

(2023) 03 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7204 Of 2022

Mayuri Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Bihar Registration of Birth and Death Rules, 1999 — Rule 11, 11(4)
Registration of Birth and Death Act, 1969 — Section 15, 30(2)(1)

Citation : (2023) 03 PAT CK 0002

Hon'ble Judges : Satyavrat Verma, J

Bench : Single Bench

Advocate : Prabhat Ranjan, Vikash Kumar, Prasoon Sinha

Judgement

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Patna Municipal Corporation, Mr. Prasoon Sinha.

The present writ application has been filed seeking quashing of the order dated 28.05.2018 passed by the Registrar (Birth and Death) (hereinafter referred as the Registrar) whereby birth certificate issued vide Registration No. 33010 dated 20.05.2016 has been cancelled in pursuance of a query made by the Passport Officer and has further declared that birth certificate issued vide Registration No. 5167 dated 05.07.1998 to be valid. The order dated 28.05.2018 issued by the Registrar is challenged on the ground that it was passed behind the back of the petitioner in complete violation of the principles of the natural justice and further for a direction upon the authorities to hold that the birth certificate issued on 20.05.2016 as valid.

Learned counsel for the petitioner submits that the situation in which the petitioner presently is, is basically the creation of her own family member when she was a minor. It is next submitted that the father of the petitioner in 1995 was working in a private sector and was transferred to Singapore by the Company, on his transfer, the family was also contemplating to shift to Singapore and hence passport was required, for which the father of the petitioner requested

the maternal uncle of the petitioner for getting the date of birth certificate of the petitioner issued, as she was a minor.

Learned counsel for the petitioner next submits that on account of certain miscommunication, the date of birth-certificate, which was issued in the name of the petitioner, recorded her date of birth as 24.10.1988 contained in Certificate No. 279865 dated 07.08.1998 (Annexure-1), when the correct date of birth of the petitioner was 24.10.1989. It is further submitted that it appears that the maternal uncle of the petitioner without producing any valid document merely filled the form required for issuance of birth-certificate in which he, inadvertently, recorded the date of birth of the petitioner as 24.10.1988 instead of 24.10.1989 based on which Annexure-1 was issued.

Learned counsel for the petitioner next submits that, no doubt, the birth-certificate recorded the date of birth of the petitioner as 24.10.1988, but while filling the form of Class-10th, the date of birth of the petitioner was recorded as 24.10.1989, thereafter, in all her educational document the same date of birth was recorded i.e. 24.10.1989 including her Aadhaar card, PAN card.

Learned counsel very fairly submits that the date of birth as disclosed before the school and college including the Aadhaar card and Pan card was based on the self-disclosure of the petitioner and was not based on the date of birth-certificate as contained in Annexure-1. It is next submitted that when petitioner realized that her date of birth-certificate contains her date of birth recorded as 24.10.1988 and the matriculation certificate along with other educational documents and Aadhaar card and PAN card records date of birth as 24.10.1989, hence, she applied afresh before the Municipal Corporation, Patna for issuance of a fresh date of birth certificate, accordingly, the Patna Municipal Corporation issued a fresh date of birth certificate dated 20.05.2016, wherein, her date of birth was recorded as 24.10.1989 contained in Certificate of Registration having No. 33010 (Annexure-3). It is next submitted that the petitioner had to go abroad for pursuing her higher studies for which a passport was required, as such, she applied for the passport but therein she disclosed both her birth certificates i.e. one which recorded her date of birth as 24.10.1988 and other one which recorded her date of birth as 24.10.1989, accordingly, the Passport Officer requested the Municipality to verify about the genuineness of the two birth certificates whereafter the Registrar after examining the documents in detail passed the order dated 28.05.2018 (Annexure-1) whereby the first date of birth certificate was held to be valid and the second one was cancelled.

The petitioner being aggrieved by the act of the Registrar has approached this Court assailing the order dated 28.05.2018 on the ground that the said order was passed behind her back without giving any opportunity of hearing by the Registrar before arriving at a conclusion that earlier birth certificate was valid and the one issued in the year 2016 was not valid. It is further submitted that the said act of the Registrar adversely affected the petitioner and at the same time entails civil consequences as her passport could not be made and thus was

not able to pursue her higher studies abroad.

Learned counsel for the Municipality opposes the writ application and rebuts the submission made by the learned counsel for the petitioner and raises a very short issue and submits that under Section 15 of the Registration of Birth and Death Act, 1969, the Registrar (Birth and Death) has been given power to correct any error or cancel the entry of date of birth by suitable entry in the margin, without any alteration in the original entry, if it is proved to his satisfaction that any entry of a birth or a death in any register kept by him under the Act is erroneous in form or substance or has been fraudulently or improperly made. It is next submitted that the said power is subject to such rules as made by the State Government with respect to condition and circumstances in which the entry may be corrected or cancelled. It is next submitted that Rule 11 of Bihar Registration of Birth and Death Rules, 1999 has been framed under Section 15 of the Registration of Birth and Death Act, 1969 (hereinafter referred to as the Act) read with Section 30 (2) (1) of the Act. It is next submitted that Rule 11(4) lays down that in case a person asserts that any entry in the register of birth and death is erroneous in substance, the Registrar may correct the entry in the manner prescribed under Section 15 of the Act upon: (I) Production by that person a declaration setting for the entry of error and true facts of the case made by two credible persons having knowledge of the facts of the case.

Learned counsel for the Municipality, thus, submits that the law is clear that as to how rectification in the date of birth is to be made, thus, the same has to be made in terms of Section 15 read with Rule 11 of the Rules and the correction has to be done by making a suitable entry in the margin without any alteration in the original entry.

Learned counsel for the Municipality, next submits that had the petitioner brought this fact to the notice of the Registrar (Birth and Death) that earlier also a date of birth certificate was issued to her, then the Registrar after hearing the petitioner and other concerned, if any, would have corrected the entry in the margin, provided he would have been satisfied that the plea of the petitioner was tenable in accordance with the law, but the petitioner concealing the said fact applied for a fresh date of birth which led to issuance of Annexure-3.

Learned counsel for the Municipality next submits that it appears that the problems in which the petitioner has landed is creation of her family members while she was a minor.

Learned counsel for the petitioner rebuts the submission of the learned counsel appearing for the Municipality and submits that what is not in dispute is that petitioner was not heard prior to passing of Annexure-1, it is also submitted that the Registrar has the power and competence under the Act and the Rules to rectify the date of birth provided an application in terms of the rules is filed, it is also submitted that if the Registrar comes to a considered conclusion, based on material available on record, he may take a different view and may make

rectification by making suitable entry in the margin.

It is thus submitted that the petitioner be given one opportunity to move before the Registrar by filing an application in terms of the Act and Rules so that the Registrar after hearing the parties takes a decision based on the material produced before him after hearing the petitioner.

Learned counsel for the Municipality does not dispute this submission of the learned counsel for the petitioner.

From perusal of the impugned order, as contained in Annexure-1, it is clear that the order was passed behind the back of the petitioner without giving her any opportunity of hearing and the said cancellation adversely affects her inasmuch as she could not get her passport made and as such was not able to pursue her studies abroad, further all her documents including educational and Aadhaar and Pan record date of birth as 24.10.1989

After hearing the parties, the order dated 28.05.2018 (Annexure-1) passed by the Registrar (Birth and Death), Patna Municipal Corporation is hereby quashed and the petitioner is given liberty to file an application in accordance with the Act and the Rules before the Registrar (Birth and Death), Patna Municipal Corporation within a period of 45 days from today.

In the event, if such an application is filed, the Registrar (Birth and Death), Patna Municipal Corporation after considering the material on record would be at liberty to pass an order in accordance with law.

However, if no application is filed within the period aforesaid, this order will not be given effect to.