

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 12071 of 2015 (H)

PETITIONER :

**KASHMI K. ALEX,
D/O.EX-NAIK KURIAKOSE ALEX, AGED 24 YEARS
THYTHARA HOUSE, SACHIVOTHAMAPURAM P.O., KURCHY
KOTTAYAM DISTRICT-686 532.**

BY ADV. SRI.RAJESH THOMAS

RESPONDENT(S) :

- 1. THE LOCAL REGISTRAR OF BIRTHS AND DEATHS,
THE SECRETARY, KURICHY GRAMA PANCHAYATH OFFICE
KURICHY P.O., KOTTAYAM DISTRICT - 686549.**
- 2. THE REVENUE DIVISIONAL OFFICER,
KOTTAYAM – 686 002.**
- 3. CHIEF EXECUTIVE OFFICER,
CONTONMENT BOARD, B.B.CANT, SRINAGAR
JAMMU & KASHMIR, PIN-190 001.**

**R1 & R2 BY GOVT. PLEADER SMT. ANITHA RAVINDRAN
R3 BY ADVS. SRI.N.NAGARESH, ASGI
SRI.GIRISH KUMAR V., CGC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1 : TRUE COPY OF THE ORIGINAL BIRTH CERTIFICATE NO.218/22 ISSUED BY THE 92 BASE HOSPITAL, C/O. 56 APO KASHMIR.

EXHIBIT-P2 : TRUE COPY OF THE 3RD PAGE OF SSLC BOOK.

EXHIBIT-P3 : TRUE COPY OF THE MARK LIST.

EXHIBIT P4 : TRUE COPY OF THE DEGREE CERTIFICATE IN BSC. NURSING.

EXHIBIT P5 : TRUE COPY OF COMMUNICATION NO.413/3/S-3/2012 DATED 24/JULY-2012.

EXHIBIT P6 : TRUE COPY OF THE ORIGINAL COMMUNICATION DATED 20/8/2013 ISSUED BY THE OFFICE OF THE CANTONMENT BOARD , BADAMLABAGH CANNT., SRINAGAR.

EXHIBIT-P7 : TRUE COPY OF THE LETTER NO.A6-2014/14 DATED 05.05.2014 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P7(a): ENGLISH TRANSLATION OF THE LETTER NO.A6-2014/14 DATED 05.05.2014 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT -P8 : TRUE COPY OF THE NON AVAILABILITY CERTIFICATE NO.1174 DATED 27/10/2014 ISSUED FROM THE OFFICE OF THE RREGISTRAR BIRTHS AND DEATHS OFFICE/DEPARTMENT, GOVERNMENT OF JAMMU AND KASHMIR.

EXHIBIT -P9 : TRUE COPY OF THE APPLICATION DATED 8/12/2014 FILED BEFORE MUNICIPAL MAGISTRATE, SANNAT GHAT (LAL CHOUK, COURT ROAD, MUNICIPAL CORPORATION) SRINAGER, JAMMU & KASHMIR.

EXHIBIT-P10 : TRUE COPY OF THE APPLICATION DATED 11/3/2014 FILED BEFORE CHIEF EXECUTE OFFICER, CANTONMENT BOARD, B.B.CANT, SRINAGAR, JAMMU & KARSHMIR.

EXHIBIT-P11 : TRUE COPY OF THE APPLICATION DATED SENT BY REGISTERED POST TO THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.12071 of 2015

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Dated this the 21st day of July, 2015

JUDGMENT

Aggrieved by the non-consideration of the petitioner's application for registration of birth by the Local Registrar of Births and Deaths, the petitioner has come up before this Court.

2. The petitioner is the daughter of one Ex-Naik Kuriakose Alex. While her father was in service in Kashmir as Naik, the petitioner was born on 21.7.1990 at 92 Base Hospital, C/o. 56 APO, Kashmir. The petitioner's father took retirement in 1991 and thereafter the petitioner has been continuously staying with his father in Kottayam district. The petitioner alleges that she passed B.Sc decree in Nursing conducted by the M.G.University, Kottayam.

3. The petitioner alleges that when her profession required a passport, her father approached the 92 Base Hospital for a birth certificate and the hospital authorities by letter No.413/3/S-B/12 informed him to approach the office of the Cantonment Board, BB Court, Srinagar (J&K) directly for issuing local body birth certificate. When her father approached the Cantonment Board Badamibagh Cantt., Srinagar, the authorities informed that they are unable to

issue the birth certificate since the birth records prior to 1999 was not available and, therefore, no action can be taken. Thereafter the petitioner's father approached various authorities in the State of Jammu and Kashmir. However, it could not evoke any positive response.

4. Thereafter the petitioner's father submitted application before the first respondent for issue of birth certificate, the same was rejected by a non-speaking order vide Ext.P7. The petitioner points out as per Section 13(3) of the Registration of Births and Deaths Act, 1969 r/w. Rule 9(3) of the Kerala Registration of Births and Deaths Rules, 1999, an adjudicatory order condoning the delay in registration of birth by the Revenue Divisional Officer is required for registration of births and deaths after one year of its occurrence.

5. Though the petitioner submitted an application for getting adjudicatory order before the second respondent, the second respondent refused to accept the same. Therefore, the petitioner sent the application by registered post with acknowledgment due. The petitioner's father who has served the nation, is made to run from pillar to post for the registration of his daughter's birth; it is alleged. The petitioner further points out that when the provisions permit even registration of births and deaths outside India at the

place of domicile, there is no reason why the petitioner is denied of the registration of birth.

6. It is further alleged that the petitioner who has completed B.Sc. in Nursing has got opportunities to get employment abroad for which a passport is required and for issuing passport, the production of birth certificate is mandatory. The grievance of the petitioner is that any delay in getting the birth certificate would adversely affect her future prospectus.

7. On admission, the learned Senior Government Pleader took notice for second respondent and the learned standing counsel took notice for third respondent. Though notice has been served on the first respondent and the service is complete, they did not turn up.

8. Arguments have been heard.

9. Section 13 of the Registration of Births and Deaths Act 1969 as well as Rule 9 of the Kerala Registration of Births and Deaths Rules, 1999, read as follows:

“S.13-Delayed Registration of Births and Deaths.-

(1)Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within 30 days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

- (2) Any birth or death of which delayed information is given to the registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.
- (3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by the Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.
- (4) The provision of this Section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action."

"Rule 9. Authority for delayed registration and fee payable therefor:-

- (1) Any birth, or death of which information is given to the Registrar after the expiry of the period specified in Rule 5, but within thirty days of its occurrence, shall be registered on payment of a fee of rupees two.

(2) Any birth or death of which information is given to the registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the officer prescribed in this behalf and on payment of late fee of rupees five.

(3) Any birth or death which has not been registered within one year of its occurrence shall be registered only on an order of Magistrate of the first class or a Presidency Magistrate and on payment of late fee of rupees ten."

10. The learned counsel for the petitioner would point out that the Government vide order No.124/72/Home dated 2.8.72 issued orders vesting jurisdiction under sub-section (3) of Section 13 with the executive First Class Magistrate (Revenue Divisional Officer). It is crucial to note that the findings under Section 13(3) of the Act are administrative or executive in nature and, therefore, exercisable by an Executive Magistrate in terms of Section 3(4) of the Cr.P.C. The Magistrate entrusted with the functioning of registration, which has not been done within one year of birth concerned, should pass orders only after a proper scrutiny of the correctness of the birth and death.

11. However, no particular procedure is prescribed under the rules regarding the manner in which the Magistrate has to verify the

correctness of the birth or death. The only requirement is that the Magistrate should verify the correctness of the birth or death. The learned counsel the petitioner would submit that the petitioner has submitted all the necessary documents along with the application before the second respondent for passing an adjudicatory order in exercise of the powers under Section 13(3) of the Act.

12. The petitioner alleges that her father has served the nation as Naik and she was born on 21.7.1990 at 92 Base Hospital, C/o.56 APO, Kashmir. Ext.P10 is the copy of the original birth certificate issued by the said hospital. The petitioner's father demitted his office in 1991 and her case is that she was continuously staying with her father in the address shown in the writ petition. She passed SSLC in the year 2006 as evident from Exts.P2 and P3 and passed the B.Sc degree in Nursing asq evidenced from Ext.P4.

13. When the petitioner had to acquire passport, her father approached the Base Hospital who advised him to approach the Cantonment Board BB Cantt. Srinagar (J&K) directly for getting the birth certificate. Ext.P5 is the communication received by him. Thereafter her father approached the Cantonment Board for the birth certificate and the said authority issued Ext.P6 communication

making it clear that they are unable to issue the birth certificate since the birth records prior to 1999 are not available.

14. Therefore, the petitioner's father approached the Local Registrar of Births and Deaths, Kurichy Grama Panchayat, who informed that the competent body is the Executive Magistrate under the Act and accordingly, the application was rejected vide Ext.P7. The petitioner's father again approached the Registrar of Births and Deaths, Jammu and Kashmir which issued Ext.P8 non availability certificate. Thereafter her father sent Ext.P9 application to the Municipal Magistrate, Sannat Ghat (Lal Chouk court Road, Municipal Corporation) Srinagar, for birth certificate. There was no response. Thereafter he again sent Ext.P10 application to the Chief Executive Officer, Cantonment Board, Srinagar. It is with this background, the petitioner has approached the second respondent, who is the competent authority, with Ext.P11.

15. The petitioner points out that the second respondent had rejected the application by a non-speaking order. Copy of the said order was made available for my perusal. By the rejection order, the petitioner's father was directed to approach the Sub Divisional Magistrate, within whose jurisdiction, the birth of the petitioner had taken place and thereafter to get the same registered before the

registering authority.

16. It is relevant to note that the section does not mandate that order under Section 13 of the Act be issued by the Executive Magistrate within whose jurisdiction, the birth had taken place. What is required is only that the Executive Magistrate, who issued the order, should be satisfied regarding the correctness of the claim of the applicant. There is no point in driving the petitioner from pillar to post for this purpose. The petitioner produced copies of valid documents before this Court in support of her claim and, therefore, this Court is of the view that second respondent should have considered those documents and should have passed orders on Ext.P11 request. If the executive Magistrate was not satisfied with the documents produced, he could have insisted for an affidavit of the petitioner.

In the result, the writ petition is disposed of directing the second respondent to consider Ext.P11 afresh and pass orders on the same after affording the petitioner or her authorised representative an opportunity of being heard. This shall be done within a period of one month from the date of receipt of a copy of this judgment. On receipt of the order from the second respondent, the same shall be produced by the petitioner before the first

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respondent who shall register the birth, in accordance with law,
within a period of two weeks thereafter.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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