

(2020) 10 SHI CK 0117

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3517 Of 2020

Ashwani Kumar & Others

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 21

Citation : (2020) 10 SHI CK 0117

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Suneel Awasthi, Hemant Vaid, Ashwani Sharma, J.S. Guleria

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The petitioners, by way of the extant writ petition, are seeking the following substantive reliefs:

"(i) Writ in the nature of certiorari may kindly be issued to quash the decision taken in regarding application No. BH2020825262446882 which was conveyed to the petitioners by S.M.S. dated 28.08.2020.

(ii) Writ in the nature of mandamus may kindly be issued directing the respondent's authorities to issue the bonafide Himachal certificate to the petitioners in a time bound manner."

2. Tersely, the facts, as per the petitioners, encapsulated in the petition, essential for adjudication of this petition, are that petitioner No. 1, Shri Ashwani Kumar, since his birth continuously residing in Village & Post Office Nerwa, Tehsil Nerwa, District Shimla, H.P. and completed his education, upto Graduation, in the State of Himachal Pradesh. Petitioners No. 2 and 3 are sons of petitioner No. 1 and since their birth, they are also residing with petitioner No. 1 on the above address. Father of petitioner No. 1 served in Himachal Pradesh State Electricity

Board, till his demise, and thereafter, sister of petitioner No. 1 was given compassionate employment in the above Board. Petitioner No. 1, with a hope to get admitted his sons, i.e., petitioners No. 2 and 3, in Army School, for the academic session 2021-22, approached the said School and came to know about requirement of 'bonafide Himachali Certificate', as one of the conditions, amongst others, for admission. Thus, petitioner No. 1, by medium of two different applications, alongwith apt documents, approached respondent No. 4 (Tehsildar, Nerwa (Chopal), Shimla, H.P.), for issuance of 'bonafide Himachali Certificates', but both the applications were rejected. Precisely, the petitioners, through the extant petition, are seeking indulgence of this Court upon the arbitrary rejection of the applications by respondent No. 4, for issuance of 'bonafide Himachali Certificates'. Lastly, it is prayed that the writ petition be allowed and respondents/State be directed to issue relevant 'bonafide Himachali Certificates' in favour of petitioners No. 2 & 3.

3. Conversely, respondents No. 2 to 4, by way of filing extensive and detailed reply to the extant petition, resisted and denied the claim of the petitioners. As per the respondents, the applications of petitioners No. 2 and 3 were rejected by respondent No. 4, as the same were received with Adhaar Card and copy of family register only and certificate of concerned Pradhan of Gram Panchayat or local authority was not attached with the applications, which eventually formed reason for rejection of the applications. The respondents also took doctrinaire stand that the petitioners, after rejection of their applications, did not, within statutory period of 30 days, as contemplated through amendment made in Chapter 28, Para No. 28.21 of the Himachal Pradesh Land Records Manual, 1992, by the Government, vide Notification No. Rev.B(3)-1/2004- vol-1, dated 20.12.2010, make appeal to the concerned Sub Divisional Officer (Civil), so rejections have attained finality, being unchallenged. On this ground, respondents sought dismissal of the extant writ petition.

4. Respondents No. 2 to 4 further contend that upon re-filing of the applications alongwith apposite documents, 'bonafide Himachali Certificates' were issued in favour of petitioners No. 2 and 3 on 14.09.2020 and 15.09.2020, respectively.

5. We have heard the learned counsel for the parties and gone through the records.

6. The learned counsel for the petitioners has argued that action of respondent No. 4 in rejecting the applications for issuance of bonafide certificates to petitioners No. 2 and 3 is highly arbitrary, illegal, unconstitutional, discriminatory and violative of Articles 14 and 21 of the Constitution of India, so the writ petition be allowed. He has further argued that during the pendency of the present writ petition bonafide certificates were issued in favour of petitioners No. 2 and 3. Per contra, the learned Additional Advocate General has argued that the applications of petitioners No. 2 and 3 were received with copies of Adhaar Card and copy of family register only and no certificate of Pradhan of Gram Panchayat concerned or local authority was attached, which resulted in rejection of the

applications. He has further argued that as the petitioners did not prefer any appeal, within the statutory period of 30 days to Sub Divisional Officer (Civil), now the extant writ petition is not maintainable. Lastly, he has prayed for dismissal of the writ petition.

7. At the very outset, it would be worthwhile to note that during the pendency of the present writ petition, petitioners No. 2 and 3 were issued 'bonafide Himachali Certificates' by respondent No. 4, when lacking condition was made good by the petitioners, so virtually petitioners' grievance stands fully redressed. However, as, in the present lis, a larger public interest is involved, and the Courts cannot shut its eyes to the apathy of law, which leads common people to run from pillar to post for issuance of certificates, through instrumentalities of State. Being a welfare State, the government is accountable for the individual and social welfare of its citizens. Orb of welfare State, with every passing day, is increasing and the Courts cannot allow the concept of welfare State to remain half-conscious or in text books only.

8. A well settled principle of law is 'ubi jus ibi remedium', which means 'where there is right, there is remedy'. The above settled principle, to some extent, seeks lateral support from another settled principle of law, viz., 'vigilantibus, non dormientibus, jura subveniunt', which means, the law assists those that are vigilant with their rights, and not those that sleep thereupon. In the present case, even the vigilant persons were knotted in unnecessary/superfluous/repetitive conditions, which, with the passage of time have lost sheen and become obsolete. In the present case, non-issuance of 'bonafide Himachali Certificates', to petitioners No. 2 and 3, which were purportedly required for admission in a school, by the respondents/State ultimately gave birth to the instant petition. So, keeping in view the larger public interest involved, to abridge the lacunae in the relevant rules and also to simplify the rigors of prerequisites for procuring different certificates from the government offices, we propose to frame comprehensive guidelines concerning the field.

9. Before passing the comprehensive guidelines, present conditions in vogue need to be highlighted, which are extracted as under:

- "(i) The person concerned is having permanent home in H.P.; or
- (ii) Residing in H.P. for a period of 20 years or above; or
- (iii) Having his permanent home in H.P. but living outside H.P. on account of his occupation."

The expression "person" occurring in condition (i) and impliedly occurring in rest of the conditions, applies to citizens and non-citizens alike. Perceptibly, out of the above enumerated conditions, only one, out of all, is required for applying for a 'bonafide Himachali Certificate, as expression "or" is purposely mentioned. Out of the above conditions, condition (ii) has supple connotations and it cannot be construed in a constricted manner, as has been done in the present case. Thus,

present is an example, as to how inflexibly the above condition was interpreted by the State authorities.

10. At this stage, it would be advantageous to evaluate literary meaning of expressions "bonafide" and "resident". "Bonafide" means in good faith or genuinely; in other words, it conveys absence of intent to deceive and expression "resident" means someone who lives at a particular place for a prolonged period or who has born there. Thus, in simple words, a bonafide resident is an individual who, genuinely, lives in a given place for a prolonged period or born there. However, "bonafide resident" in legal paradigm means an individual who has been determined by the local department of social services to be residing in the city or country where making application at the time of or immediately prior to medical treatment with the intent of remaining permanently in that locality and who did not establish residency for the purposes of obtaining benefits".

Therefore, a bonafide certificate simply establishes that holder of the same actually lives in a particular State. In other words, bonafide resident is a person who stayed in a particular location of a State and for a duration, which is required by the applicable statute(s).

11. After examining the above literary meaning, vis-à-vis, the relevant statute(s) in vogue, for acquiring bonafide certificate, one must be physically residing, for an uninterrupted period of 20 years within the State of Himachal Pradesh. Needless to say, those children, who are born in Himachal Pradesh and their parents uninterruptedly residing in Himachal Pradesh are automatically eligible for bonafide certificates.

12. Now, it would be profitable to highlight and extract the latest amendment in Chapter 28 of the H.P. Land Records Manual, 1992, which, as per the respondents, was notified by the Government vide Notification No. Rev.B. (3)1/2004-Vol-1, dated 20.12.2010, which is as under:

"Chapter:-28

Para 28. I shall be substituted as under:-

"28.1- The Tehsildar/Naib Tehsildar Mohal shal be the competent authority to issue SC/ST, income, backward class and bonafide/domicile Himachali certificates within their respective jurisdiction."

"Chapter 28,14-shall be substituted as under:-

Procedure for issuing Bonafide/Domicile Himachali Certificate. The applicant shall submit an application for obtaining Bonafide/Domicile Himachali certificate in Form-F along with a passport size photograph. The photograph shall be affixed on the certificate, to be issued on Form G, with the seal of the competent authority thereon.

The certificate shall be issued on the basis of report/inquiry of Patwari Halqua, certificates of Pradhan Gram Panchayat/President M.C./Executive Officer

Municipal Corporation concerned in accordance with the H.P. Govt. letter No. 12-7/73 SAD dated 18th August, 1972 and instructions of Govt. as per Appendix-D of this chapter further amended by instructions No. Per (AP-B) A(3)-1/2000-Vol-II dated 1st August, 2009. A register of certificates issued under this para shall be maintained in form R-1 and a photocopy of the certificate issued shall be maintained for record."

After para 28.19 the following new paras shall be added:-

"28.20-Cancellation of Certificate issued:-In case the issuing authority, either on a complaint or on receipt of information from any source, has reason to believe that any certificate has been issued wrongly, he shall after making such enquires and hearing such persons as considered necessary and affording a reasonable opportunity of being heard to the person to whom the certificate had been issued, cancel such certificate.

28.21 Appeal:- A person aggrieved by such order may within a period of 30 days file an appeal before the Sub-Divisional Officer (C) to whom the Tehsildar/Naib Tehsildar is subordinate and the Sub-Divisional Officer (C) after giving the parties an opportunity of being heard, reverse or confirm the cancellation order and such reversal or confirmation shall be final."

Both, the conditions and amendment (supra), are not under contest and constitutional validity of the same is also not under challenge, as no arguments qua the same have been addressed by either of the party. So, without touching the constitutional validity and reasonableness of the conditions and amendment (supra), we are of the considered view that no abstract standard/straight jacketed formula/general pattern can be laid down, which can be applicable to test the constitutional validity and reasonableness of the statute concerned or rules framed thereunder.

13. Be that as it may, upon a harmonious reading of conditions and amendment, extracted hereinabove, the same cannot be said to be unreasonable. Otherwise also, to test the fact that the person has a bonafide intention to reside in Himachal Pradesh will be clear, if he is residing continuously in State of Himachal Pradesh for the last 20 years or more, as encapsulated in condition (ii) (supra). Moreover, the above extracted notification, qua amendment, states that if any one of the above extracted conditions is satisfied, the person will be considered as bonafide resident of Himachal Pradesh. Now, as discussed hereinabove, condition (ii) (supra) has supple connotations, so any legally accepted document, declaring a person residing within the State of Himachal Pradesh, for the last 20 years or more, can be a strong and undeniable basis for issuing bonafide certificate to an individual.

14. A bare reading of the above extracted amendment is only germane, vis-à-vis, empowered authorities of the government to issue certificate(s), upon a report, for procuring 'bonafide Himachali Certificate' and these authorities are Patwari Halqua, Pradhan of Gram Panchayat, President M.C. and Executive

Officer Municipal Corporation. Thus, a combined reading of the above amendment and condition (ii), i.e., "Residing in H.P. for a period of 20 years or above", simply means that only Patwari Halqua, Pradhan of Gram Panchayat, President M.C. and Executive Officer Municipal Corporation are empowered to issue a certificate, upon a relevant report, for issuance of 'bonafide Himachali Certificate' and under condition (ii) a person should be continuously residing in the territory of Himachal Pradesh for the last 20 years. If condition (ii) is satisfied, then a person cannot be deprived 'bonafide Himachali Certificate'.

15. Now, the decisive question is that in case a person has revenue record in his/her name or in his/her father's name, then there is undisputed proof of residence, which is jointly called for by the issuing authority(ies), in the nature of a report of Patwari, but there may be many persons, who do not have any revenue record in their names. For such persons, we are of the opinion that document(s) establishing the factum of theirs' residing in the State of Himachal Pradesh for the last 20 years or more or his/her's being born in Himachal Pradesh, can also be considered for issuance of bonafide certificate.

16. Here, in the present case, the moot questions are:

(a) why Condition (ii) supra is to be rigidly interpreted, depriving people from being issued bonafide certificates, required for sundry usage; (b) what can be the basis, whereupon, bonafide certificates can be issued, other than the existing basis; and (c) in what manner the process of issuing the same can be simplified. As discussed hereinabove, condition (ii) (supra) has supple connotations, so interpreting the same rigidly is unjustifiable. Manifestly, out of the above enumerated three conditions, only one condition is to be satisfied for issuance of bonafide Himachali Certificate, only then a person is recognized as bonafide resident of Himachal Pradesh.

17. After analyzing the law on the subject, notifications issued by the government from time to time, this Court comes to the conclusion that in order to streamline the process of issuance of various certificates, viz., bonafide, BPL/APL, SC/ST/OBC category, Economically Weaker Sections of the Society and certificates to physically challenged persons qua their physical disability(ies), the concerned authorities will issue reports/certificates, if, any one of the following documents, as the case may be, are produced before the said authority(ies):

1. For issuing bonafide certificate(s):

(i) Ration card;

(ii) Employment certificate/identity card issued by employer, i.e., Government Office(s) showing the applicant working in the said office (location/operation whereof is within Himachal Pradesh) for the last 20 years or more;

(iii) Date of birth certificate reflecting the applicant born in Himachal Pradesh;

(iv) Attested copy of Pariwar (Family) Register, showing the place of residence of

the applicant and reflecting that the applicant for the last 20 years or more residing in Himachal Pradesh;

(iv) Adhaar Card/Voter ID card from 20 years;

(v) Revenue record(s) showing the applicant, continuously for the last 20 years or more, residing in Himachal Pradesh;

(vi) Kisaan pass book;

(vii) Certificate(s) issued by the Panchayat Pradhan, Municipal Counselor, Mayor, President Notified Area Committee, Member Legislative Assembly and Member Parliament to the effect that applicant for the last 20 years or more uninterruptedly/continuously residing in Himachal Pradesh; &

(viii) Certificate(s) issued by Class I Gazetted Officer working under the Government of Himachal Pradesh and within the State of Himachal Pradesh, stating the applicant is residing in Himachal Pradesh uninterruptedly/continuously for the last 20 years or more;

2. For issuing certificates Below the Poverty Line (BPL) and Above the Poverty Line (APL) and certificate(s) for SC/ST/OBC category, as the case may be, to the bonafide residents of H.P.:

(i) Ration card reflecting that the applicant belongs to BPL/APL family;

(ii) Certificate with respect to name of caste/tribe of father/guardian of the applicant, issued by the employer, i.e., Government Office(s) showing that the applicant or his/her father/guardian is working in the office concerned (location/operation whereof is within Himachal Pradesh);

(iii) Attested copy of Pariwar (Family) Register, showing the place of residence of the applicant in Himachal Pradesh and the applicant belonging to a particular caste/tribe;

(v) Revenue record(s) showing the applicant residing in Himachal Pradesh and belonging to caste/tribe;

(vi) Kisaan pass book issued by the Government of Himachal Pradesh showing the applicant belonging to caste/tribe, if any;

(vii) Certificate(s) issued by the Panchayat Pradhan, Municipal Counselor, Mayor, President Notified Area Committee, Member Legislative Assembly and Member Parliament to the effect that applicant belongs to a particular caste/tribe; &

(viii) Certificate(s) issued by Class I Gazetted Officer working under the Government of Himachal Pradesh and within the State of Himachal Pradesh, showing the applicant belonging to a particular caste/tribe.

3. Economically Weaker Sections of the Society to the bonafide residents of Himachal Pradesh:

(i) Certificate(s) issued by the Pradhan of Gram Panchayat, Secretary of Gram Panchayat, Member Panchayat, Secretary Notified Area Committee, Member Notified Area Committee, Member Municipal Committee/Corporation, Mayor/President of the Committee/Corporation and Patwari of the concerned area will be a proof of the fact that the applicant belongs to weaker Section of the Society.

4. Certificates for physically challenged persons to the bonafide residents of Himachal Pradesh:

(i) Certificate(s) issued by Medical Officer of a Dispensary/Medical Board, in accordance with the guidelines in vogue, will be a proof of the fact that the applicant is physically challenged person.

19. Needless to say that the above conditions are in addition to the existing conditions and not in derogation to the instructions issued by the State Government from time to time.

20. In aftermath, a writ of mandamus is issued directing the Additional Secretary (Revenue) to the Government of Himachal Pradesh to issue appropriate direction(s), in the light of the present judgment, to all concerned to the effect that if the person (applicant) while applying for bonafide, BPL/APL/Economically Weaker Sections of the Society, SC/ST/OBC category and Physically Handicapped certificates, produces any one of the above mentioned documents, then it will be sufficient material proof for issuance of relevant certificate to him/her.

21. The above directions are issued, as it is found that many times due to wrong interpretation or delayed interpretation of the existing provisions, people unnecessarily suffer and vigilant people ultimately knock the doors of the Courts, whereas innocent and poor people, who could not afford to come to the Court, due to poverty, illness, ignorance, illiteracy or other reasons, suffer.

22. The writ petition is disposed in the above terms. Pending miscellaneous application(s), if any, shall also stand(s) disposed of.