

(2021) 02 DEL CK 0029

In the Delhi High Court

Case No : Civil Writ Petition No. 6171 Of 2020

Deep Chandra Harbola

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 02-02-2021

Acts Referred:

Registration Of Births And Deaths Act, 1969 — Section 13, 15

Citation : (2021) 02 DEL CK 0029

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Ritesh Kumar, Awadhesh Kumar Singh

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode (physical and virtual hearing).

2. The Petitioner has filed this petition seeing directions for amending the place of birth in his passport, issued by the Regional Passport Office, Delhi.

3. The Petitioner is the holder of the passport bearing No. H9634228, which is valid from 22nd March, 2010 to 21st March, 2020. At the time when he

had applied for his passport, the said passport was issued with his place of birth being shown as "Delhi". The case of the Petitioner is that he did

not realise that there was a mistake in the place of birth mentioned in the passport. Sometime in 2013, when the Petitioner is stated to have decided to

travel abroad for the first time, he realised that the place of birth on his passport was incorrect. The Petitioner applied on 28th June 2013, seeking

correction of his place of birth in the passport, before the Regional Passport Office, Delhi, however he was asked to produce a birth certificate under

Registration of Births and Deaths Act, 1969, from the place he was born.

Thereafter, the Petitioner re-applied for the issue of the said passport with the rectified place of birth on 26th November 2015, on the strength of the

birth certificate issued by the Office of the Registrar of Births and Death, Department of Medical Health and Family Welfare, Government of

Uttaranchal on 9th June 2014. The passport authorities, however, have refused to change the place of birth of the Petitioner vide letter dated 29th

December, 2016, without giving any reasons for the same. Hence the present petition has been filed.

4. Ld. counsel for the Petitioner, in his submissions, relies upon the birth certificate of the Petitioner issued on 9th June, 2014 by the Office of the

Registrar of Births and Death, Department of Medical Health and Family Welfare, Government of Uttaranchal, which shows the Petitioner's

place of birth as Kargona of Tahsil/Block Bhikiyashen of District Almora of State/Union territory Uttarakhand. He submits that the Petitioner

has never travelled using the passport which had the wrong place of birth. Ld. counsel further submits that the Petitioner, being a High Court

employee, had mentioned his correct place of birth in his employment application to the High Court. He submits that since only an inadvertent error

has taken place, the same ought to be allowed to be rectified. Ld. counsel finally submits that an affidavit dated 7th January 2016, in terms of the

demand of the passport authorities, confirming the correct place of birth, was also filed with the passport authorities, however, the concerned passport

authority refused to amend the said passport on the ground that the Ministry of External Affairs' order does not permit a change in place of birth

on the passport. He relies upon two judgments of this court in :

i) Sunita Sawhney v. Union of India (WP(C) 10839/2015, decided on 3rd December, 2015)

ii) Nisha Kamboj v. Regional Passport Officer, Delhi (10789/2015, decided on 11th February, 2016)

5. Mr. Awadhesh Kumar Singh, Ld. counsel appearing for the Respondents, submits that counter affidavit has been filed. As per the said counter

affidavit, the stand of the passport authorities is that once information is submitted with the said authority, the applicant confirms the accuracy of the

said information and thus, applicants cannot be allowed to continuously keep

changing the said information. It is the Respondents case that there was no justification for giving the wrong place of birth initially itself.

6. Heard Id. counsels for the parties. The Passport Authority, appears to have relied upon the office memorandum dated 26th November, 2015, issued by the CPV division, Ministry of External Affairs, prescribing guidelines with regard to change/ correction of dates of birth in passports already held by applicants. As per the said guidelines, clerical/technical mistakes in passports, including that of place of birth can be permitted only within a period of five years of issuance of the passport with the incorrect information and not beyond that. The relevant extract of the said Memorandum reads:

“(ii) If an applicant applies for the change of date of birth in the passport within a reasonable period of time i.e. within a span of five (5)

years from the date of issue of passport having the alleged wrong date of birth, with the birth certificate issued by the Registrar of Births &

Deaths stating that the date of birth recorded in the passport was based on the entries mentioned documents other than the Birth Certificate,

the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority.

However, before the issuance of passport with changed date of birth, the Passport Authority shall also levy appropriate penalty on the

applicant for obtaining passport on previous occasion by providing wrong information regarding his/her date of birth.

The order of the Passport Authorities refusing a change in the place of birth in the passport of the Petitioner, seems to be based on the aforesaid

Office Memorandum.

7. Ld. counsel for the Petitioner has relied upon the judgment of a Id. Single judge of this court in Sunita Sawhney (supra) wherein it was held as

under:

“16. To me it appears:

(I) That the respondents, at the time of issuance of Passport and for recording date of birth therein, should insist upon the applicant

producing the Birth Certificate and only if the applicant states that his/her birth was not registered under the law aforesaid should other

proof of date of birth be accepted. Ordinarily, the applicant should be asked to resort to delayed registration procedure under Section 13

(supra).

(II) That in the event of the applicant, at the time of issuance of Passport states that his/her birth was not registered and subsequently, while

seeking correction of date of birth, producing (a) a Birth Certificate showing registration at time of birth or soon thereafter, the

respondents, if satisfied of reasons given for being earlier ignorant of registration; or (b) a Birth Certificate obtained under the delayed

registration procedure, the respondents should correct the date of birth on the Passport to bring it in consonance with the date of birth on

the Birth Certificate.

(III) No application for change of date of birth on Passport, inconsistent with date of birth on Birth Certificate can be entertained. The

applicant in such case should be directed to resort to procedure under Section 15 of Registration of Births & Deaths Act for correction

thereof.

(IV) In no case can the respondents refuse to correct date of birth, after howsoever time the same may have been sought.

17. I say so because (a) Passport is an important document on which and on entries wherein a large number of other authorities/persons

dealing with the holder of Passport rely; (b) once birth is compulsorily required to be, registered under the law aforesaid, there is no

reason why PIAs should not insist on production of Birth Certificate for making entry of date of birth on the Passport specially when the

law also makes a provision for delayed registration; (c) however where, in the past. Passport has been issued with date of birth on basis

other than Birth Certificate, correction of date of birth should be allowed only on production of Birth Certificate by following the delayed

registration procedure, again in consonance with the law aforesaid; (d) the same will also fulfil the aim of the law aforesaid of accurate

country wide data and not having a citizen whose birth is not registered in accordance with law of the country; (e) when the law aforesaid

provides for enquiry by Magistrate as to the date of birth of a person whose birth was not contemporaneously registered, there appears to

be no need for PIA to make own enquiry in this regard or to insist on obtaining declaration of Civil Court in that regard; (f) once a Birth

Certificate is produced and the PIA is satisfied of genuineness thereof, correction of date of birth to bring it in consonance with Birth

Certificate cannot be refused, whatsoever may be in delay in applying therefor; (g) inconsistent dates of birth can cause grave prejudice to

the citizen and for which there is no sanction in law; (h) there can be diverse reasons for delayâ?"for instance need for change in date of

birth in Passport to bring it in consonance with Birth Certificate may be felt at fag end of life when the holder of Passport intends to migrate

to be with children abroad and when such inconsistency is found to be an impediment; (i) the judgments aforesaid having given primacy, in

the matter of date of birth, to the Birth Certificate, there is no reason to refuse to correct the date of birth on Passport on production of

Birth Certificate.â??

8. In the abovementioned decision, the Court has categorically held that irrespective of the amount of delay which may have been there in applying for

a change of date of birth, the same cannot be refused. As long as the genuineness of the birth certificate is not in dispute, the Applicant ought to be

allowed to change the date of birth in accordance with the birth certificate. The same principle is also applicable to the change in place of birth.

9. Reliance is also placed upon the judgment in Nisha Kamboj (supra) wherein a Id. Single Judge of this Court has held:

â??4. However, keeping in view the aforesaid judgments cited by learned counsel for petitioner as well as the fact that the petitioner is

relying upon a statutory document, namely, birth certificate issued under the Act, 1969, this Court is of the view that petitioner's request for

change of place of birth should be examined by the passport authority itself.â??

10. The Petitionerâ??s passport has now expired. Accordingly, the Petitioner is permitted to apply for a fresh passport with the correct place of birth,

in terms of the birth certificate which has been placed on record. The earlier passport shall not come in the way of the Petitioner applying for a new

passport, with the correct place of birth. Needless to add, the authorities would be entitled to verify the genuineness and accuracy of these documents

and proceed with the application in accordance with law.

11. The present petition is disposed of in the above terms.