
(2008) 05 MP CK 0049
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3763 of 2008

Neetu Jain

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

General Clauses Act, 1897 — Section 21

Citation : (2009) 120 FLR 301 : (2008) ILR (MP) 2841

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant; Dharmendra Sharma, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.—Petitioner submitted passport application form in the prescribed format which was signed by her on 28.12.1998. In this application, her date of birth was mentioned as 15.6.1983, which was duly supported by the birth certificate registered with the Registrar, Births and Deaths. Passport No. A-8537993 was issued on 19.1.2000 in favour of the petitioner from the Passport Office, Bhopal, showing 15.6.1983 as her date of birth.

Case of the petitioner is that her real date of birth is 15.6.1982 as is entered in her High School Certificate Examination and marks list of High School Certificate Examination, 1998. Copy of High School Certificate Examination, Certificates issued from Saraswati Higher Secondary School, Kareli, and Saraswati Shishu Mandir, Kareli, as also School Leaving Certificate issued by Saraswati Shishu Mandir, Kareli, District Narsinghpur are cumulatively marked as Annx.P/2. Further, the case of the petitioner is that her date of birth was wrongly mentioned in the application as 15.6.1983 which was a bona fide mistake on the part of her father. She submitted representation for rectification of the date of birth as mentioned in the documents contained in Annx, P/2. This representation was not decided. Consequently, the present writ petition has been preferred.

2. It is contended by Shri V.K. Shukla, learned Counsel for the petitioner that real date of birth of the petitioner being 15.6.1982, the same is to be entered in the passport and the bona fide mistake with respect to the date of birth of the petitioner deserves to be corrected.

3. Per contra, Shri Dharmendra Sharma, learned Assistant Solicitor General, contended that the petitioner herself while submitting the passport application mentioned as 15.6.1983 as her date of birth and the same was established by the birth certificate duly registered with the Registrar of Births and Deaths; a copy whereof was annexed to the passport application form. Accordingly, he contended that Passport Office was not at fault and the date of birth entered into the passport on the basis of birth certificate cannot be legally rectified. Shri Dharmendra Sharma, learned Assistant Solicitor General, referring to various circulars submitted today along with a copy of passport application form contended that the entry pertaining to date of birth in the passport of the petitioner cannot be rectified, mereso, since it is based on the birth certificate of the petitioner and is not a mistake, nonetheless a bona fide mistake.

4. Submissions of both the learned Counsel have been considered in the light of the material on record.

5. Various circulars have been issued from time to time by the Ministry of External Affairs (CPV Division). Initially, it was opined that under the Passports Act, 1967, a Passport Issuing Authority (hereinafter referred to as PIA for brevity) functions in quasi-judicial manner in issuing grant orders or denying passport facilities on applications made by applicants. Thus, once a PIA has issued grant orders with a particular birth date, the PIA cannot review or revise its own grant order.

6. Afterwards, Ministry of External Affairs issued Circular No. VI/405/4/28/91 dated 22.12.1994 in the light of a decision rendered by the High Court of Kerala on 9.9.1994 in the case of Elizabeth v. Union of India and others. High Court of Kerala gave directions that in case of incorrect date of birth, the petitioner may file an affidavit along with relevant documents before the First Class Judicial Magistrate praying that an order may be passed to correct the date of birth. The Magistrate may conduct such an enquiry as he deems fit and pass relevant orders regarding correction of date of birth in the passport. Aforesaid circular dated 22.12.1994 was issued in supersession of earlier circular of Ministry of External Affairs bearing No. VI/405/4/2 8/91/CPO/CIR/12/91 dated 18.7.1991 to the effect that in alt such cases where passport holder insists on change of date of birth, he/she should obtain an order from First Class Judicial Magistrate in India instructing that a correction in the date of birth be made.

7. Thereafter, another judgment was pronounced by the High Court of Judicature at Mumbai in CWP No. 1072/2000. Ministry of External Affairs (PV-1 section) in the light of the said judgment issued circular bearing No. VI/401/2/5/2001 dated 18.4.2001 which contained following clarifications:--

(a) Where an applicant is seeking rectification/correction of a mistake in the entry about date of birth/place of birth in the passport, PIA may after verifying / satisfying himself, effect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid issues any correction or amendment, PIA may effect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of section 21 of the General Clauses Act, 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c) 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 resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

8. Latest Circular bearing No. VI/401/2/5/2001 was issued by the, Ministry of External Affairs (PV-1 section) on 29.10.2007 which contains mainly the following relevant provisions:--

(i) Where an applicant claims clerical/technical mistake in the entry relating to date of birth in the passport and asks for rectification/correction, the documents produced earlier as proof of date of birth at the time of issue of passport may be perused by PIA. In case, it is a clerical mistake attributable to the applicant, correction in respect of date of birth may be allowed by fresh passport booklet by charging fee for fresh passport.

(ii) Where a competent authority which issued a birth certificate issues any correction or amendment in the date 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.

(iii) Where initial entry has been made on the basis of a supportive document issued by one competent authority and the applicant subsequently requests for change on the basis of a certificate issued by another competent authority resulting in conflicting document for valid proof, the PIA should direct the applicant to procure an order for the First Class Judicial Magistrate to effect change from Passport Manual, 2001 (in some States, this function is discharged by Civil Magistrate).

9. In the light of the aforesaid position of circulars, contention of learned Assistant Solicitor General of India Shri Dharmendra Sharma is not acceptable that in no case the date of birth entered in the passport can be corrected/

rectified. It is crystal clear from various circulars issued by the Ministry of External Affairs, Government of India, referred to hereinabove that rectification/correction in the matter of date of birth may be made obviously, in case, if, the petitioner is found entitled to seek correction/rectification after following the procedure prescribed by the circulars.

10. Main problem in this case is that the petitioner herself had submitted a copy of her birth certificate in which the date of birth has been mentioned as 15.6.1983. This certificate was issued under the provisions of the Births, Deaths and Marriages Registration Act, 1886. Since the PIA has relied upon the birth certificate submitted by the petitioner herself along with the passport application form, no fault can be found with it.

11. Petitioner in view of the circulars is left with two recourses prescribed vide (ii) and (iii) of paragraph 9 of this order. In case of availing remedy (i), she is first required to seek correction of date of her birth in the birth certificate itself. Section 28 of the said Act makes a provision for correction of entry in register of births or deaths. This section is reproduced below for convenience:--

"28. Correction of entry in register of births or deaths.--(1) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, he may, subject to such (rules) as may be made by the (State Government) with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

(2) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made."

12. No provision could be pointed out to this Court that the birth certificate issued under the said Act has presumptive value with regard to date of birth. Sub-section (2) of section 35 of the said Act provides that certified copy of an entry given u/s 35 shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates. It will not give rise to presumption with regard to date of birth rather, it would be an evidence for merely proving the factum of birth.

13. Although, the date of birth of the petitioner is entered in her academic record as 15.6.1983, but again no provision could be pointed out that the certificate issued by the Board of Secondary Education or entered in other documents like driving license or marriage certificate shall have overriding effect in the matter of date of birth. This being the position, the petitioner cannot compel the PIA to make correction in the passport in respect of date of birth in the light of various circulars which do not provide for rectification of the mistake without first getting

corrected the birth certificate containing 15.6.1983 as date of birth. Since the PIA has made entry of date of birth as 15.6.1983 on the basis of the birth certificate as well as the information provided by the petitioner herself under her own signature, the petitioner may seek correction of entry in the register of birth u/s 28 and after having the same corrected, the petitioner may submit an application with the corrected entry of her birth certificate in the passport office in the light of aforesaid circular.

14. Second recourse is also open to the petitioner. It was the initial entry in her passport which was made on the basis of supportive document in the nature of birth certificate issued by the Registrar of Births and Deaths which is a competent authority under the Birth, Deaths and Marriages Registration Act, 1886. Petitioner now requests for change on the basis of the certificate issued by the Board of Secondary Education which is also one of the competent authorities. Date of birth entered in the certificate issued by the Board of Secondary Education is though taken as a proof of date of birth for number of purposes, it is not shown to have any presumptive value under law. Thus, there are conflicting documents. (Birth Certificate and High School Examination Certificate). The petitioner may procure a judicial order from the Court having competent jurisdiction to effect change in the passport with regard to date of birth. In the State of Madhya Pradesh, no such power is conferred on the Judicial Magistrate, therefore, the petitioner in order to procure a judicial order shall have to institute a civil suit for declaration about date of birth and mandatory injunction directing the PIA to effect a change in the passport with regard to date of birth.

15. Thus, it is open for the petitioner to invoke any of the aforesaid two recourses. It is directed that if the petitioner submits an application with corrected birth certificate or submits an application with a certified copy of decree for correction in the date of birth, the PIA shall consider the same in the light of circulars referred to hereinabove and shall take a decision in an expeditious manner, preferably, within a period of two months from the date of receipt of application accompanied by corrected birth certificate/Court decree (as the case may be) and certified copy of this order.

In the result, writ petition is allowed in the aforesaid terms. No order as to costs.