

(2021) 11 KL CK 0084

In the High Court Of Kerala

Case No : Writ Pettiton (C) No. 17081 Of 2021

Lizy George

APPELLANT

Vs

District Collector, Pathanamthitta District

RESPONDENT

Date of Decision : 15-11-2021

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 3(3), 13, 13(3), 15
Kerala Registration of Birth and Death Rules, 1999 — Rule 5, 9, 9(3)
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12

Citation : (2021) 11 KL CK 0084

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : Liju.V.Stephen, Indu Susan Jacob, B.S.Syamanthak, Jacob P.Alex, Joseph P.Alex, Manu Sankar P

Final Decision : Allowed

Judgement

T.R. Ravi, J.

1. The petitioner is aggrieved by the rejection of an application for delayed registration of her birth in the Register of Births maintained in the 3rd respondent Panchayat. The petitioner's claim is that she was born on 21.5.1975, as the daughter of late Sri C.George and late Smt.Marykutty. She studied at Government High School, Koodal, Muringakal P.O. and the date of birth entered in the school records is 21.5.1975. Exhibit P1 which is the relevant page of the SSLC book evidences the above fact. Exhibit P9 Aadhaar card issued to the petitioner by the Government of India, Exhibit P10 Identity card issued by the Election Commission of India to the petitioner, Exhibit P11 PAN card issued by the Income Tax Department to the petitioner, and Exhibit P12 Passport issued to the petitioner, show her date of birth as 21.5.1975. However, the fact remains that her birth was not registered with the Panchayat, which is stated to be due to the ignorance of her parents. The petitioner was married on 29.11.2007 and Exhibit P2 certificate of marriage shows her date of birth as 21.5.1975. Exhibit

P3 certificate of marriage issued by Immanuel Mar Thoma Church, Pathanapuram also shows the date of birth as 21.5.1975. The petitioner submits that, contrary to the above records a baptism certificate which was issued by the parish priest at St.Mary's Malankara Catholic Church, Vakayar, on 6.10.2018, shows the date of the petitioner's baptism as 22.7.1975 and her date of birth as 9.5.1975.

2. The application for delayed registration was submitted on 7.1.2021. The application was initially enquired through the Village Officer, who submitted a report on 29.1.2021, stating that the petitioner was born on 21.5.1975. The Secretary of the Panchayat had issued a non-availability certificate on 5.1.2021, stating that the birth has not been registered in the Office of the Panchayat. Initially, on 20.2.2021, the 2nd respondent by Ext.P6 order, granted sanction to the Registrar of Birth and Deaths at the Pramadam Grama Panchayat to register the birth event of the petitioner as on 21.5.1975, as per Rule 9(3) of the Kerala Registration of Birth and Death Rules, 1999. But later, on 3.3.2021, the Revenue Divisional Officer, cancelled Exhibit P6 order as per Exhibit P7 order, which says that on subsequent enquiry, it was noticed that the documents submitted by the petitioner are wrongly created and hence seen to be not acceptable. Referring to the Baptism Certificate, Exhibit P7 order concludes that the petitioner was born on 9.5.1975 and hence, her birth cannot be registered with the date 21.5.1975. The petitioner submitted Exhibit P13 representation before the 1st respondent stating that Exhibit P6 order was cancelled by the 2nd respondent on the basis of wrong information given by the Secretary of the Grama Panchayat and hence Exhibit P7 order may be reconsidered and permission may be granted to register her death as on 21.5.1975. By Exhibit P14, the 2nd respondent has once again rejected the representation submitted by the petitioner to the 1st respondent. The order does not say that the 1st respondent had forwarded the representation to the 2nd respondent and directed the 2nd respondent to pass orders.

3. A statement has been filed on behalf of the 2nd respondent as directed by this Court. In paragraph 4 of the statement it is stated that on receipt of Exhibit P6 order, the 3rd respondent had submitted a true extract of the Baptism register to the 2nd respondent and noting the error, Exhibit P7 was issued. However, the counsel appearing for the 3rd respondent on instructions submits that the Panchayat has never given any such request or information to the 2nd respondent. The statement further states that the entry in the school records and certain other records cannot be considered and the basic record to be considered is the baptism certificate. It is stated in the statement that the District Collector had forwarded the representation submitted by the petitioner to the 2nd respondent for consideration and necessary action and that it was for that reason Exhibit P14 was issued.

4. Heard the counsel for the petitioner and the respondents.

5. It is difficult for this Court to conceive a situation where a public official feels that the entries in public documents like the Aadhaar card, the Electoral Identity card, the PAN card and the SSLC book should be ignored and overlooked and an

entry in the Baptism register of a Church has to be treated as the primary evidence regarding the date of birth of a person. The entry in a baptism register, if proved in the manner known to law, can possibly be of evidentiary value for the purpose of proving the date of baptism. At the same time, the entry in the school records are necessarily made at the instance of either the parents or the guardian of the students at the time of admission. In the case on hand, unfortunately the parents of the petitioner are not alive to state on the fact.

6. Section 13 of the Registration of Births and Deaths Act 1969 (hereinafter referred to as the Act) and Rule 9 of the Kerala Registration of Births and Deaths Rules, 1999 (hereinafter referred to as Rules), which are the relevant statutory provisions read as follows:

"S.13-Delayed Registration of Births and Deaths.-

(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within 30 days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by the Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provision of this Section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action."

"Rule 9. Authority for delayed registration and fee payable therefor:-

(1) Any birth, or death of which information is given to the Registrar after the expiry of the period specified in Rule 5, but within thirty days of its occurrence, shall be registered on payment of a fee of rupees two.

(2) Any birth or death of which information is given to the registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the officer prescribed in this behalf and on payment of late fee of rupees five.

(3) Any birth or death which has not been registered within one year of its occurrence shall be registered only on an order of Magistrate of the First Class or a Presidency Magistrate and on payment of late fee of rupees ten."

7. Section 3(3) facilitates delayed registration of birth, on the basis of an order of the Magistrate of the First Class or a Presidency Magistrate after verifying the correctness of the birth. The manner in which the verification has to be carried out is not stated in the Section. Rule 9 also does not lay down the procedure to be followed. The verification required is the factum of the birth and not regarding the "date" on which the birth took place. The function is purely executive in character and is not an adjudication of the correctness of the date of birth stated in the request for registration. The Statute itself in Section 15 of the Act provides for correction or cancellation of the entries made in the register of births, which are all aspects on which the power is vested with the Registrar. The power exercised by the Revenue Divisional Officer is only in the nature of granting a permission to the Registrar to effect a registration for which a delayed request is made. The petitioner relies on public documents like Passport (Ext.P12), Aadhaar card (Ext.P9), PAN card (Ext.P11), Electoral Identity Card (Ext.P10), entry in School records (Ext.P1) and entries in Marriage certificate (Exts.P2 & P3) as evidence regarding the date of birth. Ext.P5 Non-availability certificate issued by the 4th respondent clearly shows that the birth of the petitioner has not been registered. The whole purpose of the Act and Rules is to facilitate the registration of birth and is not to find reasons not to register, when there is sufficient material to show the factum of birth, the education of the petitioner, her marriage and her public identity in terms of the public documents mentioned above. The purpose of providing for delayed registration is itself for ensuring that all births are registered, at least belatedly. After verifying the correctness of Ext.P5, the 2nd respondent had issued Ext.P6 order in terms of Section 13(3), which is later sought to be cancelled by Ext.P7 proceedings. Neither the Act nor the Rules provide for an appeal against an order issued by the 2nd respondent under Section 13(3) or for that matter, regarding any proceedings issued under the Act or Rules. It is well settled that a power of review is a creature of the statute and unless such a power is conferred, the same cannot be exercised. Even if one is to assume that a power to review should be inherent, the same can only be regarding arithmetical or errors apparent on the face of the record and cannot be exercised for the purpose of cancelling a permission granted based on materials which were provided later. This is all the more relevant in this case, since the Act and Rules, provides sufficient safeguard in the form of power to correct or cancel the entries in the register of births and deaths.

8. Now, coming to the document relied on by the 2nd respondent to cancel Ext.P6 order already issued, the Hon'ble Supreme Court has considered the relevance of public documents, in the context of effecting changes in the CBSE records, regarding name of the student, name of parents, date of birth etc., in the judgment in *Jigya Yadav v. CBSE* reported in [(2021) 7 SCC 535]. Paragraph 168 of the judgment reads as follows:

"168. The bye-laws provide for a two-tier mechanism for recording change of name or other details (as indicated above). One of them is prior permission or

declaration by a court of law to be obtained. As regards public documents like birth certificate, Official Gazette, Aadhaar card, election card, etc. the same enjoy legal presumption of its correctness in terms of explicit provisions contained in Chapter V of the 1872 Act. The 1872 Act extends such presumption in terms of Section 76 read with Sections 79 and 80 of the 1872 Act and as in the case of Official Gazette under Section 81 of the same Act. Even other legislations concerning public documents attach equal importance to the authenticity of such documents including while making changes in their certificates to which we have alluded to in this judgment. Understood thus, there is no reason for the CBSE Board to not take notice of the public documents relied upon by the candidate and to record change on that basis in the certificate issued by it, for being consistent with the relied upon public documents.

xxxxxx xxxxxx xxxxxx xxxxxx" (emphasis supplied).

9. In *Jarnail Singh v. State of Haryana*, reported in [(2013) 7 SCC 263], the Hon'ble Supreme Court while considering the issue regarding the determination of age of a minor, referred to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which lays down the procedure to be followed in determination of age. The relevant portions of Rule 12 reads as follows:

"12. Procedure to be followed in determination of age.-

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age

cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4)xxxxxx xxxxxx xxxxxx xxxxxx

(5) xxxxxx xxxxxx xxxxxx xxxxxx

(6)xxxxxx xxxxxx xxxxxx xxxxxx"

10. It can be seen from the above that in the order of relevance, the school records are given priority over the date of birth certificate issued by the Corporation or Municipal authority or Panchayat.

11. Further, the Director of Panchayats had issued Circular No.B1-4356/2015/TVM dated 7.2.2015, in which guidelines have been issued regarding registration of births and deaths. In Clause 3(2) of the circular, it is specifically stated that ration card and school records can be accepted as evidence for the purpose of delayed registration. When there are public documents available, the 2nd respondent ought not to have relied on the Baptism certificate for cancelling an order under Section 13(3) of the Act, which he had already issued. It is not as if baptism record cannot be relied on for any purposes at all. But it does not stand to reason that after the passage of all these years, the petitioner should be put to a position, where a doubt is sought to be created in the entries in all the public identity cards issued to her with her date of birth as 21.5.1975, solely on the basis of an entry in the baptism register; particularly when no material is available regarding the person who supplied the details regarding the birth of the petitioner for the purpose of baptism.

12. In the light of above discussions, the writ petition is allowed. Exts.P7 and P14 are quashed. The 4th respondent is directed to register the birth of the petitioner in terms of Ext.P6 order issued by the 2nd respondent, showing her date of birth as 21.5.1975, within five days from today.