

2017 M L D 1660

[Balochistan]

Before Jamal Khan Mandokhail and Nazeer Ahmed Langove, JJ

NOOR AHMED and another----Petitioners

Versus

DEPUTY COMMISSIONER, KHARAN and 3 others----Respondents

C.P. No.255 of 2017, decided on 17th May, 2017.

Constitution of Pakistan---

---Art.199---Constitutional petition---Permanent resident certificate---Authorities declined to issue permanent resident certificate to petitioners for their admission in Medical College---Plea raised by petitioners was that their family had been residing in Kharan District (Balochistan) since their forefathers---Validity---Petitioners were able to prove that they were bona fide residents of Kharan and had been residing there since their forefathers---Old Identity Cards of petitioners wherein permanent residence of fathers and mothers of petitioners was shown as of Kharan City which cards were issued in years 1995, 1975 and 1990, besides issuance of local certificate on 24-07-1994 to one of the petitioner's brother---Petition was allowed accordingly.

S.A.M. Quadri for Petitioners.

Muhammad Riaz Ahmed for Respondents.

Shai Haq, A.A.G. for the State.

Date of hearing: 3rd May, 2017.

ORDER

NAZEER AHMED LANGOVE .J.---The petitioner filed the instant petition with the following prayer:-

"It is, therefore, respectfully prayed that order issued by respondent No.1 upon recommendation of respondent No.2 may be ordered to be set-aside and respondent No.3 may be directed to consider the documents and result of pre-entry test for the academic session 2016/17 existing in favor of petitioner No.2. Any other relief deemed fit and proper in the circumstances of the case may also be awarded."

2. Brief facts of the case are that the petitioners filed the instant petition with averments that father of the petitioner No.1 and grandfather of the petitioner No.2 namely Ameer Hamza (late)

son of Khuda-e-Nazar Khan was permanent resident of Kharan and he had obtained his National Identity Card bearing No.602-40-170553 on 02-06-1975. Similarly, the petitioner No.1 and grandmother of the petitioner No.2 namely Mst. Bibi Gul obtained her National Identity Card bearing No. 636-90-014756. It is further stated that the petitioner No.1 having identity card bearing No. 636-74- 117063 besides obtaining local certificate of Kharan issued by District Magistrate, Kharan bearing No. 3659/LC/GB dated 24-07-1994. B-form of father of petitioner No.1 also existed. It is further stated that Khalid Ahmed, the brother of petitioner No.1, is also a permanent resident of said District having local certificate bearing No.3660/LC/GB dated 24-07-1994. It is further stated that the petitioner No.2 applied for admission in Bolan Medical College, Quetta and obtained prospectus and Form on 27-12-2016 and submitted the same with respondent No.3, appeared in the pre-entry test for admission in BMC and stood at serial No.1 on merit, whereas the respondent No.4 was placed at Serial No.4. However, when She approached to the office of respondent No.3 for result, it transpired that her local certificate has been cancelled by the respondent No. 1 upon re - commendation of respondent No. 2 on 13-03-2017. It is further stated that the petitioners have been condemned unheard and they have been deprived of their local certificates, which too without providing opportunity of hearing to defend their position. It is alleged that the local certificates of the petitioner have been cancelled at the instance of an influential person of the area, hence instant Constitutional Petition has been filed.

Learned counsel for the petitioners argued that the order impugned issued by the respondent No.1 is contrary to law, facts and principles of natural justice for the reasons that the petitioners have been condemned unheard, as such, impugned order passed by respondent No.1 is not sustainable under the law and is liable to be reversed. He added that that the order impugned is based on mala fide intention, just to deprive the petitioner No.2 from admission in the BMC and to accommodate the respondent No.4 illegally.

On the other hand, the learned counsel for the respondent No.4 strongly opposed the petition by submitting that the impugned order passed by respondent No.1 is based on legal and factual grounds that after due probe, quarry and obtaining reports from the competent forums, on the basis whereof, the local certificates of the petitioners have been cancelled. He maintained that since the petitioners were not the residents of Kharan and had obtained the local certificates with fraud therefore, the local certificates obtained on the basis of fraud and concealment of facts have rightly been cancelled.

4. We have heard the learned counsel for the parties and gone through the record with their able assistance, which reflects that the notices were sent to the address, where the petitioners were not residing. It was an intentional attempt to obtain/pass a favorable order behind the petitioners. It is further observed with grave concern that the private Respondent left no stone unturned to get the petitioners declared as non-locals of Kharan and in this respect, he obtained various certificates, wherein it is stated with force that the petitioners are not the permanent residents of area which in our view point is a bad and classic example of depriving citizens from their identity, which cannot be taken so lightly.

Conversely, the petitioners have been able to prove that they are bona fide residents of Kharan, and are residing there since their fore-fathers. It is manifest from the old ID cards annexed with the petition, wherein the permanent residence of the petitioner No.1, his father

Ameer Hamza and mother Mst. Bibi Gul have been shown as of Kharan City issued in the years 1995, 1975 and 1990, besides the issuance of local certificates to the petitioner No.1 and his brother Khalid Ahmed on 24-07-1994 (later's certificate is still intact). Now all of sudden, the whole machinery became highly proactive to cancel the local certificates of the petitioners, perhaps after getting remarkable marks by a poor girl, the petitioner No.2 who stood at serial No.1 of the merit list for admission in the first year of MBBS. The respondents particularly the D.C., Kharan was supposed to be a responsible and an unbiased officer, has acted illegally by way of cancelling the local certificates of the petitioners in haste which too without affording opportunity of hearing to them to defend their certificates hence such act is not sustainable under the law.

In view of above mentioned facts and circumstances of the case the petition is hereby accepted and the order impugned dated 13.03.2017 whereby the local certificates of the petitioners have been cancelled is set aside and consequently, the local certificates issued in favour of the petitioners are restored.

MH/123/Bal.

Petition allowed.