

Before Suvir Sehgal, J.

ATUL FRADY –Petitioner

versus

UNION OF INDIA- Respondents

CWP-3556 of 2018

December 04, 2019

Passport Manual, 2010—Change of date of birth on passport of minor—On attainment of majority—Possible—As per birth certificate.

Held, that in view of the above backdrop, when the facts of the present case are examined, it is clear that the case of the present petitioner falls within the four corners of the guidelines (Annexure P-6). In fact, the case of the present petitioner would fall under para 4(III) of the guideline since the present petitioner was a minor at the time when his previous passport had been issued and after attaining the age of majority he applied for a fresh passport and for correction of his date of birth. As such, the time limit of 5 years as laid down in the main para 4(III) will not apply rather proviso to para 4(III) would come to the rescue of the petitioner.

(Para 8)

Held, that as such, it is clear that for all purposes, it is the birth certificate which is to be given weight over all other documents when it comes to recording the date of birth of an applicant in the passport.

(Para 9)

Ramanjeet Singh, Advocate
for the petitioner.

Karan Singh, Advocate for UOI.

SUVIR SEHGAL, J.

(1) Petitioner has approached this Court seeking writ in the nature of mandamus for directing the respondents to change/correct his date of birth in passport bearing No. A-2783428 (Annexure P-3) as per his birth certificate (Annexure P-8) and matriculation certificate (Annexure P-7).

(2) In brief, the petitioner applied for a passport at Passport

Sewa Kendra, Ludhiana on 03.08.2017 (Annexure P-1). He received an intimation on 20.09.2017 (Annexure P-2) that a passport already stood issued in his name on 13.03.1997. The petitioner inquired from his parents and got a copy of his passport (Annexure P-3) wherein his date of birth had been wrongly recorded as 12.03.1991. The said passport had already expired on 12.03.2007. After getting this information, petitioner again contacted the passport authorities on 29.09.2017 for renewal/re-issuance of a passport with a correction in his date of birth to 21.03.1991 instead of 12.03.1991. For this purpose, he submitted his birth certificate, matriculation certificate and other documents. He submitted representation dated 12.12.2017 (Annexure P-4) and pointed out that when the previous passport had been issued he was a minor child of 6 years of age. Vide letter dated 20.12.2017, Regional Passport Office, Chandigarh (respondent No.2) informed him that his passport file had been closed due to absence of response from his side.

(3) Upon notice being issued, respondent No.2 has filed an affidavit submitting that the previous passport had been issued on the basis of the information which had been supplied in the earlier application and since false information had been given, the petitioner was liable to be proceeded against under Section 12 as well as Section 10(3)(b) of the Passport Act, 1967. It had further been submitted that change in date of birth after lapse of 15 years was not permissible. The respondent further placed reliance upon a Division Bench judgment of this Court in LPA No.1613 of 2014 titled as *Ambika Kaul* versus *Central Board of Secondary Education and others* decided on 21.05.2015 as well as a judgment of the High Court of Kerala in W.P.(C) No.9073 of 2015 titled as *Jayakumar* versus *The Regional Passport Officer*, decided on 23.06.2015.

(4) Counsels for the parties have been heard.

(5) The Ministry of External Affairs has issued an office memorandum dated 26.11.2015 (Annexure P-6) which contains guidelines for change/correction of dates of birth in the passport. The guidelines are reproduced as under:-

“ OFFICE MEMORANDUM

SUBJECT:- Guidelines with regard to change / correction of dates of birth entries in the passport of an applicant already held by him/ her.

It may be mentioned that necessary provisions with regard to change/correction of dates of birth in the passports are

contained in the Passport Manual, 2010 and from time to time number of circulars have been issued by the Ministry on this issue.

2 It is pertinent to mention that recently, the High Court of Kerala while hearing the WP No. 9073 of 2015 (Jaya Kumar Vs Union of India & others) has delivered a landmark judgment on the issue of correction/change of entries regarding date/place of birth in the passport. During the course of arguments, the Court has elaborated upon the fact that the details entered in the Passport cannot be lightly interfered with, that too after many years without any sustainable cause and without any explanation as to why initially such a wrong declaration was made and why now a change is sought that too based on a document which was available with the applicant when the original declaration was made.

The High Court has further observed that the difference in dates of birth whether two years or twenty years, the power should be to correct bonafide mistake and that too within a reasonable time. Even a civil court declaration after many number of years would lead to the applicant having possibly perpetrated a fraud on many other who acted upon the authenticated declaration of sovereign state as to the age status of its Citizen.

3. The Court, therefore, while dismissing the petition of the applicant petitioner has directed that the authorities would do well to introspect on the observation made herein to make suitable amendments to the circular. It has also been directed that there would be no scope for leaving any liberty on the petitioner to approach a civil court too on the reasoning adopted by this court and the delay occasioned in seeking the correction.

4. Hence, the core principle of the judgment of the High Court of Kerala is that only the bonafide claims of the applicants for the change/correction of the date of birth in the passport should be accepted and that too if the same are submitted by them within a reasonable time limit after the issuance of passport. In pursuance of the directions of the High Court, it has been decided that henceforth, all the PIA

shall follow the following instructions/ guidelines in order to consider the claims/request the applicant for the change/correction of entries regarding of date of birth in their passports:

(I) Where an applicant claims 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. In case, it is a clerical mistake either by the applicant or the PIA, date/place of birth correction may be allowed by issue of fresh booklet; in the former case by charging fee for fresh passport and in the latter 'gratis' (same as mentioned in Ministry's Circular No. VI/401/2/S/2001, dated 29/10/2007).

(II) If an applicant applies for the change of date of birth in the passport within reasonable period of time **i.e. within a span of five (5) years from the date of issue of passport having the alleged wrong date of birth**, with the birth certificate issued by the Registrar of Births & Deaths stating that date of birth recorded in the passport was based on the entries mentioned documents other than the Birth Certificate, the request of such applicant irrespective of difference in the dates of birth, may be considered by the Passport Issuing Authority. However, before the issuance of passport with changed date of birth, the Passport Authority shall also levy appropriate penalty on the applicant for obtaining passport on previous occasions by providing wrong information regarding his/her date of birth .

(III) The cases where the applicant comes to PIA for change/ correction with regard to date of birth in the Passport after a period of five years from the date of issue of passport with alleged wrong date of birth, no such request shall be entertained/accepted by the PIA and be rejected out rightly .

However, an exemption in this regard may be given to an applicant who was minor at the time when passport with alleged wrong date of birth was issued to him. As and when

such applicant after attaining the age of majority applies for the passport with request to change the date of birth in the passport issued to him when he was minor, the PIA irrespective of the duration of the issuance of passport may accept his case for consideration and if is satisfied with the claim and document(s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty.

(iv) In no way, the Passport Authority will relegate the applicant to obtain the declaratory court order to carry out changes with regard to date of birth in the passport, as the Passport Authority subject to the condition that the case has been submitted by the applicant within the stipulated limit of 5 years from the date of issuance of passport (except the cases of minor passport holder as detailed in para 5(ii) above) would now be eligible to accept the genuine cases irrespective of the difference of dates of birth.

5. In view of the above, all Passport Issuing Authorities are hereby requested to follow the above guidelines scrupulously to consider the requests of applicants for change/correction of dates of birth entries in the passports. Provisions contained in Chapter 4 and 8 of the Passport Manual, 2010 stand revised to the extent as stipulated above.”

(6) These guidelines as well as both the above mentioned judgments came up for interpretation before the High Court of Delhi in WP(C) No. 10839 of 2015, ***Sunita Sawhney*** versus ***Union of India and others***, decided on 03.12.2015. After extensive review of case law, the High Court of Delhi held that the passport authorities cannot refuse to correct the date of birth on passport on production of Birth Certificate.

(7) A Division Bench of this Court in ***Resham Singh*** versus ***Union of India and others***¹, had an occasion to consider the primacy of Birth Certificate *vis-a-vis* School Leaving Certificate. It was held as under:-

“13. A birth certificate is issued by a Registrar of Births and Deaths and reflects an entry extracted from the

¹ 2008(1) RCR (Civil)131

register maintained by the Registrar under the Registration of Births and Deaths Act, 1969. The aforementioned statute was enacted to provide for and regulate registration of Births and Deaths and for matters connected therewith. Section 7 thereof, requires a State Government to appoint a Registrar for each area comprising the area within the jurisdiction of a municipality/panchayat or the local authority or any other area or a combination of any two or more of them. Section 16 of the Act requires every Registrar to keep in the prescribed form a register of Births and Deaths for the registration of births and deaths in his area or any part thereof in relation to which, he exercises jurisdiction. A register of Births and Deaths is, thus, a public record of births and deaths that occur within the area assigned to a Registrar. The Register being a public record, presumption of truth attaches thereto and consequently to the birth certificate, reflecting an extract from the Births and Deaths register. A matriculation certificate, on the other hand, is primary evidence of the marks obtained by a candidate in a qualifying examination and the date of birth recorded as an ancillary measure. Primacy would, therefore, have to be accorded to the date of birth reflected in the birth certificate issued by the Registrar of Births and Deaths.”

14. xxxx xxxx xxxx

15. Thus, taking into consideration the aforementioned judgements, the enunciation of law, as detailed herein above, we are of the considered opinion that the Passport Authority erred by relegating the petitioner to seek a declaration before a civil Court and refusing to entertain his plea for correction of his date of birth. We would like to once again emphasise 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.

(8) In view of the above backdrop, when the facts of the present

case are examined, it is clear that the case of the present petitioner falls within the four corners of the guidelines (Annexure P-6). In fact, the case of the present petitioner would fall under para 4(III) of the guidelines since the present petitioner was a minor at the time when his previous passport had been issued and after attaining the age of majority he applied for a fresh passport and for correction of his date of birth. As such, the time limit of 5 years as laid down in the main para 4(III) will not apply rather proviso to para 4(III) would come to the rescue of the petitioner.

(9) As such, it is clear that for all purposes, it is the birth certificate which is to be given weight over all other documents when it comes to recording the date of birth of an applicant in the passport.

(10) In view of the above, it is clear that the respondents had erred in closing the passport application of the petitioner rather, the same was liable to be considered under proviso to para 4(III) as discussed above and in the light of the judgments referred to above.

(11) Accordingly, a direction is issued to the respondents to consider the application of the petitioner for issuance of a fresh passport and correct his date of birth on the basis of the birth certificate submitted by him with his application. The necessary consideration be completed within a period of two months from the date of receipt of certified copy of the order.

(12) Disposed of.

Tejinderbir Singh