



W.P(MD)No.19707 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.19707 of 2023

Rubiythraigana

... Petitioner

Vs

1.The Commissioner (Corporation),
O/o the Commissioner (Corporation),
Madurai Corporation,
Madurai.

2.The Town Health Officer,
O/o the Town Health Officer,
Madurai Corporation,
Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 & 2 to issue a Non Availability Certificate to the petitioner on behalf of the petitioner's birth application, by considering the petitioner's availability of passport and by considering the representation dated 21.07.2023.



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For Petitioner :Mr.S.Mohamed Ali Jinnah
For Respondents :Mr.K.Sivabalan
Standing Counsel

ORDER

The petitioner, namely, Rubiythraigana is 69 years old. She born on 23.02.1955 in No.21, P.T.Rajan, 4th Street, Narimedu, Madurai. At present, as there is no one in India to take care of her and the petitioner's son is settled at America, she wants to settle along with her son. Therefore, she applied for a renewal of her passport and the same was also granted to the petitioner. When the petitioner approached the authority for grant of green card, they insisted the petitioner for production of birth certificate. Since the petitioner born before the constitution of the Registration of Births and Deaths Act, 1969 and due to illiteracy of her parents, the Birth Certificate of the petitioner has not been obtained. Therefore, she filed a petition before the first respondent/the Commissioner, Madurai Corporation seeking for a Non Availability Certificate,



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enabling the petitioner to work out her remedy before the appropriate authority and filed this writ petition for a Mandamus, directing the respondents to issue a Non Availability Certificate to the petitioner, by considering her representation dated 21.07.2023.

2.The learned standing counsel appearing for the respondent Corporation by referring a Circular issued by the Government of India, Ministry of Home Affairs, dated 31.01.2007 submits that the Government of India has issued a Circular under Section 3(3) of the Registration of Births and Deaths Act, 1969 and also instructed the State Governments to issue necessary directions to all the District Registrars and local Registrars of births and deaths for compliance of the same. In the aforesaid circular, the Government of India has issued the instructions as follows:-

“2.In order that persons don't take undue advantage of the provision and get the Non-availability Certificates by giving wrong information about registration of his/her birth/death or by changing the date of



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occurrence of birth or death to get the second birth/death certificate or even by producing fake documents/evidence, it is essential that a procedure is put in place for issuance of non-availability Certificates. The issuing authority i.e Registrar of Births and Deaths should be informed to insist on the applicant for producing documentary evidence to prove the place of residence, place of birth, etc., A copy of any of the documents like ration card, school admission record, senior secondary mark sheet etc, should be admissible as a proof. The Registrar should be authorized to make an enquiry regarding the genuineness of the reason for applying non-availability Certificates before the desired certificate. However, in case applicant unable to produce any of these as evidence, the certificate should be issued only after police verification.”

Therefore, according to the learned standing counsel, Non Availability Certificate can be issued only after police verification and also after scrutinizing the necessary records as stipulated in the above circular.



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3.This Court considered the rival submissions made and also perused the materials placed on record.

4.Under the provision of Section 17 of Registration of Births and Deaths Act, 1969 and on the corresponding Rule 13(3) framed under the Section, a Non Availability Certificate in Form No. 10 is required to be issued when any particular of event of birth or death is not found registered. The Government of India, Ministry of Home Affairs, under Section 3(3) of Registration of Births and Deaths Act, 1969 has already issued a circular directing all the State Governments to follow the procedure before issuing the Non Availability Certificate.

5.In view of the above, this writ petition is disposed of with a direction to the first respondent to conduct an enquiry as directed in the Circular issued by the Government of India, Ministry of Home Affairs, dated 31.01.2007 and issue a Non Availability



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Certificate to the petitioner as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order. No costs.

18.08.2023

NCC :Yes/No
Index :Yes/No
Internet:Yes
vrn

To

- 1.The Commissioner (Corporation),
O/o the Commissioner (Corporation),
Madurai Corporation,
Madurai.
- 2.The Town Health Officer,
O/o the Town Health Officer,
Madurai Corporation,
Madurai.



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B.PUGALENDHI, J.

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