
(2015) 10 MAD CK 0256
In the Madras High Court
Case No : W.P.(MD) No. 15058 of 2015

V. Jasmin Parvin

APPELLANT

Vs

The Regional Passport Authority and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Citation : (2015) 10 MAD CK 0256

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : M. Ponniah, for the Appellant; J. Jeyakumaran, for the Respondent

Final Decision : Disposed Off

Judgement

R. Subbiah, J.—This Writ Petition has been filed praying for a Writ of Mandamus to direct the respondents to process the petitioner's passport application vide File No. MD1068652189115 (Token No. P23) presented before the second respondent herein and to issue passport to the petitioner by mentioning the name of her adoptive father namely M.S. Varusai Mohammed, as the name of her father in the passport, within a time frame fixed by this Court.

2. It is the case of the petitioner that the name of her biological father is one J. Seeniabuthahir and her mother name is Sakthikabanu. The biological parents has got three children including the petitioner. Further, the petitioner's maternal grandmother is Jerinabeevi and the name of her sister is Suburabeevi. The said Subura Beevi is none other than the maternal aunt of petitioner's mother. The said Subura Beevi is married to one M.S. Varusai Mohamed and out of their wedlock, no issues were born to them. Hence, they approached the biological parents and expressed their willingness to adopt the petitioner as their daughter and the biological parents have also given their consent for adoption. Accordingly, at the age one and half years, the petitioner was given in adoption to the adoptive parents, namely, M.S. Varusai Mohamed & Sabura Beevi by virtue of a deed of adoption dated 08.04.1993 and the said deed of adoption is duly

registered. In all the school records and official records, the name of petitioner's adoptive father, namely, the said M.S. Varusai Mohamed has been given, as the name of her father.

2.1. While the situation stood thus, on 18.07.2015, the adoptive parents of the petitioner arranged the marriage on 22.08.2015 with one Mohammed Ali, who is residing at Malaysia. Therefore, the petitioner approached the respondents and submitted an application through online to obtain passport for the petitioner in order to leave for Malaysia for the sake of marriage. Even after completion of several days, there was no reply from the respondents and therefore, the petitioner approached the respondents and it was informed by the authority that the petitioner should submit an order from the court in respect of the adoption and only thereafter, the application will be considered. However, according to the petitioner, there is no necessity to obtain a declaratory decree for adoption of the petitioner, since from the date of adoption, the adoptive parents brought up the petitioner as her daughter.

2.2. The respondents further instructed the petitioner to mention the name of biological father in the application form; otherwise they will not issue passport to the petitioner. As per the deed of adoption, the name of the petitioner's father is M.S. Varusai Mohamed since the sentiments and feeling are attached with the adoptive parents. Hence, the petitioner requested the respondents to issue a passport by mentioning the name of adoptive father, namely, the said M.S. Varusai Mohamed and also requested to process the application at an earlier date, because of the fact that the petitioner has to go Malaysia for her marriage. But the respondents refused to process the application and directed the petitioner to get an order from the Court. However, in a similar circumstances, this Hon'ble Court has held that the passport authorities shall issue a passport by mentioning the name of the adoptive/step father, wherever situation arise and they should not return the applications on such ground. Due to the delay in issuing the passport, the date of marriage is now postponed from 22.08.2015. The date of marriage will be fixed once the respondents issue passport to the petitioner. Hence, he has filed the present Writ Petition for the relief stated supra.

3. The respondents have filed a counter affidavit that Ms. Jasmin Parvin, daughter of Varusai Mohamed was born on 22.10.1991 at Ramanathapuram. She has applied for a fresh passport to passport Seva Kendra, Madurai enclosing the Birth Certificate issued by the Registrar of Birth and Death, Ramanathapuram Municipality dated 14.05.1993 mentioning her biological parent's name. Further, the petitioner has submitted the adoption deed dated 08.04.1993 duly registered with the Sub-Registrar Office, Velipattinam along with her passport application. As per common procedure, in the case of Muslims, Christians and Sikhs, adoption can be done under the provisions of the Guardians and Wards Act, 1890. A court order is necessary for guardianship and for allowing the child to be taken out of the country, before a passport is issued. Further, the Birth Certificate submitted by the petitioner along with her passport application was referred to the issuing

authorities. i.e. Birth and Death Registrar, Ramanathapuram Municipality, Ramanathapuram District to confirm the genuineness of the Birth Certificate. In response, a reply received from the Commissioner, Ramanathapuram Municipality stating that the Birth Certificate has been verified with the original record of Birth Certificate maintained by Ramanathapuram Municipality and the same is correct. But the child name was not entered in the Birth Register. The petitioner presented herself for enquiry and she was advised to furnish a Court order for adoption as per passport rules. Once the documents are furnished by the petitioner, her application will be considered as per rules.

4. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the petitioner was adopted at the age of one and half years and the adoption was duly registered by way of deed of adoption dated 08.04.1993. Apart from that, in all school records and in the official records, the name of adoptive father is mentioned as M.S. Varusai Mohammed. The petitioner has also expressed the urgency of the matter as she is going to be married with one Mohammed Ali, who is residing in Malaysia. Further, in order to support her contention, the petitioner has produced the driving license and transfer certificate to state that the adoptive parent name of the petitioner is the said M.S. Varusai Mohamed. In spite of all these facts, the respondents refused to issue a passport. Hence, the petitioner is before this Court.

5. In support of his contention, he placed the following judgments:-

(i) In an reported judgment of M/s. Shabnam Hashmi Vs. Union of India & Others, dated 19.02.2014.

(ii) B.S. Deepa Vs. The Regional Passport Officer .

(iii) Philips Alfred Malvin Vs. Gonsalvis, .

(iv) In an unreported judgment dated 28.08.2015 made in W.P.(MD). No. 12285 of 2015.

(v) In an unreported judgment of H.S. Vishnu Priya Vs The Regional Passport Officer and another, dated 16.06.2015.

6. Per contra, the learned counsel appearing for the respondents submitted that the petitioner has not produced any proof in support of her claim and hence, he prayed for the dismissal of the Writ Petition.

7. I heard the submissions made on either side and perused the materials available on record.

8. Keeping the submissions made on either side, it is seen that the petitioner was given by adoption to the said M.S. Varusai Mohamed way back in the year 1993 and the same was also mentioned in the deed of adoption dated 08.04.1993. Further, on a perusal of the typed set of papers filed along with the Writ Petition, it is seen that in the driving license and in the transfer certificate, the name of the adoptive father is mentioned. In a similar situation, this Court has considered

the issue in the case of B.S. Deepa Vs. The Regional Passport Officer , wherein, in the penultimate paragraph, it has been held as follows:-

"38. In view of the above, the Writ Petition is disposed of with the following directions:-

(1) Ministry of External Affairs, Union of India may incorporate suitable provisions in the Passport Manual and incorporate suitable columns in the applications for the issue of passports, to enable the parties to indicate either the names of the Biological parents or the names of the Adoptive parents or the names of the step parents or all of them, according as the situation demands. It can be left to the will of thee parties either to indicate the names of one or more of the biological parents along with the name/names of the adoptive or step parent/parents or to indicate the names of all.

(2) Insofar as the case on hand is concerned, the respondents shall issue a passport to the daughter of the petitioner, by indicating the name of R. Lakshmanan as the stepfather, in the Column reserved for filling up the name of the father. The respondents are directed to issue passport within four weeks, upon the petitioner"s application bearing File No. MA3067806994714 dated 10.07.2014.

9. Following the said order, this Court has disposed of a Writ Petition in W.P.(MD). No. 12285 of 2015 dated 28.08.2015, wherein, in the penultimate paragraph, it has been held as follows:-

(i) In view of the peculiar facts and circumstances of the case that the earlier birth certificate and the old passport were obtained by his biological father of the petitioner, at the time during the petitioner was a minor, he cannot be personally held responsible for the presence of those two documents. In order to clarify this aspect, the petitioner has filed an affidavit on 28.08.2015 before this Court to the effect that he would not take advantage of earlier birth certificate and hence, this Court deems it fit to consider the claim of the petitioner.

(ii) Since the action of the petitioner is neither wilful nor wanton for the reason attributed above, the respondent herein is directed to process the pending application submitted by the petitioner by indicating the name of his stepfather, in the Column reserved for filling up the name of the father and issue a fresh passport within a period of one week from the date of receipt of a copy of this order.

(iii) It is made clear that, undoubtedly, issuing of passport is a sensitive issue and it is well within the domain of the passport authorities. However, depending upon the peculiar facts pleaded before this Court, more particularly, in the case on hand, a positive direction was issued to the respondent for the reasons that the petitioner has no criminal antecedents or adverse serious remarks against him in the past. Therefore, this case cannot be taken as a precedent for any of the cases."

(emphasis supplied)

10. In view of the peculiar facts and circumstances of the case especially in view of the urgency expressed by the learned counsel for the petitioner, this Court directs the respondents to process the passport application of the petitioner, if the papers are otherwise in order and shall issue a passport to the petitioner, indicating the name of her adoptive father, namely, M.S. Varusai Mohamed in the column reserved for filling up the name of the father, within a period of two weeks from the date of receipt of a copy of this order.

In the result, this Writ Petition is disposed of. No costs.