

(2000) 09 BOM CK 0047

In the Bombay High Court

Case No : Criminal Writ Petition No. 1072 of 2000

Jigar Harish Shah

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

General Clauses Act, 1897 — Section 21
Passports Act, 1967 — Section 5
Passports Rules, 1980 — Rule 3

Citation : AIR 2001 Bom 60 : (2001) ALLMR(Cri) 54 : (2001) 2 BomCR 244 :
(2001) 1 BOMLR 202 : (2001) 1 MhLj 483

Hon'ble Judges : R.M. Lodha, J;G.D. Patil, J

Bench : Division Bench

Advocate : Mr. Subhash Jha, Akhilesh Singh and V.M. Abhyankar, for the Appellant; Mr. H.V. Mehta and Mr. Pravin Singhal, Assistant Public Prosecutor, for the Respondent

Judgement

G. D. Patil, J.—Rule made returnable forthwith. Mr. Mehta, learned counsel for respondent No. 1 waives service. The learned A.P.P. waives service for respondent No. 2 - State. Heard by consent.

2. By the instant petition, the petitioner is seeking a direction against respondent No. 1 for rectifying the mistake allegedly committed by the Passport Authority in relation to mentioning his date of birth as 2.7.1979 as against his correct date of birth 2.10.1979 in the passport issued to the petitioner.

3. The petitioner had made an application to the Passport Authority for recording his correct date of birth in the passport making amendment in the passport. The Passport Authority appears to have declined to do so, unless the petitioner produces a declaratory order in that regard from the First Class Judicial Magistrate. The petitioner thereupon had approached the Metropolitan Magistrate, 30th Court, Kurla, Mumbai seeking such a declaration. The learned Metropolitan Magistrate by his Order dated 23.2.2000 disposed of the

petitioner's application; on coming to the conclusion that the Court was having no jurisdiction in this regard. It is in these circumstances the petitioner has filed the instant petition.

4. Heard the learned counsel for the petitioner so also learned counsel appearing for the respondents.

5. The passports are being issued undisputedly under the provisions of Section 5 of the Passport Act, 1967 and the Passport Rules, 1980. Section 5 of the Passport Act provides that an application for the issue of passport may be made to the Passport Authority. Passport Authority, as per section 2(c) means an officer or authority empowered under Rules made under the Act to issue passports and includes the Central Government. Rule 3 of 1980 Rules speaks of Passport Authorities and lays down that in addition to the Central Government the officers specified in clause 2 of Schedule I shall, subject to the provisions of sub-rule (2), be the Passport Authorities for all purposes of the Act and these Rules. There is no dispute that the authority which has issued the passport in favour of the petitioner was one of such officer empowered under sub-rule (1) of Rule 3 for the purposes of the Act and the Rules. The passport has been issued in favour of the petitioner by the Passport Authority by passing an order in that regard as contemplated by sub-section (2) of Section 5. Once we see that the passport is issued by an order by a Competent Authority under the provisions of Section 5(2) of the Passport Act, it is apparent that the provisions of Section 21 of the General Clauses Act, 1897 would come into play and such an authority would be having the power to add to, amend, vary or rescind an order issued by it earlier. The Passport Information Booklet, which was brought to our notice by Mr. Mehta, contains a note below paragraph 4 that the date of birth/place of birth once included in the passport will not be changed. For change, the applicant will have to make a fresh application enclosing relevant evidence for obtaining fresh passport with correct date and place of birth along with a Court order by a Judicial Magistrate directing the passport office to change the date or place of birth. No provision was, however, brought to our notice by Mr. Mehta empowering the Judicial Magistrate for issuing such a direction after holding an enquiry in relation to the correct date of birth of a person seeking passport except the Circular dated 22.12.1994 of the Ministry of External Affairs (CPU Division) wherein it is stipulated that where a change of date of birth in the passport is being sought, the person concerned should be advised to produce the original copy of a declaratory order issued by the First Class Judicial Magistrate in India instructing that a correction in date of birth be made. We are afraid that such a circular whether would confer jurisdiction on the Magistrate if otherwise, he is not having under any provisions of law. A judgment rendered by the Kerala High Court inter alia appears to be the basis for issuing the Circular dated 22.12.1994 by the Ministry of External Affairs (CPV Division). We have gone through the said judgment of the Kerala High Court in *Sosomma Iypo v. Union of India & Anr.*, In that case, the person seeking correction in the passport regarding the date of birth had gone before the Executive Magistrate viz. Sub-Divisional Officer and

had obtained an order from him and produced the same before the Passport Officer. The Passport Authority did not act upon the said order because the note below paragraph 4 to which we have already referred to contemplated an order from a Judicial Magistrate and not from an Executive Magistrate. In this context the Kerala High Court observed that the note below paragraph 4 in the Booklet was based on a policy that order passed by the Judicial Magistrate would be judicial in character and would be more authentic. The Court has also recorded in its judgment that the parties before it were not able to refer to any particular statute or statutory rules which would show that a Judicial Magistrate should pass an order declaring the date of birth. It is in this backdrop, when the Court was exercising a writ jurisdiction, the Court thought it fit to direct the Judicial Magistrate to entertain a petition by the writ petitioner therein seeking declaration regarding correct date of birth and then directed that in case the learned Judicial Magistrate passes an order accepting the contention of the petitioner, the Passport Authority shall issue passport with correct date of birth to the petitioner therein. Practically, the same course was adopted by this Court in *Yogesh Indukumar Patel v. Union of India & Ors.,*. It is no doubt true that in exercise of the writ jurisdiction it would be open to this Court to issue & direction to a particular authority including the Magistrate to do a particular thing and it was this course which had been adopted in the aforesaid two decisions, one by Kerala High Court and another by this Court. In this matter, however, when the provisions of section 21 of the General Clauses Act have been brought to our notice and when we see that correction in the passport in relation to the entries therein including in relation to the date of birth can be made by the Passport Authority itself having regard to the provisions of section 21 of the General Clauses Act, we do not feel it proper to refer the matter to the Judicial Magistrate whose Courts, we are aware, are already overburdened and further in particular when the Judicial Magistrates have not been conferred with such a jurisdiction under any law. We, therefore, instead of issuing a direction to the Judicial Magistrate in this matter, direct the Passport Authority itself to hold an enquiry on hearing the petitioner in relation to the petitioner's claim about his correct date of birth and in case the Passport Authority is satisfied with regard to the claim put forth by the petitioner, we further order it to effect the necessary change in the passport issued on favour of the petitioner. Petition is allowed in the above terms. Rule is made absolute.

6. Certified copy expedited.