

(2010) 06 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15926 of 2010

Shipna Jose

APPELLANT

Vs

Registrar

RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 15

Citation : (2010) 2 KLJ 978

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : V.V. Sidharthan and T.K. Shajahan, for the Appellant; Dinesh Mathew J. Muricken and P.V. Balakrishnan, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—The petitioner herein seeks for a direction to the respondents herein to consider Ext.P9 application to correct the name of the petitioner as Shipna Jose, place of birth as Mercy Hospital, Manickamangalam, Kerala, the name of the father as Marottikudy Paily Jose and name of mother as Ambika Jose.

2. Heard learned Counsel for the petitioner and learned Counsel for the respondents.

3. Before her marriage, the petitioner, along with her parents was residing in Kalady Grama Panchayat. She was born at Mercy Hospital, Manickamangalam. Her father's name is Marottikudy Paily Jose (M.P. Jose) and mother's name is Ambika Jose. Ext.P1 is the copy of the Secondary School Leaving Certificate wherein the name of the petitioner is shown as Shipna Jose, the name of father is shown as M.P. Jose and mother's name is shown as Ambika Jose. She completed her pre-degree from M.G. University in the year 2001. Ext.P2 is the certificate issued by the University, wherein also her name is shown as Shipna Jose. Ext.P3 is the copy of the degree certificate in which also she is named as Shipna Jose. Thereafter, she studied for B.Sc. Nursing at Rajiv Gandhi University of Health Sciences, Karnataka and copy of the degree certificate has been

produced as Ext.P4, wherein the name of the petitioner is shown as Shipna Jose. Ext.P6 is the relevant page of passport. Therein also, the name of the petitioner is shown as Shipna Jose, the place of birth is shown as Manickamangalam, Kerala, name of father is shown as Marottikudy Paily Jose and name of mother is shown as Ambika Jose.

4. The marriage of the petitioner took place on 3.2.2010 with one Shri. Bijoy who is working as Electrician in Jenova Shipyard, Italy. The petitioner wants to join her husband and for applying for visa, she sought for a copy of the birth certificate from the respondents. Ext.P8 is the copy of the birth certificate. Therein, the name of the petitioner is entered as Reetha, place of birth is shown as Mercy Hospital, name of father as M.P. Jose and name of mother as Ambika. According to the petitioner, the name of the petitioner and other details in the birth register were given by her parents on 5.3.1984, just four days after the birth of the petitioner. Therefore, the above details were not properly made and entered in the birth register. The petitioner apprehends that since the entries in the birth certificate do not tally with other documents, the application for visa will not be processed. It is also submitted that as per the rules of Italian Embassy, the basic document is birth certificate as well as passport and if the entries are different, she may not get the visa also. It is in these circumstances, the petitioner has submitted an application, Ext.P9 for entering the correct entries in the birth register. Reliance is placed on various decisions of this Court including that of a Division Bench of this Court in *The Chalakkudy Municipality and Another Vs. Malavika and Another*, , to submit that the power u/s 15 of the Registration of Births and Deaths Act, 1969 allows the Registrar to correct wrong entries made in the birth register. Reliance is also placed on the decisions of this Court in *Varghese v. Director of Panchayats* 2008 (2) KLT 278, *Sivanandan v. Registrar of Births and Deaths* 2007 (3) KLT 721 and *Girijan Vs. Registrar of Births and Deaths*, also in support of the pleas.

5. Learned Standing Counsel for the Panchayat submitted that in a recent circular issued by the Government dated 21.2.2010 it is specified that the correction regarding the name in the birth register can be allowed once before the child joins the school. It is therefore submitted that the same will create difficulties for considering favourably the application of the petitioner.

6. Learned Counsel for the petitioner brought to my notice an earlier circular dated 20.3.2007, wherein para. 6 allows correction of entries in the birth register if the Registrar is satisfied that the entries require correction, especially in a case where at the time of birth the parents may not be giving the proper name but only the nickname. It is submitted by the learned Counsel for the petitioner that the stipulations in the present circular dated 21.1.2010 goes against the earlier circular as well as the dictum laid down by this Court in *The Chalakkudy Municipality and Another Vs. Malavika and Another*, .

7. A reading of Section 15 shows that it allows correction or cancellation of entry in the register of births and deaths. In *The Chalakkudy Municipality and Another*

Vs. Malavika and Another, the Division Bench, after considering the various aspects, laid down the principle thus in para. 4:

The law does not contemplate a person to have a wrong name in the register or a mistaken identity in the register or to have wrong particulars regarding the date, place etc. in the register of birth or death. It is also to be noted that the Registration of Births and Deaths Act, 1969 does not create or extinguish any right; the Act is intended only to regulate the process and procedures of registration of births and deaths and the correction of any such entry. Once the Act permits such correction earlier in form or substance, the Rules are intended only to regulate the procedure and not to prohibit such correction.

8. A reading of the circular dated 21.1.2010 shows that reliance is placed therein on the decision reported in Girijan's case 2003 (2) KLT 22 to make a stipulation that a correction can be made only once and that too, before the child joins a school. A reading of the above judgment shows that actually this Court has not ordered any such restriction as regards correction of the entries are concerned. That was a case where actually the correction was sought before the child wanted to join a particular school. The application was rejected on the ground that there is no provision for change of name in the birth register. While considering the pleas raised by the parents, this Court only observed that the child is born only on 2.3.1999 and it has not reached the age to go to school to have the name entered in the school record. If the parents want to change the name of the child, they are free to do the same. Probably, one sentence in the heading of the head note of the said reported judgment has been wrongly relied upon while issuing the circular dated 21.1.2010. Actually, that was not the real dictum laid down by this Court. The legal position has now been laid down in the later decision in Malavika's case (supra) by the Division Bench.

9. In the above view of the matter, the petitioner is entitled to succeed. Therefore, it is made clear that the Circular No. 68413/RD3/2009 especially para (1) will not stand in the way of the respondents considering the application of the petitioner on its merits and allow the correction on being satisfied that it requires such a correction. Appropriate action will be taken by the respondents and in view of the urgency shown by the petitioner, the respondents will finalise the same within ten days from today.

The Writ Petition is disposed of as above. No costs.