

(2015) 07 KL CK 0115

In the High Court Of Kerala

Case No : W.A. Nos. 1975 of 2014 and 591 of 2015

Union of India

APPELLANT

Vs

Sunil Kumar

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Passports Act, 1967 — Section 24, 24(2)(e)

Citation : (2015) 3 KLT 501

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

**Advocate : N. Nagaresh, Assistant Solicitor General of India, for the Appellant;
T.K. Shajahan, Advocates for the Respondent**

Final Decision : Allowed

Judgement

A.M. Shaffique, J—These appeals are filed against the common judgment dated 16.10.2014 in W.P. (C). Nos. 21181/2014 and 17344/2014. By virtue of the impugned judgment, the learned Single judge while allowing the Writ Petitions directed the Passport Issuing Authority (for short "PIA") to consider the application for correction of date of birth in the passport of the petitioners after declaring that Clause (c) of circular dated 29.10.2007 restricting the power of the PIA to correct the difference in date of birth beyond two years as void and inoperative. The respondents, being aggrieved by the aforesaid judgment, have approached this Court in these appeals. In fact, the learned Single Judge has decided the above cases along with a batch of other Writ Petitions. Since the impugned directions have been issued in the above Writ Petitions alone, only two appeals are filed. The facts involved in W.P.C. No. 21181/2014 are as under:

"Petitioner is the holder of Indian passport bearing No. K 6569671 which was renewed on 14.9.2012. The validity of the passport expires only on 13.09.2022. At the time of issuing the passport in 1992, the date of birth of the petitioner was entered as 10.08.1971. He submits that his actual date of birth is 06.01.1976.

He relies upon Ext. P3, true copy of the Secondary School Leaving Certificate and Ext. P4, Aadhaar card. Further, an extract of admission register of Govt. V.H.S.S., Alamcode is produced as Ext. P5. According to the petitioner, the entry of date of birth in the passport was on account of a mistake committed by his parents and that, at the relevant time in 1992, he was only 16 years old. He applied for correcting the mistake which was rejected by Ext. P6 dated 06.08.2014 calling upon him to produce a declaration of Court for changing the entry in the passport. Petitioner submits that all the materials produced here was produced before the passport authority to correct the date of birth and the passport officer was not justified in calling upon him to produce Court order and hence the petitioner has approached this Court seeking a mandamus to declare that his date of birth as 06.01.1976, as shown in Ext. P3 and for a further direction to respondents 2 and 3/appellants 2 and 3 to correct the date of birth on the basis of his application."

2. Statement is filed on behalf of the 5th respondent Assistant Solicitor General of India (ASGI) stating that as per Paragraph 5.2(3) of Chapter 8 in the Passport Manual, in instances where the previous files have already been destroyed, the PIA could exercise his discretion to correct the date of birth without a Court order, if the difference in the date of birth to be corrected is not more than two years and on the applicant providing satisfactory explanation that the same documents were provided at the time of submitting the passport application.

3. In W.P.(C) No. 17322/2014, the facts disclosed are as under:

"Petitioner obtained passport in the year 1992 as passport No. L 875090. He renewed his passport in 2002 from Embassy of India, Muscat, The date of birth shown in the passport was 04.05.1969. According to him, his actual date of birth is 04.05.1974. No documents were produced at the time of submitting application pertaining date of birth. He came to know about the mistake only now. He obtained the S.S.L.C certificate in which date of birth is shown as 04.05.1974. He requested for correction of entry regarding date of birth which was rejected calling upon him to produce a Court order. Petitioner submits that the said action is illegal. He submits that the 1st respondent has issued circular dated 29.10.2007 by which Clause (c) runs counter to Clause (a). The restriction to the power given to Passport Officers fixing the outer limit of two years for correction of the entry in the passport is in violation of Article 14 of the Constitution of India and on these set of facts, petitioner seeks the following reliefs:

"1. Issue a writ of mandamus or any other writ, order or direction calling for the records leading to Ext. P1 and direct the 2nd respondent to accept the application for issuance of passport by correcting the wrong entry of the date of birth of the petitioner and issue the renewed passport after correcting the entry of date of birth in the passport of the petitioner on the basis of Exhibit P2 S.S.L.C. Book.

2. Declare that the refusal to correct the wrong entry of date of birth in the

passport of the petitioner on the basis of Exhibit P2 as illegal.

3. Pass such other writ, order or direction as prayed for by the petitioner in due course which shall be just and proper.

4. Award the cost of the petitioner and

5. Declare Clause (c) of the Exhibit P6 circular dated 29.10.2007 as redundant and delete the same from Exhibit P6 circular dated 29.10.2007."

4. Counter affidavit is filed on behalf of respondents inter alia stating that the Regional Passport Officers function under the guidelines of the Ministry of External Affairs, who issues instructions from time to time on various aspects affecting the issue of passports to Indian citizens. Ext. P6 is the circular issued by the Ministry of External affairs laying down the guidelines on change of date of birth and place of birth in the passports. By Ext. P6 circular, only limited powers have been given to Regional Passport Officers to amend the date of birth in passports. Though the entry in the S.S.L.C book can be relied upon as a document for proving the date of birth of the applicants born before 1989, when the difference proposed is more than two years, requirement of a declaratory order from a competent court, is mandatory. The contention that Clause (c) of paragraph 5.2 of Chapter 8 runs counter to Clause (a) has been denied. It is pointed out that S. 24 of the Passports Act, 1967 gives power to the Central Government to make rules by notification in the official gazette for carrying out the purpose of the Act and it is pursuant to such power, that the circular has been issued which cannot be questioned by the petitioner.

5. Learned Single judge, having relied upon the judgment of this Court Swapna Siju Vs. Union of India and Another, (2012) 4 KLJ 208 , Nazar Vs. Union of India, (2013) 4 KLJ 276 : (2013) 4 KLT 34 , Abida v. Government of India (2011 (1) KLT 34 (SC)) and Raveendran Pillai, G Vs. Vice Consul, Consulate General of India and another, (2011) 3 ILR (Ker) 771 observed that the power of Passport Officer to correct the entry relating to date of birth in the passport is no more res integra. However, the learned Single Judge in paragraphs 7 and 8 held as under:

"7. In my view, the Passport Issuing Authorities are not effecting changes in date of birth. They are only correcting the mistakes occurred in the Passport. No one can change date of birth of a person. Therefore, any vast disparity in correcting the actual date of birth comparing to the original, does not make any difference for the purpose of correcting date of birth in the Passport. For e.g. If a person's Passport bears the date of birth as 1.1.1986, instead of 1.1.1996, the Passport Issuing Authorities will refuse to exercise the power. However if the difference is only to the effect of 1.1.1987 as against the year 1.1.1986, the Passport Issuing Authorities will effect changes. There is no rationale in restricting exercise of power for correcting date of birth beyond two years in difference. If corrections are liable to be effected on genuine reasons, necessarily it apply in all circumstances, irrespective of the fact that difference is beyond two years or less. The fixation of the outer limit of two years is fixed as though application is

seeking to effect change in date of birth. The Passport Issuing Authorities have to bear in mind that they are correcting the date of birth and not changing the date of birth. Thus, the classification for exercising of the power for effecting correction of the date of birth has no nexus with the object sought to be achieved. If the objective of classification is illogical and lacks rationality, necessarily, the classifications will have to be held unreasonable. Thus, restricting the power of the authorities of passport, in correcting the date of birth as imposed in the circular is unsustainable and liable to be struck down. Therefore, the prescription of two different sets of procedures for correcting the date of birth in the Passport for same class of persons has no basis. In *The State of West Bengal Vs. Anwar Ali Sarkar*, AIR 1952 SC 75 : (1952) CriLJ 510 : (1952) 1 SCR 284 it was held by the Hon"ble Supreme Court as follows:

"A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated are able to avail themselves of the same procedural rights for relief."

8. Accordingly, based on the challenge in W.P.(C) No. 17322/2014, it is declared that Clause C of Circular dated 29.10.2007, restricting the power of the Passport Issuing Authorities correcting difference in date of birth beyond two years is declared void and inoperative."

6. Heard the learned ASGI and the learned counsel for the writ petitioners. Learned ASGI while impugning the judgment contended that the guidelines have statutory force and could not have been held as void, without any justifiable reason. Citizens or passport holders have not been classified differently. Under normal circumstances, the mistake can be corrected by the PIA only when the back records are available and on being convinced about a mistaken entry in the passport. Clause 5.2(c) takes care of a situation when the records are not available, which cannot be termed as contrary to clause 5.2(a) or 5.2(b). The learned counsel for the petitioners, supported the judgment of the learned Single Judge.

7. In these appeals, our concern is only on a limited point, in regard to the interpretation and scope of paragraph 5 of Chapter 8 of the Passport Manual, 2010. It cannot be disputed that Passport Manual contains circulars issued by the Ministry of External Affairs by virtue of the power under S. 24(2)(e) of the Passports Act. The relevant clause in paragraph 5 of Chapter 8 of the Passport Manual, 2010 read asunder:

"5. Change of Date of Birth

5.1. Requests are frequently received by PIAs for a change in the date of birth. This is due to the fact that many countries insist that date of birth (or place of birth) in all documents of a person be the same for purposes of immigration, long term resident/student visas, etc. The Kerala High Court in a judgment dated 9th September, 1994, in the case of *Elizabeth Mathews versus Union of India* and

Others, gave directions that the petitioner may file an affidavit, along with relevant documents, before a First Class Judicial Magistrate praying for an order to correct the date of birth.

5.2. In the context of various High Court pronouncements and with a view to addressing genuine difficulties an applicant might face due to discrepancies in date of birth in passport and other documents of the passport holder/applicant, it has been decided as follows:

a. Where an applicant claims a clerical/technical mistake in the entry relating to birth/place of birth in the passport and asks for rectification/correction: In all such cases the documents produced earlier as proof of date of birth/place of birth at the time of issue of passport may be perused (if not already destroyed) by PIA. If it is a clerical mistake either by the applicant or the PIA, date/place of birth correction may be allowed by issue of fresh passport booklet; in the former case, by charging the fee for fresh passport and in the latter, "gratis". There is no need for declaratory court order in such cases.

b. Where a competent authority which issued a birth certificate or an educational certificated issues any correction or amendment in date/place of birth, "PIA may effect the necessary amendment in the passport without insisting on a court order provided the same document was produced earlier with the passport application. Fresh fees will be charged.

c. Where files have already been destroyed, PIAs could use their discretion in correction of date of birth without a court order and where such correction is only in months (not more than two years) and applicants provide satisfactory explanation that the same document(s) was produced at the time of initial passport application. DOB Affidavit should not be accepted for change in the date of birth. Fresh fees will be charged.

d. 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 etc., resulting in conflicting documents for valid proof, the PIA should accept the BC as the correct date of birth. However, suspicious documents should be verified from the issuing authority.

Since BC has been made compulsory under the Passport Rules only on or after 26.1.1989, the preference of BC over school certificate (as per the Punjab and Haryana High Court judgment quoted below) may be made effective from that date only. In case date of birth falls before this deadline either BC or School Certificate may be accepted."

8. We are basically concerned with paragraph 5.2(a) and (c). The very purpose of paragraph 5 is regarding change of date of birth. The Ministry had taken note of the genuine difficulties faced by the applicants due to discrepancies in date of

birth in passport and other documents of the passport holder/applicant and it was decided to give power to the PIA's to correct the entry. Paragraph 5.2(a) concerns a situation where an applicant claims that a clerical/technical mistake had occurred in the entry relating to his birth/place of birth in the Passport and seeks rectification/correction. In such cases, the documents produced earlier (at the time of submitting the application) as proof of date of birth/place of birth has to be perused. If it is a clerical mistake, either by the applicant or the PIA, the date of birth or place of birth can be corrected by issuing a fresh Passport. In such an event, there is no need for declaratory court order. Therefore Clause (a) concerns correction of date of birth or place of birth in situations where the original documents are available and on the PIA's satisfying itself that it is a clerical mistake committed either by the applicant or by the PIA in making an entry in the date of birth/place of birth.

9. Paragraph 5.2(b) concerns a situation where a competent authority which issued a birth certificate or an educational certificate issues any correction or amendment in the date of birth/place of birth. In such an event also, PIA may effect the necessary amendment in the Passport without insisting on a court order. However, this correction also has to be made if the same document was produced earlier with the Passport application. This clause also indicates that the original document should be available in order to ascertain that the entry in the passport was based on a particular document and the said document was subsequently amended by a competent authority.

10. Clause (c) envisages a different situation where the original documents/files have already been destroyed. In such a situation, a discretion is given to the PIA to ^correct the date of birth without a court order where such correction is only in months (not more than two years) provided the applicant gives satisfactory explanation that the same document was produced at the time when the initial passport application was submitted.

11. It is therefore evident that paragraph Clause 5.2(c) operates in a different field where a discretion has been given to the PIA to correct the date of birth without a court order, in cases where the previous files have already been destroyed. In such situations, the PIA does not have the advantage of verifying whether it is a clerical or technical mistake in the entry. In such an event, the PIA will have to satisfy itself that the applicant had produced the same document at the time of submission of initial passport application. In fact, Clause (c) envisages a situation different from clauses (a) and (b). Therefore, it cannot be said that there is no rationale in fixing an outer limit of two years for effecting such a correction as the authority is given a discretion without a court order to correct a mistake without even having the advantage of verifying the documents that were produced at the time of submission of application.

12. It is argued by the learned ASGI that the normal rule was that entries in the passport regarding place of birth or date of birth will not be corrected, without a court order. It is for the purpose of avoiding unnecessary inconvenience to the

passport holders that such powers had been given to PIA's. It is in the said background that by virtue of paragraph 5.2(c) of Chapter 8, an outer limit of time factor is fixed.

13. We shall now consider the judgments in this regard.

"i) In Aboo Chettiyanthodi Vs. The Regional Passport Officer, Malappuram, (2008) 1 ILR (Ker) 759 : (2008) 1 KLJ 642 : (2008) 1 KLT 992 , learned Single Judge of this Court held that there is no provision in law which gives power to Judicial First Class Magistrate to correct date of birth in passport and such declaratory orders are to be obtained from the Civil court. In the said judgment, this Court had referred to various circulars issued including the circular dated 18.04.2001, which was later amended as per circular dated 29.10.2007. The learned Single Judge, after having referred to the various circulars observed that "Of course, the above clause does not apply to cases where there are conflicting dates of birth or places of birth in certificates issued by two different authorities." In that case, the petitioner contended that the entry of the year 1970 in his passport against the column for showing the date of birth was made by the agent. The petitioner had a case that his actual date of birth is 20.05.1976. The learned Single Judge observed that the PIA is free to consider the application on the basis of the extract of the admission register of the school and in case such a course is not possible and if it is found difficult to accept the said certificate, petitioner can be referred to a Civil court for getting a declaratory order regarding his date of birth.

ii) In Raveendran Pillai, G Vs. Vice Consul, Consulate General of India and another, (2011) 3 ILR (Ker) 771 , a Division Bench of this Court held that in order to get declaratory orders, the applicants in will have to approach the Civil court and upheld the judgment in Aboo Chettiyanthodi's case (supra).

iii) In Swapna Siju Vs. Union of India and Another, (2012) 4 KLJ 208 , the learned Single Judge observed that to effect corrections in date of birth in the passport, the Secondary School Leaving Certificate can be relied upon as proof of the date of birth.

iv) In Nazar Vs. Union of India, (2013) 4 KLJ 276 : (2013) 4 KLT 34 , the learned Single Judge of this Court held that an extract from the school register can be verified by the PI A for correction of date of birth of a person born before 26.1.1989.

v) In Musthafa Nambiamkulam Abdulkader Vs. Ministry of External Affairs, (2013) 4 KLT 527 : (2014) 1 RCR(Civil) 515 , the learned Single Judge observed that birth certificate issued by the competent authority is the most reliable piece of evidence to substantiate the date of birth and place of birth."

14. Law in this regard being so, still the question would be whether the PIA should rely upon the documents produced to make corrections in the passport, which has to be done by the PIA in accordance with the circulars issued in that behalf, failing which the PIA will not have any jurisdiction to do so.

15. Learned Single Judge proceeded on the basis that there is no rationale in restricting exercise of power in correcting date of birth beyond two years and if corrections are liable to be effected, on genuine reasons, it has to apply in all circumstances irrespective of the fact that difference in date of birth is beyond two years or more. Therefore, the classification has no nexus with the object sought to be achieved. Reference is also made to the Constitution Bench judgment in *State of West Bengal v. Anwar Ali Sarkar & Anr.* (AIR (39) 1952 SC 75) wherein the Supreme Court held that all litigants, who are similarly situated, should be able to avail themselves the same procedural rights for relief. We do not think that the aforesaid judgment can have application to the facts of the case. First of all, there is no classification between two sets of citizens or passport holders. Here is an instance where power had been given by the Government to the PIA to correct the mistake regarding date of birth in the Passport. For the said purpose, certain procedure has to be followed. Correction can be made only if it is a mistake, either committed by the applicant or by the PIA. To ascertain whether it is a mistake or not, necessarily the original application and the records submitted at the time of issuance of the passport are to be verified. This situation is taken care of by paragraph 5.2(a), 5.2(b) concerns a different situation where the correction in the original records are made by a competent authority or educational authority. In such instance also, the original documents have to be verified. Clause (c) pertains to a different situation where the original files are not available at all wherein a discretion has been granted to PIA to satisfy himself about the fact that the applicant had produced the same document at the time of application and thereafter if it is found that there is satisfactory explanation, necessary corrections can be made. Clause (c) is in the form of relaxation to what is stated in clauses (a) and (b). But the said relaxation is limited to a certain period viz. the difference in the period relating to date of birth. If in a given case where the Passport Officer is not satisfied about the genuineness of the claim, it is always open for him to reject the same. Clause (c) does not provide an unlimited power to any person to approach the PIA without obtaining a court order. Right of any citizen is not affected by the aforesaid circular as it only restricts the power of PIA. Nothing prevents the applicants in approaching the Civil Court and getting a declaration of their legal status of date of birth for effecting necessary corrections in the Passport. Under such circumstances, we are of the view that, the learned Single Judge was not justified in declaring that clause (c) is void and inoperative.

In the result, we allow the Writ Appeals and set aside the judgment of the learned Single Judge to the extent it declares Clause (c) of paragraph 5.2 of Chapter 8 of the Passport Manual, 2010 as void and inoperative.