

(2009) 11 KL CK 0133
In the High Court Of Kerala
Case No : W.A. No. 1483 of 2009

The Chalakkudy Municipality and Another	APPELLANT
Vs	
Malavika and Another	RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 12, 14, 15, 17, 23

Citation : (2009) 4 ILR (Ker) 591 : (2009) 3 KLJ 732 : (2009) 4 KLT 714

Hon'ble Judges : S.R. Bannurmath, C.J;Kurian Joseph, J

Bench : Division Bench

Advocate : M.P. Ashok Kumar, for the Appellant; Benjamin Paul (G.P.) and T.N. Manoj, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—Law is for man and not man for law. The simple difference between man and machine is that machine follows the letter of law but man applies the spirit of law. Once this principle is properly understood, it is not difficult to understand, interpret or apply any law in a given situation. While analysing the facts of this case and the legal issues involved in the same we find the above mentioned principle would serve as a guiding spirit in deciding the case. The Registration of Births and Deaths Act, 1969 came into force in Kerala with effect from 1-4-1970. The Act is intended to provide for the regulation of registration of births and deaths and for matters connected therewith. Section 14 provides for the registration of the name of a child on birth and Section 15 provides for correction or cancellation of entry in the register of births and deaths. The Kerala Registration of Births and Deaths Rules, 1999 came into force on 1-1-2000. The said Rules have been framed in exercise of the powers u/s 30 of the Act. Section 30(1) empowers the State Government to frame Rules providing for "the correction of errors and the cancellation of entries in the register of births and deaths". Rule 10 provides for the procedure of registration of births and Rule 11 provides for the correction or cancellation of entry in the

register of births and deaths.

2. For the purpose of easy reference the provisions are extracted below:-

S. 14. Registration of name of child.--Where the birth of any child has been registered without a name, the parent or guardian of such child shall within the prescribed period give information regarding the name of the child to the registrar either orally or in writing and thereupon the Registrar shall enter such name in the register and initial and date the entry.

S. 15. Correction or cancellation of entry in the register of births and deaths.--If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.

R. 10. Period for the purpose of section 14.- (1) Where the birth of any child had been registered without a name, the parent or guardian of such child shall, within 12 months from the date of registration of the birth of child, give information regarding the name of the child to the Registrar in writing;

Provided that if the information is given after the aforesaid period of 12 months which shall be reckoned, subject to the provisions of sub-section (4) of section 23, the Registrar shall enter the name in the relevant column of the concerned form in the birth register on payment of a late fee of rupees five.

(2) The parent or the guardian, as the case may be, shall also present to the Registrar the copy of the extract given to him u/s 12 or a certified extract issued to him u/s 17 and on such presentation the Registrar shall make the necessary endorsement relating to the name of the child.

R.11. Correction or cancellation of entry in the register of births and deaths.- (1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall send an extract of the entry showing the error and how it has been corrected to the State Government or the officer specified by it in this behalf.

(2) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed u/s 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2) the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the State Government or the officer specified in this behalf.

(4) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf u/s 25 and on hearing from him take necessary action in the matter.

(5) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information u/s 8 or section 9.

The Chief Registrar of Births and Deaths (Kerala) has also issued various circulars regarding the procedure to be followed in making the entries and correction of the entries. In the circular dated 24-3-1997 it is made clear that the name as such cannot be substituted. However, corrections if any, can be made in case the Registrar is satisfied as to the genuineness of the error. Still further it is stated in the circular that any correction in the name of the parents, address, sex, religion, community, date of death, name of the deceased, name of the husband, father etc. of the deceased, can be made, in case the application is after five years, only with the permission of the Chief Registrar. It is also stated in the circular that any correction in the substance and change in name etc. can be done only with the prior permission of the Chief Registrar. Yet another clarification in the circular is that the correction shall be made only in the margin of the register and when certificates are issued, only the new entries need be shown in the certificates. However, the certificates, if any, issued prior to the corrections should be returned and cancelled.

3. Going by the purpose of the enactment and the scheme for registration and for correction in the entries therein, it is unambiguously clear that corrections either in form or substance is permissible. The only pre-condition is that the Registrar should be satisfied that the entry in the register regarding birth or death was erroneous in form or substance or the same has been fraudulently or improperly made. The entry in the register means the entries on the name and the particulars regarding the relationship, place and date. If the correction is sought within five years, the satisfaction need only be at the level of the Registrar and if the correction is sought to be made after five years, the corrections can be made only on the satisfaction of the Chief Registrar. The identity of the person concerned is the crucially relevant factor, as far as correction of the name is concerned and as far as the correction of the date, place and other particulars are concerned, in case there had been any mistake in the original entry and if the Registrar is satisfied that the same is erroneously entered, he has to exercise his power to permit the correction. 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 either in form or substance, the Rules are intended only to regulate the procedure and not to prohibit such correction. The subordinate legislation by way of rules, notifications, circulars etc. cannot restrict the scope of the plenary legislation. Conversely they cannot expand the scope either, as far as the correction of the entries in the register of birth or death is concerned. Section 15 only contemplates that the Registrar should be satisfied as to the mistake in the entry. The section clearly states that the correction can either be in the form or substance also. Rule 11 would also indicate that once the Registrar is moved for correction of any entry in the register of birth or death, it is mandatory on his part to enquire into the matter and once he is satisfied that the entry is erroneous, the rule mandates that the correction should be made as required u/s 15 of the Act. In such circumstances it is for the Registrar concerned to intimate the Government and all concerned and also, if required, to take further action u/s 25 for prosecution in case the mistaken entry was fraudulently or improperly made. The circular of the Registrar dated 24-3-1997 stipulates that once the corrections are made, before issuing the fresh certificate, all the certificates issued earlier should be got back and cancelled. For the purpose of the present case, it is also necessary to deal with the said aspect. The certificates are issued for production before an authority or officer concerned. There cannot also be two types of certificates with the person, one with the erroneous entry and the other with the corrected entry. But in case the certificate already issued has either been irrecoverably lost or cannot be returned having been produced before any authority and that authority refuses to return the same and if the Registrar is satisfied as to the inability of the applicant in such circumstances to produce the certificates already issued with the wrong entry, nothing prevents the Registrar to issue a fresh certificate with the corrected entry indicating therein that all the certificates issued prior to the correction with the wrong entries would stand cancelled. The circular has insisted for the return of the old certificates only for the purpose of cancellation. In case the same cannot be produced and if the Registrar is satisfied that the same cannot be produced for justifiable reasons, some of which are referred to above, the Registrar cannot refuse to issue a fresh certificate, on that only ground. As far as the facts in the present case are concerned, the appellant Municipality was approached by the writ petitioner for correction of the name of the father of the petitioner in the register of births. Petitioner's father's name is Sajeew Velappan Nair, but the entry in the register is "Sajeew N. Nair". According to the Municipality, certificates had already been issued noting the name of the father as Sajeew N. Nair and unless the certificates are returned, a fresh certificate could not be issued. The learned single Judge, on being satisfied as to the inability of the writ petitioner to produce the certificates already issued by the Municipality, directed to issue a fresh certificate with the

correction in the name of the father of the petitioner. In view of what we have already stated above, we are in full agreement with the view taken by the learned single Judge, though for additional reasons stated by us.

Therefore, we do not find any merit in the writ appeal. It is accordingly dismissed.