
(2016) 08 AHC CK 0246
In the Allahabad High Court
Case No : Writ C. No. 36294 of 2016

Mohd. Yaseen

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-08-2016

Acts Referred:

Citation : (2016) 9 ADJ 85 : (2016) 6 AILLJ 149

Hon'ble Judges : Dilip B. Bhosale, CJ. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Pramod Kumar Srivastava, Advocate, for the Petitioner; A.S.G.I, Piyush Mishra, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

1. Heard Sri Pramod Kumar Srivastava, learned counsel for the petitioner and Sri Piyush Mishra, learned counsel appearing for the respondents.
2. The petitioner has instituted these proceedings seeking correction of his date of birth as recorded in his passport application. The application made for the grant of a fresh passport is stated to be "On Hold". The issue itself arises on account of the fact that the petitioner holds a passport issued on 27 January 2014 and which is valid up to 26 January 2024. His date of birth as recorded in this passport is stated to be 10 June 1992. He is stated to have made an application on 13 June 2016 for correction of his date of birth. As is evident from his application for correction, the petitioner admits that mistakenly the date of birth in his passport has come to be recorded as 10 June 1992 whereas in fact it should be 7 January 1996. He relies upon a certificate issued by the Board of High School, U.P. in support of his claim that his correct date of birth is 7 January 1996.
3. We find that on more than one occasion, writ petitions are being preferred before this Court seeking resolution of such disputes. However, we find that detailed guidelines formulated by the passport authorities stand duly enshrined

in an Office Memorandum dated 26 November 2015 issued by the Ministry of External Affairs in the Union Government. The Office Memorandum is in the following terms:

"No. VI/401/2/5/2001

Ministry of External Affairs CPV Division

PV-I Section

Patiala House Annexe, New Delhi the 26th November, 2015

Office Memorandum

Subject:-Guidelines with regard to change/ correction of dates of birth entries in the passport of an applicant already held by him/ her reg.

It may be mentioned that the necessary provisions with regard to change/ correction of dates of birth in the passports are contained in the Passports Manual, 2010 and from time to time number of circulars have been issued by the Ministry on this issue.

2. It is pertinent to mention that recently, the High Court of Kerala while hearing the WP No. 9073 of 2015 (Jayakumar v. UOI & others) has delivered a land-mark judgment on the issue of correction/change of entries regarding date/place of birth in the passport. During the course of arguments, the Court has elaborated upon the fact that the details entered in the Passport cannot be lightly interfered with, that too after many years without any sustainable cause and without any explanation as to why initially such a wrong declaration was made and why now a change is sought that too based on a document which was available with the applicant when the original declaration was made.

The High Court has further observed that the difference in dates of birth whether two years or twenty years, the power "should be one to correct bona fide mistake and that too within a reasonable time. Even a Civil Court declaration after many number of years would lead to the applicant having possibly perpetrated a fraud on many other who acted upon the authenticated declaration of sovereign State as to the age status of its Citizen.

3. The Court, therefore, while dismissing the petition of the applicant petitioner has directed that the authorities would do well to introspect on the observation made herein to make suitable amendments to the circular. It has also been directed that there would be no scope for leaving any liberty on the petitioners to approach a Civil Court too on the reasoning adopted by this Court and the delay occasioned in seeking the correction.

4. Hence, the core principle of the judgment of the High Court of Kerala is that only the bona fide claims of the applicants for the change/correction of the date of birth in the passport should be accepted and that too if the same are

submitted by them within a reasonable time limit after the issuance of passport. In pursuance of the directions of the High Court, it has been decided that henceforth, all the PIA shall follow the following instructions/guidelines in order to consider the claims/request the applicant for the change/correction of entries regarding of date of birth in their passports:

(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.

5. In view of the above, all the Passport Issuing Authorities are hereby requested to follow the above guidelines scrupulously to consider the requests of applicants for change/correction of dates of birth entries in the passports. Provisions contained in Chapter "4 and 8" of the Passport Manual, 2010 stand revised to the extent as stipulated above.

(Muktesh K. Pardeshi)

Joint Secretary (PSP & CPO) & the Chief Passport Officer"

4. Further supplementary instructions have also been issued by the Department concerned after taking into consideration a detailed judgment rendered by a learned Single Judge of the Kerala High Court in Jayakumar v. The Regional Passport Officer WP (C) No. 9073 of 2015 (H) decided on 23.6.2015, These supplementary instructions are to the following effect:

"FAQ

Correction of Date of Birth in Passport-

New Guidelines Based on Kerala High Court Judgment

(Case No. 9073/2015 dated 23/06/2015)

Major Applicants

1. If the applicant was a major when his/her first passport with incorrect date of birth was issued, he/she can correct it, within five years of issue of the first passport. No change of date of birth is allowed afterwards.

Minor Applicants

2. If the applicant was a minor when his/her first passport was issued, he/she can correct the date of birth, any time when he/she is a minor, or when he/she first time applies for reissue of passport after becoming a major.

Requirement of Documents

3. Only a genuine birth certificate issued by the competent authority will be accepted as a proof of age for correction of date of birth in the passport. No other document such as School Certificate etc. will be accepted for correction of date of birth. In exceptional cases, official documents proving correct date of birth may be considered.

Fine payable

4. Prescribed fine shall be levied on the applicant, who seeks correction of date of birth in the passport, in accordance with the relevant provisions of the Passports Act, 1967 and Rules framed there under.

Fake documents

5. Application fee and penalty will not be reimbursed if the application for correction of date of birth is found to be incomplete, faulty or fraudulent. In case of fraudulent applications for change of date of birth based on forged or fake documents, appropriate action will be taken in accordance with the Passports Act."

5. Apart from the above, we find that the Ministry of External Affairs under the "Passport Seva Project" has put in place a detailed grievance redressal system enabling applicants to seek information, make enquiries and their grievances redressed by various modes of electronic communication. Apart from putting in place a mechanism for lodging of grievances through electronic means, it also envisages the holding of Passport Adulates and Passport Mela in the course of which such disputes can be easily resolved. This grievance mechanism stands duly enumerated in the order dated 10 September 2014 issued by the Ministry of External Affairs.

6. Issues relating to correction of the date of birth as recorded in a passport would necessarily entail an enquiry into facts which can best be addressed, looked into and remedied by the passport authorities themselves at the first instance. We are, therefore, of the view that grievances of the nature raised in this petition are liable to be entertained only after the petitioner has exhausted the remedies provided and put in place by the Union Government in the first instance.

7. We find that the grievances of the petitioner can be duly redressed by the Regional Passport Officer, the third respondent herein, in terms of the Office Memorandum dated 26 November 2015 referred to above.

8. We accordingly dispose of this writ petition leaving it open to the petitioner to approach the Regional Passport Officer and seek redressal of his grievances in light of the Office Memorandum and Supplementary Instructions referred to herein above. Needless to state in case, such an application is made the third respondent will attend to the same and dispose of the said application expeditiously.