

(2007) 09 AP CK 0069

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19376 of 2007

Siddiqui Suraiya Bano

APPELLANT

Vs

The Regional Passport Officer

RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

General Clauses Act, 1897 — Section 21

Citation : (2007) 6 ALD 568

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : D. Pramada, for the Appellant; None, for the Respondent

Judgement

P.S. Narayana, J.—Heard Smt. Pramada, learned Counsel representing the writ petitioner. Proof of service is filed.

2. The Writ Petition is filed for a writ of Mandamus declaring the action of the respondent in not receiving the application of the petitioner for making the correction of her date of birth in the passport as illegal and arbitrary, and consequently, direct the respondent to receive the application of the petitioner for correction of her date of birth in the passport as 30.07.1943 instead of 30.07.1942 and pass such other suitable order.

3. In the affidavit filed in support of the writ petition, the petitioner stated that she was born on 30.07.1943 in Nagina town, U.P. State, India, and that after her marriage, she had shifted to Hyderabad and has been residing in the address furnished in the affidavit filed in support of the writ petition. It is also stated by the petitioner that the Regional Passport Office at Hyderabad issued passport to her in the year 1990, and subsequently, it was renewed in the year 1995, and again in the year 2000, it was renewed with validity upto 02.03.2010. The passport number of the petitioner is B-1626371 and the passport office file Number is E/3375/00. While applying for the passport, the petitioner submitted her Matriculation certificate showing the date of birth. While recording in the

passport, the year was wrongly mentioned as 30.7.1942, instead of 30.7.1943 and that the petitioner without noticing this, had applied for immigration along with her husband to Canada, basing on which, herself and her husband reached Toronto, Canada on 07.11.1998. The petitioner applied for Canadian passport and obtained the same on 18.06.2007, and that in the application for immigration and as well as for obtaining the Canadian passport, she gave her certificates, wherein her date of birth is clearly recorded in all these documents, including the Canadian passport. Subsequently, the petitioner came to India on 24.06.2007 for medical treatment. While undergoing treatment, the petitioner has also applied for registration as overseas citizen of India on 7.7.2007. The petitioner sent her completed application to the Ministry of Home Affairs, Jaisalmer House, 26 Man Singh Road, New Delhi on 10.7.2007, thereafter, she received a reply on 19.7.2007 pointing out that her Indian passport needs to be cancelled and valid visa to be applied for staying in India. The petitioner further stated that her husband attended the Ministry of Home Affairs, New Delhi on 10.8.2007 to obtain visa, and it directed the petitioner to approach the Ministry of External Affairs, Patiala House, CPV Division, New Delhi. The Section Officer of PVI Division pointed out the discrepancy in the date of birth of the petitioner as recorded in the Indian passport and requested her to get it corrected before canceling the Indian passport. It was explained to her that she would be given an identity passport and a permanent visa to stay in India with her correct date of birth, but before that, she was advised to get corrected her date of birth in her Indian passport from the Regional Passport Office, Hyderabad.

The petitioner further stated in paragraph 4 of the affidavit that basing on the advise given to her by the Section Officer of PVI Division, she approached the Regional Passport Officer, the respondent herein, for correction of her date of birth in her Indian passport, where the respondent's protocol officer directed her to either approach the civil Court or get the same attested by a First Class Judicial Magistrate endorsing the same on an affidavit given by her. She approached several officers, but there was objection raised with regard to the same. Once again, she approached the respondent wherein she was directed to obtain orders from a competent Court.

It is further stated by the petitioner that since her application for overseas citizenship needs to be processed immediately along with her visa, as otherwise her staying in India would be termed as illegal, she is constrained to approach this Hon''ble Court by way of this writ petition seeking appropriate direction to the respondent to consider her case for correction of date of birth in her passport, which will be cancelled by the External Affairs Ministry.

4. In Mohd. Nasrullah Khan v. Regional Passport Officer, Hyderabad 2005 (1) ALT 95 it was held thus:

In Ali Imran v. Regional Passport Officer, Secunderabad, I have considered the Circular dated 18.4.2001 issued by the Government of India in the Ministry of External Affairs pursuant to the judgment of the High Court of Judicature at

Bombay in Civil Writ Petition No. 1072 of 2000. The instructions/clarifications issued in the said Circular read as under.

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA (passport issuing authority) 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 effect the necessary amendment in the 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 amendments 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., 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 a competent court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport.

However, pursuant to the judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per Clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt. 18.4.2001.

5. In Durgempudi Venkata Raghava Vs. Pass Port Officer, it was held as hereunder.

Placing reliance on the clarification issued on the aforesaid Circular, Writ Petition No. 8533 of 2004 was disposed of directing the respondents to consider the representation of the petitioner along with the Secondary School Certificate issued by Secretary, Board of Secondary Education, Andhra Pradesh and pass

appropriate orders in the light of the observations made in the said judgment. It is no doubt true that the present Writ Petition was filed in the year 1997 and the Government under Ministry of External Affairs issued the Circular referred to supra on 18.4.2001. As can be seen from the material available on record, the certificates, which had been produced before this Court, it is clear that it is only a bona fide mistake, which had crept in. Apart from this aspect of the matter, no counter-affidavit had been filed denying the specific averment made in the affidavit filed in support of Writ Petition that along with the application form for passport, the Travel Agent also enclosed copies of S.S.C. certificate, Intermediate certificate and also Degree certificate. Therefore, it is evident that without verifying the date of birth, the respondent authority just took the date of birth as filled up in the application form and issued the passport. Hence, it is needless to say that it is only a bona fide mistake.

The learned Senior Standing Counsel for Central Government, no doubt submitted that in such a situation, if the passport was issued prior to the said circular it would be proper to give an opportunity to the Writ Petitioner to file fresh application for issuance of passport to the competent authority.

In the light of the facts and circumstances, especially in view of Clause (a) of the Circular, dated 18.4.2001 referred to supra and also in view of the fact that all these copies of documents also had been produced at the time of filing of the application form but a bona fide mistake had crept in, the Writ Petition is disposed of with the following directions.

6. In the light of the circular and also in the decisions specified supra, the action of the respondent is not justified and in view of the same, the respondent is hereby directed to receive the application of the petitioner for making the correction of her date of birth as 30.07.1943 instead of 30.07.1942 in the passport bearing No. B-1626371 and consider and dispose of the same in accordance with law, within a period of two weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition is disposed of. No order as to costs.