
(2011) 06 MAD CK 0292

In the Madras High Court

Case No : Writ Petition No. 23614 of 2010 and M.P. No's. 1 and 2 of 2010

Amal Vincent

APPELLANT

Vs

The Union Territory of Puducherry

RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0292

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : T. Murugesan, S.C. for D. Ravichander, for the Appellant; R. Syed Mustafa, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The writ petition filed by Amal Vincent is directed against the impugned order passed by the fourth Respondent in his proceedings No. 206-AMAL/STOM/T3/2010 dated 29.09.2010 and quash the same with consequential direction to the 4th Respondent herein, the Deputy Tahsildar (Revenue), Mahe to issue a Residence Certificate for five years as requested by the Petitioner in consonance with the Clause 5.1.17 mentioned in the information Bulletin issued by the 2nd Respondent.

2. Mr. T. Murugesan, learned senior counsel appearing for the Petitioner submitted that the Petitioner is a resident of Mahe which is one among the four regions of Union Territory of Puducherry and the Petitioner's mother Valasamma Vincent is running a clinical laboratory in the name and style of M/s Medical Investigation Centre, Mahe from the year 1989. While so, the Petitioner's mother had also applied to the Assistant Inspector of Labour, seeking renewal of the Registration Certificate for running the Lab and thereupon, the Assistant Commissioner of Labour also issued a certificate on 05.10.2004. Consequently, a certificate for renewal has also been obtained periodically till 2010. On that basis, the learned Senior counsel appearing for the Petitioner argued that Form III issued in favour of the Petitioner's mother will clearly speak of the fact that the

Petitioner's mother is doing business in Mahe for the past 16 years and this will in turn stand as a testimony in favour of the Petitioner that they are the residents of Mahe.

3. Adding his submission, the learned Senior counsel further stated that the Petitioner was born on 04.04.1992 at Mahe and his birth was registered in the office of the Municipality of Mahe. Subsequently, he had his education in the Union Territory of Puducherry in the region of Mahe. Again, he stated that the Petitioner had his primary schooling at Avila Primary School, Mahe from 1995 to June 2002. Thereafter, he studied in Jawaharlal Nehru Government Higher Secondary School at Mahe from V. standard to X standard (2002-2008) and his admission number was 13201. Further he continued his higher secondary education in the same school from 2008-2010 and on that basis, it was further submitted that the Petitioner's mother and the Petitioner are voluntarily residing in Mahe for the past 15 years. With this background, he further stated that on completion of schooling, the Petitioner had secured an aggregate of 99%, viz., 1190/1200 marks from the Higher Secondary examination conducted by the HSC Board of Kerala on behalf of Government of Puducherry and thus, being an outstanding student, he has got a prospective chance to get an admission for a course in medicine and Engineering in Union Territory of Puducherry. While so, the 2nd Respondent issued an information Bulletin for the year 2010-2011 asking the desirous candidates to apply for any professional courses by getting a residence certificate in terms of Clause 5.1.7. When he approached the 4th Respondent for issuance of Nationality and Residence Certificate, the 4th Respondent after thorough enquiry, issued the Nationality and Residence Certificates certifying that the Petitioner was residing for the past five years in the Region of Mahe in Certificate dated 25.06.2008. Subsequent to the issuance of the certificate dated 25.06.2008, the Petitioner once again approached the 4th Respondent for issuance of Residence Certificate. Again, the 4th Respondent/the Deputy Tahsildar (Revenue), Mahe without appreciating the case of the Petitioner in proper perspective, had issued a certificate in its proceedings in No. 6007/STOM/T3/10 dated 17.06.2010 in and by which he has issued a certificate certifying that the Petitioner is residing in Mahe since three years only. Since this certificate dated 17.06.2010 is running contrary to his own certificate dated 25.06.2008, the Petitioner submitted a representation to the 3rd Respondent, the Regional Administrative Officer, Mahe on 28.06.2010 placing several other documents to substantiate his case that he has been voluntarily residing in Mahe for more than a decade. The 3rd Respondent, in his communication dated 25.06.2010 had rejected his request for issuance of the Residence Certificate for five years. The 3rd Respondent has issued the said order without appreciating the real fact but he had substantiated his stand for issuance of rejection order dated 25.06.2010 on the basis that he had reached a conclusion for issuance of certificate dated 25.06.2010 only on the basis of the discrete enquiry which let the 3rd Respondent to believe that the Petitioner was not residing in the Mahe region for the past five years.. The Petitioner has challenged the said order in

WP. No. 14220/2010 and this Court, by holding that the 3rd Respondent had issued the order dated 25.06.2010 only on the basis of the discrete enquiry which is unfair, unreasonable and unjustifiable and violation of principles of natural justice, once again, this Court had directed the 4th Respondent to decide the matter afresh on the basis of the order passed by this Court in WA. No. 2879/2003 dated 21.10.2003. Thus the matter was remitted back by setting aside the impugned orders passed by the 3rd Respondent therein dated 30.06.2010 and 25.06.2010. An yet another direction was given to consider the Petitioner's application for issuance of Residence Certificate afresh in the light of the guidelines number 6260/C2/Rev/2003 dated 06.10.2003 and G.O. Ms. No. 48 dated 12.12.2002 Revenue Department, Puducherry and also in the light of the documents to be produced on the side of the Petitioner only after giving adequate opportunity to the Petitioner therein for being heard.

4. In the light of the order passed by the learned Single Judge in WP. No. 14220/2010 dates 25.08.2010, after due enquiry and physical verification by the VAO, Mahe, a Revenue Inspector on ascertaining the fact that the Petitioner and his family are not having continuous residence for the past 5 continuous years preceding the date of application, as stipulated in the guidelines for the issuance of the Residence Certificate, viz., Guidelines number 6260/C2/Rev/2003 dated 06.10.2003 and G.O. Ms. No. 48 dated 12.12.2002 Revenue Department, Puducherry, once again rejected the request of the Petitioner for the issuance of the Residence Certificate. Challenging the order, Mr. T. Murugesan, learned Senior counsel appearing for the Petitioner placed three-fold submissions-Firstly, he argued that the 3rd Respondent should have considered a vital fact that the Petitioner's mother was issued with the Voter's Identity Card by the Election Commission of India in the year 1995. Yet another piece of vital documents, viz., the Driving License issued by the Regional Transport Office and the ration card issued by the Food Supplies Department of Puducherry, conjointly shows the case of the Petitioner that the Petitioner and his parents are residing in Mahe for the past 15 years, therefore according to him, both the 3rd and the 4th Respondents are stopped from issuing a different order which are going against the earlier order issued by the 4th Respondent, inasmuch as the 4th Respondent himself has issued a certificate in the year 2008 certifying that the Petitioner was residing in Mahe for the past five years. Therefore, it was pleaded that when the 4th Respondent himself has admitted the fact that the Petitioner is residing for the past five years preceding 2008, the impugned certificate issued by the 4th Respondent confining the years of stay only for the past three years, is absolutely contradictory. On that basis, he prayed for setting aside the impugned order with a direction to issue Residence Certificate for five years in accordance with law.

5. Secondly, he argued that when the Petitioner was issued with a Residence Certificate in the year 2008 certifying that the Petitioner is residing in Mahe for the past five years, the very same fourth Respondent is legally stopped from issuing the impugned order in 2010 stating that the Petitioner is residing only for

the past three years. On these two submissions, he prayed for setting aside the impugned order by placing his argument that the latest impugned order issued by the 4th Respondent confining the Residence Certificate to three years is absolutely unwarranted as it is going against his own earlier residence certificate certifying the case of the Petitioner that he lived for about 5 years in the same place.

6. A detailed counter affidavit has been filed. When there was a direction given by this Court in WP. No. 14220/2010 dated 25.08.2010, remitting the matter back to the 4th Respondent, the Deputy Tahsildar, Revenue, Mahe, to consider the issuance of Residence Certificate in the light of the guidelines along with the documents produced on the side of the Petitioner and after giving adequate opportunity to the Petitioner for being heard, a fresh application for residence certificate was invited from Amal Vincent the Petitioner herein and also for personal appearance through notice Number 206-AMAL/STOM/T3/2010 dated 29.02.2010. In response to the notice issued by the 4th Respondent, fresh application for residence certificate was submitted by the Petitioner on 22.09.2010 in and by which, a request was made for issuance of residence certificate for a continuous period of five years. Thereupon the 4th Respondent by considering the case of the Petitioner with all documentary evidence and after the enquiry, by following the guidelines issued by the Government of Puducherry coupled with the orders passed by the judicial authorities, passed the present impugned order dated 29.09.2010 in and by which, the certificate was given that the Petitioner had resided only for three years preceding the date of submitting the application. The said order is under challenge by the Petitioner. As per the G.O. Ms. No. 48 dated 12.12.2002, Revenue Department, Puducherry, for issuance of a Residence Certificate in the Union Territory of Puducherry, any person claiming residential certificate should comply the actual and physical residence, but mere possession of evidence like ration card, EPIC or previous certificate are not the sole criteria for issuance of the Residence certificate. On the other hand, the candidates claiming the Residence certificate must be an ordinary resident of Mahe region for the past five continuous years and since the Petitioner was not continuously residing for five years, he was not entitled for any relief as prayed for.

7. Mr. R. Syed Mustafa learned Special Government Pleader (Puducherry) stated that the guidelines issued by the Secretary (Revenue), Puducherry, in order No. 62660/C2/Rev/2003 dated 06.10.2003 and guideline No. 6260/C2/Rev/2003 dated 06.10.2003 and G.O. Ms. No. 48 dated 12.12.2002, Revenue Department, Puducherry. Ms. No. 48 dated 12.12.2002 also need to be considered which say that the candidate or whose parent (either mother or father or both) or Guardian (in the case of children who lost both the parents) has been actually and physically residing continuously in the Union Territory for at least five years preceding the date of application, that apart, mere stay in places such as residential hostel would not amount to residence and further, the mere possession of Ration Card, EPIC Card or previous Certificate are not the sole

criteria for issuance of the Residence Certificate. Therefore, the learned Special Government Pleader (Puducherry) submitted that by applying the guidelines issued by the order No. 6260/C2/Rev/2003 dated 06.10.2003 and G.O. Ms. No. 48 dated 12.12.2002, Revenue Department, Puducherry, mere stay in places such as residential hostel would not amount to residence and mere possession of evidence like ration card, EPIC card and previous certificate are not the sole criteria for the issuance of the Residence Certificate. On the basis of the guidelines for issuance of residence certificate, the application has to be initially enquired by the VAO and thereafter, a report shall be submitted to the Revenue Inspector who in turn shall report to Deputy Tahsildar/Tahsildar who may issue the certificate. On that basis, the application submitted by the Petitioner seeking the residence certificate for the past five years preceding the date of application, for the purpose of applying to the professional courses through CENTAC on 03.06.2010, was duly considered by the VAO of Mahe after personal enquiry with the Petitioner, along with Field enquiry and when the reports revealed the residence status of the Petitioner that the Petitioner had not resided in Mahe region for the past five continuous years preceding his date of application dated 03.06.2010 and when the finding of the Report shows that he had resided along with his parents at "Akshay Amrut" behind Sri Krishna temple, Choodikkotta, Mahe for the past three months as a tenant, it was argued, he is not entitled to get any Residence Certificate.

8. Heard the parties on both sides.

9. This is the second round of litigation for issuance of Residence Certificate for the period of five years by the 4th Respondent / Deputy Tahsildar, Mahe. In the first round of litigation, if we look at the order passed by this Court in WP. Nos. 14220 and 14413/2010 dated 25.08.2010, a reference was made therein that the very same fourth Respondent, Deputy Tahsildar, Mahe, had issued a similar Residence Certificate on an earlier occasion during 2003 to the Petitioner herein which has been supported by another certificate issued by the school authority that the Petitioner and his parents have been residing in Mahe for a considerable time, i.e., for more than 5 years preceding the date of application for admission to MBBS course. That apart, as per the guidelines issued by the Revenue Department, that mere possession of evidence like ration card, EPIC card and previous certificate are not the sole criteria for the issuance of the Residence Certificate, the arguments advanced by the learned Senior Counsel appearing for the Petitioner saying that the 4th Respondent is stopped from issuing the impugned order as he himself had issued a certificate in 2008 certifying that the Petitioner was residing for the past five years in Mahe region and the very same 4th Respondent has completely overlooked his own earlier order and wrongly issued the impugned certificate certifying that the Petitioner is residing only for three years preceding the date of application in the year 2010, needs a consideration by the 4th Respondent. Naturally, a question might arise when he issued another certificate dated 29.09.2010 he should not have issued the certificate stating that the Petitioner is residing only for three years i.e., from

2007-2010, which goes against his own earlier certificate issued in the year 2008. But this argument has not been supported by any evidence produced by the Petitioner. The documents filed in support of the writ petition does not contain any certificate of residence issued by the fourth Respondent in the year 2008. However, if the ground (c) taken by the Petitioner in the affidavit is correct that the Petitioner who was already issued with the certificate of residence in the year 2008 that he was residing for 5 years preceding the date of his application, naturally he is entitled to get the residence certificate for 5 years in the year 2010. But the finding given by the 4th Respondent shows that in the Electoral Roll in 2010 (s11) Kerala as per part II of 20-Vatakara Assembly Constituency under No. 3-Vatakara Lok Sabha Constituency, Tmt. Valasamma, W/o. Vincent Correya has been included vide SI. No. 111. Her photograph was also included therein. Further, when her Electors Photo Identity Card Number is indicated as CCZ 1825306, it appears that she has not surrendered his old photo Identity card issued by Mahe Assembly Constituency while including her name in Vatakara Assembly Constituency. Therefore, it appears that the Petitioner's mother has also included her name in 29, Mahe Assembly Constituency during Electoral Roll Revision in November 2008, which was published in 2009, vide SI. No. 878 of Part-3 of Mahe Assembly Constituency. The Petitioner's mother's name still reflects in the draft Electoral Roll 2010 vide SI. No. 5 of Part-3 of 29-Mahe Assembly Constituency. This clearly shows that she has included her name willfully in Kerala state and Union Territory of Puducherry for enjoying all the benefits from both the States. This stand has not been contravened anywhere by the Petitioner sufficiently to reach a conclusion in favour of the Petitioner. Even in the website of Kerala State for admission to professional degree courses 2010, under the details of candidates, Thiru Amal Vincent's name is reflected and his application Number is indicated as 1121863 and his nativity is shown as Keralite. In the website of admission to Kerala Christian Professional College for the year 2010 under the details of candidates, Thiru Amal Vincent's name is reflected and his application number is indicated as 10110569. In this website his permanent address is shown as Angha villa, Cheenikham Poyil, Azhiyoor P.O., Kozhikode District PIN 673 009. The same address has been repeated in the column communication address. This fact is further verified by another document issued by the RTO, Kozhikode on 19.05.2008. As per the said document, the husband of the Petitioner's mother name one Vincent Correya own a first hand motor cycle bearing Registration No. KL-11-AB-3370 would go to show that they are the residents of Kerala and not the residents of Mahe region in the year 2008.

10. When I looked at Paragraph No. 16 of the impugned order that transpired that when the Respondents held a discreet enquiry with the nearby residents of No. 3/160, Anagha Villa, Karivayal, Azhiyoor Village of Vatakara Taluk of Kozhikode District, Kerala State, it was stated that the Petitioner along with his family have resided at the above address for more than 5 years and on the basis of the discrete enquiry held behind the back of the Petitioner when the earlier impugned order was passed by the Respondent that the Petitioner was not

residing in Mahe up to the middle of 2007, this Court on earlier occasion differing with result of the discrete enquiry had already remitted the matter by its order dated 25.08.2010 passed in W.P. Nos. 14220 and 14413 of 2010 discussing with the findings arrived by the Respondent on the basis of discrete enquiry to hold a fresh enquiry after giving a proper notice to the Petitioner and decide the case of the Petitioner for issuance of residence certificate in the light of the guidelines issued in guideline No. 6260/C2/Rev/2003 dated 06.10.2003 and G.O. Ms. No. 48 dated 12.12.2002, Revenue Department, Puducherry and also in the light of the documents produced on the side of the Petitioner. However, the only argument placed before this Court that the 4th Respondent, the Deputy Tahsildar, Mahe have issued the present impugned order restricting the residential certificate only for three years is going contrary to the similar residential certificate issued by the very same 4th Respondent in 2008 cannot be made available. For the simple reason that the residence certificate issued in favour of Amal Vincent during June 2008 by the Deputy Tahsildar (Revenue), Mahe has already been cancelled after a detailed enquiry since the residence certificate has been obtained on false representation of facts. So, when the earlier certificate issued by the fourth Respondent in 2008 has been cancelled and that is not under challenge, it is not open to the Petitioner to say that he was issued with the residential certificate in 2008 certifying that he has resided in Mahe region for five years preceding 2008. Therefore, to conclude it is more appropriate to recapitulate few facts. In the website of Kerala Government for admission of professional degree course 2010 under the details of candidates since the Petitioner is shown as a native of Keralite unless the Petitioner himself has given his particulars, the website of Kerala Government for admission to professional degree course for 2010 would not have shown him as Keralite. Secondly, the certificate issued by the Regional Transport Office, Kozhikode on 19.05.2005 also shows that the father of the Petitioner Vincent Correya has purchased a motor cycle with Registration No. KL 11 AB 3370. Unless the Petitioner's father has shown his residential proof of Kozhikode, the Regional Transport Officer at the time of registration of the motor cycle would not have given the registration number as KL 11 AB 33770. Earlier, the Petitioner Amal Vincent himself has written that he has resided at Anagha Villa, Cheenikkam Poyil, Azhiyoor Village ,Kozhikode District, Kerala State from the year 2005-2007. Thirdly, when the Petitioner was studying X standard, he has made an application form for Permanent Integrated Certificate during the year 2007 as per Serial No. 3B of the Application form and the Petitioner has given his address stating that for the past ten years, he has resided at Anagha Villa, Cheenikkam Poyil, Azhiyoor Village, Kozhikode District, Kerala State from the year 2005-2007, which shows that the Petitioner was not resident of Mahe region for the past five continuous years.

11. The case of the Petitioner further goes to say that as per Clause 2.6, the candidate or whose parents have been continuously residing in the Union Territory for five years preceding the date of application are entitled to get the

residence certificate as required under Clause 5.1.7. Therefore, it is relevant to extract Clause 2.6 and 5.1.7. of Information Bulletin.

2.6. Candidates belonging to Pondicherry UT are eligible for admission to all the degree courses. A candidate is considered as a Pondicherry UT candidate if he/she satisfies at least one of the following domicile criteria.

A) Those candidates or whose parents have been residing continuously in the Pondicherry UT at least for 5 years immediately before the date of application.

b) Those who have passed SSLC/HSC or any other public examination and for that purpose had undergone academic studies continuously for 5 successive classes immediately preceding the qualifying examination (including the year of the qualifying examination) in recognized educational institution(s) located in Pondicherry UT and having their residence in Pondicherry UT for 5 years continuously during that period.

5.1.7. Candidates claiming admission under this category should be residents of the respective region, for a continuous period of five years, preceding the date of application. As per the above clause, to claim admission under special allocation from Puducherry, Karikal, Mahe and Yanam regions, candidates should have studied in the recognized schools located in the respective regions continuously for three years, immediately preceding the qualifying examination (including the year of the qualifying examination), mere stay in places such as residential hostel would not amount to residents. They should produce residence certificate from the competent authority not below the rank of Deputy Tahsildar.

12. Indeed, the above issue has been considered by this Court in W.A. No. 1151 of 2006, dated 29.08.2007, wherein it was held that though a candidate gets a residence certificate in terms of Clause 2.6 that he stayed in the Union Territory of Pondicherry, while studying in any of the institution situated in the Territory of Pondicherry as Hosteller, unless a residence certificate is issued certifying that he is resident of Mahe Region, he is not entitled to get the benefit of special regional allocation under Clause 5.1.7. Therefore, though the Petitioner has received earlier a residence certificate issued by the Revenue Authorities, subsequently, VAO and other Revenue Authorities have verified his permanent residential status under the Region of Pondicherry and finally came to the conclusion that he is not permanent resident of Pondicherry, therefore, no interference can be called for against the impugned order.

13. Let me see the admitted case of the Petitioner and the Respondents. The writ Petitioner Amal Vincent was born in Mahe on 04.04.1992 and his birth was registered in the records of the Municipality of Mahe. He also did his primary schooling at Mahe from 1995 to June 2002. Thereafter, he continued his studies in Jawaharlal Nehru Government Higher Secondary School at Mahe from V. Standard to X standard during 2002-2008 and his admission No. was also 13201. After X standard, he continued his higher secondary education in the same school during 2008- 2010. These facts have not been disputed by the

Respondents in the counter. This stand has been further fortified by the Residence Certificate issued by the fourth Respondent, the Deputy Tahsildar (Revenue), Mahe by Certificate dated 25.06.2008 wherein the fourth Respondent at the time of issuance of the Residence Certificate categorically certified to the effect that the Petitioner was residing for the past five years in the region of Mahe. This indicates 5 years preceding from the date of issuance of the Residence Certificate dated 25.06.2008, the Petitioner was residing at Mahe. Secondly, the further Certificate admittedly issued by the fourth Respondent in the year 2010 also shows that the Petitioner resided in Mahe region for about three years preceding the date of issuance of the second Residential Certificate but the one more fact remains to be seen is the Petitioner's father submitted a Surrender Certificate issued by the Taluk Supply Officer/City Rationing Officer, Taluk Supply Office, Vatakara, Kozhikode District, Kerala State dated 03.01.2008 which shows the age of the Petitioner Amal Vincent and his sister Anagha as 06 and 04 respectively. This also goes to show that when the Petitioner was residing in the state of Kerala she was six years old. That apart, the website of Kerala Government for admission to professional degree course 2010 under the details of candidates (Provisional) Thiru amal Vincent's name his Application Number was shown as 1121863. Further, it indicates the nativity of the Petitioner as Keralite. In the website of admission to Kerala Christian Professional College for the year 2010, under the details of candidates, Thiru Amal Vincent's name is reflected and his Application Number is indicated as 10110569 and his permanent address is indicated as Anagha Villa, Cheenikham Poyil, Azhiyoor P.O., Kozhikode District-673 309. The same address has been repeated under the column of Communication address. Even in the present case, the Petitioner Amal Vincent himself has written that he has resided at Anagha Villa, Cheenikkam Poyil, Azhiyoor P.O., Kozhikode from the year 2005-2007. His own particulars given by the Petitioner vividly shows that he was not resident of Mahe region for the past continuous five years. It is not out of context to mention a vital fact that Puducherry being a Union Territory is dependent on the Government of India for fund allocation. The Government of Puducherry is spending about Rs. 15 crores per year towards reimbursement of tuition fees for students studying in private college through Government quota. Further, the Union Territory of Puducherry consists of four regions viz., Puducherry, Karaikal, Mahe and Yanam (all are erstwhile French colonies). The regions of Puducherry and Karaikal are surrounded by State of Tamil Nadu whereas Mahe is surrounded by Kerala and Yanam is surrounded by the State of Andhra Pradesh. Hence, naturally, the residents of the neighbouring states want to get the Residence Certificate of Union Territory of Puducherry for the purpose of getting the benefits from the Government of Puducherry to its residence. Therefore, from these facts, it can be seen that when the Petitioner himself in the website of Kerala Government for admission to professional courses-2010 has indicated his nativity as Keralite his further attempts to make the residence of Puducherry by producing various certificates, has been properly considered by the Revenue Authorities. Though the records produced by the Petitioner shows that he has resided in both the

places viz., in the region of Mahe and in the state of Kerala, he has failed to produce any substantial evidence to prove his residence of five continuous year in Mahe region. One another fact also needs mention herein is that the Petitioner Amal Vincent had studied in Mahe region during the above said period and during that time, he had stayed along with his family in their own house at Azhiyoor at Kerala State which is 1.5 Kms. away from the school where he studied. In view of that, the Petitioner was not issued with Permanent Integrated Certificate. A mere perusal of the Report form for issue of Permanent Integrated Certificate shows that the then Village Administrative Officer, Mahe, the Revenue Inspector and the then Deputy Tahsildar (Revenue), Mahe have rejected the application of the Petitioner for Permanent Integrated Certificate stating that he was staying only five months in Mahe region.

14. In this view of the matter, I do not find any merit in the writ petition and the writ petition stands dismissed. No costs. The connected miscellaneous petition is also dismissed.