

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 6118 of 2024**

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TILAKKUMAR VIJAYKUMAR MISHRA

Versus

STATE OF GUJARAT &amp; ORS.

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Appearance:

MR AR THACKER(888) for the Petitioner(s) No. 1

SHIVANG A THACKER(7424) for the Petitioner(s) No. 1

MS JEENAL ACHARYA, AGP for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

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**CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 30/07/2024****ORAL ORDER**

1. By this petition, the petitioner has prayed for quashing and setting aside the letter dated 17.10.2023 issued by the respondent no.2, i.e. Mamlatdar. Vide said letter, the Mamlatdar has refused to issue Domicile Certificate, on the sole ground that, the petitioner, for the period from 2013 to 2016, has undertaken his studies in Abu Dhabi.

2. Mr Shivang Thacker, learned advocate appearing for the petitioner, while inviting attention of this Court to page 21 of the captioned writ petition, submitted that the place of birth of the petitioner is New Delhi; the reason for shifting Delhi, was the health of the mother of the petitioner, as she has suffered a paralytic attack; however, the petitioner returned with his parents to Ahmedabad within two months. Since 2006, that is, immediately after the birth on 23.01.2006, the petitioner has been residing at Baroda with his parents, which fact, is strengthened by the passport applied and issued by the passport authority. It indicates the place of issuance, as Ahmedabad and the period is from 02.01.2007 to 01.01.2012. The passport was renewed for the period from 2016 to

2021, similarly, indicating the place of issuance as Ahmedabad and with address of Baroda.

2.1 It is further submitted that the petitioner has studied from Junior K.G. to Std. II at Baroda. For brief period of three years, the petitioner was away; however, thereafter, from standard VI to XII, the petitioner has studied in the State. There is no dispute inasmuch as, the school certificates, the documents, substantiate that the petitioner has undergone his studies in the schools at Baroda, namely, pre-school in Dreams Play School, Vadodara; senior class in Navrachana Vidyani Pre-primary School, Essar International School, Gujarat Public School, Vadodara; so on and so forth. It is submitted that therefore, there are sufficient documents to suggest that the petitioner has stayed in the State of Gujarat except for three years, i.e. for the period from 2013 to 2016.

2.2 It is further submitted that the father of the petitioner is having movable and immovable properties, being Tenement no.A/10 in Baroda. The parents have jointly purchased two residential houses in the year 2011 and 2012 and a commercial property in the year 2016. Though, the father of the petitioner was born in the State of Bihar; has joined service with L & T Ltd. and got married in Gujarat in 2000. Whereas, the mother of the petitioner was born outside the State but is possessing Domicile Certificate of State of the year 2000.

2.3 It is therefore, submitted that the authorities have wrongly denied the Domicile Certificate to the petitioner. Even otherwise, the petitioner, is entitled for the benefits of the policy of the State Government including the clarification issued by the Home Department to the Commissioner of Police dated 05.09.2009. It is further submitted that all these aspects have not been considered by the respondent no.3 and the order has been passed, refusing the

domicile certificate to the petitioner.

2.4 Reliance is placed on the Judgment of this Court in the case of *Muskan Sunilkant Tiwari vs. State of Gujarat*, reported in 2018 (0) AIJEL-HC 239722. It is submitted that the petitioner is identically placed to the petitioners of the said petitions. It is submitted that this Hon'ble Court has held that the only interpretation that can be given to the term 'domicile' as contained in the Rules, is residence of particular kind, which need not be continuous, but must be indefinite not purely fleeting.

2.5 It is, therefore, submitted that the petitioner has been residing at Vadodara since birth except a brief period of three years, the petitioner and his parents are residing at Vadodara only. Therefore, the rejection of the application of the petitioner for domicile certificate, is contrary to law and requires to be quashed and set aside.

3. Ms Jeenal Acharya, learned Assistant Government Pleader has submitted that the entire procedure for issuance of domicile certificate is governed by the policies formulated by the State Government dating back to the year 1950. It is submitted that the domicile certificate can be issued based on origin or by choice; however, the petitioner cannot claim the domicile certificate based on origin as the petitioner as well as the parents of the petitioner have their birth place outside the State of Gujarat. So far as the choice of residence is concerned, the petitioner has been unable to establish the intention of the parents to reside at Vadodara permanently. The minimum criteria of 10 years of residency in the State of Gujarat, has not been fulfilled and their residence appeared to be fleeting and not indefinite.

3.1 It is submitted that inconsistent details have been mentioned

inasmuch as, the petitioner, in the declaration form, has indicated that he has been residing at Vodadara since last 15 years, whereas, while giving the statement before the Talati, it is stated that he has been residing in Vadodara since last 10 years. Also, it is stated that he has been residing in the State of Gujarat since last more than 16 years and 20 years respectively, but the same appears to be contradictory for, the age of the petitioner itself is 17 years. The information, apparently, is incorrect; considering the fact that for the period from 2013 to 2016, the petitioner was residing at Abu Dhabi, which was not for the education purpose, but as the father of the petitioner had taken job in Abu Dhabi. It is submitted that owing to the incorrect and inaccurate information, it is not clear, rather admitted that, neither the petitioner nor his parents have continuously resided in the State of Gujarat in last 10 years. Moreover, as per the rules, a person domicile, at time of birth, follows the domicile of his father; however, the father has never obtained the domicile certificate and hence, the petitioner cannot claim to hold domicile certificate by origin in Gujarat by birth. The domicile of the mother would be of no consequence for the petitioner.

3.2 It is submitted that reliance placed on the judgment in the case of Muskan Sunilkant Tiwari (supra), is misplaced, inasmuch as, in the said case, what weighed with the Hon'ble Court, was the fact that the petitioners therein, had applied for domicile and were granted domicile certificate, which was furnished by them to the Admission Committee and on the basis thereof, the admissions were granted. It is further submitted that even the parents of the petitioner in those cases, were permanent resident of the State of Gujarat and had intention to reside in the State of Gujarat. In the present case, the exception would not be attracted, as the petitioner as well as his parents had resided out of India for the

period between 2013 to 2016 for the purpose of job, taken by the father of the petitioner. It is, therefore, urged that the petition does not require to be entertained and be dismissed.

4. Heard learned advocates appearing for the respective parties.

5. The grievance and the challenge in the captioned writ petition is to the letter dated 17.10.2023 of the Mamlatdar Vadodara City West, Vadodara.

6. The mother of the petitioner was admitted in AIIMS Hospital in New Delhi for treatment of Acute Disseminated Encephalomyelitis (ADEM) (Paralysis) and during which period, the petitioner was born on 23.06.2006 at New Delhi. Within 2 to 3 months of his birth, the parents of the petitioner shifted to Varodara. In support of the said stand, the petitioner has placed on record various documents, namely, (i) Passport; (ii) Report Card issued by the Dreamz Play School of the year, 2006; (iii) Certificate of senior class issued by Narvrachana & Vidyani Pre-Primary Section; (iv) School Leaving certificate of the Essar International School, Surat of the year, 2013; (v) Bonafide certificate of the Gujarat Public School, Atladara at Vadodara; and (vi) Marksheets, etc.

7. It is the case of the petitioner that the passport of the petitioner has been issued from Ahmedabad and the address mentioned is of Vadodara. The validity of the passport of the petitioner was for the year 2007 to 2012 and thereafter, also for subsequent period, the passport is issued from Ahmedabad and the address mentioned, again is of Vadodara. Even the Aadhaar card issued, in the name of the petitioner, contains the address of the Vadodara. Besides, petitioner has placed on record the election card of the father, containing the address of Vadodara. Even the APL-Ration Card, which has been issued, contains the address of

Vadodara. Apparently, all the documents, which have been placed on record, they are for the period from 2006 onwards till recently except the period of the year 2013 to 2016. It is not in dispute that the petitioner, has studied Standard 10<sup>th</sup> and 12<sup>th</sup> from Vadodara. Therefore, consistently from the year 2006 till the year 2024, except the 3 years i.e., 2013 to 2016, the petitioner has been residing in the State of Gujarat at Vadodara.

8. Besides, the petitioner has placed on record various documents, pertaining to the immovable properties i.e. residential and commercial, purchased by the parents of the petitioners. The sale deeds have been executed. The petitioner has placed on record the electricity bills issued by the Electricity Company in the name of the parents of the petitioner. Other documents, namely; the Aadhaar card, Voter identity card and APL Card of the father of the petitioner, are also placed on record, containing the address of the Vadodara. Reference is also made to the proceedings, which has been filed and pending before the Family Court, pertaining to the divorce of the parents of the petitioner, wherein also, the address mentioned of the parents of the petitioner is of Vadodara. In addition to the above referred documents, the petitioner has also placed on record the domicile certificate of the year, 2000, issued in the name of his mother, by the Executive Magistrate, indicating that she is a domicile in the State of Gujarat. The element of indefinite is writ large and it cannot be said that it is fleeting.

9. At this stage, the judgment of the Coordinate Bench of this Court, in the case of Muskan Sunilkant Tiwari (supra) is worth referring to. The issue, in the said writ petition, was about the cancellation of the domicile certificate. The facts of the present case, are almost identical with minor variation. Considering the various judgments so also the applicable policies issued by the

General Administration Department of the State Government, this Court, in paragraphs 27, 28, 41 to 44 and 47, observed thus:-

“27. The concept of one's domicile has a definite implication and is directly linked with the situs of one's residence. The term in its ordinary acceptation means, a place where a person lives or has his home. It is a place where a person has his actual residence, inhabitancy or commorancy.

28. Domicile as a concept is of immense importance, both in municipal law as well as in Private International Law or the conflicts of laws, as it is called. The concept denotes 'the place of living', or more precisely a permanent residence. Domicile as pointed in Halsbury's Laws of England (Fourth Edition) Volume 8, Paragraph 421 'is the legal relationship between an individual and a territory with a distinctive legal system which invokes that system as his personal law.' Although the notion which lies behind the concept of domicile is of 'permanent residence' or a 'permanent home', yet domicile is primarily a legal concept for the purposes of determining what is the 'personal law' applicable to an individual and therefore, even if an individual has no permanent residence or permanent home, even then he is invested with a 'domicile' albeit by law or implication of law. There are three main categories or classes of domicile, A) Domicile of Origin, B) Domicile of Choice, and C) Domicile by law. 'Domicile of origin' is the domicile which each person has at birth i.e. the domicile of his father or his mother. 'Domicile of choice' is the domicile which a person of full age is free to acquire in substitution for that which he presently possesses. In other words, the 'domicile of origin' is what is attached to person by birth whereas the domicile of choice is what is acquired by residence in a territory subject to a distinctive legal system with the intention to reside there permanently or indefinitely. What should be always remembered is that a domicile denotes an area with a separate and distinctive legal system and not just a particular place in a country. This aspect is elaborated in paragraph 442 of Halsbury's Laws of England (Fourth Edition) Volume 8, which states as under :

"Even person who has, or whom the law deems to have, his permanent home within the territorial limit of a single system of law is domiciled in the country over, which is the whole of that country even though his home may be fixed at a particular spot within it."

41. The only interpretation that can be given to the term 'domicile' as contained in the rules is residence of a particular kind. This residence, however, need not be continuous but it must be indefinite not purely fleeting. It is difficult to lay down an absolute definition of the word 'domicile'. Even the State Government, while amending the rules and introducing the concept of domicile, understood the same to be a resident within the State of Gujarat. One of the earliest and yet the simplest definitions of this expression was attempted by Chitty J. in

***Craignish v. Craignish, (1892)3 Ch. 180***, at p.192(a) in the following terms :

"That place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom."

42. However, it is the Administrative Instructions of 8th June 1989 issued by the General Administration Department of the State Government to all the District Magistrates and the Commissioner of Police, Ahmedabad, that triggered the controversy. A close reading of the said Administrative Instructions would indicate that it talks about continuous stay within the State of Gujarat for a period of ten years.

43. Ms.Shah, the learned Government Pleader, pointed out that Shruti Pankaj Singh was born at Meerut, Uttar Pradesh, and studied upto Standard-II at Navi Mumbai and thereafter from 2009 she studied at Vadodara. She was admitted in Standard-IV in the year 2009. Despite such factual position, in her application dated 7th June 2018 seeking domicile certificate, she has stated that she is residing in the State of Gujarat for last twelve years. In the same way, in the case of Astha Dipak Tripathi, she was born at Pune, Maharashtra. She studied from Standard-I to IV at Pune and then from 2009 onwards, i.e. from Standard-V, she studied at Vadodara till the last. However, in her application, she has stated that she is residing in the State of Gujarat for last thirteen years. In the case of Vikalp Devendra Panchal, he was born at Nalasopara, State of Maharashtra. Upto Standard-VII he studied at Thane and thereafter from Standard- VIII, he started studying at Vadodara. However, in the application, he has stated that he is residing in the State of Gujarat for last fifteen years. In the case of Muskan, she was born at Alwar, Rajasthan, and studied upto Standard-VIII at Bhatinda, Punjab, and thereafter from Standard-IX, she started studying at Bharuch. In her case, it is pointed out that she not remained present for verification.

44. It appears from the submissions of Ms.Shah that according to the State Government, the students did not study continuously for a period of ten years in the State of Gujarat. The parents of each of the writ-applicants might be residing within the State of Gujarat past more than ten years but the requirement, according to the State Government, is continuous study for ten years within the State of Gujarat.

"47.The final conclusion may be summarised as under :

(1) Rule 4(1-A) of the Amendment Rules, 2018, merely provides that the candidate/student must be 'domicile of Gujarat State'. The said rule does not define the term 'domicile' or 'domicile of Gujarat State'.

(2) Rule 4(1-A) does not provide that only those candidates/students who establish 'minimum continuous stay of ten years in the State of Gujarat at the time of application' can be considered eligible for the 'domicile of Gujarat State'.



(3) The only interpretation that can be given to the term 'domicile' as contained in the rules is residence of a particular kind. This residence, however, need not be continuous but it must be indefinite not purely fleeting.

(4) Rule 4(1-A) does not provide or postulate the condition or requirement that the student must adduce necessary evidence to establish minimum continuous stay of ten years in Gujarat. The rule does not prescribe or postulate any other or further or additional requirement or condition for acquiring status as 'domicile of Gujarat'.

(5) When any other requirement is not prescribed by the rules, then such requirement cannot be introduced by the State by way of a letter or even a circular.

(6) Merely because a student shifts himself outside the State of Gujarat for few years to pursue his studies in a school outside the State of Gujarat as a boarding student and returns to the State of his permanent residence and starts residing with his parents and also pursues further education (Standard-IX to XII), then in such circumstances the period for which he remained outside the State of Gujarat his studies as a boarding student cannot be excluded while computing 'minimum continuous stay of ten years in Gujarat State'.

(7) The materials on record indicate that the parents of all the four writ-applicants are residing in the State of Gujarat past more than ten years and thereby it could be said that they have declared their intention to settle in the State of Gujarat atleast for the present, if not for all times to come. The materials do further indicate and it is not in dispute that the four writ-applicants have studied in the State of Gujarat from Standard-V onwards upto Standard- XII.

(8) The domicile certificates which were already issued in favour of the writ-applicants should not have been cancelled relying on the Administrative Instructions of 8th June 1989 issued by the General Administration Department of the State Government.

(9) The case on hand is not one of adopting unfair means or any malpractice in obtaining the domicile certificates. The domicile certificates were issued to each of the writ applicants after proper inquiry having regard to the information furnished by the writ-applicants.””

10. This Court has held that the concept of one's domicile has a definite implication and is directly linked with the situs of one's residence. The term in its ordinary acceptation means, a place where a person lives or has his home. It is a place where a person has his actual residence, inhabitancy or commorancy. It has been

held and observed that residence need not be continuous but it must be indefinite not purely fleeting. *Craignish v. Craignish, (1892) 3 Ch. 180*, has been referred to, wherein, it has been observed that place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom. In the final conclusion, this Court, considering Rule 4 (1-A) of the Gujarat Professional Medical Education Course (Regulation of Admission in Undergraduate Courses) Rules, 2017, has held that it does not provide or postulate the condition or requirement that the student must adduce necessary evidence to establish minimum continuous stay of ten years in Gujarat. It has been further observed that merely because student shifts himself outside the State of Gujarat for few years to pursue studies in a school outside the State of Gujarat as a boarding student and returns to the State of his permanent residence and also pursues further education of Standard-IX to XII, then in such circumstances the period for which he remained outside the State of Gujarat cannot be excluded while computing minimum continuous stay of ten years in the State of Gujarat.

11. From the voluminous documents, it is more than clear that the parents have been residing in the State for more than ten years, except a brief period of three years. Besides, the petitioner, as student, has undertaken his studies for standard 10<sup>th</sup> and 12<sup>th</sup> in the State of Gujarat, which otherwise, is the requirement for making the student eligible for getting admission. Currently, the intention of settling in the State of Gujarat is explicit. However, the application of the petitioner has been rejected only on the sole ground that from the year 2013 to 2016, the petitioner, was away for studies at Abu Dhabi.

12. At this stage, it is also required to be noted that when the Mamlatdar, was of the opinion that the petitioner, could not have been issued the domicile certificate, he could not have simply rejected his application by putting endorsement, instead, should have passed an order, assigning the reasons substantiating the conclusion, as to why and how, the petitioner, is not entitled for the domicile certificate. Apt would be the judgment of the Apex Court in the case of *Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors.* reported in (2010) 9 SCC 496. It is held and observed that recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. It has also been pointed out that reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies. Reasons facilitate the process of judicial review by superior Courts. Therefore, the endorsement put, cannot be said to be an order rejecting the request of the petitioner for grant of domicile certificate.

13. Under the circumstances, the petition deserves to be allowed and is accordingly allowed. The matter is remitted to the respondent No.3, with the direction, in terms of the present judgment, to issue domicile certificate forthwith and not later than 12.08.2024. No order as to costs.

14. Direct service is permitted.

MOHD MONIS

**(SANGEETA K. VISHEN,J)**