
(2016) 12 KL CK 0031
In the High Court Of Kerala
Case No : WP(C).No. 33252 of 2016 (F)

Miss. Sindhu Varghese

APPELLANT

Vs

The Regional Passport Officer

RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 13, Section 23, Section 7,
Section 8, Section 9

Citation : (2017) AIR(Kerala) 39 : (2017) 1 ILR Kerala 502

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. P.V. Anil, Advocate, for the Petitioner; Sri. N. Nagaresh, Assistant Solicitor General, for the Respondent

Final Decision : Disposed Off

Judgement

Shaji P. Chaly, J. - This writ petition is filed by the petitioner seeking direction to the respondent to consider Exts.P1, P7 and P8 as a substitute to the birth certificate of the petitioner, and to consider Ext.P12 application seeking Passport again, and for other related reliefs. Material facts for the disposal of the writ petition are as follows:

2. Petitioner completed her post graduation in June, 2016, evident from Ext. P6. She is keenly interested in pursuing her graduation in U.S.A., where her father and two elder brothers have been living for several years. Petitioner was advised by her parents and brothers to take a Passport, for which petitioner made enquiries with the respondent. The pre-requisite for a Passport is birth certificate of the petitioner. When this pre-requisite was brought to the notice of the father of the petitioner, he immediately came down to India from U.S.A. Parents of the petitioner, left with no other option, informed the petitioner that they are not her biological parents and the petitioner is their foster daughter. Petitioner was informed by her parents that they received petitioner from one Smt. Saudamini, who is a social worker. The said social worker informed the parents of the

petitioner that the petitioner's date of birth is 22.11.1992, and place of birth is Thiruvananthapuram. Petitioner was brought up very well by the parents and she was given education up to this stage by the parents and she was never informed about the aforesaid situation by her parents, till now. However, petitioner is issued with Ext.P1 abstract of Admission Register by the school in which her date of birth is shown as 22.11.1992. In Ext.P2, Secondary School Leaving Certificate, the date of birth is provided as 22.11.1992. In Ext.P7 Aadhaar Card issued to the petitioner, the year of her birth is shown as 1992, and in Ext.P8 driving license issued by the State Authority, the date of birth of the petitioner is shown as 22.11.1992. Therefore, according to the petitioner, all these certificates show that the petitioner was born on 22.11.1992 and the same can be treated as a certificate valid for consideration of the respondent to issue a Passport to the petitioner if all other requirements are in order. These are the background facts raised by the petitioner in the writ petition.

3. A statement is filed for and on behalf of the respondent, in which, among other contentions, it is stated that the petitioner is a foster child. As per the Passport Rules, for applicants born on or after 26.01.1989, only Birth Certificate issued by Municipal Authority or the office of the Registrar of Birth or Deaths is acceptable. The birth certificate should ordinarily contain the name of child, name of father and mother, date of birth, place of birth, sex, registration number and date of registration.

4. As per the Circular issued by the Ministry of External Affairs bearing No.VI/401/2/1/2011 dated 26.05.2015, in the case of orphan/abandoned children born on or after 26.01.1989, the following are the acceptable documents as proof of date of birth:

"(i) Copy of Birth Certificate; or

(ii) Date of birth recorded in the Matriculation Certificate issued by duly recognised/ affiliated educational institution along with the bona fide certificate duly sworn by the Head of the Orphanage/Childcare Home (in case of minor) or by applicant himself (in case of major) before the First Class Judicial Magistrate/ Executive Magistrate categorically stating his/her date of birth/place of birth; or

(iii) Declaratory Court order issued by the court of competent jurisdiction recording the date of birth/place of birth of such an applicant in the order".

Since the petitioner is adopted, a declaratory Court Order as provided in para 4(iii) is required. Therefore, it is the contention of the respondent that petitioner is not entitled to get any relief in the writ petition. It is also submitted that if the petitioner produces a court order, declaring date of birth/place of birth, the application will be considered by the respondent.

5. Heard learned counsel for the petitioner and the learned Assistant Solicitor General, and perused the documents on record and the pleadings put forth by the respective parties.

6. The prime contention advanced by learned counsel for the petitioner is on the basis of a Full Bench decision of the Punjab & Haryana High Court in "Pawan Deep Singh (minor) v. Union of India and another" [2004 KHC 4211: AIR 2004 P&H 106], wherein it was held that except on four grounds shown in Section 6(1) of the Passport Act, 1967 and nine grounds mentioned in sub-section (2) of Section 6, an application for passport could be refused. There, the applicant applied for grant of Passport on the ground that he wanted to go abroad for education as his adopted parents live there. However, his application was refused by the authorities on the ground that his adoption was invalid as his adopted parents had two other natural sons. Considering the facts and circumstances, the Full Bench of the Punjab & Haryana High Court quashed the decision of the Passport Authority and directed to issue passport to the petitioner therein, within the time frame fixed, by receiving an affidavit from the petitioner's father's sister or his grandfather or grandmother. According to the learned counsel, the parameters and stipulations provided in the Full Bench decision are strictly applicable to the facts and circumstances of this case. It is also submitted by learned counsel for the petitioner that the petitioner has sufficient proof of her date of birth contained under the educational certificates and driving license etc. etc. and therefore, considering those documents compendiously, the date of birth of the petitioner is clear and without any doubt, and therefore, the respondent is duty bound to rely on the same and consider the application of the petitioner.

7. However, learned ASGI submitted that in accordance with the Government of India notification referred to above, once the petitioner has disclosed that she is a foster child, Passport can be issued only by securing a declaratory order from a court of competent jurisdiction, declaring the date of birth/place of birth of the petitioner. According to the learned ASGI, the date of birth recorded in the Matriculation certificate issued by duly recognised/affiliated educational institution along with the bona fide certificate duly sworn by the Head of the Orphanage/Childcare Home can be taken into consideration only if the child is still remaining with the orphanage or Childcare Home. Therefore, it is contended, the educational certificates provided by the petitioner for the purpose of ascertaining the date of birth cannot be looked into. It is also stated that if the petitioner produces a court order, the application of the petitioner will be considered at the earliest by the respondent. Be that as it may, at my insistence, learned ASGI made a deeper probe into the issue, in the context of the peculiar fact circumstances in this case.

8. Learned ASGI has brought to my notice Section 13 of the Registration of Births and Deaths Act, 1969, which read thus:

"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 thirty 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 and 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 a 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 provisions 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".

Sub-section (3) of Section 13 is relevant to the context.

9. It is also brought to my attention a Circular issued under the Kerala Registration of Births and Deaths Rules, 1999 dated 20.05.2013 bearing No.17484/R.D.3/13/LSGD, which deals with the registration of birth of the children whose birth could not be registered for various reasons. The said Circular reads as follows:

(Verancular Matter)

10. Therefore, on a reading of the said Circular, it is specific and clear, as provided under Section 7(2) of the Registration of Births and Deaths Act, the procedure to be adopted by the Registrar is dealt with. As per Sections 8 and 9, the Registrar is vested with powers to register the birth of a child which is coming to his knowledge suo motu or otherwise. Therefore, on a compendious reading of the said provisions of the Act, 1969, read along with the above circular, it is clear, there is enough and more provisions contained in the statute itself for making registration of the date of birth of the abandoned child or an orphan, and recognised by the State Government accordingly.

11. My attention is also invited to S.R.O No.348/71, wherein the Government have conferred power on the Executive Magistrates to exercise the powers conferred under Section 13(2) of Act, 1969, and the Government have ordered that the jurisdiction under Section 13(3) of the Kerala Registration of Births and Deaths Act, 1969, and Rule 10(3) of Kerala Registration of Births and Deaths Rules, 1970, shall be vested with the Executive First Class Magistrate (Revenue Divisional Officers), and that under Section 23 of the Act shall be allocated to the Judicial Magistrates. It is also brought to my notice Circular No.B2-29772/99 dated 05.10.1999 issued by the Director of Panchayats/Chief Registrar of Births and Deaths, wherein sufficient directives are issued to register the date of birth of children abandoned and remaining in Orphanage and Child Protection Agencies. Material part of which reads as follows:

(Verancular Matter)

12. True, a notification is issued by the Ministry of External Affairs, to tackle the situation as has arisen in this case, evident from the discussion made above, but when there are provisions under a statute to deal with a specified situation, the provisions of the Act and Rules made thereunder have a march over the notification. Moreover, the notification so issued is dealing only with a situation to avail a Passport, whereas the provisions of Act, 1969 and the Rules thereto provide a permanent feature, of registration of birth, by which the said issue will attain a finality for ever, and to the satisfaction of the concerned. Therefore, considering in any manner, predominance shall be provided to the provisions of the Act and Rules.

13. Accordingly, by virtue of the provisions of Act, 1969, and the Notifications/Circulars issued in accordance with the Rules framed thereunder, the birth of an orphan/abandoned child can be registered as per the provisions of Act, 1969 and the appendant Rules. Taking into account the said circumstances, I am of the considered opinion, petitioner can be relegated to the Executive Magistrate of the competent jurisdiction to make suitable application as provided under S.R.O No. 348/71. If the petitioner makes any application, the Executive Magistrate of the competent jurisdiction viz., the Revenue Divisional Officer shall consider the application and take a decision on the same at the earliest, and at any rate, within three weeks from the date of receipt of a copy of the application, and the birth shall be registered by the competent authority in accordance with the order so passed.

14. Needless to say, if and when birth certificate is produced by the petitioner before the respondent, all necessary steps shall be taken to issue passport to the petitioner subject to other parameters and stipulations contained under the Passports Act and Rules. The writ petition is disposed of accordingly.