

(2013) 09 KL CK 0019
In the High Court Of Kerala
Case No : Writ Petition (C) No. 19971 of 2013

Nazar	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2013) 4 KLJ 276 : (2013) 4 KLT 34

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Sheejo Chacko, Sangeeth C. Subramanian and P. Jinish Paul, for the Appellant; P. Parameswaran Nair, Asst. Solicitor General of India, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioner has approached this Court seeking for correction of date of birth in the passport bearing No. F7487778. The case of the petitioner is that his actual date of birth is 30.5.1967, but the same is wrongly entered as 3.4.1965 in Ext. P1 passport. On coming to know about the mistake, the petitioner had filed Ext. P3 application dated 14.6.2013 before the 2nd respondent seeking to effect necessary corrections. In support of the case projected by the petitioner, Ext. P2 extract of the Admission Register issued by the school, where the petitioner had last attended for studies, was also produced. Since the same was not acted upon by the second respondent, the petitioner is now before this Court for getting appropriate relief. The learned Assistant Solicitor General of India appearing for the respondents submits that the petitioner had neither produced the SSLC Book, nor the Birth Certificate issued by the concerned authority so as to cause the correction of the date of birth in the passport. With reference to relevant circulars and also the verdict passed by this Court reported in Aboo Chettiyanthodi Vs. The Regional Passport Officer, Malappuram, the learned Counsel submits that the petitioner has to produce the SSLC Book or else he has to get a declaration from the Civil Court, as observed in the last paragraph of the said verdict.

2. The learned counsel for the petitioner, on the other hand, submits that there is absolutely no reason for the respondents to insist for the documents as aforesaid and that in the cases of applicants, who were born prior to 1989, school records are more than sufficient, as held by this Court in *Swapna Siju Vs. Union of India and Another*,

3. The Register of Births and the Birth Certificates issued by the concerned authority need not be the sole basis for the correction of date of birth of the person born before 26.1.1989. It is not necessary to produce an extract from the Register of Births to prove the date of birth, as held by this Court in *Swapna Siju v. Union of India* (cited supra).

4. The next question that arises for consideration is, as to what will be the course in respect of persons who have not completed SSLC and has left school before that. The relevant clause in the Circular, as extracted in *Aboo v. Regional Passport Officer* (cited supra), reads as follows:

10. In the Passport Information Booklet currently circulated along with all Passport applications cl. (b) under S. IV(A)(1) reads as follows:

(b) Proof of Date of Birth (attach one of the following) Birth certificate issued by a Municipal Authority or district office of the Registrar of Births and Deaths, Date of birth Certificate from the school last attended by the applicant or any other recognized educational institution; or an Affidavit sworn before a Magistrate/ Notary stating date/place of birth as per the specimen in ANNEXURE A by illiterate or semi-illiterate applicants.

Of course the above clause does not apply to cases where there are conflicting dates of birth or places of birth in certificates issued by two different authorities.

11. In *Jismol Joseph Vs. Union of India (UOI)*, a learned Single Judge of this Court held that the Judicial Magistrate has jurisdiction to decide the question regarding the correction of date of birth and place of birth in the passport. But, no specific source of power was traced in that ruling to confer the Judicial Magistrate of First Class to pass declaratory orders. The applicant in that case was asked by the Passport Authority by relying on the NOTE in the Information Booklet (to which mention was made earlier) to obtain a court order from a Judicial Magistrate. But as mentioned earlier, after the Ministry of External Affairs issued revised circulars and has deleted the NOTE in the revised booklets there is no provision now for approaching the Judicial First class Magistrate for obtaining declaratory orders. If at all, any such declaratory order could be passed, it can only be by a competent Civil Court having jurisdiction. Hence, the challenge against Annexure A4 order passed by J.F.C.M.-II Perinthalmanna has to fail.

5. Going by the above clause, it is very much obvious that the provision does not exist there as the SSLC Book itself and the Date of Birth Certificate issued by the school last attended by the applicant is sufficient. Ext. P2, in the instant case, is such certificate issued by the concerned school and as such the petitioner is

entitled to pursue the cause on the basis of Ext. P2.

6. The remaining question that arises for decision is as to the authenticity of Ext. P2. It is always open for the 2nd respondent to ascertain the correctness/genuineness of the said certificate by calling for the particulars through their own machinery or through the school concerned or get the verification as to the factual details through the police or deploy such other source or machinery. The decision rendered by this Court in *Aboo v. Regional Passport Officer* (cited supra), deals more with regard to the scope, authority, power and jurisdiction of the concerned Magistrate Court to issue necessary proceedings in this regard. If the application preferred by the concerned party is rejected, which was taken up before this Court under S. 482 of the Cr.P.C. After discussing the relevant aspects, this Court observed in paragraph 12 of the above judgment as follows:

12. According to the petitioner, the entry of the year 1970 in his passport against the column for showing the date of birth was made by the agent who submitted the application on his behalf and there was no supporting documents produced at that time regarding the date of birth of the petitioner. If so, the passport issuing Authority is free to reconsider the claim of the petitioner with reference to the extract of the admission register of the Government High School, Pattikad and carry out the necessary rectifications regarding the date of birth of the petitioner, in case such a course is possible in the light of the circulars referred to above. If, however, that authority finds it difficult to accept the said certificate it shall refer the petitioner to a competent civil court for getting a declaratory order regarding his date of birth.

7. Whether Ext. P2 extract of Admission Register is correct or not, is a matter to be ascertained by the 2nd respondent and the chances of further cause of action arises will be subject to the outcome of such verification. In such circumstances, the 2nd respondent is directed to re-consider Ext. P3 application preferred by the petitioner and pass appropriate orders after ascertaining the correctness/genuineness of Ext. P2 extract of the Admission Register issued by the concerned School directly or indirectly to the respondents and finalise the proceedings in accordance with law. It shall be done at the earliest and at any rate within two months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above.