHERRY.***
>
> ***The following shall be the criteria prescribed for determining persons as Residents of this Union Territory:-***
>
> ***(i)The candidate or whose parent(either Mother or Father or Both) or Guardian (in the case of Children who have lost both the parents) has been residing continuously in this Union Territory for atleast five years preceding the date of application.***
>
> ***..***
>
> ***..***
>
> ***(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 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.

(3)For getting Nativity/Residence certificate, the application has to be submitted by the applicant to the concerned Tahsildar of Taluk Office or Dy.Tahsildar of Sub-Taluk Office and it will be forwarded to the Village Administrative Officer of the concerned revenue village through the Revenue Inspector for discreet enquiry and report. If the applicant or parent or guardian resides in the concerned revenue village, as per the criteria mentioned in pre-paras, the Village Administrative Officer shall make a report and it shall be verified by the Revenue Inspector. After considering the reports of the VAO and RI, the Dy.Tahsildar or Tahsildar of concerned Sub-Taluk or Taluk may issue the certificate to the applicant."

10.Admittedly, the petitioner is a permanent resident *of Mahe. Her father is working as Headmaster in Government School, Mahe and her mother is also residing at Mahe. The said fact is not disputed by the respondents.*

11.This Court perused the Circular of the Revenue Department No.6260/C2/Rev/ 2003 dated 06.10.2003 wherein it is stated that while computing the period of actual residence, temporary absence for education, job etc., shall be ignored. After her marriage on 22.06.2020, the petitioner went to Gundulpet in Mysore, Karnataka and again after her husband went to Netherlands, due to employment, she started living along with her parents in Mahe. Therefore, it is clearly evident that but for the short duration after marriage, the petitioner has all along been a resident of Union Territory of Pondicherry. Such being the undisputed position, rejecting the petitioner's claim for issuance of Residence / Nativity Certificate is not acceptable as it is not in consonance with Circular of the Revenue Department No.6260/C2/Rev/ 2003 dated 06.10.2003, issued by the Pondicherry Government."

11.In view of the above, the impugned order is set aside and the second respondent is directed to issue nativity certificate within a period of two weeks from the date of receipt of a copy of this order, so as to enable the petitioner to pursue her higher studies.

12.The writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

27.04.2023

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Note: Issue order copy on 28.04.2023

Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

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Department of Revenue and Disaster Management,
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