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W.P. No.27915 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.27915 of 2023 and
W.M.P. No.27411 of 2023

Vijayakumar

... Petitioner

Vs

1.The Deputy Collector (Revenue) South
Villiayanur District
Puducherry

2.The Tahsildar
Taluk Office
Bahour, Puducherry

3.The Village Administrative Officer
Taluk Office
Bahour, Puducherry

4.Centralised Admission Committee (CENTAC)
Government of Puducherry
2V72, PEC College, VSR Street
ECR Road, Puducherry - 605 014

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus calling for the records on the file of the 1st respondent vide proceeding No.4620/DCRS/B7/Cert-Appeal/2023/2160 dated



W.P. No.27915 of 2023

15.09.2023 and to quash the same and consequently direct the 1st respondent to issue residential certificate to petitioner's son.

For Petitioner : Mr.E.Manoharan
For Respondents : Mr.R.Sreedhar,
Addl. Govt. Pleader (P)

ORDER

This petition is filed by the father of certain Abishek Charan for issuing a residence/nativity certificate for his son. According to the petitioner, Abishek Charan has secured a seat in medicine (UG Programme) in Venkateswara Medical College, Puducherry. The seat was allotted to him through centralised counselling by the 4th respondent. At the time of joining the course, Abishek Charan, *inter alia*, may have to produce his residence/nativity certificate.

1.2 Abishek Charan approached the Tahsildar, Bahour, for issuing him with a nativity/residence certificate, and the Tahsildar, vide his order, dated, 24.08.2023, has rejected the same. This order was challenged before the appellate authority, namely the Deputy Collector (Revenue) South, who has



W.P. No.27915 of 2023

passed the impugned order on 15.09.2023, confirming the proceedings of the Tahsildar. This is under challenge in this writ petition.

2. The learned counsel for the petitioner submitted that:

- a) Both the parents of the petitioner hail from Puducherry, that their son Abishek Charan too was born in Puducherry, and that owing to his avocation, the petitioner with his family temporarily lived outside Puducherry. Even as the petitioner was away from Puducherry, his parents continued to be in Puducherry. And, Abishek Charan did his 9th and 10th standards in Puducherry, staying with his grand parents.
- b) The Tahsildar and also the appellate authority had relied selectively on selected parts of the Order of the Revenue Department of the Government of Puducherry dated, 06.10.2003, which provides the guidelines for issuance of domicile/residence/nativity certificate. As per the guidelines, for a student to claim domicile status, his parents or guardians must be residents of Puducherry for previous five years next before the date of application for obtaining the domicile certificate, or the student should have studied for five continuous previous years preceding



W.P. No.27915 of 2023

WEB COPY

the qualifying examination (this implies it must be 8th to 12th standard), and must have their residence (which implies he should not be a hosteller). What the authorities however, ignored was Clause (2) of the guidelines, which provide the parameters which the authority concerned may have to factor in while considering the application for obtaining the above referred certificates. This apart, the authorities have also equated domicile with the nativity, when both the expressions have different connotations.

3. Per contra, appearing for the respondents, the learned Additional Government Pleader (Puducherry), submitted that while the petitioner claims that Abishek Charan did his schooling from class 1 to 10 in Puducherry, the boy himself has given a statement that he studied in different places both in Tamil Nadu and in Andhra Pradesh, and that he did his 9th and 10th standards alone in Puducherry.

4. This court weighed the rival submissions carefully. First, a distinction may have to be drawn between nativity and domicile. Nativity implies the place from which a person hail, or the place of his/her birth, whereas, domicile relates



W.P. No.27915 of 2023

to residence-ship. So far as the petitioner is concerned, what is not in dispute is that he is a native of Puducherry, but what is in dispute is whether he is also a domicile of Puducherry. Therefore, without getting into further details, it can be straight away stated that petitioner's son Abishek Charan is entitled to a nativity certificate from the authorities.

5. Turning to the issue of domicile, paragraph 2(i) and 2(ii) of the guidelines issued vide order of the Government of Puducherry dated 06.10.2003 are relevant and they read as under:

"(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 the 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



W.P. No.27915 of 2023

WEB COPY

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."

If these provisions are dissected, it indicates that (a) any temporary absence for education is required to be exempted; (b) if the grand parents continued to stay in Puducherry even if the parents of the student move out of Puducherry, it has to be factored in; and (c) thirdly, the documentary evidence like a ration card, EPIC Card, and other certificates, which the authorities have considered as irrelevant, have not been totally banned from being considered.

6. Reading clause (i) above, the student may fall within it. The boy had studied in Tamil Nadu, Andhra Pradesh and also Puducherry. Is it not possible now to consider that the boy has been temporarily outside for education? Coming to



W.P. No. 27915 of 2023

the second part, it says, the residence of grand parents in the Union Territory of Puducherry may be taken for issuance of residence certificate **for study purpose only in exceptional and genuine cases**. This implies that Abishek's case can also fall under this.

7. The learned Additional Government Pleader (Puducherry) is quick to add that the grand parents status is required to be taken into account only where the parents are working abroad. This does not make any sense for, at the end of the day, what is significant is the parents are not in Puducherry, and whether they have gone for employment to any other parts of India or outside India is essentially immaterial.

8. If the proceedings of the Tahsildar and also the appellate authority are tested on the plane of what have been stated above, it is evident, that these authorities appear to have limited their scrutiny without considering the effect of clause 2(i) and (ii) of the order of Revenue Department, Government of Pondicherry dated 06.10.2003 in No.6260/C2/Rev/2003.

9. In the result, this petition is allowed, and the order of the Tahsildar, in



W.P. No.27915 of 2023

No.002/TOB/A1/2023/391 dated 24.08.2023, and the order of the Deputy Collector (Revenue) South, Government of Puducherry, dated 15.09.2023 made in No.4620/DCRS/B7/Cert-Appeal/2023/2160 are set aside, and the matter is remanded back to the Tahsildar, Bahour, and he is directed to (a) issue a nativity certificate to which the petitioner's son is entitled to; and (b) to revisit the entire issue of domicile in the face of clauses 2(i) and (ii) here-in-above extracted. The entire exercise is required to be completed on or before 25.09.2023. This court, therefore, directs the fourth respondent to inform Venkateswara Medical College, Puducherry, (which is not a party before the court) where Abhishek Charan is required to join, not to fill the seat allotted to the petitioner till 26.09.2023. No costs. Consequently, the connected writ miscellaneous petition is closed.

22.09.2023

Asr
Index : Yes/No
Speaking/Non-speaking Order

Note to office:

Issue order copy today.



W.P. No.27915 of 2023

To

1. The Deputy Collector (Revenue) South
Villaiyanur District
Puducherry
2. The Tahsildar
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N.SESHASAYEE, J.,

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