
(1998) 03 KL CK 0043
In the High Court Of Kerala
Case No : O.P. No. 1671 of 1992

Abu

APPELLANT

Vs

Sub Divisional Magistrate

RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 13, 13(3)

Citation : (1998) 2 CivCC 692 : (1998) 3 RCR(Civil) 55

Hon'ble Judges : S. Sankarasubban, J;K.S. Radhakrishnan, J;K.K. Usha, J

Bench : Full Bench

Final Decision : Allowed

Judgement

K.K. Usha, J.—Petitioner who was born on 2.8.1960 made an application to the 1st respondent for permission to register his birth. The application was rejected under Ext.Pl order dated 28.11.1991 quoting a decision of this Court, Usman v. Hindustan Machine Tools Ltd., 1987 (2) KLT 1028. The petitioner challenges the above order in this Original Petition. When the matter came up for hearing before one among us the correctness of the Bench decision referred above was doubted and the petition was referred for consideration of a Division Bench. By order dated 12.2.1997 the Division Bench referred the matter for being considered by a Full Bench. Thus the petition is coming up for hearing before the Full Bench.

2. As mentioned earlier, the petitioner was born on 2.8.1960. It is alleged in the Original Petition that for 18 years he was under treatment in Medical College, Thiruvananthapuram and during this period he could move only his head. His disability is certified as 60%. Since the petitioner was desirous of writing S.S.L.C. Examination and since he was averaged, he required a birth certificate. It was for the above purpose he made an application, which was rejected under Ext.Pl. The Registration of Births and Deaths Act, 1969 (Act 18 of 1969), a Central Enactment, came into force in Kerala with effect from 1.4.1970. Before coming into force of the above enactment, Travancore-Cochin Registration of Births and Deaths Act, 1953 was governing that part of the State which was under the

former Travancore, Cochin State. As far as the former Malabar area is concerned, it was the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886) that was applicable. A reference to the object and reasons of the Bill relating to Act 18 of 1969 would show that the enactment was brought for unifying similar legislations in Assam, Madras, Kerala and West Bengal and the provisions for registration of births and deaths contained in the Municipal Act, Panchayat Act, Chowkidar Manual or Land Revenue Manual by way of executive orders or bye-laws in other States, The Government thought that in order to develop a sound and unified system of registration in the Country, Central Legislation is necessary on the subject. The data that could be collected by accurate countrywide registration would be useful for national planning, organising public health and medical activities and developing family planning programmes, etc.

3. S. 8 of the Central Act refers to those who are required to pass on the information of births and deaths to the Registrar concerned for registering the same. Ss. 9 and 10 also deal with the responsibility of certain category of persons for notifying births and deaths to the Registrar. R.5(2) of the Registration of Births and Deaths Rules, 1970 provides that information required under S. 8 regarding birth has to be given within twenty-one days from the date of birth. S. 13 contains provision in the matter relating to delayed registration of births and deaths. It reads as follows:-

13. Delayed registration of birth and deaths-

(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefore, but within thirty days of its occurrence, shall

be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the First Class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any suit action.

4. Before Act 18 of 1969 came into force it was the provisions contained under the Travancore-Cochin Registration of Births and Deaths Act, 1953 that governed the petitioner herein, since he was born at Kollam within the former State of

Travancore-Cochin. S. 6 of the above Act contains the provisions regarding the duty of certain persons to give information of the birth to the Registrar. Such information can be given within two weeks next after the date of such birth. There are provisions for imposing penalty on failure to give such information under S. 16. S. 13 reads as follows:

13. Every Registrar shall without the payment of any fee register all information furnished to him under Ss. 6 to 11, and it shall also be his duty to inform himself carefully of every birth and of every death which takes place in his village or ward, and he shall ascertain and register, as soon as conveniently may be after the event, the particulars required to be registered according to the forms prescribed under S.S, touching every such birth or death as the case may be, which has not already been registered.

The above would show that as far as the petitioner is concerned, at the time of his birth he was governed by the Travancore-Cochin Registration of Births and Deaths Act, 1953 and in view of the provisions contained under S. 13 of the above Act, it was open to the Registrar to register his birth even if no information of his birth was given to the Registrar within the time as required under S. 6 of the Act. But, as mentioned earlier, under the Central Act 1969 different provisions are incorporated under S. 13 in the matter of delayed registration of birth and deaths. In 1987 (2) KLT 1028 (Supra) a Bench of this Court took the view that a birth had taken place before Act 18 of 1969 came into force in Kerala cannot be sought to be registered invoking the provisions contained under S. 13(3) of the Act 18 of 1969. The reasoning is that the Act is prospective in nature and therefore, it regulates only the events which have taken place after the coming into force of the Act. According to the learned Judges, in the case of a birth which had taken place several decades before the Act came into force no action can be taken to get the birth registered by invoking the provisions contained under S. 13 of the Act. With great respect to the learned Judges, we are not able to agree with the above view. As mentioned earlier, before Act 18 of 1969 came into force the petitioner could have got his birth registered belatedly by invoking the powers of the Registrar under S. 13 of the Travancore-Cochin Registration of Births and Deaths Act, 1953. It is true that by virtue of the provisions contained under S. 31 of Act 18 of 1969 the Travancore-Cochin Registration of Births and Deaths Act, 1953 stands repealed. At the same time, it cannot be held that while the petitioner who has lost the right which he had under S. 13 of the Travancore-Cochin Registration of Births and Deaths Act, 1953, has to be denied an opportunity to get his birth registered by invoking the provisions contained under S. 13(3) of the Act 18 of 1969. If a different view is taken we will reach an anomalous position. Those who were born before 1.4.1970 will have no remedy if his birth had not been already registered under the Travancore-Cochin Registration of Births and Deaths Act, 1953 and a person who is born on 1.4.70 or afterwards can get his birth registered beyond the period prescribed under law by invoking the provisions contained under S. 13(3). When the very object of the Act is to have a uniform set of provisions applying

to all persons in India by doing away the different enactments prevalent in each State it could not have been the intention of the legislature to deny certain persons the benefit of S. 13 of the Act 18 of 1969 as also the provisions of law originally applicable to them only for the reason that they were born before 1.4.70. We are therefore, of the view that it is open to those who are born before 1.4.70 also to take advantage the provisions contained under KS. 13 of the Registration of Births and Deaths Act, 1969 to get their birth registered after the prescribed period. Thus, we hold that the decision reported in 1987 (2) KLT 1028 (Supra) does not lay down correct law.

5. We therefore quash Ext. PI and direct the 1st respondent to consider the application submitted by the petitioner for registration of this birth on merits by exercising his jurisdiction under S. 13(3) of the Registration of Births and Deaths Act, 1969 and also after giving an opportunity to the petitioner to comply with all the formalities required for such an application. Orders shall be issued by the 1st respondent within a period of two months from the date of receipt of a copy of this judgment. The Original Petition stands allowed as above.