IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.07.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
WP.No.35650 of 2023
& WMP.Nos.35616 of 2023 & 11472 of 2024

R.Jaianuram ... Petitioner

Vs.

1.The Union of India
Rep. by its Chief Secretary,
Government of Puducherry
Puducherry.

2.The Deputy Collector (Revenue) North,
Government of Puducherry,
Puducherry.

3.The Tahsildar, Taluk Office,
Revenue Department.
Government of Puducherry
Puducherry. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Ceriorarified Mandamus calling for the records on the file of the 2nd respondent in connection with the proceedings No.6067/DC (R)N/A2/CV/2022/2797 Dt, 20.10.2023 confirming the Order of the 3rd respondents in his proceedings No.1425/TOP/Certification/2023, Dated 25-07.2023, and quash the same as illegal and direct the 2nd and 3rd respondents to issue the Residence/Nativity Certificate in favour of the petitioner as may deem fit and proper in the circumstances of the case.

For Petitioner : Ms.Gopika Nambiar
for Mr.V.P.Chamuraj

For Respondents : Mr.A.Tamilvanan
Additional Government Pleader (P)

ORDER

The petitioner was born on 01.05.2005 at Jipmer Hospital, Puducherry. He claims that his father is a native of Puducherry and that his family has been living for seven generations in Puducherry in the same family house. According to him, his father had moved temporarily to Chennai and later to Kolappakkam in Kanchipuram District, all in the pursuit of better employment prospects. He had studied from the 1st to 12th standards in Societe Progressiste High School, Pondicherry. He now aspires for a medical seat and hopes to secure the same in Puducherry.

2. All statutory documents, such as Voter ID, Aadhar and Ration cards, according to the petitioner, reveal the residence of the petitioner and his family in Puducherry only. His application for issuance of Nativity Certificate had however come to be rejected by the Tahsildar, Puducherry/R3 on 25.07.2023 and an appeal challenging the same had also come to be been dismissed on 20.10.2023 by the Deputy Collector (Revenue) North, Puducherry. The authorities have concluded that the family is permanently residing at Kolapakkam, Kundarathur and the petitioner vehemently denies this.

3. He points out that R3 has issued an OBC caste certificate and a community certificate based on the categorization of the caste as per the list applicable to Puducherry. He places on record a letter from Larsen and Toubro (L&T) to the effect that the petitioner's father is a permanent resident of Puducherry at No.11, Muthumariamman Koil Street, Pondicherry – 605 001, which address is what is reflected in his Aadhar and Pan cards.

4. The petitioner submits that his father is regularly remitting property tax for the property in Puducherry and maintains bank accounts in a Nationalised Bank at the same place. They have no connection whatsoever to Tamil Nadu except for the employment of his father there and hence he is aggrieved by the rejection of his request for Nativity in Puducherry.

5. The petitioner relies on the decisions in i) *K.V.MohammedShabaar V. The Government of Pondicherry and others*[1] and ii) *N.Karunya Vignesh V. Union Territory of Puducherry and others*[2]. He also relies on an order passed by the Revenue Department of the Government of Puducherry bearing No.6260/C2/Rev/2003 dated 06.10.2003, which sets out guidelines for determination of residence in the Union Territory of Puducherry.

6. Clause 2 (i) in that order states that, while computing the period of actual residence in Puducherry, temporary absence for education, jobs etc. shall be ignored. Thus, according to the petitioner, his absence from Puducherry was

[1]W.P.No.10905 of 2012 dated 29.06.2012
[2]2021 SCC Online Mad 15734

temporary as it was only for the purpose of education and must not count in deciding the question of his nativity.

7. The respondents have filed a detailed counter objecting to the Writ Petition. They rely on a field enquiry conducted by R3 at Kolappakkam, Chennai, which revealed that the petitioner's father owns a residential house at Kolappakkam, purchased in 2019.

8. Thus, according to them, the statement of the petitioner to the effect that his father does not own immovable property outside Puducherry is incorrect and must be construed as being fatal to the matter. This submission cannot be accepted as ownership of property in a place is hardly conclusive as to the nativity or otherwise of the owner in that location. Purchase of property may be for several reasons, such as sentiment, investment etc. and while they may indicate some ties that a person has with that place, that has limited relevance in determining nativity.

9. They also rely on field enquiry conducted by the Village Administrative Officer (not a party to this writ petition) to the effect that the petitioner and his parents are not resident in the Puducherry address given in the cause title. Thus, they would espouse the view that the petitioner cannot claim nativity of place where he is not resident.

10. That apart, they rely on G.O.Ms.No.48 dated 12.12.2002 of the Revenue Department of Government of Puducherry which states that for

establishing nativity by birth, the applicant should have been both born in the Union Territory of Puducherry and be resident within the Union Territory, prior to the date of application. For nativity by continuous residence, the applicant should have been residing continuously for 5 years in the Union Territory prior to the date of application. In the present case, the petitioner does not, according to them, satisfy either criteria.

11. They also rely on order bearing No.6260/C2/Rev/2003 dated 06.10.2003, also relied upon by the petitioner, pointing to certain clauses therein which operate against the petitioner. According to that order, the candidate must have been residing continuously in Puducherry for at least 5 years preceding the date of application or must have undergone academic studies for 5 successive classes, prior to the qualifying examination and must have his residence in Puducherry for 5 years continuously during that period.

12. Thus, according to them, the period of actual residence of the petitioner in Puducherry is essential to decide the residential status of the applicant and one cannot decide the question based merely on documentary evidences, such as ration card or other certificates. If the petitioner's claim were to be accepted, they apprehend that opportunities for Puducherry students would stand curtailed. On these grounds, they would pray that the Writ Petition be dismissed.

13. Heard both learned counsel. The location of the petitioner's birth, in Jipmer Hospital, Puducherry is admitted. The address of the parents in the birth certificate is reflected as Mariamman Koil Street, Gingee Salai, Pondicherry, which is the same as in the cause title to the Writ Petition. The petitioner had admittedly studied in the Societe Progressiste High School, Kalathiswaran Koil Street, Pondicherry – 605 001, and this fact is also not in dispute. The voter ID, driving license and Aadhar card reflect the address of the petitioner as being in Puducherry. There is no dispute in regard to any of these parameters.

14. Over the years, the Government of Puducherry has issued the following Circulars touching upon the issue of nativity certificate. The first of the Circulars produced before me is dated 20.06.1975 bearing D.Dis.No.8421/75/C. The subject of the Circular related to the award of scholarship under the Pondicherry Post-Matric Scholarship Scheme and issuance of residence certificate by officials of the Revenue Department.

15. The Under Secretary to the Government notes that some of the residence certificates were incorrect in that, the certificate was issued as though the scholar and his parents had been continuously resident in Puducherry for the last 5 years, while the Scholar had actually studied outside the Union Territory of Puducherry and his father was also employed outside the Union Territory. The officials were instructed to enquire into the matter and issue

residence certificates only if the enquiry revealed continuous residence for the last 5 years. This Circular does not deal with nativity by birth.

16. The second circular is G.O.Ms.No.40 dated 12.12.2002 and makes reference to two earlier Circulars dated 10.09.1970 and 22.10.1970 of the Revenue Department, but not Circular dated 20.06.1975. G.O.Ms.No.40 purports to be a comprehensive set of instructions for determination of nativity by birth or continuous residence.

17. As far as nativity by birth is concerned, this is what it states:

GOVERNMENT OF PONDICHERRY
Abstract

Revenue Department – Issue of Domicile/Nativity Certificate in the Union Territory of Pondicherry – Instructions/Guidance – Issued – Reg.

REVENUE DEPARTMENT

G.O.Ms.No.40 Pondicherry, the 12.12.2002

Ref: (i) Circular No.13 (No.G-1417/9/70) dt. 10.9.1970 of the Revenue Department.
(ii)Circular No.16 dt.22.10.70 of the Revenue Department, Pondicherry.

....

(a) Nativity by birth: The applicant should have been born in the Union Territory of Pondicherry and should have been ordinarily residing within the Union Territory prior to the date of application. In order to satisfy the criterion of "Ordinarily resident", the person should have been staying either by himself or with his family within the Union Territory of Pondicherry continuously with a clear intention of residing there

permanently, but for temporary absences from such place of residence for reasons of job or education, etc. As long as the applicant is able to establish satisfactorily his intention to return to his place of residence on the conclusion of such temporary absence, he may be considered to be a person ordinarily residing in the Union Territory.

....

18. It also deals with nativity by continuous residence. In the counter filed, particularly paragraph 12, R2 elaborates on the aspect of nativity by continuous residence stating that mere possession of documents like, Voter ID, Aadhar Card or Ration card, will not bestow residence, as a person claiming benefit of residence should be a resident for 5 years prior to the date of application.

19. A reading of clause (a) in the G.O. as extracted above, does not support that position. In G.O.Ms.No.40, the respondents state that to be entitled for nativity by birth, the applicant should have been i) born in the Union Territory of Puducherry (ii) ordinarily resident there prior to the date of application. The phrase 'ordinarily resident' is defined therein to say that the person should have been either staying by himself or with family within Puducherry, continuously, with the clear intention of residing there permanently, but for temporary absences for reasons of job, education etc.

20. The stipulation is that, as long as an applicant is able to establish his return to his residence on the conclusion of the temporary absence, he may be considered to be a person 'ordinarily resident' in the Union Territory of

Puducherry. Since earlier Circulars have not been superseded, I proceed on the basis that they are all in continuation of each other. Thus, in my view, the applicant has to establish one or the other, ie., either nativity by birth or nativity by continuous residence and if an applicant establishes nativity by one means, it becomes unnecessary for him to establish satisfaction of the other as well.

21. In this case, the petitioner was born in Puducherry and has undergone his schooling there from class 1 to class 12. His residence during that period was in an address outside of Puducherry by reason of his father’s employment out of the Union Territory. The factum of his schooling in a school in Puducherry is not in dispute and this becomes possible by virtue of the fact that the petitioner was, during his father's employment in Tamil Nadu, staying very proximate to Puducherry and hence it was practically possible to reside in Tamil Nadu and attend a school in Puducherry.

22. That apart, he intends to study further in Puducherry as is evident from the fact that he is seriously pursuing his graduate studies from an Institution there. He has also filed an affidavit dated 26.06.2024 at the direction of the Court stating that though he is presently residing in Chennai with his parents, he will not make a claim for Nativity/residence certificate in the State of Tamil Nadu or from any other State/Union Territory in the Country.

23. This would attest to his intention to continue his link/ties with Puducherry, and, in the considered opinion of the Court, this serves to establish

his intention to return to his place of residence on the conclusion of the temporary absence. In the present case, the petitioner has been studying only in Puducherry despite his father's employment requiring his stay in Tamil Nadu. Thus, notwithstanding that his father was employed in Tamil Nadu, the petitioner's presence in Puducherry for pursuing his schooling continued undeterred.

24. This Court finds nothing untoward in the petitioner choosing to stay with his parents in Tamil Nadu even while continuing his education in Puducherry and this would, in my considered opinion, more than qualify him to be a person ordinarily residing in the Union Territory. A decision on his nativity would have to be taken based on the facts as exist at the time of making such decision and the aforesaid events would serve to convince the Court of his intention to maintain his ties with Puducherry.

25. The third order is dated 06.10.2003 and bears No.6260/C2/Rev/2003. This has been issued without reference to the earlier two Circulars issued by the Revenue Department. In this order, though a series of guidelines have been issued, the aspect of nativity by birth is not alluded to.

26. The fourth order is G.O.Ms.No.64 Chief Secretariat (Education-I) dated 25.05.2006 under which the Pondicherry Private Professional Educational Institutions (Domicile Requirement in Admission of Students) Regulation, 2006 have been notified. The explanation under clause (3) with the heading

'*Domicile Requirement*' states that a candidate would be considered as belonging to the Union Territory of Pondicherry if he/she satisfies at least one of the six criteria set out therein.

27. Here again, birth is not set out as a criteria. That apart, sub-clause (d) of clause (3), states that children of natives of Pondicherry Union Territory, who have declared Pondicherry as their home town, so certified by their Heads of Office, would be treated as belonging to the Union Territory of Pondicherry.

28. This requirement of certification from the employer flows from an old order, a copy of which is shown in Court but not filed, which was premised on the Government being the employer in question, and issuing such certificate after due enquiry. This feature continues till date, even in the era of private enterprise. L & T has, in issuing certificate dated 11.08.2023, made it clear that they have merely re-produced the address given on the application of the employer as residence, which is in tandem with the address in the Aadhar Card and the Voter ID.

29. In the considered view of the Court, this requirement is outdated and entirely misplaced in that, an employer, particularly one in private sector, would have neither the means nor the necessity to look into the nativity of an employee. They would only go by the records being the Aadhar and Pan cards, as the employer has done in the present case.

30. However, though the Court believes that a certificate issued by a private employer must, ideally, have little value in determining nativity, the certificate of L&T assumes importance in light of clause (10)(iii) of the NEET Prospectus that states that children of natives of the Union Territory of Puducherry who have declared any place in Union Territory as their home town, so certified by the respective Heads of office would be considered to be a Puducherry resident.

31. In *K.V.Mohammed Shabaar*[3] involving facts very similar to the present case, the respondents were directed to issue nativity certificate based on the factual position obtaining that that applicant, with the support of several documents as in the instant case, had established his residence in Mahe. In the present case, the following documents are available and are undisputed.

(i) Various pension orders issued by the Government of Puducherry to Sri.P.Jayaramulu, grandfather of the petitioner.
(ii) The Puducherry address in the TDS form issued by the employer of the petitioner's father.
(iii) Community certificate bearing Certificate No.2332/TOP/C/2023 dated 17.03.2023 issued by the Department of Revenue and Disaster Management, Government of Puducherry setting out the Puducherry address.
(iv) Community Certificate bearing No.9338/TOP/C/2023 dated 26.07.2023 issued by R3 to the petitioner's brother setting out the same address, and based on community classification followed by Puducherry.
(v) Election ID Card of the petitioner and his parents with the Puducherry address.
(vi) Aadhar Card of the petitioner and his parents with the Puducherry address.

[3] Foot Note Supra 1

(vii) Driving license of the petitioner's father with the Puducherry address.
(viii) Learners license of the petitioner with the Puducherry address.
(ix) Transfer Certificate issued by Societe Progressiste High School, Pondicherry.
(x) 10th Standard School Leaving Certificate confirming the petitioner's status in the aforesaid school.

32. On the basis of the above detailed discussion setting out the relevant facts, I am of the unambiguous view that the petitioner can only claim nativity as a resident of Puducherry. This Writ Petition is allowed. R3 is directed to issue Nativity Certificate to the petitioner within a period of one (1) week from today. No costs. Connected Miscellaneous Petition is closed.

30.07.2024

Index : Yes / No
Speaking Order/Non-speaking order
Neutral citation:Yes/No
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