
(1999) 01 MAD CK 0093

In the Madras High Court

Case No : Writ Petition No. 18449 of 1998 and W.M.P. No's. 27975 and 27976 of 1998

P.S. Manoharan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 11-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : AIR 1999 Mad 208 : (1999) 2 MLJ 141

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : N.C. Ramesh, for the Appellant; Patti B. Jagannathan, Spl. Govt. Pleader and V.P. Venkat, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—Petitioner after completing his B.D.S. Course at Mahatma Gandhi Government Dental College, Pondicherry wanted to join M.D.S. Course in Tamil Nadu Dental College. According to petitioner, his father Paul Surendra is a native of Nagercoil, Kanyakumari District, having born and brought up there. He was also educated in that place, and has been working in the Union Territory of Pondicherry. Therefore, he is a permanent resident of Tamil Nadu.

2. In the prospectus to M.D.S. course, one of the requirement was production of permanent residence certificate. Candidates who have studied from 9th standard onwards and have undergone under-graduate course in Tamil Nadu are exempted from producing such certificates. A format is also issued in the prospectus. According to petitioner, since he is eligible to get admitted, he filed application along with a certificate issued by the competent authority that he is a permanent resident of Tamil Nadu. The Tahsildar, Vanur issues a permanent residence certificate on 17-3-1998 stating that petitioner is a permanent resident of Vanur Taluk, Villupuram District. It is his case that petitioner was staying in

Vanur Taluk at the time of making his application. Taking into consideration the nativity of his father, who is employed in Pondicherry, Tahsildar issued the certificate. Petitioner got admitted into the course and he began to attend the classes from 1-6-1998.

3. Some of the students who have not been selected to M.D.S. course filed a writ petition before this Court, in which petitioner was not a party. In that writ petition, a representation was made by the Government that they have received representations from some quarters about some of the candidates, who do not satisfy the permanent residence condition, though they have filed certificates. The complaint was that the candidates have filed bogus certificate about their permanent residence. Petitioner on getting information about the pendency of writ petition subsequently came to know that his admission was sought to be cancelled on the ground that permanent residence certificate produced by him is not genuine, and the same does not reflect the real state of affairs. Government also seemed to have passed an order on 31-8-1998 cancelling his selection.

4. Petitioner therefore, came to this Court in W.P. 13663 of 1998 to quash the order. The main ground that was urged before this Court was that he was not given notice before passing the impugned order and therefore cancellation of his admission is violative of the principles of natural justice and the same is liable to be quashed. When this submission was made, I gave direction on 2-11-1998 directing Revenue Divisional Officer, Villupuram to hold an enquiry afresh on 5-11-1998 and petitioner was also directed to be present before him with all documents on which he placed his reliance and I further directed Government that all materials which are relied on by them also must be placed before petitioner so that he can give his explanation.

5. On the basis of said direction, petitioner appeared before the Revenue Divisional Officer, Villupuram, who held enquiry. The result of enquiry is challenged in this writ petition. The Revenue Divisional Officer, Villupuram has held that petitioner is not a permanent resident and the certificate produced by him does not reflect the real situation though the same is genuine. The certificate was cancelled. The same is challenged in this writ petition on various grounds.

6. In this connection, one more factor is also required to be mentioned. One of the affected candidate was one Dr. Balu, who was in Wait List No. 1 in the selection list. If the admission of any other candidate was cancelled, the person who gets the benefit of cancellation was Dr. Balu. When Revenue Divisional Officer cancelled the admission of petitioner, Dr. Balu got admitted in that vacancy. Subsequently, he has been impleaded as 5th respondent in this writ petition.

7. Respondents 1 to 4 have not filed any counter. Learned special Government Pleader only placed the file before this Court and argued the matter on instructions. Fifth respondent has filed his counter affidavit justifying the order of 4th respondent. He also contended that petitioner as well as his parents are

permanent residents of Pondicherry and they have been residing there for the past 25 years. Petitioner's father was employed as Laboratory Technician, who is now retired from service and his mother is still a Government servant in Pondicherry. It is further said that even in the Voters' list of the year 1996, petitioner and his parents' names are included as voters of Pondicherry constituency. It is also said that petitioner got admission to B.D.S. course in Pondicherry only on the ground that he is a permanent resident of Pondicherry. For these reasons, 5th respondent contended that by no stretch of imagination, petitioner can be construed as permanent resident of Tamil Nadu and therefore the order of Revenue Divisional Officer, Villupuram does not call for any interference nor his admission is liable to be interfered with.

8. The only question that requires consideration is whether the impugned proceedings of 4th respondent is liable to be interfered with under Article 226 of Constitution of India.

9. Being a proceeding under Article 226 of Constitution of India, I need only consider whether the authorities have taken into consideration the relevant materials and whether the opinion formed by them on that basis is possible. I am not sitting as an appellate Court. But, if the authorities have not considered the matters which should have been considered and decision is based on irrelevant materials, I will be justified in interfering under Article 226 of Constitution of India.

10. After stating about the documents produced before him, 4th respondent has also stated that on 17-3-1998, Tahsildar has issued certificate to petitioner based only on the report of Village Administrative Officer and Revenue divisional Officer without proper enquiry. Fourth respondent has further stated thus,

"As the later certificate issued was disputed, the matter was referred to the Tahsildar for enquiry and report. The Tahsildar himself has visited the village and enquired the villagers. His enquiry revealed that the petitioner Thiru. P.S. Manoharan and his father did not reside in the village since 1992 and accordingly a report was sent to the Collector by the Tahsildar. The petitioner's parent are Christians. The statement of the villagers that no Christian family resided in the village adds strength to the Tahsildar's conclusion.

Subsequently as per the direction of the High Court, I enquired the petitioner in office on 5-11-98 and also visited the village on the next day for spot verification and enquiry.

The village "Rayaottai" is a small village, which is in an interior part of the Taluk. This village has no transport facility also. In a portion of the village that there are about 4 houses only belonging to Caste Hindus, where the petitioner's father was reported to be residing and about 9 families of Adi-Dravidars are residing in other portion of the village.

The petitioner's father Thiru Paul Surendran was a Government employee of

Pondicherry Government who has since been retired and the wife of Thiru Paul Surendran is also reported to be a Government servant. When the petitioner's parents are working in Pondicherry, the contention of the petitioner that his family was residing in Rayaottai village for about more than 5 years since 1992, is an afterthought because of the fact that the village being a small one is situated away from Pondicherry in a remote corner without any transport facility. Further they have no compelling reasons to reside in a small village, that too in a rented house, while there are several big villages abutting main road nearer to Pondicherry. They are financially sound enough to reside in Pondicherry town in a rented house. If they had really resided in the village for about 6 years they might have obtained a family card there. But no family card has been issued to them.

In these circumstances Thiru Paul Surendran, the father of the petitioner has got prepared the records to prove that he was residing in Rayaottai village and produced them before me after his claim was disputed. I do not want to rely on the records.

When I visited the village most of the villagers were not willing to reveal anything regarding this before me, I suspect that Thiru Paul Surendran has created such a situation in the village after this dispute. Anyhow, two ladies of the village came forward and stated that Thiru Paul Surendran did not reside in the village for the past six years. I have recorded statement from them in this regard.

In the circumstances explained above, I am of opinion that the petitioners family had never resided in "Rayaottai" village; as a result, I hereby cancel the certificate of "permanent residence" issued by the then Tahsildar, Vanur in C.No. 50/ 98 dated 17-3-1998."

11. Before considering the validity of this order, let us consider what are the matters to be considered and how the same is to be proved for getting a certificate for permanent residence.

12. Clause VII (2) of the Prospectus read thus,

"Excepting those who have studied from 9th standard onwards and have undergone undergraduate course (MBBS/BDS) in Tamil Nadu others seeking admission should furnish a permanent residence certificate in the form annexed."

The form referred to is also appended to the prospectus, which is as follows :

"Certificate of Permanent Residence Certified that Dr.

S/oD/o,W/o Thiru.....

an applicant for admission to Post Graduate studies is a permanent resident of..... in the

Taluk

District.....

State

Office Seal.....

Signature of

Village Administrative Officer.....

Signature

Name and Designation

Station.....

Date

13. In this connection, the prospectus for admission to Tamil Nadu Engineering course may also be considered. There also a certificate of permanent residence will have to be submitted. In cases where the candidate was not studying in Tamil Nadu from 9th standard onwards, the certificate should be as per the pro forma, which read thus,

Certificate No. III

Note : This Certificate should be issued by an Officer of Revenue Department not below the rank of a Tahsildar in the Taluk concerned.

Certificate of Permanent residence in Tamil Nadu

Certified that Thiru/ThirumathiParent/Guardian of Thiru/Selvi/Thirumathi an applicant for admission toin Tamil Nadu has/had permanent residence at. in Tamil Nadu.

Signature of Village Signature : Administrative Officer Name and of..... in designation : theTaluk of..... District. Station : Office Seal: Date : A note is also appended to the pro forma, which is also relevant for our purpose.

1. Omitted.

2. Omitted.

3. Other candidates who claim Tamil Nadu nativity but have not passed the IX, X and H.S.C. examinations or other equivalent examinations from a school in the State of Tamil Nadu should produce, in respect of the Parent/Guardian, certificates of permanent residence in the State of Tamil Nadu.

4.(a) This certificate should first be signed by the Officer incharge of the village or town concerned which is claimed as the place of permanent residence and it should be thereafter countersigned by an officer of the Revenue Department not below the rank of a Tahsildar in the Taluk concerned.

This Certificate should not be issued by Special Tahsildars, Deputy Tahsildars

such as Loans, Land Acquisition, Election, Excise and HQs., Deputy Tahsildars, Special Deputy Collectors, Assistant Commissioner of Agricultural Income, Excise, Elections etc.

(b) The certificate should bear the stamp of the office of the Officer signing the Certificate. The certifying officers should insist upon clear proof of the permanent residence of the Parent or Guardian of the candidate and satisfy themselves on the genuineness of the residential qualification. They should be particularly careful in the case of candidates whose mother tongue is not Tamil and whose place of birth is outside the place mentioned in the Certificate.

5. A person will not lose his permanent residence in the State merely on account of his absence from the State owing to his employment elsewhere in Government Service or in any occupation, trade, business or profession.

6. Omitted.

7. Omitted.

8. The parent or parents of Tamil Nadu origin living in other State can be allowed to admit their children on obtaining necessary permanent residence certificate from the authorities concerned in Tamil Nadu."

14. According to me, the question of permanent residence will have to be considered on the basis of guidelines given in the prospectus issued for Engineering admissions. There cannot be any difference of permanent residence for medical college admissions and Engineering college admissions. If that be so, 4th respondent will have to consider the matter on the basis of above notes and thereafter will have to consider whether the certificate obtained by petitioner on 17-3-1998 is valid.

15. The definite case of petitioner is that his father is a permanent native of Nagercoil. He was born and brought up there and also got educated there and later for his employment, joined the service under Union Territory of Pondicherry. To support the same, petitioner has produced the school certificate of his father wherein his grandfather is stated to be a permanent resident of Nagercoil and was also working in Nagercoil. His father was a student of S.C. High School, Nagercoil. He has also produced a certificate issued in the year 1992 to show that Paul Surendran is a permanent resident of Nagercoil. The certificate is issued by the Tahsildar, Vanur. In the community certificate also, it is stated that petitioner and his father belong to C.S.I. of Christian belonging to Kanyakumari District.

16. Why I am referring to these certificates is that in the impugned order 4th respondent has stated that he does not want to rely on the records filed by petitioner. The said approach of 4th respondent is not correct because as per notes 3, 5 and 8, candidate can claim benefit of permanent residence certificate, if his parents have permanent residence in Tamil Nadu. The parents also will not lose the permanent residence merely because he is employed outside the State.

If the parents are of Tamil Nadu origin, and residing in other State, they can be allowed to admit their children on obtaining permanent residence certificate. Taking these notes together, it is clear that if petitioner's father is a permanent resident or native of Tamil Nadu and if for the purpose of his employment he is residing in the Union Territory of Pondicherry, or outside the State, it will not disentitle petitioner from claiming the benefit of permanent resident in Tamil Nadu.

17. Merely because 4th respondent made local inspection and he could not get details of petitioner's father, that by itself may not be a reason to hold that the certificate dated 17-3-1998 is not correct. He has to consider the validity of the certificate on the basis of the notes mentioned above. I do not think 4th respondent approached the question on that basis. The community-cum-residence certificate issued to petitioner on 29-6-1992 is not relied on by 4th respondent only for the reason that the file containing the same was destroyed by the office. The law presumes that official acts are done according to law and following the procedure. Merely because the file is destroyed, the genuineness and correctness of the certificate is not to be doubted unless there are other circumstances to rebut that presumption.

18. Further reasoning of 4th respondent is that since petitioner's father is a Government employee of Pondicherry Government, he would not have resided in a remote village is most irrelevant fact. It will mean that all Government servants can reside only in town or municipal limits and Government servants cannot hail from rural area or from villages. The said approach is really perverse. His reasoning that they could have obtained family card in the place of residence is also not relevant if petitioner can prove that his father is a native of Tamil Nadu and only for the purpose of his employment he is living in Pondicherry. If petitioner's father is residing in Pondicherry for the purpose of his employment, he cannot have family card in the native place. It is not disputed that even now petitioner's mother is a Government servant in Pondicherry. It is not the physical presence of person that has to be taken into consideration for the purpose of permanent residence. A person having permanent residence in Tamil Nadu may have to be physically present in another State for the purpose of his employment. In view of the note, it is not the actual living that is to be considered, but whether he belongs to a particular place has to be gone into. Note 5 is very clear in that regard and note 8 states living in another State is not a bar to claim permanent residence certificate in Tamil Nadu and in case of candidates who have been studying in Standards 9, 10, HSC examinations in other State, the status of parent is to be considered. None of these facts have been taken note of by 4th respondent.

19. Fourth respondent relied only on oral evidence of a mother and daughter who do not know anything about petitioner. But even according to them, they only say that they have heard about this petitioner that he was residing in that area about six years back.

20. Why I am giving importance to the notes mentioned above is that the Government cannot be expected to have a different standard for considering permanent residence status for Engineering and medical college admissions. At least, the note appended to Tamil Nadu Engineering college Admissions, which I have referred to earlier can be looked into as guidelines. Merely because the parents of a candidate or the candidate is residing in another State for the purpose of employment or education, it cannot be said that he is not a permanent resident of home State. Residence for the purpose of employment or education is only temporary residence and permanent residence always will be his home State unless by some unequivocal act he relinquishes his residence in the home State. An intention to relinquish is required in such cases.

21. In the result, the impugned order of 4th respondent is quashed and direction is given to 4th respondent to reconsider the case of petitioner with notice to him on the basis of observations made above. The admission of 5th respondent will be subject to the result of 4th respondent passing orders on the basis of above directions. 4th respondent is directed to pass fresh orders within a period of three weeks from today with notice to all concerned. This being education matter, it is only proper that 4th respondent will maintain the time schedule in passing the revised orders.

22. The writ petition is allowed as indicated above. No costs. Consequently, W.M.P. Nos. 27975 and 27976 of 1998 are closed.