

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 10665 of 2015 (G)

PETITIONER:

C.P. JOSE, S/O.PAILEE, AGED 68 YEARS,
CHITTINNAPIILLY HOUSE, CHENGAL,
KALADY P.O, ERNAKULAM DISTRICT.

BY ADV. SRI.G.SANTHOSH KUMAR (P).

RESPONDENTS:

1. THE REVENUE DIVISIONAL OFFICER,
FORT KOCHI - 682 001.
2. KANJOOR GRAMA PANCHAYAT REP.BY ITS SERCRETARY,
KANJOOR P.O, ERNKAULAM DISTRICT - 68 2001.
3. THE SECRETARY,
KANJOOR GRAMA PANCHAYAT, KANJOOR P.O,
ERNAKULAM DISTRICT - 682 001.
4. MALAYATTOOR - NEELESWARAM GRAMA PANCHAYATH,
REP.BY ITS SERCRETARY NEELESWARAN P.O,
ERNAKULAM DISTRICT- 671 121.
5. THE SECRETARY,
MALAYATTOO-NEELESWARAM GRAMA PANCHAYATH
NEELESWARAM P.O, ERNAKULAM DISTRICT - 671 121.
6. DEPUTY DIRECTOR OF PANCHAYATS,
CIVIL STATION, ERNAKULAM - 682 020.

R1 & R6 BY GOVERNMENT PLEADER SRI.JUSTIN JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 10665 of 2015 (G)

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE PHOTOCOPY OF THE S.S.L.C CERTIFICATE OF THE PETITIONER'S SON.

EXHIBIT P2: TRUE PHOTOCOPY OF THE PASSPORT OF THE PETITIONER'S SON.

EXHIBIT P3: TRUE PHOTOCOPY OF THE APPLICATION DATED 24.02.2105

EXHIBIT P4: TRUE PHOTOCOPY OF THE REPLY RECEIVED BY THE PETITIONER DATED 19.03.2015.

EXHIBIT P5: TRUE PHOTOCOPY OF THE RECEIPT DATED 10.03.2015 ISSUED BY THE 2ND RESPONDENT

EXHIBIT P6: TRUE PHOTOCOPY OF THE AFFIDAVIT DATED 05.03.2015.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.10665 of 2015 G

Dated this the 9th day of April, 2015

JUDGMENT

The petitioner, a citizen of India, had five children, four of whom have survived. As to the birth details of the children, the petitioner narrates that the first one, a girl child, was born on 01.04.1973; the second one, a male child, was born on 12.06.1976, but the said child died soon thereafter.

2. In course of time, on 12.05.1977, the petitioner had his third and fourth children, twin boys. Incidentally, the third child is said to have been born at the petitioner's residence; whereas the fourth child, at the hospital. Later, on 03.09.1979 the petitioner had his fifth child, a girl.

3. From the pleadings, it emerges that despite the official recording of the date of birth of his second child, a son, subsequently, when the said child died; it was not

reported to the civic authorities. It also emerges from the pleadings that concerning the twins, as the birth of the fourth child has taken place in the hospital, only it was reported to the civic authorities. Inadvertently that of the third child was not reported.

4. The third child, namely, Vinnus, having been educated, now has the prospects of securing employment abroad. In that context, the petitioner is said to have approached the Revenue Divisional Officer, the first respondent, for birth certificate. When the first respondent directed the petitioner to produce “non-availability certificates” from the second and fourth respondent Grama Panchayats, the petitioner on 24.02.2015 allegedly submitted Exhibit P3 application before the second respondent. Having not heard from the officials, when the petitioner submitted an application to the third respondent on 02.03.2015 under the provisions of the Right to Information Act, the said official issued Exhibit P4 reply

dated 19.03.2015 holding that no application was pending with the second respondent Grama Panchayat. Consequently, the petitioner re-submitted his Exhibit P3 application on 10.03.2015, duly obtaining Exhibit P5 receipt. In further response to Exhibit P4 reply provided by the third respondent, the petitioner has also submitted Exhibit P6 notarised affidavit affirming the fact of the birth of his third child.

5. In so far as the fifth respondent is concerned, when the petitioner applied for a similar certificate, he does not seem to have acted on the petitioner's request essentially misled by the fact that there was already an entry on 12.06.1976 concerning the birth of a child. In elaboration, it is the case of the petitioner that his second child was born on 12.06.1976, but its subsequent death was not reported. Under those circumstances, the fifth respondent has mistaken the birth of the petitioner's deceased second child as that of the third child, whose birth

has never been recorded. Assailing the action of respondents 2 to 5, the petitioner has filed the present writ petition.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Grama Panchayats, apart from perusing the record.

7. It is indeed axiomatic to observe that under summary jurisdiction, as is the case with the petition under Article 226 of the Constitution of India, this Court does not deal with the disputed questions of fact. The petitioner, however, has a limited grievance that respondents 2 to 5 ought to have acted on his applications for non-availability certificate and passed appropriate orders. Thus, it is essential to determine the scope of the writ petition, which is evident from the reliefs sought. The prayer portion reads as follows:

“i. Issue a writ of mandamus or any other writ, direction or order commanding the third respondent to dispose of Exhibit P3 application at the earliest and give necessary

orders to the first respondent for issuance of the birth certificate to him forthwith.

ii. Issue a writ of mandamus or any other writ, direction or order commanding the fifth respondent to dispose of the application for Non-availability certificates submitted by the petitioner at the earliest in accordance with law.

iii. Grant such other reliefs as this Hon'ble Court deems fit and proper."

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel, this Court, without adverting to the merits of the matter, disposes of the writ petition with a direction to respondents 2 to 5 to consider the petitioner's applications concerning the issuance of non-availability certificates and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of fifteen days from the date of receipt of a copy of this judgment.

Dama Seshadri Naidu, Judge

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