
(2003) 04 KL CK 0081
In the High Court Of Kerala
Case No : W.A. No. 188 of 2003

The Health Inspector, Kottayam

APPELLANT

Vs

M.G. Jayakrishnan

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Kerala Registration of Births and Deaths Rules, 1999 — Rule 11(2)

Citation : (2003) 1 KLJ 781

Hon'ble Judges : Cyriac Joseph, J;A.K. Basheer, J

Bench : Division Bench

Advocate : T.R. Ramachandran Nair, for the Appellant; K.I. Mayankutty Mather, Paul Abraham Vakkanal and Asokan, for the Respondent

Judgement

Cyriac Joseph, J.—This Writ Appeal arises from O.P. No. 1507 of 2003 which was disposed of by the learned Single Judge as per the impugned judgment dated 16th January, 2003. The appellants are the respondents and the respondent herein is the petitioner in the original petition. According to the averments in the original petition, the respondent here in was born on 25-06-1973 in Ananthamandiram Hospital, Kottayam. He is presently working in the United States of America. In order to apply for a Green Card there he needed a birth certificate from the first appellant - Health Inspector / Registrar (Births & Deaths), Kottayam Municipality. He approached the first appellant and obtained a birth certificate on 8-5-2002 a true copy of which is Ext. P1. As per Ext. P1 the date of birth of the respondent is 26-6-1973 where as the actual date of birth is 25-6-1973. The mistake which had crept in the Birth Registrar was noticed by the respondent only when he received Ext. P1 birth certificate. Hence, he submitted Ext. P2 application dated 2-12-2002 to the first appellant requesting to correct the mistake in the Birth Register. The application was filed u/s 15 of the Registration of Births and Deaths Act, 1969. The first appellant is the competent authority to consider applications for correction in the Birth and Death Register maintained by the local authority. Along with his application the respondent enclosed relevant pages of the S.S.L.C. Book and Passport. In the

S.S.L.C. Book and in the Passport of the respondent, his date of birth is shown as 25-6-1973. According to Rule 11(2) of the Kerala Registration of Births and Deaths Rules, 1999, 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 of 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. In the light of the provisions contained in Rule 11(2) of the Kerala Registration of Births and Deaths Rules, 1999, along with Ext. P2 application the respondent submitted affidavits of two credible persons having knowledge of his correct date of birth. They are the affidavits of Smt. Nalini and Smt. Ananthavally who are the elder sisters of the respondent's mother. However, the first appellant as per Ext. P5 communication dated 21-12-2002 rejected the request of the respondent for correction of date of birth. As per Ext. P5, the correct date of birth of the respondent as seen from the Birth Register maintained in the office of the first appellant is 26-6-1973. At the time of admission of the respondent in the school the guardian might have made a mistake in giving the date of birth of the respondent. Hence the respondent could take steps for correcting the date of birth in the school records in conformity with the Birth Register. It is also stated in Ext. P5 that under the existing rules the respondent's date of birth cannot be corrected in the Birth Register.

2. In the original petition the petitioner prayed for quashing Ext. P5 order of the first respondent and also for a direction to the first respondent to effect appropriate correction in the date of birth of the petitioner in the Birth Register maintained in the office of the first respondent and to issue a birth certificate of the first respondent and to issue a birth certificate to the petitioner showing his date of birth as 25-6-1973. The original petition was disposed of by the learned Single Judge at the admission stage without giving any opportunity to the respondents in the original petition to file any counter affidavit. In the impugned judgment the learned Single Judge has observed that from the affidavits filed in support of the claim of the petitioner the mistake regarding the petitioner's date of birth in the Municipality records appears to be quite probable on account of noting the date of reporting of birth as the date of birth. Since the petitioner's two important documents like S.S.L.C. Book and Passport contained the date of birth as 25-6-1973 the learned Single Judge directed the first respondent to correct the petitioner's date of birth in their register as 25-6-1973 and to issue birth certificate to the petitioner accepting the affidavits and declaring the date of birth of the petitioner as 25-6-1973 within one week from the date of receipt of a copy of the judgment.

3. Aggrieved by the above direction given by the learned Single Judge the respondents in the original petition have filed this writ appeal. While admitting the writ appeal an interim order was passed staying the operation and implementation of the impugned judgment and the appellants were directed to file an affidavit disclosing the material on which the entry regarding the date of

birth of the respondent was made in the Birth Register. If it was based on any written communication from the hospital authorities the appellants were directed to make available such communication for the perusal of the court.

4. The first appellant filed an affidavit dated 18-2-2003 stating that the child (respondent herein) was born in the A.M.M. Clinic, Kottayam which was being run by Dr. Anni Joseph at that time. The entry was made in the Birth Register in the office of the first appellant based on the birth report from the hospital. For producing the birth report from the hospital all the records were searched and verified. The birth reports from various hospitals from 1985 onwards are kept along with the registers in the office of the Registrar of Births and Deaths. Birth reports for the period prior to 1985 are not seen attached to the birth register or kept in the record room. In spite of the intensive search made by the appellants the same could not be found out. Consequently the birth report in respect of the respondent could not be produced as directed by the court. It is further stated in the affidavit that the relevant entry was made as per the birth report sent from A.M.M. Clinic, Kottayam. The informant is Dr. Anni Joseph, Medical Officer. All the details like place of birth, details of parents, age of mother, order of birth, informant's name and address etc., have been recorded in the Register and they have been entered in accordance with the report in the prescribed form. Entry No. 1758 in the Register relates to a male child born on 26-6-1973 named Chacko Kurian. The said child was born in the same hospital on 26-6-1973. The entries were made in the course of official duties with regularity as per the birth report sent from the hospital. The maternity register that is available shows that the entry in relation to Sl. No. 1758 is item 27 in the said register. This also shows that the respondent's birth was properly recorded in the maternity register and in the birth register. The name of the respondent was entered in the register on 13-8-1973 and the informant had signed in the register. It is also stated in the affidavit that in view of the above circumstances the application of the respondent for correction of the entry relating to his date of birth was rejected.

5. Along with the memorandum of writ appeal the appellants have produced Annexure I photocopy of the relevant page of the records in the Ananthamandiram Hospital. From Annexure I it is seen that one Vasanthakumari, C/o. Gopinadhakuruppu, Macherryvila Veedu was admitted in the hospital at 10 a.m. on 26-6-1973 and she delivered a male child on 5.25 p.m. on 26-6-1973. It is not disputed that the said Vasanthakumari is the mother of the respondent and the said Gopinadhakuruppu is the father of the respondent. Along with the memorandum of appeal the appellants have also produced Annexure II which is the photocopy of the relevant page of the Birth Register maintained in the office of the first appellant. From Annexure II it is seen that the date of birth of the respondent is 26-6-1973, that the birth was registered on 29-6-1973 and that the name of the respondent was entered in the Birth Register on 13-8-1973 as "Jayakrishnan". It is also seen that the place of birth of the respondent is A.M.M. Clinic, Kottayam. It is further seen that the information regarding the birth of the

respondent was given to the Municipality by Dr. Anni Joseph, A.M.M. Clinic, Kottayam. It is also seen that the respondent's father Gopinadhakuruppu is a graduate and -the respondent's mother Vasanthakumari has passed S.S.L.C. The appellants have made available the original of the Admission Register of the hospital from which Annexure I photocopy was taken. They have also produced the original of the Register of Births and Deaths maintained by the first appellant from which Annexure II photocopy was taken. We have perused those original documents and we are satisfied that Annexures I and II are photocopies taken from the original documents.

6. In the light of the above mentioned documents produced by the appellants it is clear that the date of birth of the respondent was correctly entered in the Birth Register maintained by the appellants. There is no legal evidence or acceptable material to show that the date of birth of the respondent is 25-6-1973. The date of birth shown in the S.S.L.C. Book or the Passport cannot disprove the correctness of the date of birth recorded in the Register of Births. The mistake might have been committed while entering the date of birth of the respondent in the school records. Based on the entries in the school records the respondent's date of birth might have been shown in his S.S.L.C. Book and the Passport as 25-6-1973. Therefore, the first appellant was right in pointing out in Ext. P5 that correction has to be made in the school records and not in the Birth Register maintained by the first appellant.

7. The respondent had submitted the application for correction of date of birth in the Birth Register under rule 11(2) of the Kerala Registration of Births and Deaths Rules, 1999. It is true that under rule 11(2) the Registrar has got power to correct the entry in the Birth Register, if any person asserts that the entry in the birth register is erroneous and produces 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. It is also true that the respondent had produced declaration of the elder sisters of the respondent's mother. According to the respondent, they are two credible persons having knowledge of the date of birth of the respondent. But the question is whether the first appellant was bound to correct the entry in the Birth Register only on the basis of the assertion made by the respondent and the declaration made by the two sisters of the respondent's mother. In our view, before exercising the power under Rule 11 (2), the Registrar must be satisfied that the entry in the register is erroneous. For satisfying himself whether the entry is erroneous or not, the Registrar can consider not only the assertion of the applicant and the declaration of the two credible persons but also any other relevant material available. In this case the Registrar was not satisfied that the entry was erroneous. In view of the relevant entries relating to the respondent in the Birth Register maintained by the first appellant and the entries made in the Admission Register of the Ananthamandiram Hospital, the first appellant was fully justified in refusing to act upon the assertion of the respondent and the declaration given by the two sisters of the respondent's mother. When there is corroborating evidence like the

hospital records to support the entry in the Birth Register of the Municipality, the Registrar is not bound to act upon the assertion of the applicant or the declaration given by two persons claiming to have knowledge about the date of birth. The decision of the appellants to reject the respondent's request for correction in the Birth Register cannot be said to be illegal or arbitrary or perverse or unreasonable. In such circumstances this court is not justified in compelling the appellants to allow the request of the respondent and to effect correction of date of birth of the respondent in the Birth Register maintained by the appellants and to issue a birth certificate to the respondent showing his date of birth at 25.06.1973.

8. Learned counsel for the appellant submitted that if the appellant's date of birth is not corrected in the Birth Register of the Kottayam Municipality he will not be able to apply for a Green Card in the United States of America as the date of birth shown in his Passport is different from the date of birth recorded in the Birth Register of the Municipality. However, influenced by such sympathetic considerations this court cannot direct the statutory authorities to act against the statutory provisions. In the above circumstances, the writ appeal is liable to be allowed and the impugned judgment is liable to be set aside. Hence the judgment dated 16.1.2003 in O.P.No. 1507 of 2003 is set aside. Consequently O.P.No. 1507 of 2003 will stand dismissed.