

(2016) 08 AP CK 0070

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15437 of 2015

Mohammed Abdul Faheem

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALT 702

Hon'ble Judges : Sri Suresh Kumar Kait, J.

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Sri Suresh Kumar Kait, J. - Vide the present petition, the petitioner seeks a mandamus declaring the action of respondent No.2 in not correcting his date of birth as illegal and arbitrary.

2. Petitioner states that he obtained passport bearing No.H0893875, dated 29.09.2008, with date of birth as ?17.08.1977? instead of ?17.08.1979?. However, SSC Certificate issued by the Board of Secondary Education, Andhra Pradesh and, in other school certificates, the date of birth was recorded as 17.08.1979. Inadvertently, the date of birth of petitioner was wrongly recorded as ?17.08.1977?. Petitioner further states that he did not notice wrong entry of his date of birth after issuance of passport. Very recently, the petitioner is said to have noticed wrong entry of his date of birth in passport and made representation dated 11.05.2015 seeking correction of his date of birth.

3. Petitioner?s grievance is that, respondent No.2 did not receive the application and orally stated that, if the Court gives a direction to correct the date of birth, the same would be corrected.

Pursuant to the order of this Court dated 17.08.2016,

4. Smt D.Bharathi, Assistant Passport Officer, Secunderabad is present in Court.

She requested that the presence of Regional Passport Officer, Secunderabad may be dispensed with as she is in dispensary on account of ill health. Her request is acceded to. Consequently, the presence of respondent No.2 is dispensed with.

5. Learned counsel appearing on behalf of respondent No.2 has produced application form of the petitioner dated 11.12.1998, whereby he applied for issuance of passport. The said application is supported with an affidavit for date of birth, whereby the petitioner stated that he was born at Godhavarikhani, Karimnagar, and he had no documentary proof in support of his place and date of birth. He further stated that he did not possess any educational qualification and he is an illiterate. Accordingly, the date of birth was noted in the passport as ? 17.08.1977?.

6. Thereafter, the petitioner made application on 18.09.2008 seeking renewal and change of signature. Accordingly, the office of respondent No.2 asked the petitioner to produce court order.

7. In case of correction of date of birth, circular No.VI/401/2/5/2001 dated 29.10.2007 was issued by the Ministry of External Affairs (PV-I Section). It reads as under:

Ministry of External Affairs

(PV-I Section)

No.VI/401/2/5/2001 29th October, 2007

CIRCULAR

Subject:Change of date of birth and place of birth in passports

Many countries insist that date/place of birth in all relevant documents of a person be same, for purposes of immigration, long term resident visas etc. Consequently, frequent requests are being received by PIAs in India, and sometimes Missions abroad for change in date of birth/place of birth in passports already held by individuals. A fair number of court cases are also being filed by applicants for effecting changes in date of birth and place of birth. Instructions contained in Ministry's Circular of even number dated 18th April, 2001 (copy enclosed), are by and large ignored by most PIAs. In this regard, all PIAs are advised that all cases relating to change of date of birth/place of birth in passports already held by an applicant be examined on following lines before asking for production of a Court Order:-

(a) 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 passport booklet; in the former case, by charging fee for fresh passport and in the latter, ?gratis?. There

is no need for declaratory court order in such cases.

(b) Where a competent authority which issued a birth certificate or an educational certificate, issues any correction or amendment in date/place of birth, PIA may effect the necessary amendment in the passport without insisting on a Court Order provided the same document was produced earlier with the passport application. Fresh fees will be charged.

(c) Where files have already been destroyed, PIAs could use their discretion in correction of date of birth without a Court Order, where such correction is only in months (not more than two years) and applicants provide satisfactory explanation that the same document(s) was provided at the time of initial passport application. Fresh fees will be charged.

(d) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e. School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e. Municipal authorities etc., resulting in conflicting documents for valid proof, the PIA should direct the applicant to procure an order from a First Class Judicial Magistrate, to effect change as per Passport Manual 2001 (In some States, this function is discharged by Civil Magistrates).

(e) For those born on or after 26.01.1989, birth certificate is the only approved document, as already prescribed.

2. Pending cases, if any, may also be disposed of, if eligible under these instructions.

(K.R. Rajan Pillai)

Deputy Secretary (PV-I)

8. It is clear from the aforesaid circular that where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e. School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e. Municipal authorities etc., resulting in conflicting documents for valid proof, the Passport Issuing Authority (PIA) should direct the applicant to procure an order from a First Class Judicial Magistrate, to effect change as per Passport Manual 2001 (In some States, this function is discharged by Civil Magistrates).

9. Subsequently, number of circulars, office memorandums, corrigendum were issued by the Ministry of External Affairs. It is pertinent to note that office memorandum dated 26.11.2015 was issued pursuant to the directions of the High Court of Kerala in W.P.No.9073 of 2013. The guidelines, with regard to change/correction of date of birth entries in the passports, read 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 it 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.

10. Thereafter letter dated 19.02.2016, issued by the Government of India, Ministry of External Affairs, CPV Division, was communicated to the Passport Issuing Authorities in India.

The said letter is extracted hereunder:

Government of India

Ministry of External Affairs

(CPV Division)

Patiala House Annexe, Tilak Marg New Delhi, 19th February, 2016

To

The Passport Officer,

Passport Office,

SNSM Building, Karalkada Junction,

Pettah, P.O., Trivandrum,

Kerala ? 695024.

Subject: Correction of Date of Birth in Passport on the basis of Birth Certificate of the applicant.

Madam,

Please refer to your letter No.STVM/551/16/A/08-VOL-II dated 11.02.2016 on the above mentioned subject.

2. It may be mentioned that the guidelines of the Ministry issued vide Circular No.VI/401/02/05/2001, dated 26.11.2015 and 13.01.2016 with regard to the cases of change/correction of date of birth entries in the Passport, putting a limitation of five (5) years for such correction/changes (except the case of minors) were issued in pursuant to the judgment dated 23.06.2015 of the Single bench of the High Court of Kerala in W.P.No.16668 of 2015 i.e., Usharani v. UOI and Others, wherein while dismissing the bunch of petitions the High Court had taken stern stand against all such applicants/petitioners who were approaching the Passport Authorities/Courts, to carry out such changes in their Date of Birth recorded in the Passports, even after a long period of time from the date of issue of any such Passport containing the alleged wrong date of birth.

3. However, another Single bench of the same High Court in W.P.No.599/2016 (Rojo George v. UOI), the subject matter of which is identical to the W.P.No.16668 of 2015 has not concurred with the decision/judgments delivered by its Coordinate bench on the same subject.

In any case, the order dated 18.01.2016 in the W.P.No.599/2016 is only an interim order and the W.P. is yet to be decided, in which the concerned Passport Authority i.e., RPO Cochin has been advised to file the Counter reply/affidavit in the W.P. on the grounds that since the Passport is a vital document of the Government of India having the legal sanctity, putting a limitation that is too on

the basis of the directions of the High Court of Kerala, cannot said to be arbitrary and unilateral.

4. In order to minimize litigation, in case of any application for change of DOB involving two years or less as well as court orders giving specific relief to petitioners only in such cases, the PIAs may not oppose the applications or appeal the court orders.

5. However, in case of any application involving change of DOB by more than two years as well as court orders directing in general the Ministry to modify its current policy on change of DOB, as elucidated in Ministry's circulars dated 26/11/2015 and 13/01/2016, may be contested/appealed in higher courts, in order that the sanctity of the Indian passport issuance system is not undermined from global point of view, that would result in restrictions on movement of Indian citizens abroad.

Yours faithfully,

Sd/-

(Sankara Subbu)

US(PV-I)

11. In view of the directions of the Kerala High Court as noted above, and the circulars issued by the Ministry of External Affairs, it is established that, if an applicant applies for 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. In that case, 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 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. In 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.

12. Vide letter dated 19.02.2016, regarding correction of date of birth in passport on the basis of birth certificate of the applicant, it is stated that, in order to minimize litigation, in case of any application for change of date of birth involving two years or less as well as court orders giving specific relief to petitioners only in such cases, the PIAs may not oppose the application or appeal the court orders. However, in case of any application involving change of date of birth by more than two years as well as court orders directing in general the Ministry to modify its current policy on change of date of birth, as elucidated in

Ministry's circulars dated 26/11/2015 and 13/01/2016, may be contested/appealed in higher courts, in order that the sanctity of the Indian passport issuance system is not undermined from global point of view, that would result in restrictions on movement of Indian citizens abroad.

13. In view of above, both Regional Passport Officer, Secunderabad and Regional Passport Officer, Visakhapatnam are directed to take decision on all applications pending consideration within a period of four weeks from the date of receipt of a copy of this order, and communicate the same in writing to the applicants concerned. If any of the applicant is still aggrieved by the decision taken, he/she may approach appropriate forum.

14. I hereby make it clear that, if decision is not taken within the time stipulated above, and any applicant approaches Court, thereafter, for change/correction of entries regarding date of birth in their passports, heavy costs would be imposed on the Passport Officers.

15. Needless to mention that non-compliance of the order of this Court would amount to contempt.

16. In so far as the present Writ Petition is concerned, petitioner is given liberty to approach the Civil Court to get the correct date of birth declared.

17. The Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petition pending, if any, shall also stand disposed of. However, in the circumstances, without costs.