

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 3579 of 2015 (V)

PETITIONER:

SIDHIKH, AGED 38 YEARS
S/O. ABDUL AZIZ, RESIDING AT THADATHIL PUTHAN VEEDU
UTTACKAVU, NEDUMPANA P.O.,
KOLLAM DISTRICT.

BY ADV. SRI.V.A.AJIVAS

RESPONDENTS:-

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY
MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI
PIN - 110 001.

2. THE REGIONAL PASSPORT OFFICER,
THIRUVANANTHAPURAM, PIN - 695 001.

Addl.3. THE HEADMASTER OF
M.K.L.M.H SCHOOL, KANNANALLUR,
KOLLAM DISTRICT.

(ADDL. R3 IMPEADED AS PER ORDER DATED 07.04.2015 IN IA.3942/2015)
R1 & 2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3579 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. THE TRUE COPY OF THE RELEVANT PAGE OF THE PETITIONER'S
PASSPORT NO:F-3651422.

EXHIBIT P2. THE TRUE COPY OF THE RELEVANT PAGE OF THE PETITIONER'S
S.S.L.C. CERTIFICATE ISSUED BY THE HEADMASTER, M.K.L.M. HIGH
SCHOOL, KANNANALLUR.

EXHIBIT P3. THE TRUE COPY OF THE PETITIONER'S DRIVING LICENCE.

RESPONDENT(S)' EXHIBITS

ANNEXURE A1: COPY OF SSLC CERTIFICATE ISSUED FROM MKLMH SCHOOL,
KANNANALLUR DT.26.3.90.

TRUE COPY

P.S.TO JUDGE'

dsn

ANIL K.NARENDRA, J

W.P.(C.)No.3579 Of 2015

DATED THIS THE 16th DAY OF SEPTEMBER, 2015

JUDGMENT

The petitioner, who is the holder of Indian Passport No.F3651422 issued by the 2nd respondent, which was valid upto 10.5.2015 has filed this Writ Petition seeking a writ of mandamus commanding the 2nd respondent to accept his application for correction of date of birth in his passport, namely Ext.P1 as 15.5.1977 based on Exts.P2 and P3 documents, instead of 15.5.1973. He has also sought for other consequential reliefs.

2. The issue raised in this Writ Petition is squarely covered against the petitioner by the judgment of a Division Bench of this Court in **Union of India v. Sunil Kumar (2015 (3) KLT 501)** in which this Court has categorically held that the power of the Passport Issuing Authority in correcting difference in date of birth is a restricted power and nothing prevents the applicants from approaching the civil court and getting a declaration of their legal status of date of birth for effecting necessary corrections in the passport and that, clause (c) of Para.5.2 of Chapter 8 of the

Passport Manual, 2010 restricting the power of the Passport Issuing Authorities from correcting difference in date of birth beyond two years is valid and operative. Para.17 of the said judgment reads thus:

"17. 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.”

3. In the case on hand, the petitioner was issued with Ext.P1 passport on 11.5.2005. The date of birth mentioned in Ext.P1 passport is 15.5.1973. According to the petitioner, his correct date of birth is 15.5.1977 and in order to substantiate the said contention, he would rely on Ext.P2 extract of SSLC certificate issued by the 3rd respondent Headmaster and also Ext.P3 driving licence dated 24.8.2012 issued by the Assistant

Licensing Authority, Kollam. However, as can be seen from Annexure A1 extract of the SSLC certificate produced along with the statement filed by respondents 1 and 2, the date of birth of the petitioner is 15.5.1973. Annexure A1 extract of the SSLC certificate is one produced by the petitioner himself before the 2nd respondent along with his application for passport. A comparison of Ext.P2 and Annexure A1 would show that the date of birth mentioned in Annexure A1 is 15.5.1973, whereas that in Ext.P2 is 15.5.1977. Further, in Annexure A1, the Headmaster of the school, namely, the 3rd respondent has affixed his signature on 26.3.1980 whereas in Ext.P2, the said date is shown as 26.3.1983.

4. Further, as noticed by the Division Bench of this Court in Sunil Kumar's case (supra), the power of the Passport Issuing Authorities in correcting difference in date of birth is a restrictive right and such authorities have no power to correct difference in date of birth beyond two years. In such circumstances, the petitioner is not entitled for the reliefs sought for in this Writ Petition. It is for the petitioner to approach the competent civil

court for getting a declaration of his legal status on date of birth for effecting necessary correction in the passport, after establishing with reliable materials that his actual date of birth is 15.5.1977. Without prejudice to the aforesaid right of the petitioner, this Writ Petition is dismissed.

No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S. to Judge