

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2014

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.No.1787 of 2014

M.I.Raveendran

... Petitioner

vs.

The Regional Passport Officer,
Regional Passport Office,
Shastri Bhavan,
No.26, Haddows Road,
Chennai 600 006.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondent to effect correction of Date of Birth of the petitioner as 10.04.1986 in the Passport issued by the respondent in G2739696 and issue a new Passport to the petitioner.

For Petitioner : Ms.K.Sunitha

For Respondent : Mr.N.Mariappan,
Central Govt. Standing Counsel

O R D E R

Heard Ms.K.Sunitha, learned counsel for the petitioner and Mr.N.Mariappan, learned Central Government Standing Counsel appearing for the respondent.

2. The petitioner has prayed for a direction to the respondent to effect correction of his Date of Birth as 10.04.1986 in the Passport issued by the respondent vide No. G2739696 and issue a new Passport to him.

3. It is the case of the petitioner that he applied for Passport before the respondent and the respondent issued him a Passport in No.G2739696 on 30.04.2007, which expires on 29.04.2017. According to him, in the Passport issued to him by the respondent, his date of birth has wrongly been mentioned as 10.04.1987 instead of 10.04.1986. Many a time, the petitioner requested the respondent to correct his Date of Birth as 10.04.1986 instead of 10.04.1987. As the petitioner was asked to give a representation, he gave a representation dated

11.02.2013 requesting the respondent to effect correction of Date of Birth as 10.04.1986 in the Passport issued to him, stating therein that in the Educational Certificates also, his date of birth has been mentioned as 10.04.1986.

4. The petitioner would further state that his Educational Certificates i.e. Transfer Certificate and Grade Card carries his correct Date of Birth. As the petitioner did not receive any reply from the respondent for the above said representation, on 18.03.2013, he once again sent a representation dated 11.02.2013 to the respondent for which also, till date, he has not received any reply from the respondent. In this regard, the petitioner filed a complaint in the City Post Office in Complaint No.100053-34909 and the Department of Posts sent a letter to the petitioner that his representation was delivered to the respondent on 20.03.2013. In spite of receipt of his representation, till date, the respondent did not send any reply for the same nor did he correct the Date of Birth of the petitioner. Hence, having no other alternative remedy, the petitioner is before this Court with the above Writ Petition.

5. In the counter affidavit, the respondent has stated as follows:

5.1. On 17.01.2007, the petitioner had submitted his Application for issuance of fresh passport in which he stated his date of birth as 10.04.1987. At that time, the petitioner submitted his Birth Certificate No.1311 dated 18.04.1987 issued by the Sub-Registrar, Births and Deaths, Perinthalmanna Panchayat, Malappuram District, Kerala State to prove his date of birth.

5.2. The petitioner had also furnished a Certificate dated 23.11.2006 issued by Thiru.K.M.Ramakrishnan, General Manager in charge, IDPL (Tamil Nadu) Ltd., Chennai 600 089, certifying his date of birth as 10.04.1987. Therefore, Passport bearing No.G2739696 dated 30.04.2007 valid upto 29.04.2017 was issued to the petitioner, after receipt of clear Police Verification Report. The Passport was issued to the petitioner on 30.04.2007. After a lapse of 5 years and 10 ½ months from the date of issuance of passport, on 18.03.2013, the petitioner submitted his representation dated 13.02.2013 to the respondent for change of his date of birth in the passport which is not maintainable either in law or on facts.

5.3. The Circular No.VI/401/2/5/2001, dated 15.01.2008 issued by the Deputy Secretary (PV-I), Ministry of External Affairs (CPV Division) reads as follows:

"... We would like to emphasize 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..."

Therefore, the petitioner's request is not sustainable in the eye of law.

5.4. In order to prove his date of birth as 10.04.1987, the petitioner submitted his Birth Certificate dated 18.04.1987 before the respondent herein. The above fact was willfully suppressed by the petitioner before this Court. At the time of applying for issuance of Passport on 17.01.2007, the petitioner passed X standard Examination held in March 2002. In the X Standard Mark Statement dated 30.05.2002, the petitioner's date of birth is mentioned as 10.04.1986. But, the petitioner has not produced the above document to the respondent herein while he was applying for issuance of passport.

5.5. In view of the above, veracity of two different Certificates, viz. Birth Certificate dated 18.04.1987 and X Standard Mark Statement dated 30.05.2002 showing different date of births is in question which is to be ascertained by the respondent herein. Thus, the petitioner has approached this Court suppressing his material evidence, viz. Birth Certificate dated 18.04.1987, which is not sustainable in the eye of Law.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Ms.K.Sunitha, learned counsel for the petitioner would contend that the petitioner did not receive any reply from the respondent for his representation dated 18.03.2013 and even after repeated requests, the respondent has not corrected the petitioner's Date of Birth in his Passport, which is illegal and arbitrary. It is his strenuous contention that no prejudice would be caused to the respondent in correcting his Date of Birth, as he is holding the Educational Certificates for substantiating his correct Date of Birth.

8. On the other hand, Mr.N.Mariappan, learned Central Government Standing Counsel would contend that Passport was issued to the petitioner on 30.04.2007 and that the petitioner has made a representation dated 13.02.2013 to the respondent for alteration of his Date of Birth in the passport after a lapse of 5 years and 10 ½ months, which is not maintainable either in law or on facts. He would also contend that the petitioner has not produced his Date of Birth Certificate to the respondent while applying for issuance of Passport.

9. From the above pleadings, it is seen that this matter concerns with correction of Date of Birth of the petitioner in his Passport. It is seen that at the time of submitting the application for issuance of Passport on 17.01.2007, the petitioner has passed X Standard Examination held in March 2002. In the X Standard Mark Statement dated 30.05.20002, the petitioner's date of birth is mentioned as 10.04.1986. But, the petitioner has not produced the above document to the respondent while applying for issuance of passport. But, to prove his date of birth as 10.04.1987, the petitioner has submitted his Birth Certificate dated 18.04.1987 before the respondent. Therefore, the veracity of two different documents, viz. Birth Certificate showing the petitioner's date of birth as 10.04.1987 and X Standard Mark Statement showing his date of birth as 10.04.1986 has to be verified by the respondents.

10. The petitioner has approached this Court on the strength of his X Standard Mark Statement, which shows his date of birth as 10.04.1986. To prove his date of birth, the petitioner ought to have given proper declaration and that could be done only before the competent court of jurisdiction based on oral and documentary evidence. When a person has in his possession or power two or more documents showing different dates of birth, or has reason to believe that there exists or can be obtained two or more documents showing different dates of birth, he should inform the competent authority and produce all such documents and state which he believes shows his true date of birth and the reasons for such belief.

11. In this context, it is worthwhile to refer to the circular (supra), wherein it has been clearly clarified that when there is a conflict between two entries, viz., entry in the birth certificate by the Registrar of Births and Deaths and entry in the school leaving certificate, the entry in the Birth Certificate issued by the Registrar of Births and Deaths has to be taken into account. The said circular further implies the inner meaning that in case the certificate is unreliable, suspicious or appears to be procured or manipulated, the parties should be relegated to Civil Courts.

12. In the instant case, the petitioner had obtained a Passport incorporating his date of birth as 10.04.1987, based on the birth certificate issued by the Registrar of Births and Deaths and subsequently, sought correction in his date of birth, by adducing the Matriculation Certificate in proof of his claim. If we decide the case on par with the circular, it can be easily said that the certificate issued by the Registrar of Births and Deaths would prevail. But at the same time, it is pertinent to mention here that the said circular is applicable for issuance of fresh passport. But in the case on hand, the petitioner is in possession of passport and seeks correction in the date of birth based on the subsequent certificate. Therefore, this Court has no other option, but to

relegate the petitioner to a Civil Court, since the claim of the petitioner has to be considered on the basis of oral and documentary evidence only and not by this Court under Article 226 of the Constitution of India.

13. In view of the above, this Writ Petition stands dismissed, relegating the petitioner to work out his remedy before the Civil Court to declare his correct Date of Birth by raising all contentions that were raised before this Court. No costs.

Sd/-

Assistant Registrar

Dated:30.12.14

True Copy

Sub Assistant Registrar

To :

The Regional Passport Officer,
Regional Passport Office,
Shastri Bhavan,
No.26, Haddows Road,
Chennai 600 006.

+1 cc to Mr.N.Mariappan, Advocate,SR.57808

+1 cc to M/s.K.J.Rebello, Advocate,SR.57567.

skv(co)
krd 8/1

Order in
W.P.No.1787 of 2014

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