
(2007) 11 P&H CK 0085
In the Punjab And Haryana At Chandigarh

Resham Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

General Clauses Act, 1897 — Section 21

Passports Act, 1967 — Section 5

Registration of Births and Deaths Act, 1969 — Section 16, 7

Citation : (2008) 149 PLR 621 : (2008) 1 RCR(Civil) 11 : (2008) 1 RCR(Civil) 131 : (2008) 1 RCR(Criminal) 158 : (2008) 1 RCR(Rent) 54

Hon'ble Judges : Uma Nath Singh, J; Rajive Bhalla, J

Bench : Division Bench

Judgement

Rajive Bhalla, J.—The petitioner, prays for the issuance of an appropriate writ, order or direction especially in the nature of Certiorari for quashing the order dated 22.8.2007, passed by respondent No. 2, declining to vary/make a correction in the petitioner's Passport.

2. The petitioner was issued Passport bearing No. B0886182 on 13.10.1999, valid upto 12.10.2009 showing his date of birth as 23.7.1962. The said entry was made on the basis of an entry in his matriculation certificate. The petitioner applied for permanent immigration to the United States. The US Embassy, New Delhi required the petitioner to submit an authenticated document as to his date of birth. The petitioner, applied for issuance of a birth certificate before the Registrar of Births and Deaths. On receipt of the aforementioned certificate, the petitioner realised that his date of birth, as recorded in the Births and Deaths register was 26.5.1962 and not 23.7.1962, as entered in his matriculation certificate. Consequently, the petitioner applied to the Passport Officer, Jalandhar, for a correction of the entry regarding his date of birth, in his Passport. As the authority failed to decide the application, the petitioner filed CWP No. 10448 of 2007, praying for the issuance of a direction to the Passport authority to decide his application. Vide order dated 17.7.2007, the writ petition was disposed of with a direction to the Passport authority to consider and dispose of the

representation dated 1.6.2007, in accordance with law, within a period of four weeks from the date of receipt of a certified copy of the order.

3. The Passport Officer, Jalandhar, vide order dated 22.8.2007 declined to make any correction in the Passport, on the ground that the entry, of date of birth in the Passport was based upon an entry in the matriculation certificate and, therefore, an alteration could not be affected. The petitioner was advised to approach a competent Court for declaration with respect to his date of birth.

4. Counsel for the petitioner contends that, respondents do not deny that a Passport Officer has jurisdiction to alter/vary and/or make corrections in a Passport. The instructions dated 18.4.2001, issued by the Ministry of External Affairs acknowledge this fact. It is contended that a Passport Officer cannot decline to act, upon a certificate issued by the Registrar of Births and Deaths, under the Registration of Births and Deaths Act, 1969. An entry of date/place of birth is based upon an entry in the Births and Deaths register, maintained by the Registrar under the aforesaid enactment. It is, therefore, a public record and a presumption of truth attaches thereto.

5. As regards the merits of the case, it is submitted that the petitioner was a minor, when he was admitted to school by his parents. The entry, regarding his date of birth, was wrongly recorded by his parents and, therefore, the corresponding entry in the matriculation certificate is, incorrect. The petitioner applied for a Passport, assuming that the entry in the matriculation certificate was correct. However, as the birth certificate reflects his true date of birth i.e. 26.5.1962, this technical correction, should have been allowed and the petitioner should not have been relegated to seek a declaration from a civil Court.

6. Counsel for the respondents on the other hand submits that respondent No. 2, namely; the Passport authority is bound by the Act, the Rules framed thereunder and the instructions issued by the Ministry of External Affairs from time to time. As per instructions dated 18.4.2001, a Passport Officer is competent to make alterations of a technical nature only. The instructions specifically provide that where an entry is made on the basis of a supporting document issued by one competent authority i.e. school/education authority and the applicant subsequently requests for change, on the basis of a certificate issued by another competent authority i.e. a Municipal Authority, the Passport Officer should direct the applicant to obtain an order from a civil Court, certifying the validity of birth/place of birth. In view of the aforementioned instructions, the Passport authority had no jurisdiction to pass an order altering the date of birth, on the basis of the certificate issued by the Registrar of Births and Deaths. It is, therefore, prayed that as the Passport Officer was justified in directing the petitioner to obtain a declaratory order from a civil Court, the present writ petition be dismissed.

7. We have heard learned Counsel for the parties and perused the paper book.

8. The petitioner applied for a Passport by appending his matriculation certificate, as proof of his date of birth i.e. 23.7.1962. The petitioner's Passport, bears the

aforesaid date of birth. On the insistence of the U.S. Embassy, the petitioner applied for and was issued a birth certificate by the Registrar of Births and Deaths, Hoshiarpur, reflecting his date of birth as 23.5.1962. This apparent contradiction between the date of birth in the matriculation certificate and the birth certificate, compelled the petitioner, to file an application before the Passport Officer, praying for correction of his date of birth, as reflected in the Passport. Vide the impugned order dated 22.8.2007, the Passport Officer, declined to make any correction and directed the petitioner, to obtain a declaratory decree from a civil Court.

9. The Passport Officer, as is apparent from the arguments advanced by his counsel, in essence, does not plead lack of jurisdiction or power to amend a Passport but asserts that as two competing documents, issued by competent authorities, reflect different dates of birth, he could not embark upon an enquiry to opine as to which of the documents bore the correct date of birth. The aforementioned argument, in our considered opinion, is incorrect.

10. It is not denied that a Passport Officer is empowered to alter/amend/vary/make entries and endorsements in a Passport. Section 21 of the General Clauses Act, empowers an authority to add, amend, vary or rescind an order issued by it earlier. However, the respondent Passport Officer relied upon instructions, issued by the Ministry of External Affairs dated 18.4.2001 and more particularly Clause 'c' thereof. The complete instructions are reproduced herein below:

As per the current practice, in case of change of date of birth/place of birth, the applicant is required to produce the original declaratory order from a first class judicial magistrate. However, in view of the recent judgement given by the High Court judiciary at Mumbai in CWP No. 1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued.

a) Where applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect 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 were to issue any correction or amendment, PIA may affect the necessary amendment in a 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 amendment 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. a 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 the competent Court of jurisdiction, certifying the valid date of birth/place

of birth.

11. A perusal of the instructions disclose that Clause 'a', empowers a Passport Officer to rectify/correct an entry in the date of birth/place of birth after verifying/satisfying himself and treating the correction as technical in nature. However, Clause (c), the provision relied upon by the Passport Officer, directs a Passport Officer not to adjudicate a plea for correction, where the claim is based upon two sets of documents, one being a matriculation certificate and the other being a certificate of birth issued by the Registrar of Births and Deaths. In such a situation, the instructions direct a Passport authority to relegate the applicant to a civil Court.

12. Once it is accepted, that a Passport Officer can alter/amend entries with respect to birth/place of birth, the caveat placed on his power, by Clause (c) of the instructions, in our opinion, curtails the powers of a statutory authority, namely; the Passport Officer. It would be necessary to mention here that these instructions are merely explanatory or clarificatory and do not, impinge upon or in any manner curtail the statutory jurisdiction conferred by the Act. These instructions came to be issued in view of a judgement of the High Court of Jigar Harish Shah Vs. Union of India and Others, , wherein the Union of India raised a defence similar to that urged in the present case. While considering the matter, it was held as follows:

XXXX XXXX XXXX The passport has been issued in favour of the petitioner by the Passport authority by passing an order in that regard as contemplated by Sub-section (2) of Section 5. Once we see that the Passport is issued by an order by a competent authority under the provisions of Section 5(2) of the Passport Act, it is apparent that the provisions of Section 21 of the General Clauses Act, 1897 would come into play and such an authority would be having the power to add to, amend, vary or rescind an order issued by it earlier. The Passport Information Book let, which was brought to our notice by Mr. Mehta, contains a note below paragraph 4 that the date of birth/place of birth once included in the Passport will not be changed. For change, the applicant will have to make a fresh application enclosing relevant evidence for obtaining fresh Passport with correct date and place of birth alongwith a Court order by a judicial magistrate directing the Passport Office to change the date or place of birth. No provision was, however, brought to our notice by Mr. Mehta empowering the judicial magistrate for issuing such a direction after holding an enquiry in relation to the correct date of birth of a person seeking Passport except the Circular dated 22.12.1994 of the Ministry of External Affairs (CPU Division) wherein it is stipulated that where a change of date of birth in the Passport is being sought, the person concerned should be advised to produce the original copy of a declaratory order issued by the First Class Judicial Magistrate in India instructing that a correction in date of birth be made. We are afraid that such a circular whether would confer jurisdiction on the Magistrate if otherwise, he is not having under any provisions of law.

XXXX XXXX XXXX In this matter, however, when the provisions of Section 21 of

the General Clauses Act have been brought to our notice and when we see that correction in the Passport in relation to the entries therein including in relation to the date of birth can be made by the Passport Authority itself having regard to the provisions of Section 21 of the General Clauses Act, we do not feel it proper to refer the matter to the Judicial Magistrate whose Courts, we are aware, are already overburdened and further in particular when the Judicial Magistrates have not been conferred with such a jurisdiction under any law. We, therefore, instead of issuing a direction to the Judicial Magistrate in this matter, direct the Passport Authority itself to hold an enquiry on hearing the petitioner in relation to the petitioner's claim about his correct date of birth and in case the Passport Authority is satisfied with regard to the claim put forth by the petitioner. We further order it to effect the necessary change in the Passport issued in favour of the petitioner. Petition is allowed in the above terms. Rule is made absolute.

13. A similar dispute also arose before the High Court of Gujarat in Kokilaben Panchal Vs. Regional Passport Officer, . After considering the judgement of the Bombay High Court, the instructions dated 18.4.2001, the provisions of Births and Death Registration Act, 1969 and the provisions of the General Clauses Act, 1897, it was held that the Passport authority was not justified in refusing to entertain the application for change of date of birth and/or place of birth and instead insisting that an order be obtained from a Court. A relevant extract of the aforementioned judgement is reproduced hereunder:

XXX XXXX XXX ...As held in the aforesaid decisions and even as per the instructions issued by the Ministry of External Affairs, the passport authority has jurisdiction to make necessary correction in the passport so far it relates to the date of birth and place of birth is concerned on satisfying itself with regard to genuineness of the document/s. Therefore, the passport authority is required to hold an appropriate enquiry on the application being made to correct the date of birth and/or place of birth in the existing passport and/or for issuance of fresh passport mentioning the correct date of birth as per the certificate issued by the competent authority issued under the provisions of Births and Deaths Registration Act, 1969 in a case where there is discrepancy in the date of birth and/or place mentioned in the certificate issued by the competent authority under the provisions of the Births and Deaths Registration Act and the School Leaving Certificate. However, for that purpose, the authority is required to be satisfied with regard to the claim put forth by the applicant (petitioner/s in the instant case) on the basis of the supporting documents issued by the competent authority issued under the provisions of the Births and Deaths Registration Act.

14. At this stage, it is also required to be noted that normally when there is a discrepancy in the date of birth in the certificate issued by the competent authority under the provisions of the Births and Deaths Registration Act as well as school leaving certificate, in that case, primacy is required to be given to the birth certificate issued by the Municipality and the competent Government Authority under the Births and Deaths Registration Act, unless it is on verification

of such document, a doubt is created and/or authority is not satisfied with regard to the genuineness of the same. It is also required to be noted that when there is dispute with regard to genuineness of the date of birth and/or certificate, then, certainly the passport authority can refuse to make necessary correction and/or effect change in the passport with regard to the date of birth and/or place of birth is concerned and may insist for order from the Court.

XXX XXXX XXX Therefore, for the aforesaid purpose, the passport authority is required to entertain the application, hold necessary enquiry and consider the same and if not satisfied then, to give reasons for not accepting the same.

14. It was,thus, held that where there is a conflict, between the date of birth, recorded by the competent authority under the Births and Deaths Registration Act and the school leaving certificate, primacy was to be accorded to the birth certificate issued by the authority under the Registration of Births and Deaths. It was also held that unless upon verification,the certificate issued by the Registrar of Births and Deaths, appears to be doubtful or suspicious or the Passport authority is not satisfied as to its genuineness, then alone would the Passport authority be justified in declining to effect a correction in the date of birth and directing an applicant to seek adjudication, as to his date of birth before a civil Court.

15. The aforementioned judgements, with which we are in respectful agreement,have correctly and succinctly delineated the powers and the jurisdiction of a Passport authority, considering an application for alternation of date of birth, based upon two contradictory documents i.e. a birth certificate issued by the Registrar of Births and Deaths and a certificate issued by an education authority.

16. A birth certificate is issued by a Registrar of Births and Deaths and reflects an entry extracted from the register maintained by the Registrar under the Registrarion of Births and Deaths Act, 1969. The aforementioned statute was enacted to provide for and regulate registration of Births and Deaths and for matters connected therewith. Section 7 thereof, requires a State government to appoint a Registrar for each area comprising the area within the jurisdiction of a municipality/panchayat or the local authority or any other area or a combination of any two or more of them. Section 16 of the Act requires every Registrar to keep in the prescribed form a register of Births and Deaths for the registration of births and deaths in his area or any part thereof in relation to which, he exercises jurisdiction. A register of Births and Deaths is, thus, a public record of births and deaths that occur within the area assigned to a Registrar. The Register being a public record, presumption of truth attaches thereto and consequently to the birth certificate,reflecting an extract from the Births and Deaths register. A matriculation certificate, on the other hand, is primary evidence of the marks obtained by a candidate in a qualifying examination and the date of birth recorded as an ancillary measure. Primacy would, therefore, have to be accorded to the date of birth reflected in the birth certificate issued by the Registrar of

Births and Deaths.

17. The respondents appear to have misunderstood the legal nature of a birth certificate, issued by the Registrar of Births and Deaths and have equated it with a matriculation certificate. While considering two conflicting certificates i.e. a birth certificate issued by the Registrar of Births and Deaths and a matriculation certificate, the date of birth indicated in the birth certificate issued by the Registrar must prevail.

18. However, the Passport Officer would be well within his jurisdiction to satisfy himself as to the genuineness of a certificate and in case it appears to be suspicious, manipulated or procured, he would be justified in relegating the party to approach a civil Court to seek a declaration, as to his date of birth. A Passport Officer cannot, as a matter of routine, in situations as obtaining in the present case, direct the applicant to approach the civil Court. We are, therefore, of the considered opinion that Clause (c) of instructions, which accord an equal value to a birth certificate and a matriculation certificate, as regards the date of birth and therefore, direct a party to seek adjudication before a civil Court are incorrect and would have to be ignored.

19. Thus, taking into consideration the aforementioned judgements, the enunciation of law, as detailed herein above, we are of the considered opinion that the Passport Authority erred by relegating the petitioner to seek a declaration before a civil Court and refusing to entertain his plea for correction of his date of birth. We would like to once again emphasise that as and when an application is filed before a Passport authority and there appears to be a conflict between entries in the birth certificate issued by the Registrar of Births and Deaths and the entry of birth in a school leaving certificate, the entry in the birth certificate issued by the Registrar of Births and Deaths would prevail and except where the certificate is unreliable, suspicious or appears to be procured or manipulated, parties should not be relegated to civil Courts in a mechanical manner.

20. Under the circumstances referred to herein above, the present writ petition is allowed. The order dated 22.8.2007 is set aside and the matter is remitted to the Passport Officer, Jalandhar, to consider the application of the petitioner for correction in the date of birth in the Passport, in accordance with law, within a period of four weeks" from the date of receipt of a copy of this order. No order as to costs.