

**(2023) 12 J&K CK 0057**

**In the Jammu And Kashmir High Court**

**Case No :** Writ Petition (C) No. 1121 Of 2023, Civil Miscellaneous Case No. 2676 Of 2023

Mohammad Bin Shora

APPELLANT

Vs

Union Of India And Another

RESPONDENT

**Date of Decision :** 20-12-2023

**Acts Referred:**

**Citation :** (2023) 12 J&K CK 0057

**Hon'ble Judges :** Sanjay Dhar, J

**Bench :** Single Bench

**Advocate :** Manzoor Ah.Dar, T.M.Shamsi

**Final Decision :** Disposed Of

## Judgement

Sanjay Dhar, J

1. The petitioner has sought a direction upon the respondents to effect necessary correction in his passport to the extent of his date of birth.

2. Briefly stated, the case of the petitioner is that initially passport No.J4355136 was issued in his favour on 22.12.2010 which reflected his date of birth as 28.02.2005. At the relevant time the petitioner was a minor and due to inadvertent mistake of his grandparents, wrong date of birth was recorded in his passport. On 19.06.2019 a fresh passport was issued in favour of the petitioner with same date of birth, but this time some correction in the surname of the petitioner was entered in the passport. As on 19.06.2019 also the petitioner was a minor. The fresh passport was to expire on 27.02.2023. On 02.02.2023 the petitioner after attaining the age of majority applied for re-issue of passport with correct date of birth particulars.

3. According to the petitioner his actual date of birth is 28.03.2005 and not 28.02.2005, as is reflected in the passport. The petitioner has substantiated this fact by annexing copies of his birth certificates issued by Srinagar Municipal Corporation and J&K Board of School Education. It is contended by the petitioner

that the respondent-Passport Authority is not acceding to his request relating to correction of his birth particulars despite the petitioner having applied for the same. Hence this Writ Petition.

4. Respondent-Passport Authority has filed its reply to the writ petition, in which it has been submitted that the documents annexed by the petitioner with his application for re-issue of passport with change of his birth particulars, appears to be fictitious. It has been submitted that the date of birth that has been recorded in the passport of the petitioner is based upon the certificate of birth produced by the petitioner at the relevant time. On this ground it has been submitted that the request of the petitioner cannot be accepted.

5. I have heard learned counsel for the parties and perused the pleadings and the material on record.

6. The petitioner has placed on record copies of office memorandum dated 26.11.2015 and office memorandum dated 22.09.2016, issued by Ministry of External Affairs CPV Division, New Delhi. These office memoranda contain guidelines with regard to change of date of birth in the passport of an applicant already held by him/her. The guidelines contained in office memorandum dated 26.11.2015 are reproduced as under:-

"(i) Where an applicant claims clerical/technical mistake in the entry relating to birth/place of birth in the passport and asks for rectification/correction:

In all such cases, the documents produced earlier as proof of date of birth/place of birth at the time of issue of passport may be perused (if not already destroyed) by PIA. In case, it is a clerical mistake either by the applicant or the PIA, date/place of birth correction may be allowed by issue of fresh booklet; in the former case by charging fee for fresh passport and in the latter ?gratis? (same as mentioned in Ministry?s Circular No.VI/401/2/5/2001, dated 29/10/2007).

(ii) If an applicant applies for the change of date of birth in the passport within a reasonable period of time i.e, within a span of five

(5) years from the date of issue of passport having the alleged wrong date of birth, with the birth certificate issued by the Registrar of Births & Deaths stating that the date of birth recorded in the passport was based on the entries mentioned documents other than the Birth Certificate, the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority. However, before the issuance of passport with changed date of birth, the Passport Authority shall also levy appropriate penalty on the applicant for obtaining passport on previous occasion by providing wrong information regarding his/her date of birth.

(iii) The cases where the applicant comes to PIA for change/correction with regard to date of birth in the Passport after a period of five years from the date of issue of passport with alleged wrong date of birth, no such request shall be

entertained/accepted by the PIA and be rejected out rightly.

However, an exemption in this regard may be given to an applicant who was minor at the time when passport with alleged wrong date of birth was issued to him. As and when such an applicant after attaining the age of majority applies for the passport with the request to change the date of birth in the passport issued to him when he was minor, the PIA irrespective of the duration of the issuance of passport may accept his case for consideration and if is satisfied with the claim and document(s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty.

(iv) In no way, the Passport Authority will relegate the applicant to obtain the declaratory court order to carry out changes with regard to date of birth in the passport, as the Passport Authority subject to the condition that the case has been submitted by the applicant within the stipulated limit of 5 years from the date of issuance of passport (Except the cases of minor passport holder as detailed in para 5(ii) above) would now be eligible to accept the genuine cases irrespective of the difference of dates of birth.”

7. The guidelines contained in office memorandum dated 22.09.2016 are more or less in the same form. From a perusal of the aforesaid guidelines, it appears that an applicant has to apply for change of date of birth in the passport within a reasonable time which has been fixed as 5 years from the date of issue of passport, having the alleged wrong date of birth. In the case of minors an exception has been made and it has been provided that, when such an applicant after attaining age of majority applies for the passport with the request to change the date of birth in the passport issued to him at the time when he was minor, the passport issuing authority can consider his case if it is satisfied with the claim and documents submitted by the applicant.

8. In the instant case, admittedly, the petitioner was minor at the time when passport in his favour was issued in the first instance as also in the second instance. The petitioner was born in the year 2005, meaning thereby that he has attained age of majority in the year 2023 and immediately after attaining age of majority he has applied to the respondent-Passport Authority for effecting correction in his birth particulars by producing birth certificate issued by Srinagar Municipal Corporation and birth certificate issued by J&K Board of School Education. Both these certificates depict the date of birth of the petitioner as 28.03.2005. If these certificates are found to be authentic by the respondent-Passport Authority, upon their verification, there is no legal impediment for the said authority to effect correction in date of birth as depicted in the passport of the petitioner.

9. The respondent-Passport Authority is vested with power to consider the request of the petitioner for correction of his birth particulars in the light of the guidelines issued by the Ministry of External Affairs in terms of office memoranda dated 26.11.2015 and 22.09.2016 (supra).

10. For the foregoing reasons, the writ petition is allowed and the respondent-Passport Authority is directed to effect change relating to date of birth of the petitioner in his passport as requested by him in case the testimonials submitted by the petitioner in support of his claim are found to be authentic. The needful shall be done by the respondents within a period of one month from the date a copy of this order is served upon them.

11. The writ petition stands disposed of.