

Proceedings of the Director of School Education, Chennai-6
Present: Dr.S.Kannappan

Rc.No.04873 / M / S1 / 2021, Dated. 27 .02.2021

Sub: School Education Department - Hon'ble High Court of Madras - W.P.No.16292/2020 filed by minor Vardhini Parthasarathy with a prayer to issue a Nativity Certificate to the petitioner without undue delay - Directions and awareness to be issued- Reg.

Ref: 1) Letter from Principal Secretary to Government, School Education Department, Secretariat, Chennai-09, Letter No.22702/GL1 (2)/2021-1, Dated: 23.01.2021.
2) Orders of the Hon'ble High Court of Madras in Dated 20.11.2020 in W.P.No.16292 of 2020.

With reference to the letter and Order of Hon'ble High Court of Madras cited above, this is to bring to your notice that The Hon'ble High Court of Madras W.P.No.16292 of 2020 dated 20.11.2020 has issued the following direction: (copy enclosed)

"The Principal Secretary, School Education Department, Government of Tamil Nadu, shall issue suitable directions to the officials and teachers of the School Education Department to create awareness among the students of High Schools and Higher Secondary run by the State Government, Government Aided and private Schools, be it state board or the central board, to apply for the mandatory certificates to pursue higher education, at least in the beginning of the year, in which, the students may seek higher education, which would avoid these kind of matters being decided at the eleventh hour and also the students do not suffer mental agony and distress"

In this connection to the above, all the Chief Educational Officers and District Educational Officers are directed to issue necessary guidelines on applying "**Nativity certificate**". Moreover, it is directed to create awareness among all types of Government School students on applying Nativity Certificate and to issue suitable directions to the Head Masters/Headmistress and Teachers of Government and Government-Aided Primary, High and Higher Secondary schools in your jurisdiction. Further, an action taken report on this above mentioned issue will have to be submitted to this Office for onward transmission to the Government.


Director of School Education

To

All the Chief Educational Officers and
District Educational Officers.

Sd/-
25/2/21

3/3

Copy submitted to

Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai- 600 009.

High Court Direction
Most - Immediate/By Messenger

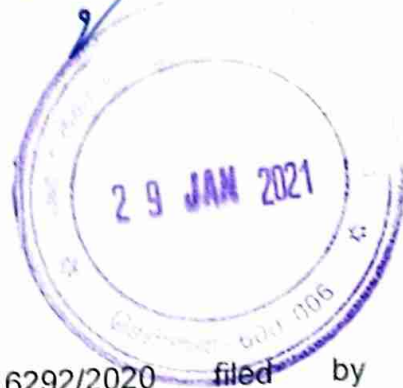


004873
School Education Department,
Secretariat,
Chennai-9.

Letter No.22702/GL-1(2)/2020- 1, dated 23 .01.2021

From
Thiru. Dheeraj kumar, I.A.S.,
Principal Secretary to Government.

To
✓ The Director of School Education, Chennai -6(w.e),
Director Matriculation Schools, Chennai -6.(w.e).



Sir,

Sub: School Education - W.P.No.16292/2020 filed by
Minor Vardhini Parthasarathy before Hon'ble High Court of
Madras with a prayer to issue a Nativity certificate to the
petitioner without undue delay - Directions issued -regarding.

Ref: Orders of the Hon'ble High Court of Madras in dated 20.112020
in W.P.No.16292 of 2020.

The Hon'ble High Court of Madras W.P.No.16292 of 2020 dated 20.112020
has issued the following direction.(copy enclosed)

"The Principal Secretary, School Education Department, Government of Tamil Nadu, shall issue suitable directions to the officials and teachers of the School Education Department to create awareness among the students of High Schools and Higher Secondary run by the State Government, Government Aided and Private Schools, be it State Board or the Central Board, to apply for the mandatory certificates to pursue higher education, at least in the beginning of the year, in which, the students may seek higher education, which would avoid these kind of matters being decided at the eleventh hour and also the students do not suffer mental agony and distress."

2. I am directed to request you to take necessary immediate action on the above direction of Hon'ble High Court of Madras dated 20.11.2020 in W.P.No.16292 of 2020 and to issue suitable instruction to the officials and teacher under your control in this regard and send the action taken report to the Government.

Yours faithfully,

for Principal Secretary to Government.

(B-8)
25/1/2021

35502/MCA/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.16292 of 2020
and W.M.P.No.20381 of 2020

Vardhini Parthasarathy

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
3. The Secretary,
National Medical Committee,
Pocket 14, Sector 8,
Dwaraka, New Delhi-110 077.
4. The Tahsildar,
Alandur Taluk Office,
1st Main Road, Nanganallur,
Chennai-600 061.

.. Respondents

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the fourth respondent comprised in application TN-3202010134102 dated 13.10.2020 (the impugned letter) wherein, the petitioner's application for Nativity Certificate was rejected on the reason "based on VAO and RI report" and quash the same as illegal and arbitrary and consequently, direct the fourth respondent to issue a Nativity Certificate to the petitioner without undue delay.

For Petitioner : Mr.Sathish Parasaran, Senior Counsel
for M/s.N.V.Balaji

Form 0003274

35502
04/12/2020

For Respondents

:Mr.V.Shanmugasundar,
Special Government Pleader
for RR1 and 4

Mr.Abdul Salaem for R2

Mr.M.S.Seshadri for R3

O R D E R

The petitioner, who is a medical aspirant, laid challenge to the order of the fourth respondent dated 13.10.2020 rejecting the Nativity Certificate in application TN-3202010134102 "based on VAO and RI report" as illegal and arbitrary and consequently, to direct the fourth respondent to issue a Nativity Certificate to the petitioner without undue delay.

2. The petitioner was born on 17.04.2002 in Hyderabad, where her maternal uncle was working, in whose house her mother stayed for delivery. The petitioner's mother was diagnosed with cancer forcing them to move to Chennai for undergoing treatment at Adyar Cancer Institute. From the year 2004, the petitioner along with her mother was to stay with the petitioner's maternal grandmother at Bangalore, where her mother breathed last on 03.09.2006. The petitioner was four years old at that time. The petitioner was to stay with her maternal grandmother and uncle at Bangalore till 29.02.2016 and to complete 8th Standard. When her maternal uncle moved to Srirangam, Tiruchirappalli in March 2016, she had to come over with them to pursue her studies from 9th Standard. The petitioner claimed that since March 2016, she has been living in Srirangam. While so, her name has been included in the ration card held by her paternal grandfather in Nanganallur, Chennai. Besides the ration card, she was given Aadhar card bearing No.9674 5676 0872 containing the said address of her paternal grandfather.

3. The petitioner states that she, having lost her mother to cancer, was always ambitious to become a Doctor. She passed the National Eligibility-cum-Entrance Test (NEET) by securing 575 marks out of 720 in her maiden attempt. The petitioner fulfils all eligibility criteria for seeking admission in MBBS/BDS Course, such as, age, citizenship, marks in school subjects and also NEET, etc. One other criterion to seek admission in medical courses in the Tamil Nadu State is that the candidate must be a native of Tamil Nadu. The clause governing "Nativity", as stated in the Prospectus is relevant and the same is extracted hereunder:

"4h. Candidates who are Native of Tamil Nadu,
but have studied from VI Standard to XII Standard

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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 parents should be enclosed to claim Communal Reservation. In case, parents are not literate, then No Graduation Certificate for parents/First Graduation Certificate of the candidates, from the Revenue Authority of competent jurisdiction should be submitted to substantiate their parent's place of birth in Tamil Nadu along with the above mentioned certificates. If the candidates do not submit the above mentioned certificates, then the candidate's application will be summarily rejected."

4. As per the above condition, the petitioner has to submit the nativity certificate along with the other documents and hence, she submitted an online application bearing No.TN-32020100810025 on 08.10.2020 with the fourth respondent. The said application was rejected on the same day on the ground that she did not furnish the birth certificate. Attaching the birth certificate, she again applied vide application No.TN-3202010134102 on 13.10.2020, which was rejected stating "based on VAO and RI report", which is impugned in this writ petition.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing on behalf of the respondents.

6. It is the submission of the learned counsel for the petitioner that both the parents of the petitioner were born and brought up in Chennai and they have completed their education till post-graduation in Chennai, which is more than the stipulated period of five years. The father of the petitioner was issued with the nativity certificate dated 08.10.2020, which would support the case of the petitioner, with respect to her nativity. According to the learned counsel for the petitioner, the petitioner cannot claim the nativity of any other State, in view of her birth and her stay in other States, on account of the calamity in the family and thus, the impugned order makes the petitioner "Stateless person". It is objected by the learned Special Government Pleader that the nativity certificate of the father was obtained very recently only for the purpose of creating document in support of the nativity claim of the petitioner. The learned counsel for the petitioner also

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, etc. 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.

2. a) The applications for these should bear one Rupee Court Fee stamp. These certificates are issued for getting admission in the school and to seek job opportunities.

e) Nativity Certificate is issued subject to the applicant proving continuous residence for five years and above.

f) Residence certificate is issued if one lives in a place for more than one year.

3. The following guidelines have been prescribed for issue of Nativity Certificates."

11. This Court considered the above said Government Order in the order dated 11.11.2020, in W.P.No.15393 of 2020 (Varsha Parappa Totagi V. The District Collector, Chennai District) and observed the following :

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11. When the petitioner has satisfied the other criteria, the continuous education of five years preceding the application, cannot be a ground to reject the same. It is not the will or wish of the petitioner to go and study outside the State. It was only due to the avocation of her father, she had to be away from Tamil Nadu. If this rule is to be strictly applied, the wards of the parents, who are born, brought up and living for generations together in Tamil Nadu, if he/she on account of his/her jobs had to move to various States, will deprive the son or daughter of the soil, their nativity. If the parents are staying outside Tamil Nadu on account of their avocation, it does not mean that they disown their native State. Perhaps that is the reason why in the guidelines in G.O. Ms. No.2388, in clause (7), it is mentioned as follows:

"(7) The birth place of the parent, place of residence of the parent or grand father, permanent assets, mother tongue, place of education, place of marriage of the applicant/parents, the period of stay in and outside Tamil Nadu may also be taken into consideration before issuing nativity certificate."

The above said clause itself is only to enable those parents, who have to stay outside the State for various reasons to be considered as a native of Tamil Nadu.

12. In this case, the birth place of one of the parents has been given as Tamil Nadu. Mother is having a permanent residence in Chennai. She also has a permanent asset and her mother tongue is admittedly Tamil, the mother had studied in Tamil Nadu and her marriage was solemnised in Chennai and they stayed here till the petitioner was 6 or 7 years old. If the said criteria are considered by the authorities, the petitioner has to be considered only as a native of Tamil Nadu and she is entitled to a Nativity Certificate. When the guidelines issued by the government are so complete and elaborate, the second respondent ought to have considered the same in its letter and spirit.

13. The Nativity Certificate is mandatory for applying for medical seat, only in order to curtail the seats that should go to the residents of the State and not to be hijacked by other State students. That is the reason, the authorities, while issuing the Nativity Certificate, have to consider such aspects in mind and consider the applications. In

this case, when the permanent residence of the petitioner and her parents is in Chennai and it was only for a temporary period, on account of his job he has gone to Dubai, if the petitioner is denied Nativity Certificate, it is not known, which other State in India, would accept them as their native and issue a Nativity Certificate. If the Nativity Certificate is not produced, such student may have to claim only those seats earmarked for "All India quota" and not under any other category, based on communal reservation etc. The Policy of the Government is only to disentitle the candidates belonging to other States or in other words, to give priority to the own State candidates i.e. Tamil Nadu quota.

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. As observed in the order dated 11.11.2020 above, when one of the parents of the candidate has been living out of the parent State on account of employment, etc., it cannot be stated that they lost the nativity of the State. It is pertinent to note that post LPG (Liberalization, Privatization and Globalization) from the year 1991, the persons have to move to various places, not only within the country, but outside the country to eke out a decent livelihood. Though on account of their avocation, they may get citizenship of other country, but their birth, on account of which, their nativity would not vanish and they always have their roots in the place of their birth. That may be the reason, Clause (viii), namely, "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" has been incorporated. The authorities cannot give a restrictive interpretation to the guidelines, but it should be stretched to give a constructive meaning. Even if the Tahsildars have doubt to expand the meaning, they could seek instructions from the higher officials of the Revenue Department, instead of making the applicants to run from pillar to post.

13. The objection of the learned Special Government Pleader that most of the documents pertaining to the claim of the nativity of the petitioner have been obtained recently and thus, the same could not be entertained. The said objection deserves to be overruled for the simple reason, firstly, that Clause (ii) of G.O.Ms.No.2388, dated 27.11.1990, relying upon which the nativity certificates have been issued by the revenue officials, mandates that "permanently residing for a period of five years should be supported by documentary evidence", which would have necessitated the petitioner to file the application seeking for the certificates required to be submitted for the claim of admission in MBBS/BDS Course.

14. The very purpose of issuance of the G.O.Ms.No.2388, dated 27.11.1990 is to protect and uplift the native students by giving them preference in admission and to avoid the natives of other soil to grab the opportunities of Tamil Nadu candidates. Though the jurisdictional Tahsildar has to issue the nativity certificate, since the house of the father of the petitioner is located within the jurisdiction of the fourth respondent and the petitioner, being the daughter, cannot be isolated from her father, and the fourth respondent cannot shirk his duty to issue the said certificate.

15. The present case is a classic example, where, the mental agony of the petitioner, a native by virtue of her parents, has been furthered, by mechanically dismissing the application of the petitioner. This Court is of the view that the G.O.Ms.No.2388, issued in the year 1990, i.e., on 27.11.1990, has to be revisited to suit the present scenario. Otherwise, the very intention of conferment of powers for the issuance of such certificates at the hands of the revenue officials would be lost.

16. In the result, the impugned order dated 13.10.2020 is set aside and the fourth respondent is directed to issue Nativity Certificate to the petitioner forthwith. The said exercise shall be completed on or before 23.11.2020. Thereafter, the petitioner shall be permitted by the second respondent to upload the certificate on or before 25.11.2020 and the second respondent is directed to consider the

petitioner under the Tamil Nadu State quota and give her ranking for counselling on that basis.

17. Considering the exigencies expressed by the petitioner and other similarly placed candidates before this Court, the Principal Secretary to the Government, Revenue Department, Government of Tamil Nadu and the Commissioner of Revenue Administration, are directed to suitably amend the G.O., and issue revised guidelines to meet the contingencies as that of the petitioner and others, as indicated above. This Court is also of considered view that the Revenue Department shall convene training sessions for the officials to enable them to exercise their power judiciously and take just decisions, just before the declaration of results of the public examinations leading to the filing of applications in large numbers seeking certificates like, income, nativity, etc., from the revenue officials.

18. The Principal Secretary, School Education Department, Government of Tamil Nadu, shall issue suitable directions to the officials and teachers of the School Education Department to create awareness among the students of High Schools and Higher Secondary Schools run by the State Government, Government Aided and Private Schools, be it State Board or the Central Board, to apply for the mandatory certificates to pursue higher education, at least in the beginning of the year, in which, the students may seek higher education, which would avoid these kind of matters being decided at the eleventh hour and also the students do not suffer mental agony and distress.

19. This writ petition is allowed accordingly. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy/

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

Em0003282

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2. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
3. The Secretary,
National Medical Committee,
Pocket 14, Sector 8,
Dwaraka, New Delhi-110 077.
4. The Tahsildar,
Alandur Taluk Office,
1st Main Road, Nanganallur,
Chennai-600 061.

Copy to :

5. The Principal Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
6. The Principal Secretary,
School Education Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
7. The Commissioner of Revenue Administration,
Chepauk, Chennai-600 005.

+lcc to Mr. Balaji, Advocate, sr no. 37459

W.P.No.16292 of 2020

GN(CO)
RMP(24/11/2020)