

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 511 OF 2015

Smt. Remediana Fernandes,
wife of Antonio Fernandes,
Resident of House no. 1053,
Outraband, Loliem, Canacona, Goa.

... Petitioner

V e r s u s

1. The Passport Officer,
Regional Passport Office,
Passport Seva Kendra,
Passport Bhavan, EDC Complex,
Patto, Panaji, Goa.

2. Union of India,
Through its Secretary
Ministry of External Affairs,
New Delhi.

... Respondents

Mr. D. Pangam, Advocate for the Petitioner.

Mr. Mahesh Amonkar, Central Government Standing Counsel for the Respondents.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **22nd July, 2015.**

JUDGMENT *(Per F. M. Reis, J.)*

Heard Shri D. Pangam, learned Counsel appearing for the Petitioner
and Shri Mahesh Amonkar, learned Central Government Standing Counsel for the
Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel.

Learned Central Government Standing Counsel appearing for the Respondents, waives service.

3. Briefly the facts of the case are that :

It is the contention of the Petitioner that the birth date of the Petitioner as reflected in the birth certification of the Petitioner is 17.04.1969. It is further her case that in all public documents such as the driving licence, PAN card, election card, the date of birth of the Petitioner is shown as 17.04.1969. It is further her case that the Passport issued to the Petitioner bearing no. G9596698 by inadvertence, the date of birth of the Petitioner is shown as 17.04.1963 which is clearly an error. The Petitioner states that when she realised about the said mistake in the date of birth as shown in the passport, she immediately by an application dated 19.06.2015 applied to the Respondent no.1 for correction of the date of birth but, despite of such requests, the Petitioner has been informed by the Officer of the Respondent no. 1 that unless the Petitioner obtains an Order of the Court, the said date of birth in the passport of the Petitioner cannot be corrected. Consequently, the above Petition came to be filed, inter alia, seeking for a direction to the Respondent no. 1 to correct the date of birth of the Petitioner on the said passport to 17.04.1969.

4. The Respondents did not file any reply disputing the said contentions of the Petitioner.

5. Shri Pangam, learned Counsel appearing for the Petitioner, has pointed out that all the public records disclosed that the date of birth of the

Petitioner is 17.04.1969 and the date as reflected in the passport as 17.04.1963 is patently a clerical error which can be corrected by the Passport Officer. Learned Counsel further pointed out that the directions to obtain Orders from the Court is totally erroneous as there is nothing on record to suggest that different dates are shown on difference records which would require such corrections. Learned Counsel as such submits that the relief sought by the Petitioner be granted.

6. On the other hand, Shri Mahesh Amonkar, learned Central Government Standing Counsel appearing for the Respondents, has pointed out that the Passport Officer has no powers to correct the date of birth as shown in the passport and that the Petitioner has to obtain necessary Order from the Magistrate for affecting such correction. In support of the said submissions, he has relied upon the Judgment of the Division Bench of this Court dated 29.10.2013 in ***Criminal Writ Petition no. 3746 of 2013*** in the case of ***Kondram Vallapil Srinivas vs. Union of India & Ors.***

7. We have considered the submissions of the learned Counsel and we have also gone through the records. The facts in the case of ***Kondram Vallapil Srinivas vs. Union of India & Ors.*** (supra), were that the change of date was sought to be carried out after twenty five years when the passport was issued and, in fact, the Petitioner therein was shown to be in employment in Riyadh and the passport was renewed from time to time. On the other hand, in the present case, the facts are different as the subject passport was issued in the year 2008 and there is no material that she worked abroad. In such circumstances, we find that the correction sought by the Petitioner appears to be only clerical which the

Passport Officer is entitled to effect such corrections. The Petitioner was in fact issued a passport on 04.08.2008 and immediately when she learnt about the error in the date of birth, an application was filed for such correction. On perusal of the records produced by the Petitioner from the Government offices, namely the Directorate of Planning, Statistics and Evaluation, the date of birth of the Petitioner is shown as 17.04.1969, the driving licence apparently issued in the year 2005 also shows the date of birth as 17.04.1969. the other documents including the school leaving certificate showing the date of admission of the Petitioner as 02.06.1980 discloses that the date of birth of the Petitioner is 17.04.1969.

8. Examining the overwhelming material produced on record, we find that the corrections sought by the Petitioner is only clerical. The Respondents have not produced any material to show that the supporting entry on the passport was based on any document issued by a competent authority. It would also be advantageous to note that in the Judgment of the learned Division bench in the case of **Kondram Vallapil Srinivas vs. Union of India & Ors.** (supra) at Paras 11 and 12 it is observed thus :

“11. Insofar as the Passport Manual and paragraph 5 thereof is concerned, that refers to three subsequent circulars, namely, 02.05.2001, 29.10.2007 and 15.01.2008. The Manual then makes provision in regard to the request of change in date of birth. Paragraph 5 of the Manual reads thus:“

“5. *Change in Date of Birth:*
(Ref.V.I/401/2/5/2001 dated 29.10.2007
and 15.01.2008 as adapted)

- 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 09th 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 application 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 certificate 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 provided at the time of initial passport application. DOB Affidavit should not be accepted for change in 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 26.01.1989, 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.

(e) For those born on or after 26.01.1989, birth certificate is the only approved document, as already prescribed”

12. A bare perusal thereof would show that in the light of the High Court pronouncements and with a view to address the genuine difficulties faced by the Passport holders/ applicants due to discrepancies in date of birth in the passports and other documents, the Passport Authorities decided that barring the clerical or technical mistake in the date of birth in the Passport and where there are minor discrepancies and as enumerated in paragraph 5.2 (a) to (e) in case the correction is more than two years, the concerned applicants should approach the competent court and seek an order and declaration from that court. The Passport Authorities have been cautioned not to accept the date of birth affidavit and on the strength

of such affidavit, changes should not be made. The caution that has to be exercised by the Passport Authorities is in larger public interest and to avoid any situation where the changes effected are later on objected. That would mean frequent changes being required to be made and on the basis of some affidavit, so also, questionable and doubtful documents produced, the requests of this nature would have to be granted. The paragraph 5 of the Manual makes reference to the decisions of the Kerala High Court and the Punjab & Haryana High Court. Equally, it takes care of the fact that such requests should not be routinely refused and it must not be insisted that in all cases the parties must bring an order or declaration from the competent court. The Passport Authorities are, therefore, cautioned that the applications ought not be refused on the ground that there is no court order or declaration. In the cases referred to in the Manual, the Passport Authorities themselves should make the changes by taking requisite care.”

9. There is nothing on record produced by the Respondents to show any basis on which the initial entry came to be recorded in the passport of the Petitioner. The request of the Petitioner is based on undisputed documents produced from the public documents, as such the Respondents were not justified to exercise discretion and refuse the request of the Petitioner to affect the correction on the passport.

10. Hence, the Petition is allowed. Rule is made absolute in terms of prayer clause (a).

11. Petition stands disposed of accordingly with no Orders as to costs.

K. L. WADANE, J.

F. M. REIS, J.

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