

(2011) 01 MAD CK 0254

In the Madras High Court

Case No : Writ Petition No. 6143 of 2008

K.C. Kalaikovan

APPELLANT

Vs

The Commissioner, Revenue Administration, The Collector,
The Revenue Divisional Officer and The Tahsildar

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : (2011) WritLR 575

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : G. Geremiah, for the Appellant; L.S.M. Hasan Fizal, Government Advocate, for the Respondent

Judgement

R. Sudhakar, J.—This writ petition is filed to call for the records of the third Respondent and in his proceedings Na. Ka.3467-2004 (E)

dated 7.2.2008 and quash the same and to direct the Respondents to alter the Petitioner's date of birth in Petitioner's service record as

28.1.1952.

2. The Petitioner working as Village Administrative Officer joined the services on 6.12.1995. Within five years from the date of joining services i.e.

on 27.12.1999, he has made an application for correction of date of birth based on the birth certificate. According to him, the date of birth entered

in the service register showing his date of birth as 23.1.1951 is wrong and the correct date of birth as per the birth certificate produced is

28.1.1952.

3. The Respondents do not dispute that (1) the application for correction of date of birth is well within the time. The third Respondent, considering

the various representations, recommendations of the departmental authorities and the statement of persons given in support of the Petitioner claim

for correction of date of birth, came to the conclusion that the statement of the father giving the date of birth as 23.1.1951 in the school records is

correct and the birth certificate is not acceptable.

4. According to the impugned order, the father of the Petitioner is not an illiterate as he signed in English; The supporting evidence of persons is not

properly corroborated by acceptable evidence; and except the birth certificate, there is no other material to establish the plea to correct the date of

birth. Consequently, the claim for correction of date of birth was rejected. Hence, the present writ petition.

5. The Petitioner has not chosen to file an appeal. However, since the writ petition has been admitted and pending for a long time, this Court is not

inclined to reject the plea of the Petitioner at this point of time, more so, when the counter affidavit has been filed by the Respondents, which

enables this Court to consider the plea on merits.

6. Heard Mr. Hasan Fikal, learned government Advocate, who reiterated the stand taken by the third Respondent in the impugned order.

7. The impugned proceedings rejecting the claim for correction of date of birth deserves to be set aside for the following reasons:

(i) When the date of birth certificate issued by the competent authority is submitted by the Petitioner within the time specified that itself is a valid

proof to accept the claim unless the authorities are able to establish that the certificate is invalid for any reason whatsoever.

This will be in line of the decision of the Apex Court in *Cidco v. Vasudha Gorakhnath Mandevlekar* reported in CDJ 2009 SC 1100 wherein it

has been held in paragraph 20 as follows:

The Deaths and Births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory

registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the school register,

particularly, in absence of any proof that same was recorded at the instance of the guardian of the Respondent. (See *Birad Mal Singhvi Vs. Anand*

Purohit, .

(2) The validity of the entry made in the school register was accepted on the

ground that the father was able to sign in English and for which, the Respondents-authority relied on the decision of the Apex Court in SLP No. 224.7703 dated 14.3.2005 and the same is extracted in the impugned order itself.

8. The Hon"ble Supreme Court has clearly held that the statement contained in the school admission register based on information given would be authenticated evidence unless it is established by unimpeachable contrary materials. In this case, the Petitioner has established his plea for correction of date of birth based on the birth register extract, which is the most appropriate document and the decision of the Apex Court CIDCO v. Vasudha Gorakhnath Mandevlekar reported in CDJ 2009 SC 1100 referred to supra will therefore, squarely apply to the case on hand.

9. When the birth register extract has been produced, the Respondents have no justification in insisting upon further evidence.

The authority cannot disown the birth certificate issued by the competent authority unless it is held to be false or obtained by misstatement. It will be valid so long it is in force.

10. Another point which is raised in the impugned proceedings is that out of nine children, the birth of two children alone has been registered and birth of other children is not registered and therefore, the registration of Petitioner's birth will not clear the doubt. The compulsory registration of births and deaths was not in vogue at that point of time, the Petitioner cannot be penalised on account of non-registration of birth of other children and such a plea is without basis and misconceived.

11. In view of the Apex Court decision in Cidco v. Vasudha Gorakhnath Mandevlekar reported in CDJ 2009 SC 1100, the impugned order is set aside and the Petitioner is entitled to correction of date of birth in the service records and for consequential relief. This writ petition is disposed of accordingly. No costs.