
(2014) 10 KL CK 0343

In the High Court Of Kerala

Case No : W.P.(C). Nos. 29694 of 2012, 31200 of 2013, 8172, 8473, 16172, 16364, 16673, 17322, 18237, 18259, 18269, 18495, 18879, 19741, 20185, 20502, 21181, 21872, 22486, 22726, 23368, 24033, 24096, 24315, 25056 and 25384 of 2014

Nizar

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2015 Ker 41 : (2014) 4 KHC 558 : (2014) 4 KLJ 727 : (2014) 4 KLT 609

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : Nidhi Balachandran and Sabu George, Advocate for the Appellant; P. Parameswaran Nair, Adv., ASG of India, Advocate for the Respondent

Judgement

A. Muhamed Mustaque, J.—These batch of writ petitions are filed aggrieved by the refusal on the part of the Passport Issuing Authorities to correct the date of birth in the Passport on account of the circular dated 29.10.2007, issued by the Ministry of External Affairs, wherein the power given to the Passport Issuing Authorities to correct date of birth in the Passport in genuine cases, is only if the difference is in months (not more than two years). In W.P.(C) No. 17322, which is the lead case of this batch, the circular is challenged to the above extent alleging that it is in violation of Article 14 of the Constitution of India.

2. This Court in Swapna Siju Vs. Union of India and Another, held that for applicants who have born before 26.1.1989, it is not necessary to produce an extract from the Register of Births, generally called the "birth certificate". The judgment of the Hon'ble Supreme Court in Nazar v. Union of India [2013 KHC 3665], wherein it is held that, it is always open for the Passport Issuing Authorities to ascertain the correctness/genuineness of the certificate relied by the applicants for satisfying the genuineness put forward by them for correction

of the date of birth in the Passport. In *Abida Vs. Government of India*, , the Hon"ble Supreme Court held that Passport Act, 1967 do not specify the nature of documents to be produced in proof of the date of birth of an applicant. It is upon the authority to decide the nature of the document required for correcting the date of birth in the passport.

3. The above judgments would clearly indicate that genuineness of the claim is important in making correction of date of birth in the Passport. The question therefore, arises is whether the Passport Issuing Authorities have the power to correct the date of birth, if the difference is more than two years. The relevant clause in the circular issued by the Ministry of External Affairs is reproduced here under:

"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."

4. The learned Additional Solicitor General of India relying on the decision of this Court in *Raveendran Pillai, G Vs. Vice Consul, Consulate General of India and another*, , submits that correction beyond two years can only be done through a declaratory order passed by a competent Civil Court.

5. The power to correct the entry related to the date of birth in the passport is no more *res integra* in view of the decisions as above.

6. In the counter affidavit filed by the 2nd respondent, it is stated that the provisions regarding the power to effect changes in the entries in the Passport were introduced so as to help genuine applicants and in cases where there was vast difference, the power of the authorities are restricted by fixing the cut off of two years difference. It is further stated that there is no illegality or irregularity in fixing the cut off of two years in exercising the discretionary power of the Passport Issuing Authorities. It seems that the restriction in effecting changes in the date of birth is based on the assumption that if there is a vast difference in the age, Passport Issuing Authorities cannot act upon such application.

7. In my view, the Passport Issuing Authorities are not effecting changes in date of birth. They are only correcting the mistakes occurred in the Passport. No one can change date of birth of a person. Therefore, any vast disparity in correcting the actual date of birth comparing to the original, does not make any difference for the purpose of correcting date of birth in the Passport. For eg. If a person's Passport bears the date of birth as 1.1.1986, instead of 1.1.1996, the Passport Issuing Authorities will refuse to exercise the power. However if the difference is only to the effect of 1.1.1987 as against the year 1.1.1986, the Passport Issuing Authorities will effect changes. There is no rationale in restricting exercise of power for correcting date of birth beyond two years in difference. If corrections are liable to be effected on genuine reasons, necessarily, it apply in all

circumstances, irrespective of the fact that difference is beyond two years or less. The fixation of the outer limit of two years is fixed as though application is seeking to effect change in date of birth. The Passport Issuing Authorities have to bear in mind that they are correcting the date of birth and not changing the date of birth. Thus, the classification for exercising of the power for effecting correction of the date of birth has no nexus with the object sought to be achieved. If the objective of classification is illogical and lacks rationality, necessarily, the classifications will have to be held unreasonable. Thus, restricting the power of the authorities of passport, in correcting the date of birth as imposed in the circular is unsustainable and liable to be struck down. Therefore, the prescription of two different sets of procedures for correcting the date of birth in the Passport for same class of persons has no basis. In *The State of West Bengal Vs. Anwar Ali Sarkar*, it was held by the Hon'ble Supreme Court as follows:

"A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated are able to avail themselves of the same procedural rights for relief."

8. Accordingly, based on the challenge in W.P.(C) No. 17322/2014, it is declared that Clause C of Circular dated 29.10.2007, restricting the power of the Passport Issuing Authorities correcting difference in date of birth beyond two years is declared void and inoperative.

9. It is pointed out by the learned Assistant Solicitor General of India, that in large number of cases, applications for corrections are filed after a decade or more and it is also submitted that in many of the cases the files have been destroyed and it is not possible for the Passport Issuing Authorities to trace out such files.

10. As have been declared by this Court in the judgments referred as above, the genuineness of the claim of the applicant is the basis for entertaining the application for correction. It is for the Passport Issuing Authorities to come out with regulations prescribing an outer limit for entertaining application for correction of the date of birth in the Passport. The Passport Issuing Authorities may fix such outer limit for entertaining application for correction of the passport and also in exceptional cases for relaxation of the outer limit. This Court need not direct the Passport Issuing Authorities to prescribe the outer limit to entertain such applications.

Therefore, these writ petitions are allowed by directing the Passport Issuing Authorities concerned to consider the application for correction of date of birth in the Passport in the light of the decisions of this Court referred as above. The applications shall be considered within six weeks in accordance with the relevant provisions. It is made clear that the Passport Issuing Authorities need to correct the date of birth only if the authority is satisfied with the genuineness of the

claim of the applicants.

The writ petitions are disposed of as above.