
(2009) 12 KL CK 0029

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29955 of 2009

Swapna Siju

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Citation : (2012) 4 KLJ 208

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : James Abraham, for the Appellant; T.P.M. Ibrahim Khan, (ASG), for the Respondent

Judgement

P.N. Ravindran, J.—The Regional Passport Officer, Cochin had on 23.4.1983 issued a passport bearing No. U159810 to the petitioner, then a minor, wherein her date of birth was shown as 29.4.1974. After the validity of the said passport expired, the petitioner submitted an application dated 30.3.2009 under the Tatkal scheme for the issue of a new passport. Along with the said application, the passport initially issued to the petitioner on 23.4.1983 was also enclosed. In the application for a new passport, the petitioner had given her date of birth as 29.4.1975 instead of 29.4.1974, the date of birth given in the earlier passport. The petitioner states that she was born on 29.4.1975 and that in the school records and in the driving licence issued to her, her date of birth is shown as 29.4.1975, which is her correct date of birth. On noticing the disparity in the date of birth, the Passport Officer called upon the petitioner to furnish particulars regarding the correct date of birth. It is submitted that the petitioner thereupon went over to the Regional Passport Office, Cochin and clarified that the application on which a passport was issued to her on 23.4.1983 was one submitted by her uncle as her parents were abroad and that the date of birth might have been wrongly given at that time. The petitioner states that as her birth has not been registered, she produced photostat copies of the relevant page of her Secondary School Leaving Certificate and the Driving Licence before

the second respondent and also explained to him that she was a minor when the earlier passport was issued, that her parents were at that time abroad, that her uncle had applied for the passport and that the mistake might have been committed by him. The Passport Officer, Cochin was however not satisfied with the explanation furnished by the petitioner. He thereupon sent Ext. P3 letter dated 14.9.2009 informing the petitioner that as there was no response to the queries from the Passport Office, her application for passport has been closed. She was informed that she can apply afresh if she so desires after complying with the formalities. This writ petition was thereupon filed seeking a direction to the second respondent to issue a fresh passport to her under the Tatkal scheme. The petitioner submits that the rejection of her application for passport on the ground that the date of birth in the passport issued to her when she was a minor is different from the date of birth given in the application for a new passport. The petitioner contends that as she was born before 26.1.1989 the second respondent cannot insist that she should produce the extract from the Register of Births to prove her date of birth.

2. The learned Assistant Solicitor General of India appearing for the respondents has filed a statement dated 12.11.2009 and an additional statement dated 2.12.2009. It is stated that as the date of birth given in the application for a fresh passport was at variance with the date of birth in the passport issued to the petitioner on 23.4.1983, she was asked to produce an extract from the Birth Register to prove her date of birth and as the petitioner did not respond, her application was closed. It is also stated that if the petitioner requires a passport to be issued showing the date of birth 29.4.1975, she will have to apply afresh with supporting documents.

3. I have considered the submissions made at the Bar by the learned counsel appearing on either side. It is not in dispute that a passport was initially issued to the petitioner on 27.4.1983 and that the petitioner was at that point of time admittedly a minor. Even if her date of birth is taken as 29.4.1974 as a minor aged nine years, it can safely be presumed that the first application for passport would have been filled up and submitted either by her parents or a near relation and that the petitioner would not have on her own made the entry regarding the date of birth in the application for passport. As the petitioner's parents were abroad, as stated by her, her uncle would have made the application. The petitioner cannot therefore be held personally responsible for the entry regarding her date of birth. In the year 2001, the Ministry of External Affairs had issued a Circular, No. VI/401/2/5/2001 dated 18.4.2001 wherein it was inter alia stipulated that where the initial entry regarding the date of birth has been made on the basis of a supporting document issued by a competent authority namely, school/educational authority and the applicant subsequently requests for a change in the date of birth on the basis of a certificate issued by another competent authority, namely, the Municipal authority, resulting in conflicting sources of proof of date of birth, the Passport Issuing Authority should direct the applicant to obtain an order from the civil court certifying the valid date of birth.

It was also stipulated that where the applicant is seeking clarification or correction of a mistake in the entry regarding the date of birth or place of birth in the passport, the Passport Issuing Authority may after verifying/satisfying himself, effect the necessary correction treating the same as a technical correction without an order from the competent civil court. It was further stipulated that if the competent authority which issued the birth certificate or the school authorities registering the date of birth were to issue a subsequent correction or amendment, in such cases also, the Passport Issuing Authority can effect necessary amendment in the passport without insisting on a court order.

4. Later, the Ministry of External Affairs issued a Circular dated 29.10.1997 wherein inter alia it was stipulated that for those born on or after 26.1.1989, a birth certificate is the only approved document to prove the date of birth. It was also stipulated that where the applicant claims clerical or technical mistake in the entry relating to date of birth in the passport and asks for rectification/correction, the documents earlier produced as proof of date of birth at the time of issue of passport may be perused. It was also stipulated that if it has not already been destroyed and if the Passport Issuing Authority is satisfied that the mistaken entry regarding the date of birth is a clerical mistake committed either by the applicant or by the Passport Issuing Authority, a fresh passport can be issued with the necessary correction by charging fee if the applicant had committed the mistake, and free of cost if the mistake had been committed by the Passport Issuing Authority. It was further stipulated that in such cases, no declaratory order from a court is not necessary. Similarly, it was also stipulated that where the files relating to the earlier passport have been destroyed, the Passport Issuing Authority could use their discretion to correct the date of birth without a court order where such correction is only in months not exceeding two years and the applicants provide satisfactory explanation that the same documents were produced at the time when the initial passport was applied for. It was further stipulated that when a competent authority which has issued a birth certificate and the school or the educational authority issues a correction or amendment regarding the corrected date of birth, then also without insisting on a court order such corrections can be effected provided the birth certificate or certificate from the educational authority was produced along with the earlier passport application. It was further stipulated that where there is a conflict between the certificate issued by the school authorities/Municipal authorities, the applicant should produce an order from the First Class Magistrate. Later, pursuant to the directions issued by the High Court of Punjab and Haryana, the Ministry of External Affairs issued a Circular dated 29.10.2007 wherein inter alia it was directed as follows:

We would like to emphasise that as and when the 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 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.

5. The circular dated 29.10.2007 was amended to the above extent. Still later, Ext. R1 (a) circular dated 15.1.2008 was issued wherein it stipulated as follows:

In the Civil Writ Petition No. 13722/2007 filed by Shri Resham Singh v. Union of India, High Court of Punjab and Haryana has, inter alia, delivered the following judgment on 6th November, 2007:

We would like to emphasize 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.

Ministry's revised instructions contained in para (d) of Circular No. VI/401/2/5/2001 dated 29th October, 2007 may now be read together with the above judgment of High Court of Punjab and Haryana and stand amended to that extent.

6. It is thus evident from the various circulars referred to above that in the case of applicants who are born before 26.1.1989, it is not necessary to produce an extract from the Register of Births, generally called the birth certificate, to prove the date of birth of the applicant. The circulars referred to above also confer on the Passport Issuing Authority the discretionary power to correct the date of birth in a passport where he or she is satisfied either with reference to the birth certificate or the school records that the earlier entry was mistakenly made. The circular also notices that the mistake regarding the date of birth might have been committed either by the applicant himself or by the Passport Issuing Authority. The fact that the petitioner was a minor aged nine years (going by the date of birth as in the previous passport) when she was first issued a passport is not disputed. It is not known on what basis was the date of birth in the earlier passport given as 29.4.1974. As noticed earlier, the petitioner who was admittedly a minor at that point of time would not have made the application on her own. It is also not known whether the documents that accompanied the application on the basis of which a passport was issued on 29.4.1983 are currently available with the second respondent. Whether during the year 1983, it was mandatory to produce proof of date of birth along with the application for passport is also not discernible from the pleadings and the circulars referred to above. Apart from stating that in the application which led to the issue of passport bearing No. U159810 and in that passport the petitioner's date of birth was given as 29.4.1974, the second respondent has not stated whether that entry was supported by a birth certificate or school records. In such circumstances, as the earlier passport was issued to the petitioner at a point of

time when she was a minor and in view of the fact that in the school records namely, the Secondary School Leaving Certificate, which, in the case of applicants born" before 26.1.1.989 is a document which can be relied on to prove the date of birth and as the original of the Secondary School Leaving Certificate is available for examination if necessary by the Passport Issuing Authority, I am of the opinion that the Passport Issuing Authority should have acted on the entry regarding the date of birth in the Secondary School Leaving Certificate and issued a passport to the petitioner showing the date of birth as 29.4.1975. As the petitioner's application was under the Tatkal scheme and a higher fee had been paid, the second respondent should in my opinion re-open the petitioner's application for passport, process it and issue a passport to her if there is no other impediment for the issue of a passport.

I accordingly dispose of this writ petition with a direction that in the event of the petitioner producing the original of the Secondary School Leaving Certificate along with attested copies thereof and a certified copy of this judgment, the second respondent shall re-open the petitioner's application for passport referred to in Ext. P3 letter, process the same and issue a fresh passport to her under the Tatkal scheme if there is no other impediment for the issue of a passport. The second respondent shall return the original of the Secondary School Leaving Certificate to the petitioner after comparing the attested photostat copies thereof with the Secondary School Leaving Certificate either on the day it is produced or along with the fresh passport. Needful in the matter shall be done expeditiously and in any event within two weeks from the date on which the petitioner produces a certified copy of this judgment before the second respondent.