
(2016) 08 MAD CK 0082

In the Madras High Court

Case No : Writ Petition (MD). No. 15074 of 2016

J. Nijish Archibald

APPELLANT

Vs

The Regional Passport Officer

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Citation : (2017) 169 AIC 624 : (2016) 7 MLJ 605

Hon'ble Judges : Mr. M. Venugopal, J.

Bench : Single Bench

Advocate : Mr. G. Thalaimutharasu, Advocate, for the Petitioner; Mr. R. Murugappan, Senior Panel Counsel for Central Government, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. M. Venugopal, J.— Heard both sides. By consent, the main writ petition itself is taken up for final disposal.

2. No counter is filed on behalf of the Respondent.

3. According to the petitioner, he was born out of wedlock between his mother Mrs. Vergin Inigo and his Biological Father Mr. Oliver Samarchibald on 09.07.1994. A Birth Certificate was also issued to him by the Nagercoil Municipality on 19.08.2008 under Regn. No. 4011454.

4. The stand of the Petitioner is that while he was 6 years old, his Biological Father died on 09.08.2000 and thereafter, his mother got remarried to one Jerala Gnanarathinam on 15.11.2002. His mother's new husband and his mother are taking care of him. As a matter of fact, in all the certificates, such as Transfer Certificate and Aadhar Card, his father's name is mentioned as "Jerald Gnanarathinam".

5. The plea of the petitioner is that he had completed B.E (Mechanical Engineering) degree course at Jeppiar Engineering College, Chennai, during April 2016. Now, he is desirous of continuing his higher studies at abroad. Since the

petitioner's original passport bearing No. H0350281, issued by the Respondent, got expired on 10.09.2013, he made an application to issue a new passport and also applied with all requisite formalities (vide Ref.No. 16-1005980009). It is also represented that after receipt of petitioner's application, the respondent called for him for an interview on 19.07.2016. In fact, in the original passport, his Biological Father's name finds a place. But, in all his certificates like Transfer Certificate and Aadhar Card, his father's name is mentioned as "Jerald Gnanarathinam" (his mother's new husband). However, in the renewal application form, he mentioned his father's name as of "Jerald Gnanarathinam". He attended the interview on 19.07.2016, but so orally informed by the Respondent/Regional Passport Officer, Regional Passport Office, Madurai that unless there is a specific direction from the Court, it may not be possible to issue a new passport by inserting his father's name as "Jerald Gnanarathinam", after renewing the earlier one.

6. At this juncture, the Learned Counsel for the Petitioner seeks in aid of the decision of this Court in B.S. Deepa v. The Regional Passport Officer, Chennai-45 and another reported in 2015 (2) CTC 503at special page 513 and 514 , whereby and where under, at paragraph Nos.34 to 38, it is observed as follows:

34. Therefore, the fundamental premise, on which, the Hindu Law of Adoptions proceeds is that the relationship between the biological parents and the children can never get severed, except in accordance with the provisions of this Act. In such circumstances, I do not know how Courts could issue directions to replace the name of the biological father or mother with that of the stepfather or mother. It is only in cases of legally valid adoptions that the names of the biological parents could be replaced by the names of the adoptive parents, as law recognises a severance of ties in such cases.

35. The cases of children surrendered to child care homes or abandoned by their biological parents, do not pose great difficulty. In such cases, the first identity itself is born, only when the Court passes an order approving local or inter-country adoption. Since such adoptions are now well regulated by the earliest decision of the Supreme Court in Lakshmi Kant Pandey v. Union of India AIR 1984 SC 469 and the various guidelines issued by the Government of India, the Courts passing orders in terms of the provisions of the Guardians and Wards Act themselves issue appropriate directions to the Passport Office, to include the names of the adoptive parents in the passport issued to the child. But, as stated earlier, the children in such cases happen to be those abandoned by their biological parents. Therefore, there is no chance of any discrepancy between different types of certificates. But, cases such as the one on hand, pose a lot of difficulties, as I have pointed out earlier. While the Courts are certainly obliged to take care of the immediate interests of these children by giving certain directions to the Passport Office, the Courts cannot overlook the long-term needs and rights of these children. For instance, the right of a child to inherit the estate of its biological father, will get defeated by a direction to effect correction of entries

in the statutory records.

36. Therefore, I am of the view that the Ministry of External Affairs is obliged to come up with innovative steps and measures to resolve problems of this nature. The Passport Manual may perhaps have to be amended suitably to incorporate additional columns in the applications for the issue of passports. Apart from the columns where the names of the biological parents are to be indicated, the application form may also contain additional columns where the names of the step-parents could be indicated, wherever applicable. This will reduce or even eliminate the possibility of any discrepancy between the entries in the Birth Register and the School Records or other records.

37. Such a step as suggested above, will also ensure that the rights guaranteed to children under the United Nations Convention on the Rights of the Child, 1989, to which India is a signatory, are protected. While it is necessary to secure a passport for the minor daughter of the petitioner at the earliest, it is also necessary to ensure that the emergent needs do not destroy the future rights of the child. Therefore, I am of the view that the writ petition could be disposed of with certain directions, both to the Union of India and to the respondents herein, so that persons similarly placed like the petitioner are not compelled to approach the Court every time for the issue of passports.

38. In view of the above, the writ petition is disposed of with the following directions:-

(1) The Ministry of External Affairs, Union of India may incorporate suitable provisions in the Passport Manual and incorporate suitable columns in the applications for the issue of passports, to enable the parties to indicate either the names of the biological parents or the names of the adoptive parents or the names of the step parents or all of them, according as the situation demands. It can be left to the will of the parties either to indicate the names of one or more of the biological parents along with the name/ names of the adoptive or step parent/parents or to indicate the names of all.

(2) In so far as the case on hand is concerned, the respondents shall issue a passport to the daughter of the petitioner, by indicating the name of R. Lakshmanan as the stepfather, in the column reserved for filling up the name of the father. The respondents are directed to issue passport within four weeks, upon the petitioner's application bearing File No.MA3067806994714 dated 10.7.2014.?

7. In this connection, this Court aptly points out the order dated 31.07.2014 of the Delhi High Court between Kaveen Kaur v. The Regional Passport Officer [W.P. Civil No. 3582 of 2014], which pertain to a case, where the Ministry of External Affairs, turned down the request of the daughter to include the name of the Stepfather in her passport. As a matter of fact, the Ministry of External Affairs placed reliance on clause 4.4 of the Passport Manual, which runs as under:

"4.4 In the case of (b) above, the name of stepfather/stepmother cannot be written in the passport of children from the previous marriage. The relationship of the child to his biological parents subsists, even after divorce by parents. In such cases, the column of father or mother in the passport cannot also be left blank. Therefore, such applicants must apply with the names of their biological parents. However, if the stepfather or stepmother is appointed by a Court as legal guardian, the name of such a step-parent can be written as legal guardian."

8. Also this Court aptly points out the order dated 13.10.2014 in W.P.No.6755 of 2014 between Jigna Mahesh v. Union of India, through Secretary Department of Ministry of External Affairs and Another, wherein, it is observed that since the Biological father had given up all rights in favour of the Biological mother at the time of divorce and also since there was a Deed of Adoption executed by the Biological father himself in favour of the person, who married the Biological mother, it is held that there was break up of ties between the Biological father and the child.

9. Be that as it may, this Court following the decision of this Court in B.S. Deepa v. The Regional Passport Officer, Chennai-45 reported in 2015(2) CTC 503, at special Page 514 and also taking note of the entire conspectus of the attendant facts and circumstances of the present case, in an integral fashion, directs the Respondent/Regional Passport Officer, Regional Passport Office, Madurai to consider the aspect of reissuing the petitioner's passport bearing No.H0350281, after duly renewing the same, by acting on the application in Ref.No.16-1005980009, in the teeth of the decision of this Court in 2015 (2) CTC 503 at page No. 503, at special page No. 514, as stated supra, within a period of four weeks from the date of receipt of copy of this order and to do the needful to and in favour of the petitioner.

10. With the aforesaid observation(s) and direction(s), the writ petition is disposed of. No costs.