

(2016) 06 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1020 of 2015

Saien

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 6
Passports Act, 1920 — Section 5

Citation : (2017) AIR(J&K) 12

Hon'ble Judges : Tashi Rabstan, J.

Bench : Single Bench

Advocate : Sindhu Sharma, ASGI, for the Respondents; C.M. Koul, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Tashi Rabstan, J. - Through the medium of this writ petition, the petitioner is seeking quashment of Communication under Reference No.

SCN/304085684/15 dated 01.07.2015 issued by the Regional Passport Office, Jammu, whereby it has been informed that as the petitioner-

applicant, who is minor, has been residing with her mother at Delhi, so his mother cannot apply from the jurisdiction of Jammu for issuance of

passport in favour of petitioner and a penalty of Rs. 5000/- has also been imposed on the mother of petitioner.

2. The petitioner being minor has filed this petition through his maternal grandfather. The facts-in-brief as projected in the writ petition are that the

mother of petitioner came to be previously wedded with one Shri Deepak Jalali on 29.02.2004 and out of the said wedlock Master Saien,

petitioner herein, was born. However, the marriage between the parties could not materialize and the same came to be dissolved by ex parte

judgment and decree dated 30.04.2010 delivered by the learned Additional District Judge, Jammu. It is averred that the petitioner continues to live with his maternal grandfather at Jammu. It is averred that on 23.06.2015 the petitioner through his mother applied online for issuance of passport in his favour. However, respondent No. 2 vide Communication dated 01.07.2015 under Reference No. SCN/304085684/15, impugned herein, has informed that as the petitioner-applicant, who is minor, has been residing with his mother at Delhi, so his mother cannot apply from the jurisdiction of Jammu for issuance of passport in favour of petitioner and a penalty of Rs. 5000/- has also been imposed on the mother of petitioner. Hence the present writ petition.

3. The contention of learned counsel for petitioner is that the petitioner has throughout studied at Jammu, initially in the Dream Land Public School, Disco Road, Janipur, Jammu in Nursery Class, then in Delhi Public School at Jammu from Class 1st to 4th standard. In 6th standard the petitioner came to be admitted in G.D. Goenka Public School, Jammu in the i.e., with effect from 12.03.2014 to 09.04.2015 the petitioner had been admitted in G.D. Goenka Public School, East Delhi. Thus, it is contended that except for one year, the petitioner throughout studied at Jammu.

Further, it is contended that when the petitioner applied online for issuance of passport in his favour on 23.06.2015, he was very much studying at G.D. Goenka Public School, Jammu. Thus, it is contended that respondent No. 2 on mistaken notion has come to the conclusion that petitioner is staying at Delhi along with his mother, when the fact of the matter is that he is staying at Jammu along with his maternal grandfather.

4. Objections have been filed on behalf of respondent No. 2. It is averred that in view of discrepancies in the online submission of the application form of petitioner, the answering respondent through the medium of show-cause notice dated 01.07.2015 only sought clarification of petitioner's position without which the requested service could not be provided to him. Further, it is averred that instead of replying to the show-cause notice, the petitioner has approached this Court. It is further averred that the mother of petitioner had failed to provide any documentary proof to the effect that she is the sole legal guardian of the child.

5. Heard learned counsel appearing for the parties and perused the file.

6. Admittedly, as per the school documents annexed with the writ petition, it reveals that the petitioner throughout studied at Jammu, except for the period with effect from 12.03.2014 to 09.04.2015 when he remained with his mother at New Delhi and was admitted in 5th standard in G.D.

Goenka Public School, East Delhi. Further, the record reveals that when the petitioner through his mother applied online for issuance of passport

on 23.06.2015, he was studying in G.D. Goenka Public School, Jammu. It has also been brought on record that the mother of petitioner had also

submitted a declaration in terms of Annexure ""G"" appended to Section IV (A) (3) (a) of Schedule IE of the Passport Rules, 1980 that in case of a

court case arising due to issuance of a passport to the minor child, she would be solely responsible for defending the case and not the Passport

Issuing Authority. Even in the objections respondent No. 2 has also admitted furnishing of such a declaration by the mother of petitioner being a

single parent, but their stand is that the mother of petitioner did not annex any documentary proof with Annexure ""G"". However, a perusal of

impugned request of petitioner not for want of any documentary proof, rather on the sole ground that as the minor applicant was staying up along

with his mother at Delhi, so under rules his mother ought not to have applied from the jurisdiction of Jammu, thus a penalty of Rs. 5000/- was

levied on the mother of petitioner for wrongly applying from the jurisdiction of Jammu.

7. I have gone through the school documents annexed with the writ petition and the same reveal that except for 5th standard, the petitioner was

studying at Jammu right from Nursery to 6th standard. Further, even when the petitioner had applied for issuance of passport through his mother,

he was studying at Jammu in G.D. Goenka Public School. Therefore, it seems that respondent No. 2 has wrongly come to the conclusion that the

petitioner was staying up at Delhi when he had wrongly applied for issuance of passport from the jurisdiction of Jammu.

8. Further, as regards the contention of learned counsel for respondent No. 2, that mother of petitioner had failed to provide any documentary

proof to the effect that she is the only guardian of the child, the Apex Court in *Githa Hariharan v. Reserve Bank of India* (1991) 2 SCC 228 :

(AIR 1999 SC 1149) has held that the mother can act as a natural guardian of child, inter alia, the event the father is indifferent towards the child

or if the child is put under custody of mother by mutual understanding between the parents. Further, the High Court of Delhi in case, titled as,

Shalu Nigam v. The Regional Passport Officer, decided on 17.05.2016 AIR 2016 Del 130) has held that mother's name is sufficient in

certain cases like the present one to apply for passport, especially as a single woman can be a natural guardian and also a parent.

9. Therefore, in view of the above, I find merit in the writ petition. Accordingly, the writ petition is allowed and Communication under Reference

No. SCN/304085684/15 dated 01.07.2015 issued by respondent No. 2 is hereby quashed. Passport Officer, Regional Passport Office, Jammu

is directed to issue passport in favour of petitioner after going through his school documents that he has been putting up and studying at Jammu, of

course, after completing other necessary formalities. Connected miscellaneous petition(s), accordingly, stands disposed of.