
(2015) 06 KL CK 0111

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 9073 of 2015-H, 9317 of 2015-L, 10431 of 2015-D, 12693 of 2015-J, 14538 of 2015-N and 16668 of 2015-G

Jayakumar

APPELLANT

Vs

The Regional Passport Officer

RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Passports Act, 1967 — Section 17, 6

Citation : AIR 2015 Ker 237 : (2015) 3 ILR Ker 597 : (2015) 3 KHC 763 : (2015) 3 KLT 158 : (2015) 3 RCR(Civil) 1001

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : B. Mohanlal, for the Appellant; N. Nagaresh, Assistant Solicitor General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The above writ petitions were heard together, since it dealt with the common question of correction of date of birth in Passports, as per Circular No.VI/401/2/5/2001 dated 18.04.2001 as amended on 29.10.2007 and 15.01.2008.

2. The petitioners in these cases are unable to speak of the actual date of issuance of the Passport. The respondent-Passport Issuing Authority [for brevity "PIA"] also does not have any records relating to the time of issuance of the Passport, since all the Passports have been issued twenty years back. Admittedly the Passports were renewed more than once. All the petitioners require change in the date of birth as originally entered in the Passport. They now assert a different date of birth as against that disclosed in the Passport on the basis of their Secondary School Leaving Certificate [for brevity "SSLC"], Transfer Registers issued by the School, Aadhar Card, Election Identity Card and so on and so forth; either one or more of them. The petitioner in W.P.(C). No. 14538 of

2015 alone relies on a Birth Certificate issued by the Registrar of Births and Deaths, which is said to have been issued in the year 2012. The petitioners also does not speak of any specific cause of action which precipitated the need for the above writ petitions. The correction ranges from five years to seven years, all seeking advancement of their date of birth, an attempt, for whatever reason, to be styled younger than that they would be ascribed in accordance with the Passport. The petitioners place reliance on various decisions of this Court.

3. The learned Assistant Solicitor General of India seeks to distinguish each of the decisions, to contend that the correction cannot be granted for the asking and it can only be in accordance with the Circular. In cases where the correction is within 2 years, the Circular also requires that a Court order should be obtained. However, the said "Court order" indicates a declaration from the Civil Court and not the invocation of Article 226 of the Constitution, is the argument.

4. The law on the subject has been urged by both sides relying on various decisions, which shall be noticed in the order of their pronouncement. The first in point, noticing that there are a number of decisions on that count, is Jismol Joseph Vs. Union of India (UOI), (2003) 3 KLT 265 wherein a learned Single Judge of this Court reiterated the position that the declaratory orders as required under the Circular could be issued by the Chief Judicial Magistrate. Later a learned Single Judge, in Aboo Chettiyanthodi Vs. The Regional Passport Officer, Malappuram, (2008) 1 ILR (Ker) 759 : (2008) 1 KLJ 642 : (2008) 1 KLT 992 found that Jismol Joseph (supra) did not trace the declaration to any specific source of power. It was also noticed that the power was on the basis of a Note in the information booklet, which required the correction of date of birth on orders issued by a Judicial Magistrate. The Note stood deleted and a Court order, to which reference was made in the amended Circular, was held to be a declaratory order passed by a competent Civil Court having jurisdiction.

5. In an unreported decision of this Court in W.P.(C). No. 17606 of 2010 dated 20.07.2010 [Vijayakumar v. Union of India] another learned Single Judge, considered the decision in Aboo (supra) and found that such a declaration would be required only if there are conflicting certificates issued by two different authorities. In the said case, since the extract from the School Admission Register alone was relied on, it was directed that the PIA could consider the correction of the date of birth.

6. Noticing the obvious conflict between Jismol (supra) and Aboo (supra), yet another learned Single Judge referred the matter to a Division Bench. The Division Bench in Raveendran Pillai, G Vs. Vice Consul, Consulate General of India and another, (2011) 3 ILR (Ker) 771 found unequivocally that for making alteration to the date of birth in Passport, the holders of such Passports would have to get declaratory orders from the competent Civil Courts. This, as of now, is the binding precedent available in this High Court.

7. Simultaneous to Raveendran Pillai (supra), a learned Single Judge in Abida Vs.

Government of India, (2011) 1 KLT 34 : (2011) 2 RCR(Civil) 426 considered the issues (i) whether the PIA could insist for a Birth Certificate issued by the Registrar of Births and Deaths, (ii) whether SSLC Book would be sufficient and (iii) whether for non-production of Birth Certificate Section 6 of the Passports Act, 1967 [for brevity "the Act"] could be invoked for rejecting an application for Passport. The Court found that the Act having not specified the document to be produced in proof of date of birth, it was perfectly valid for the PIA to have required production of birth certificate. Section 6 was held to have no effect in the case of defective applications, which defect, in the said case, was the adequate proof of date of birth being not available. *Nazar Vs. Union of India*, (2013) 4 KLJ 276 : (2013) 4 KLT 34 , again a Single Bench judgment, differed slightly from *Abida* (supra) and found that the birth certificate cannot be the sole basis for correction of date of birth for the persons born before 26.01.1989. It was held that in such cases and also in cases where a person has not completed SSLC, some document to substantiate the date of birth would be sufficient. These decisions do not have any application as far as the cases with respect to correction of date of birth is concerned, except for the possible inference that the SSLC book produced by the petitioners could be relied on by the PIA.

8. The binding precedent often referred to is *Swapna Siju Vs. Union of India and Another*, (2012) 4 KLJ 208 , wherein the petitioner was concerned with the issuance of a new Passport. *Swapna Siju* had an earlier Passport issued on 23.04.1983, when she was a minor. Her date of birth was shown as 29.04.1974 in the said Passport. The same had not been renewed and it stood expired. On 30.03.2009, under Tatkal Scheme, *Swapna Siju* applied for a new Passport and also enclosed along with the application documents to evidence her date of birth as 29.04.1975. On the PIA seeking clarification, it was submitted by the applicant that the earlier Passport was issued at the time when she was a minor and since her parents were abroad, her uncle had written the date of birth wrongly as 29.04.1974. The issue therein was with respect to the variance of the date of birth and not a correction as such to an existing Passport. The aforesaid Circular was referred to and the amendments brought in thereon also. This Court noticed that the various Circulars would indicate that the extract from the Register of Births generally is not insisted for persons born before 26.01.1989. The PIA is also conferred with discretionary power to correct the date of birth in a Passport where the PIA is satisfied that the earlier entry was mistakenly made, either by the applicant or by the PIA. In that case, the Court was persuaded to invoke the extraordinary jurisdiction, since the petitioner was a minor, aged 9 years, when she was first issued with the Passport and any declaration as to her date of birth could not have been squarely attributed to her. The SSLC book produced along with the second application was found in the circumstances to be a document which could be relied on to prove the date of birth. That document was also not available when the earlier Passport was issued. I am in perfect agreement with the said judgment, since the facts mandated invocation of the extraordinary remedy under Article 226 of the Constitution.

9. The claim of the petitioners can only be considered under the Circular issued by the Ministry of External Affairs numbered as VI/401/2/5/2001, which is produced across the Bar by the learned Assistant Solicitor General. The said Circular speaks of rectification/correction in date of birth or place of birth in instances where the applicant himself had committed a mistake as also the mistake caused by the Passport Issuing Authorities (PIAs), who issued the passport. In the latter case, the date of birth is corrected in the original passport issued and when the applicant has committed a mistake, the Circular requires a procedure to be followed, wherein the applicant is required to surrender the passport with details of original date of birth entered as also authenticating documents with respect to the change necessitated along with an affidavit explaining the circumstances under which such a mistake occurred. Where the mistake is pertaining to less than 2 years, the Circular also permits the PIA to make the correction on satisfaction of the reasons stated and the documents produced. In excess of 2 years, it is required that a Court order be obtained by the applicant. It is based on the above Circular that the writ petition has been filed seeking an order directing correction of date of birth.

10. It is the reference to the "Court order" in the said Circular that prompts many a Passport holder to approach this Court, claiming a direction for correction of date of birth. It is to be clarified that this Court's power is not one conferred by the Circular; nor does the Circular intend that. This Court exercises power under Article 226, which inter alia intends at effacing any illegality and undoing of an injustice. Unless there are compelling reasons to invoke the extraordinary jurisdiction, that too a discretionary one, this Court would not issue an order merely for the asking. The grounds asserted by all the petitioners is the requirement of a Court order as per the Circular, insisted upon by the PIA, by reason of the obvious disparity in the date of birth as disclosed from the Passport and that revealed in the certificates relied on by them. No specific cause or resultant effect is averred in the writ petitions as a reason for attempting to claim such correction, after having for very many years held the Passport, travelled abroad on its strength, resided in the country/countries abroad and also renewed it more than once. The petitioners, hence, are to be understood as having come to this Court on a mere whim to correct the date of birth; with neither any perceivable cause of action disclosed nor revealed a probable consequence on that change being made. This Court is unable to countenance such a claim; nor is it possible under Article 226 of the Constitution of India.

11. At the outset, it is to be noticed that all the petitioners were holding the said Passports for more than twenty years. Despite a specific query as to the date on which the Passport was originally issued, all the petitioners feigned ignorance. Neither is a date referred to in the writ petitions. The PIA, of course, would not maintain their records for so many years, especially since all the petitioners have in the past twenty years regularly renewed the Passports. There is absolutely no reason as to why the petitioners did not seek for a correction at an earlier point of time, in all these years. The petitioners do not have a case that they had

declared a different date of birth at the time of issuance on the basis of any specific document; but assert a mistake often alleged on the agent.

12. The date of birth as disclosed in the valid Passport held now, undoubtedly is the date of birth declared at the time of issuance. The petitioners were holding the said Passports for very number of years and as stated earlier, had been regularly using the same. At no point in the past very many years did the petitioners claim for a correction before the PIA; not even at the time of renewal. The petitioners are disentitled to make such a claim, differing substantially from the declaration made earlier for reason only of their having accepted and acquiesced to the date of birth as disclosed in the valid Passport now held by them, which had been used by them in their travels and residence abroad. The documents now referred to by them being Secondary School Leaving Certificate, etc., were also available with them at the time of issuance of the said Passports and no reason is stated as to the presumably false declaration made.

13. One other aspect is the reliance placed on the SSLC Certificates, Transfer Registers of the School, Election Identity Cards and so on and so forth. All the petitioners are persons who were born prior to 1989 and the said documents referred to in the various writ petitions also indicate the date of birth as declared by them before the authorities who issued such certificates. What comes to fore, is the claim of the petitioners on the conflicting declarations made before the school authorities and the PIA. The claim made before the School authorities would not have been made by the petitioners themselves, since at the time a student sits for matriculation, he/she would normally be a minor. Armed with the said certificate and after having obtained majority, a declaration, admittedly a false declaration, was made before the PIA for obtaining the Passport, is the case. Hence, while one declaration is accepted, the other would have to be termed as a false one. There should be sufficient material to substantiate that and, hence, the binding precedent of this Court in *Aboo* (supra) that there should be a declaration from a competent Civil Court, PIA could not, on the basis of the certificates produced by the petitioners, resort to the correction of date of birth on the mere asking.

14. A learned Single Judge of the High Court of Andhra Pradesh in W.P.(C). No. 3416 of 2015 dated 12.04.2005 [*Mohammed Ayub Khan v. The Regional Passport Officer*] in a similar circumstance of reliance placed on the Transfer Certificate from a school and the Secondary School Leaving Certificate found that there is no presumption that the same is true, relying on *Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others*, AIR 1965 SC 282 : (1965) 3 SCR 861 and *Birad Mal Singhvi Vs. Anand Purohit*, AIR 1988 SC 1796 : (1988) 3 JT 389 : (1988) 2 SCALE 328 : (1988) 2 SCR 1 Supp : (1988) 2 UJ 442 . *Brij Mohan* (supra), a decision of a 5-Judge Bench, was a case in which the election of a candidate was challenged inter alia on the ground that on the date of nomination, the appellant was below 25 years of age. The petitioner in the election petition, the candidate who lost, had produced three documents; being the admission register of a

school, an application made by the respondent for employment and the certificate issued by the School Examination Board of Bihar, all of which showed him to be below 25 years of age. Negating the reliance placed on such documents, it was held so:

"The appellant's case is that once this wrong entry was made in the admission register it was necessarily carried forward to the Matriculation Certificate and was also adhered to in the application for the post of a Sub-Inspector of Police. This explanation was accepted by the Election Tribunal but was rejected by the High Court as untrustworthy. However much one may condemn such an act of making a false statement of age with a view to secure an advantage in getting public service, a judge of facts cannot ignore the position that in actual life this happens not infrequently. We find it impossible to say that the Election Tribunal was wrong in accepting the appellant's explanation. Taking all the circumstances into consideration, we are of the opinion that the explanation may very well be true and so it will not be proper for the court to base any conclusion about the appellant's age on the entries in these three documents, viz., Ex. 2, Ex. 8 and Ext. 18".

The proposition was followed in *Birad Mal Singhvi* (supra). It was held so:

"If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. Merely because the documents Exs. 8, 9, 10, 11 and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exts. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents.

xxx xxx xxx

To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded".

Hence, the production of a certificate issued by the school authorities would not by that alone prove the truth of the declaration based on which the entries are made.

15. In one of the above writ petitions an extract of the Register of Birth is produced; but one issued in 2012. When such a record of the petitioners' birth

was available, clearly consciously the petitioner declared a wrong date of birth before the PIA for the issuance of the Passport.

16. A Division Bench of the Gujarat High Court in *Regional Passport Officer Vs. Kokilaben Panchal and Others*, AIR 2009 Guj 59 : (2009) 2 GLR 1246 found that the PIA is not expected to make an independent enquiry when there is a dispute or difference with regard to the date of birth, place of birth or name entered in the Passport. PIAs could direct production of relevant documents from the authorities maintaining the Register of Births and Deaths or from the Judicial Magistrate or from the Civil Court.

17. The admissibility of the Record of Deaths and Births, maintained by the statutory authorities under Section 35 of the Evidence Act, 1872, was upheld by the Hon"ble Supreme Court in *CIDCO Vs. Vasudha Gorakhnath Mandevlekar*, (2009) 121 FLR 991 : (2009) 8 JT 495 : (2010) 2 LLJ 674 : (2009) 8 SCALE 480 : (2009) 7 SCC 283 : (2009) 2 SCC(L&S) 319 : (2009) 9 SCR 427 : (2011) 1 SLJ 140 : (2009) 8 SLR 1 . That was a case in which an employee while entering the service of a Corporation disclosed her date of birth to be 02.10.1950. However, relying on a memo submitted by the employee subsequent to her appointment, wherein the year of birth was interpolated as "1950" after scoring of the year "1948", the employee was found liable for superannuation taking her date of birth as 1948. The employee produced Birth Certificate indicating the date of birth to be 02.10.1950, which certificate was dated 02.04.2000. The Hon"ble Supreme Court found that but for the interpolation in a solitary memo, all the service records show the year of date of birth to be 1950. The employee's claim was upheld on two grounds; one that the Births and Deaths Register maintained by the statutory authority raises a presumption of correctness and that the Corporation is bound by its own records. That was a case in which the date of birth disclosed in the Register of Deaths and Births tallied with the consistent declaration of the employee as was revealed from the records of the corporation. Herein, no explanation is offered as to why a false declaration was made, despite the correct date of birth being entered in the Register of Births and Deaths. The fact that such wrong declaration has been acted upon by many, restricts the grant of relief to the petitioner.

18. Another significant aspect in all these cases is that, the petitioners seek change of date of birth by advancing it from that declared in the Passport, by 5 to 7 years. Relevant would be, hence, the consideration of what a Passport entails. Before the enactment of the Passport Act of 1967, when the issuance of Passports were regulated by the Indian Passport Act, 1920 and the Rules of 1950, an issue arose before this Court as to whether Medical professionals could be denied Passport on the ground that the country needs their service. A Full Bench decision of this Court, reported in *Francis Manjooran and Others Vs. Government of India, Ministry of External Affairs, New Delhi and Others*, AIR 1966 Ker 20 , with separate judgments by three learned Judges, all of them former Chief Justices of this Court, is apposite. At that point of time, there was

no statute governing the issuance or refusal of a Passport and the Act of 1920 required only Passports for those persons who enter India [Now admittedly there is an enactment governing the issuance and refusal of Passports]. The history of "Passport" was traced to an English statute of 1548, where the term was applied to a licence given by a military authority to a soldier to go on furlough. The system of identifying a citizen in foreign countries by the "Passport" was found to be brought in vogue after the 1st World War. The judgment of M.S. Menon, C.J., found so in paragraph 9:

"9. For the purposes of this case it is enough to say that an Indian passport is an identity and travel document issued to an Indian national and essential for his travel outside India and for this return to this country.

The usual wording is:

"These are to request and require in the name of the President of the Republic of India all those whom it may concern to allow the bearer to pass freely without let or hindrance, and to afford him or her every assistance and protection of which he or she may stand in need".

The question as to what is a Passport today was answered so by Raman Nair, J. (as he then was):

"What is a passport today, whatever might be its historical origins? It is many things, for it serves many purposes. It is, among other things, an essential document of travel, for, most countries insist on a passport for entry and a good many for exit as well. It serves as a document of identity and is prima facie evidence of nationality. But these are only some of the many uses to which a passport is put. Essentially a passport remains what Lord Alverstone C.J. said it was in *Rex v. Brailsford* (1905) 2 K.B. 730 at 745 of course with special reference to the United Kingdom:

"It will be well to consider what a passport really is. It is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries, and, it depends for its validity upon the fact that the foreign Office in an official document vouches the respectability of the person named".

Gopalan Nambiar, J. (as he then was) also concurred with the above view.

19. Apposite also would be a reference to *Satwant Singh Sawhney Vs. D. Ramarathnam*, Assistant Passport Officer, Government of India, New Delhi and Others, AIR 1967 SC 1836 : (1967) 3 SCR 525 :--

"A passport, whether in England or in the United States of America serves diverse purposes; it is a "request for protection", it is a document of identity, it is a prima facie evidence of nationality; in modern times it not only control exit from the State to which one belongs, but without it, with a few exceptions, it is

not possible to enter another State. It has become a condition for free travel".

20. The Passport hence, is a political document issued by the sovereign of a country to its citizen, giving him the protection due to a citizen of that country, in his travels and residence abroad. The citizen who travels abroad and resides abroad and gets himself employed abroad, however, traces his roots and his citizenry status to the country of his origin on the basis of his Passport, which is the basic document on which such travel, residence and employment is facilitated. The declarations made in the Passport and the stamp of approval by his/her sovereign State reveals the details of the identity of the citizen to all and sundry outside the country in his travels. The details entered therein are taken by any person/agency, of the outside country, in which he/she travels and resides as the authenticated details of his existence as a citizen of his/her country of origin. These details are acted upon in dealing with him, employing him and allowing him to travel and reside in the foreign countries.

21. The consequences which could occur on a drastic change made to one of such essential identities, herein being the date of birth, is perceivable but not all possibilities easily discernible. For one it could be a termination of employment at the age of superannuation as per the laws of the foreign country. Legion and numerous are the decisions of this Court and the Hon'ble Supreme Court that, to correct the date of birth in service records, the claim should be made within a reasonable time from the initial appointment. No such claim can be entertained far later and not at all, at the fag end. This is so, since the date of birth declared entails certain consequences, upon which the affairs of other employees and the employer itself are arranged. If it be so for employment within the country, could we in today's world of comity of nations deny or decline such inevitable consequences of employment abroad? The employer abroad would have taken a citizen of this country into his employment on the basis of the Passport and on the basis of the age disclosed therein. If the same is changed after a very many number of years, that too to the extent of reducing the age, from 5 to 7 years; then the consequence would be severe for such employer and the sanctity of the Passport issued by this country would be seriously jeopardised.

22. The Passport issued by the sovereign State is the property of the State under Section 17 of the Passports Act, 1967. The details entered therein cannot be lightly interfered with, that too after very many years without any sustainable cause and without any explanation as to why initially such a wrong declaration was made and why now a change is sought; that too based on a document which was available with the applicant when the original declaration was made. It is not proper for this court to sit lightly in this jurisdiction and issue orders without proper satisfaction of an illegality or injustice having been occasioned. The consequence if any suffered by the petitioners are all their own making, which they never sought to rectify in all these years when they declared themselves to be of a particular age, by showing their Passports as the authenticated identity of their citizenship in India.

23. This Court has also been shown a judgment of a learned Single Judge of this Court in *Nizar Vs. The Union of India*, (2014) 4 KHC 558 : (2014) 4 KLT 609 where the restriction for enabling correction by PIA, only when the difference is two years, was struck down. The said decision is said to be challenged in appeal. In fact, this Court would agree with the principle on which the decision proceeds, since there is no rationale behind the restriction on the power conferred on the PIA to correct the date of birth only if the difference is within two years. The difference in date of birth be two years or twenty years, the power should be one to correct a bona fide mistake and that too within a reasonable time. Even a Civil Court declaration after many number of years would lead to the applicant having possibly perpetrated a fraud on many others who acted upon the authenticated declaration of a Sovereign State as to the age status of its citizen. The authorities would do well to introspect on the observations made herein to make suitable amendment to the Circular.

24. For all the above reasons, this Court does not see any reason why the jurisdiction under Article 226 should be so lightly invoked by this Court. No warrant exists for issuance of a writ on the basis of the rather barren pleadings. There is no scope for leaving any liberty on the petitioners to approach a Civil Court too on the reasoning adopted by this Court and the delay occasioned in seeking the correction. This Court is fortified in saying so by the decision of the Hon'ble Supreme Court, reported in *Board of Secondary Education of Assam Vs. Md. Sarifuz Zaman and Others*, (2003) 10 SCALE 89 : (2003) 12 SCC 408 : (2003) 6 SCR 1273 Supp , wherein the issue of correction of date of birth in the school records as certified by a statutory Board came up for consideration. It was held so in paragraph 12:

"Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone. There ought to be a limit of time by which human affairs stand settled and uncertainty is lost".

The writ petitions fail and they are accordingly dismissed. Parties are left to suffer their respective costs.