
(2013) 05 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7181 of 2012

Aparna Mody

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Citation : (2013) 3 WLN 274

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Vipul Singhvi, for the Appellant; Sanjeet Purohit, for the Respondent

Final Decision : Allowed

Judgement

P.K. Lohra, J.—The petitioner has laid the instant writ petition praying therein the under mentioned reliefs:- a. by an appropriate order or direction the respondents may kindly be directed to reissue passport to the petitioner by showing his date of birth as 26-06-1983 instead of 26-05-1983 and name as Aparna Mody instead of Aprana Modi and correct the surname of the petitioner parents as Mody instead of Modi without the requirement of getting declaration from the Court.

b. Any other appropriate order or direction which may be considered to be just and proper may be granted in favour of the petitioner.

Succinctly stated the facts of the case are that a passport was issued in the name of the petitioner on 30th August, 1991, wherein her date of birth was mentioned as 26th May, 1993 and her name was incorporated as "Aprana Modi".

2. Learned counsel for the petitioner, Mr. Singhvi, submits that subsequently the said passport was also renewed upto 24th September, 2011. The submission of the learned counsel for the petitioner is that at the threshold when the passport was issued in her name, her name was erroneously spelt as "Aprana Modi" instead of Aparna Mody" and furthermore her date of birth was also mentioned in

the passport as "26th May, 1983" instead of "26th June, 1983". The learned counsel for the petitioner also submits that now the petitioner is contemplating to apply passport afresh and the respondent-authorities while processing her application shall take note of the recitals contained in the earlier passport and the same is likely to result in many complications. As per averments contained in the writ petition when the petitioner approached the respondents for renewal/issuance of fresh passport, she was conveyed by the respondents to seek a declaration from the competent civil Court about her date of birth and change in the spelling of her name. Learned counsel for the petitioner submits that insistence of the respondents to seek a declaration from a competent civil Court for such matter will take a considerable period as the process of adjudication before a civil Court is very much cumbersome.

3. Learned counsel for the petitioner has invited my attention to the order dt. 31st October, 2011 passed by this Court in SBCW No. 7873/2010-Piyush Chopra vs. UOI & Ors. wherein in almost similar circumstances, this Court has issued directions to the respondents to make necessary corrections in the passport. Learned counsel for the petitioner has also submitted that subsequent to the decision in the case of Piyush Kumar, this Court has issued similar directions in the case of Ravi Bansal vs. Union of India, SBCW No. 5636/2012-decided on 26th April, 2013.

4. Per contra, Mr. Sanjeet Purohit, the learned counsel appearing for the respondents, submits that as per clause 8.1 to 8.3 of the Passport Manual, the change in the date of birth could be made only if the incumbent produces a declaratory order passed by the competent Court after necessary inquiry and therefore, declining the prayer of the petitioner by the respondents cannot be faulted.

5. This Court while examining the legality of the action of the passport authority in refusing such corrections without a declaratory order from the First Class Judicial Magistrate has observed as infra:-

After having heard the learned counsel for the parties and after having perused the material placed on record, this Court is clearly of the view that in the present case, the respondents have chosen to proceed in a rather perfunctory manner and have put forward the unnecessary demand of the so-called declaratory order regarding date of birth while ignoring all other material on record.

The petitioner has stated his date of birth as "07.10.1984". His date of birth, when he was a minor, got mentioned in his mother's passport as "07.11.1984". The discrepancy has only being of a month wherefore the petitioner has furnished repeated explanations and in proof of his correct date of birth, has furnished several of the documents including his Secondary School Certificate and Driving Licence. It has not been shown as to what cogent evidence was available with the respondents to discard the date of birth stated in the Secondary School Certificate. It has also not been shown as to how the date of

birth of the petitioner as stated in his mother's passport was taken conclusive by the respondents. Of course, the discrepancy does appear but has not been of such a magnitude or serious nature wherefore the petitioner is driven to seek a declaratory order particularly when Secondary School Certificate is available and ordinarily, the date of birth stated therein is to be accepted as correct.

In the given set of facts and circumstances, this Court is unable to find any justification wherefore the respondents have chosen to keep the application made by the petitioner pending for all this time. In the given fact situation, even the demand of penalty [as indicated in the communication dt. 04.05.2009 (Annex. 6)] does not appear justified. It has not been shown if the petitioner has deliberately made any such misstatement for which he was required to be penalised. It would rather be a travesty of justice if the respondents are permitted to avoid issuance of passport to the petitioner even when he has stated the date of birth in conformity with what has been mentioned in his academic career and in all the related documents including the Secondary School Certificate. Having regard to the circumstances, this writ petition deserves to be allowed with necessary directions to the respondents.

Accordingly, this writ petition is allowed; the respondents are directed to process the application made by the petitioner for issuance of passport immediately and, for the purpose of date of birth, shall take the date mentioned in the petitioner's Secondary School Certificate as conclusive. Further, the respondents are held not entitled to recover any penalty from the petitioner and the amount of Rs. 2,000/- as deposited by the petitioner towards penalty shall be refunded to him. The requirements of this order shall be carried out by the respondents within 30 days from today.

6. There is no quarrel in the factual position that the corrections sought by the petitioner are only with regard to spelling of her name and the month of her birth for the same year i.e., 1983. The petitioner in order to substantiate her claim for the necessary corrections has placed on record the requisite materials including her birth certificate, certificates issued by the Board of Secondary Education, Rajasthan for Secondary Examination, 1999 and Senior Secondary Examination, 2001. Besides this, the petitioner has also submitted her PAN card indicating her name as Aparna Mody and her date of birth as 26th June, 1983.

7. Thus, considering the fact that the corrections which are sought for by the petitioner are of minor character and the fact that at the time of issuance of the original passport, the petitioner was a minor, the action of the respondents is not justified and refusal on their part to make necessary corrections or permitting the petitioner to make necessary corrections in her application for issuance of fresh passport cannot be sustained. In view of the fact that the petitioner has produced requisite birth certificate showing her actual date of birth and certificates of Secondary and Senior Secondary Examination indicating correct spelling of her name along with PAN card. The bona fide error about her actual date of birth and spelling of her name at the time of issuance of original passport

when she was minor can very well be overlooked by the passport authority in the peculiar facts and circumstances of this case while processing her application afresh for renewal/issuance of passport. Thus, applying the ratio decidendi of Piyush Chopra's case (supra), the present petition deserves acceptance.

8. Accordingly, the present petition is allowed. The respondents are directed to consider the application of the petitioner for issuance of fresh passport after considering the documents to be submitted by the petitioner showing her actual date of birth and her name as Aparna Mody without insisting for a declaratory order from the First Class Judicial Magistrate. The respondents are directed to ensure compliance of this order in accordance with law. No order as to costs.