

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No. 17638 of 2012 (D)

PETITIONER : -

MANJU S., AGED 23 YEARS,
D/O. SIVADASAN,
RESIDING AT MANU BHAVANAM
ULAVUKKAD,
NOORANAD.P.O.,
ALAPPUZHA DISTRICT.

BY ADV.SRI.A.SHAFEEK (KAYAMKULAM)

RESPONDENT : -

THE REGISTRAR OF BIRTH AND DEATH
AND SECRETARY PALAMEL GRAMA PANCHAYAT,
NOORANAD.P.O.,
ALAPPUZHA DISTRICT.

BY ADV.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
BY ADV.SRI.A.R.DILEEP
BY ADV.SRI.MANU SEBASTIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : TRUE COPY OF THE RELEVANT PAGES OF THE CHILD REGISTER
KEPT AT THE PRIMARY HEALTH CENTRE.

EXHIBIT P2 : TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE.

EXHIBIT P3 : TRUE COPY OF BIRTH CERTIFICATE.

EXHIBIT P4 : TRUE COPY OF THE CERTIFICATE DATED 1.2.2012 ISSUED BY THE
PRIMARY HEALTH CENTRE.

EXHIBIT P5 : TRUE COPY OF THE APPLICATION SUBMITTED BY THE FATHER
OF THE PETITIONER TO THE RESPONDENT.

EXHIBIT P6 : TRUE COPY OF THE ORDER DATE 19.3.2012 ISSUED BY
RESPONDENT.

RESPONDENT'S EXHIBIT : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 17638 of 2012

Dated this the 09th day of January, 2015

JUDGMENT

Briefly stated, the petitioner, presently in private employment, is said to have been born on 27.04.1989 at Primary Health Centre, Palamel, Alappuzha District. At the time of entering her date of birth, the respondent authority recorded it as 10.05.1989, albeit, based on the information supplied by the very father of the petitioner. In all the school records, however, the date of birth was reflected as 27.04.1989. Later, in course of time, having noticed the discrepancy, the petitioner's father is said to have submitted Exhibit P5 application before the respondent on behalf of the petitioner. The respondent, however, rejected the requests for correction of the date of birth through Exhibit P6. Aggrieved thereby, the petitioner filed the present writ petition.

2. The learned counsel for the petitioner has contended that the petitioner's father being a farmer was not aware of the procedural intricacies regarding the reporting of the date of birth. He has further submitted that though the petitioner was born in a Primary Health Centre, the doctors in charge of the said Primary Health Centre did not care to supply the information to the respondent. According to the learned counsel, for the omission on the part of the authorities of the Primary Health Centre, the petitioner cannot be made to suffer.

3. Placing reliance on **Secretary, Registrar of Births and Deaths v. Thomas Jacob and Others** [2011 (3) KHC 389] and also **Chalakkudy Municipality and Another v. Minor Malavika and Another** [2009 (4) KHC 713], both the judgments rendered by learned Division Benches, the learned counsel has contended that the petitioner does not seek to have any undue advantage with the correction of the date of birth; on the contrary, she only wanted to have her date of birth advanced by about a month so that her correct date of birth stands reflected in the relevant register. Referring to Exhibit P6 rejection order, the learned counsel

has strenuously contended that the respondent authority has not taken into account the statutory scheme, especially Rule 11 of the Kerala Registration of Births and Deaths Rules, 1999, wherein it has been provided that based on information supplied by any person, the respondent authority can correct the date of birth in the records provided the information supplied by the said person cannot be doubted.

4. The learned Standing Counsel for the respondent, on the other hand, has submitted that the initial recording of the date of birth was made based on the information supplied by none other than the petitioner's father. Referring to Section 8, the learned counsel would contend that had the birth taken place in the Primary Health Centre as has been averred by the petitioner, person in charge of the said Centre ought to have provided the information. In other words, it is the contention of the learned Standing Counsel for the respondent that Exhibit P4, which is said to be the certificate issued by the Primary Health Centre, is of doubtful authenticity. In the same vein, the learned Standing Counsel has also doubted Exhibit P1 which is said to be the

Register kept by the Primary Health Centre. According to him, the petitioner cannot insist on the authority to go beyond the statutory provision and correct the date of birth, whatever be the consequences.

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

6. The issue lies in a narrow compass : whether the petitioner is entitled to have her date of birth corrected despite the fact that the initial information based on which the entries were recorded was supplied by her very father. In this regard, the statutory scheme seems to be to the effect that Section 8 of the Registration of Births and Deaths Act, 1969, prescribes the persons who are required to register the births and deaths and the persons who are required to supply the information in that regard. Section 15 provides for correction or cancellation of entry in the register of births and deaths, and it is as follows:

“If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or

improperly made, he may, subject to such rules as may be made by State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation."

7. In terms of Rule 11 of the Kerala Registration of Births and Deaths Rules, 1999, the authority can correct or cancel an entry in the register of births and deaths. For our purpose it is instructive to extract Rule 11, which is as follows:

"11. Correction or cancellation of entry in the register of births and deaths – (1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall send an extract of the entry showing the error and how it has been corrected to the State Government or the officer specified by it in this behalf.

(2). If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(3). Notwithstanding anything contained in sub-rule (1) and sub-rule (2) the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the State Government or the officer specified in this behalf.

(4). If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf under section 25 and on hearing from him take necessary action in the matter.

(5). In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9."

8. Though the statutory provision is to the effect that the correction could be effected once there is any clerical error or when an entry has been fraudulently or improperly made, it cannot be said that the entry initially made by the respondent had any element of fraud; at best, it could be said that it was made based on an improper piece of information supplied by the petitioner's father, who is said to be an Agriculturist, not known to the ways of legal formalities in recording the date of birth. In fact, the learned Division Bench of this Court in **Secretary, Registrar of Births and Deaths v. Thomas Jacob and Others** [2011 (3) KHC 389] has held thus:

"9. We have considered the submission made in the light of the pleadings and the material available before us. As held by this Court in *Chalakudy Municipality v. Malavika*, 2009 (4) KHC 713 : 2009 (4) KLT 714 : ILR 2009 (4) Ker 591 : AIR 2010 Ker. 77 law does not contemplate a person to have a wrong name in the register or a mistaken identity in the register or to have wrong particulars regarding the date of birth, place of birth etc. It was also held that Act does not create or extinguish any right and that the Act is intended only to regulate the process and procedure of registration of births and deaths and

the correction of any such entry. Further, this Court also held that once the Act permits such correction either in form or substance, the Rules are intended only to regulate the procedure and not to prohibit such correction.”

9. The learned Division Bench has also observed that Section 15 of the Act read with Rule 11 lays down the manner in which an application for correction is to be made. It is the settled position of law that the prescriptions in a statutory rule cannot be modified by an executive order and if a statute requires something to be done in a particular manner, it shall be done in that manner alone. In **Chalakkudy Municipality and Another v. Minor Malavika and Another** [2009 (4) KHC 713] another learned Division Bench of this Court has observed thus:

“The law does not contemplate a person to have a wrong name in the register or a mistaken identity in the register or to have wrong particulars regarding the date, place etc. in the register of birth or death. It is also to be noted that the Registration of Births and Deaths Act, 1969 does not create or extinguish any right; the Act is intended only to regulate the process and procedures of registration of births and deaths and the correction of any such entry. Once the

Act permits such correction either in form or substance, the Rules are intended only to regulate the procedure and not to prohibit such correction. The subordinate legislation by way of rules, notifications, circulars etc. cannot restrict the scope of the plenary legislation. Conversely they cannot expand the scope either, as far as the correction of the entries in the register of birth or death is concerned. S.15 only contemplates that the Registrar should be satisfied as to the mistake in the entry."

10. In a conspectus, going by the ratio laid down by two learned Division Benches of this Court referred to above and Rule 11 of the Rules, it can be safely stated that the petitioner on the strength of Exhibits P1 and P4 is entitled to seek correction of the date of birth. What falls for consideration next is the issue of genuineness of either Exhibit P1 or P4. I am afraid though the respondent in the counter affidavit has doubted the authenticity of both the documents, no serious challenge has been laid. At any rate, both of them have been issued by an official, thus its authenticity having been protected in terms of Section 114 of Indian Evidence Act, though rebuttable the presumption is.

11. Even otherwise the petitioner cannot be said to derive any undue advantage by seeking the correction of date of birth. Firstly, the difference is only about a month and secondly the date is to be advanced, if at all, to the prejudice of the petitioner since her age stands increased by one month. Had it been a case of altering the date of birth to a future date, there could have been an element of suspicion that the petitioner was trying to take advantage of the issue so that she could reflect lesser age than what had been reflected originally in the records.

12. Under these circumstances, I do not see any valid ground to sustain Exhibit P6, and accordingly it is set aside. Consequently, the respondent is directed to take into account Exhibits P1 and P4 and effect the correction in the relevant records and issue a fresh certificate in the place of Exhibit P3.

With the above observation, this writ petition is disposed of. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-