
(2008) 09 MAD CK 0056
In the Madras High Court
Case No : Writ Petition (MD) No. 8772 of 2008

L. Mala

APPELLANT

Vs

The Tahsildar (Birth and Death Controlling Authority)

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 09 MAD CK 0056

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant;

Judgement

K. Chandru, J.—Mr. D. Sasikumar, learned Government Advocate takes notice for the respondent.

2. The grievance of the petitioner is that she and her husband have adopted a male child by name Mohan @ Anirudh. The adoption was made

from an agency by name Claretian Mercy Home, Azhagusirai, Ponnammangalam Post, Thirumangalam Taluk, Madurai District. The agency after

conducting appropriate home study, gave approval for the petitioner and her husband to adopt the said child. When the agency submitted an

application before the learned First Additional District Judge, Madurai, in H.A.O.P. No. 21 of 2006, they have informed the Court that the date of

birth of the male child was 15.12.2004 as the boy was relinquished by the mother to the respondent society on the same day.

3. The learned I Additional District Judge, Madurai, after inviting scrutiny report from an independent agency, passed a final order vide his

judgment dated 23.03.2007 permitting the petitioner and her husband to adopt the child.

4. Unfortunately, the learned I Additional District Judge, Madurai, did not incorporate in his order, the date of birth of the child as 15.12.2004,

though in the narration of the fair order dated 23.03.2007, the date of birth is referred to.

5. This Court by a judgment dated 12.08.2008 in W.P.(MD)No.3080 of 2008 directed all the District Judges to incorporate in their orders

relating to adoption is the date of birth of the child which is going in adoption so that it will avoid future controversies. Para 17 and 18 of the said

judgment reads as follows:

17. Taking note of these developments, the following directions are issued to all the District Courts, which are dealing with original petition either

under HAMA or GAWA.

(i) A decision in an application filed for adoption in the District Court should not take more than four months.

(ii) The Court should not hear the matters in the Open Court, but preferably in the chambers of the learned judges or with special timings in the open Court itself.

(iii) There should not be any frequent request to produce before the Court the child to be given in adoption and the order for producing the child should be made only once.

(iv) The adoptive parents must be treated with respect and due courtesies must be shown to them. It must be understood that they are not litigants in any adversarial proceedings before the Court.

(v) In the operative portion of the order passed by the District Court, it must necessarily indicate the Date of Birth of the adopted child and it must direct all authorities concerned to accept the said date of birth for all practical purposes.

18. In view of the guidelines issued in this case, copies of the judgment shall be sent by the Registry of this Court to all the Principal District Judges in the State of Tamil Nadu and Union Territory of Puducherry with a direction to them to circulate the copies to all the Subordinate Judges.

6. But in the present case, the learned First Additional District Judge, Madurai did not have the benefit of the judgment and his order was passed

an year ago. Therefore, he did not incorporate the date of birth of the child. Even otherwise he might not have been aware of the significance in

making such incorporation.

7. The petitioner instead of seeking appropriate orders before that Court moved the Judicial Magistrate, Thirumangalam for the delayed recording

of the date of birth of the child in the register as per the Registration of Births and Death Act, 1969.

8. The learned Judicial Magistrate, Thirumangalam, after going through the order passed by this Court, referred to above, held that since the First

Additional District Judge, Madurai did not incorporate the date of birth as 15.12.2004, the judgment of this Court is not applicable to the case of

the petitioner. Since this Court has already observed that there cannot be two registrations of date of birth in the Register, as it may give rise to

confusion, refused to accept the application filed by the petitioner and her husband for the late recording of the date of birth of the male child

Mohan @ Anirudh.

9. Therefore, the petitioner has come forward with the present writ petition seeking for a direction to the respondent to record the date of birth of

the child by name Mohan @ Anirudh as 15.12.2004 and consequently issue a birth certificate. This cannot be countenanced by this Court as per

the earlier decision of this Court.

10. However, the petitioner cannot be left without any remedy. Therefore, this Court in exercise the power under Article 226 and in accordance

with the direction given by this Court in W.P. (MD)No. 3080 of 2008 dated 12.08.2008, hereby directing all authorities concerned including the

school authorities to accept the date of birth of the child Mohan @ Anirudh as 15.12.2004 and enter in all their records for all practical purposes.

This order shall be implicitly obeyed by all the authorities concerned.

11. In the light of the declaration granted by this Court, the prayer as made in the writ petition need not be granted. Accordingly, this writ petition is

disposed of. No costs.