

(2011) 10 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7873 of 2010

Piyush Chopra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Citation : AIR 2012 Raj 19

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Advocate : Dinesh Kumar Joshi, for the Appellant; Anish Ahmed, for the Respondent

Judgement

Dinesh Maheshwari, J.—The petitioner, said to be 26 years in age, and a qualified chartered accountant, has filed this writ petition stating grievance that the respondents have unnecessarily kept his application for issuance of passport pending and were not issuing the requisite passport despite completion of all the formalities and despite his having answered all the queries and objections. The petitioner has, inter alia, averred that earlier he made an application to the respondent No. 3, the Regional Passport Officer, Jaipur for issuance of passport on 29-6-2004. On the said application, address proof was demanded that was, according to the petitioner, furnished. The matter, however, remained pending with the respondent No. 3 and ultimately, the petitioner was informed in the month of July, 2008 that his file had been closed on 10-10-2007 and that he shall have to submit a fresh application for passport. The petitioner has further averred that in the given circumstances, he made an application afresh on 8-2-2008 while remitting the requisite fees and enclosing all the necessary documents. This application was registered as file No. A-022938/2008.

2. The passport having not been issued despite moving the application afresh, the petitioner demanded information about the proceedings on his application under the Right to Information Act whereupon he was informed under the communication dated 4-5-2009 (Annex. 6) that there was a discrepancy about

his date of birth as mentioned in the application and as mentioned in his mother's passport; and that passport could not be issued to him for want of necessary proceedings, explanation, documents and penalty. The petitioner preferred an appeal in relation to the said communication dated 4-5-2009 issued under the Right to Information Act but then, with his letter dated 15-3-2010, also remitted an amount of Rs. 2,000/- towards penalty and sent several of the documents including his Secondary School Examination Certificate issued by the Central Board of Secondary Education, his driving licence, and his certificate of membership of the Institute of Chartered Accountants of India.

3. The petitioner has stated the grievance that despite passage of sufficient time and despite his having furnished all the requisite explanation/information, the respondent authorities have failed to issue him passport; and on the other hand, he was suffering serious hardship inasmuch as he was unable to take up CPA course from USA and then, his present employer at Hyderabad having contacts all over the world had also enjoined upon him to submit the passport but he was unable to satisfy the requirements of the employer.

4. While stating that the respondents were entirely unjustified and unreasonable in not issuing him the passport, the petitioner has pointed out regarding the alleged discrepancy that his date of birth came to be wrongly mentioned in the passport of his mother as "7-11-1984" instead of the correct one i.e. "7-10-1984" wherefor he has furnished all the explanations with documentary proof that his correct date of birth is 7-10-1984. The petitioner submits that date and year of birth are the same and there is difference of one month only that was not deliberate and it was purely unintentional mistake that occurred in his mother's passport and for this reason alone, he cannot be denied the passport.

5. In this writ petition, notices for final disposal were issued on 20-8-2010. In their reply, even while not disputing on the basic facts, the respondents have asserted that the passport could not be issued to the petitioner for the discrepancy in his date of birth as occurring in the application made by him and as already mentioned in his mother's passport. The respondents have taken the stand that the petitioner should produce a declaratory order from the First Class Judicial Magistrate regarding his date of birth; and it is submitted that whenever such declaratory order regarding his date of birth shall be filed by the petitioner, the respondents would issue the passport forthwith. As regards deposit of the amount of penalty of Rs. 2,000/-, the respondents submit that the petitioner was never directed to deposit such an amount but he sent the demand draft of Rs. 2,000/- with his letter dated 15-3-2010 of his own. It is submitted that the penalty is imposed for furnishing incorrect or misleading details but mere depositing of the amount of penalty would not satisfy the other requirement of declaratory order regarding the date of birth.

6. Put in a nutshell, the stand of the respondents is that because of discrepancy regarding the date of birth of the petitioner as mentioned in his application for passport and as mentioned in his mother's passport, the petitioner ought to

submit a declaratory order regarding his date of birth; and it is submitted that upon furnishing of such declaratory order, the respondents would issue the passport without further delay.

7. Only two points appear requiring determination in this matter, one, regarding the legality and validity of the action of the respondents is not issuing passport to the petitioner for want of a declaratory order; and second, about the legality of demand of penalty by the respondents.

8. After having heard the learned counsel for the parties and after having perused the material placed on record, this Court is clearly of the view that in the present case, the respondents have chosen to proceed in a rather perfunctory manner and have put forward the unnecessary demand of the so-called declaratory order regarding date of birth while ignoring all other material on record.

9. The petitioner has stated his date of birth as 7-10-1984. His date of birth, when he was a minor, got mentioned in his mother's passport as 7-11-1984. The discrepancy has only being of a month wherefor the petitioner has furnished repeated explanations and in proof of his correct date of birth, has furnished several of the documents including his Secondary School Certificate and driving licence. It has not been shown as to what cogent evidence was available with the respondents to discard the date of birth stated in the Secondary School Certificate. It has also not been shown as to how the date of birth of the petitioner as stated in his mother's passport was taken conclusive by the respondents. Of course, the discrepancy does appear but has not been of such a magnitude or serious nature wherefor the petitioner is driven to seek a declaratory order particularly when Secondary School Certificate is available and ordinarily, the date of birth stated therein is to be accepted as correct.

10. In the given set of facts and circumstances, this Court is unable to find any justification wherefor the respondents have chosen to keep the application made by the petitioner pending for all this time. In the given fact situation, even the demand of penalty (as indicated in the communication dated 4-5-2009 (Annex. 6)) does not appear justified. It has not been shown if the petitioner has deliberately made any such misstatement for which he was required to be penalised. It would rather be a travesty of justice if the respondents are permitted to avoid issuance of passport to the petitioner even when he has stated the date of birth in conformity with what has been mentioned in his academic career and in all the related documents including the Secondary School Certificate. Having regard to the circumstances, this writ petition deserves to be allowed with necessary directions to the respondents. Accordingly, this writ petition is allowed; the respondents are directed to process the application made by the petitioner for issuance of passport immediately and, for the purpose of date of birth, shall take the date mentioned in the petitioner's Secondary School Certificate as conclusive. Further, the respondents are held not entitled to recover any penalty from the petitioner and the amount of Rs. 2,000/- as

deposited by the petitioner towards penalty shall be refunded to him. The requirements of this order shall be carried out by the respondents within 30 days from today.

In the circumstances, there shall be no further order as to costs.