

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 3rd December, 2015**

+ **W.P.(C) 10839/2015**

SUNITA SAWHNEY

..... Petitioner

Through: Mr. Girish Aggrwal and Mr. Vaibhav Jain, Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Monika Arora, Mr. Krishan Nandan and Mr. Harsh Ahuja, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition seeks a mandamus to the respondent No.2 Regional Passport Office (RPO), New Delhi to, on the basis of the Birth Certificate issued by the respondent No.3 Sub Registrar (Birth & Death), Ambala, Haryana, correct the date of birth in the Passport issued to the petitioner from that mentioned of 22nd January, 1961 to that given in the Birth Certificate of 20th June, 1961.

2. The petition came up before this Court first on 24th November, 2015 when the counsel for the respondents No.1&2 appeared on advance notice and considering the nature of controversy, need was not felt to issue formal notice or to call for replies and the counsels were heard and on their request

the hearing adjourned to 2nd December, 2015 and thereafter to today. The counsels have been heard further. Need for issuing notice to the respondent No.3 is not felt.

3. It is the case of the petitioner,

(i) that she was born on 20th June, 1961 at her house in Ambala and no registration of her birth was recorded;

(ii) that the petitioner, on the basis of information received, considered her date of birth as 22nd June, 1961 but in the Ambala Cantt records her correct date of birth is 20th June, 1961;

(iii) that the petitioner got issued Passport No.K6487971 valid upto 19th July, 2022 in which also as per information given by her, her date of birth is mentioned as 22nd June, 1961;

(iv) that the petitioner got issued a Birth Certificate showing her date of birth as 20th June, 1961;

(v) that the petitioner approached the respondent No.2 RPO, New Delhi to, on the basis of her Birth Certificate, have her date of birth corrected but the respondent No.2 RPO put the application of the petitioner “on hold”.

4. The petitioner, along with the petition itself has filed copies of,
- (a) order dated 19th October, 2012 of this Court in W.P.(C) No.6739/2012 titled ***Nikhil Garg Vs. Union of India*** where the Passport Authorities, on the very first date when the petition came up before the Court, conceded that they will correct the date of birth on the basis of the Birth Certificate and a direction to the said effect was issued;
 - (b) order dated 4th March, 2013 of this Court in W.P.(C) No.1410/2013 titled ***Srishti Yadav Vs. Union of India*** where also the petition was disposed of on the very first date with a direction to the Passport Authorities to, after examining the documents submitted, consider examine the request for issuance of a fresh Passport based on the Birth Certificate;
 - (c) order dated 7th July, 2014 of this Court disposing of W.P.(C) No.4090/2014 titled ***Akshit Bajaj Vs. Union of India*** with a direction to the Passport Authorities to examine the documents submitted by the petitioner therein for change of date of birth and to, if satisfied, effect the change in date of birth;
 - (d) order dated 24th December, 2014 of this Court in W.P.(C)

No.9107/2014 titled *Harshita Gupta Vs. Union of India*, which petition was also similarly disposed of.

5. However, since none of the aforesaid orders referred to any Rule or Regulation for effecting such change in date of birth on the Passport, on 24th November, 2015, the Rule in this regard was enquired from the counsel for the respondents No.1&2 and on his request the matter was adjourned.

6. The counsel for the petitioner has today also handed over a copy of the order dated 4th August, 2009 of this Court in W.P.(C) No.7387/2008 titled *Pushpendra Singh Diwaniyan Vs. Union of India* where notice was taken of Circulars dated 18th April, 2001 and 29th October, 2007 of the Passport Issuing Authorities (PIAs) with respect to change of date of birth on the Passport and the petition was disposed of with the direction to the PIAs to examine the claim of the petitioner therein for change of date of birth.

7. The counsel for the respondents No.1&2 has today handed over in Court an Office Memorandum (OM) dated 26th November, 2015 issued by the Ministry of External Affairs laying down the Guidelines with regard to the change / correction of date of birth entries in the Passport. Since the said OM does not appear to be in public domain, it is deemed expedient to set out the same herein below. The same is as under:

“OFFICE MEMORANDUM

Subject:- *Guidelines with regard to change/correction of dates of birth entries in the passport of an applicant already held by him/her—reg.*

It may be mentioned that the necessary provisions with regard to change/correction of dates of birth in the passports are contained in the Passports Manual, 2010 and from time to time number of circulars have been issued by the Ministry on this issue.

2. *It is pertinent to mention that recently, the High Court of Kerala while hearing the WP No.9073 of 2015 (Jayakumar Vs. UOI & others) has delivered a land-mark judgment on the issue of correction/change of entries regarding date/place of birth in the passport. During the course of arguments, the Court has elaborated upon the fact that the details entered in the Passport cannot be lightly interfered with, that too after many years without any sustainable cause and without any explanation as to why initially such a wrong declaration was made and why now a change is sought that too based on a document which was available with the applicant when the original declaration was made.*

The High Court has further observed that the difference in dates of birth whether two years or twenty years, the power should be one to correct bonafide mistake and that too within a reasonable time. Even a Civil Court declaration after many number of years would lead to the applicant having possibly perpetrated a fraud on many other who acted upon the authenticated declaration of sovereign state as to the age status of its Citizen.

3. *The Court, therefore, while dismissing the petition of the applicant petitioner has directed that the authorities would do well to introspect on the observation made herein to make suitable amendments to the circular. It has also been directed that there would be no scope for leaving any liberty on the*

petitioners to approach a Civil Court too on the reasoning adopted by this Court and the delay occasioned in seeking the correction.

4. *Hence, the core principle of the judgment of the High Court of Kerala is that only the bonafide claims of the applicants for the change/correction of the date of birth in the passport should be accepted and that too if the same are submitted by them within a reasonable time limit after the issuance of passport. In pursuance of the directions of the High Court, it has been decided that henceforth, all the PIA shall follow the following instructions/guidelines in order to consider the claims/request the applicant for the change/correction of entries regarding of date of birth in their passports.*

- (i) *Where an applicant claims 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. In case, it is a clerical mistake either by the applicant or the PIA, date/place of birth correction may be allowed by issue of fresh booklet; in the former case by charging fee for fresh passport and in the latter 'gratis' (same as mentioned in Ministry's Circular No.VI/401/2/5/2001, dated 29/10/2007).

- (ii) *If an applicant applies for the change of date of birth in the passport within a reasonable period of time i.e. within a span of five (5) years from the date of issue of passport having the alleged wrong date of birth, with the birth certificate issued by the Registrar of Births & Deaths stating that the date of birth recorded in the passport was based on the entries mentioned documents other than the Birth Certificate, the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority. However, before issuance of passport with changed date of birth, the Passport Authority shall also***

levy appropriate penalty on the applicant for obtaining passport on previous occasion by providing wrong information regarding his/her date of birth.

- (iii) The cases where the applicant comes to PIA for change/correction with regard to date of birth in the Passport after a period of five years from the date of issue of passport with alleged wrong date of birth, **no such request shall be entertained/accepted by the PIA and be rejected out rightly.***

However, an exemption in this regard may be given to an applicant who was minor at the time when passport with alleged wrong date of birth was issued to him. As and when such an applicant after attaining the age of majority applies for the passport with the request to change the date of birth in the passport issued to him when he was minor, the PIA irrespective of the duration of the issuance of passport may accept his case for consideration and if is satisfied with the claim and document(s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty.

- (iv) In no way, the Passport Authority will relegate the applicant to obtain the declaratory court order to carry out changes with regard to date of birth in the passport, as the Passport Authority subject to the condition that the case has been submitted by the applicant within the stipulated limit of 5 years from the date of issuance of passport (except the cases of minor passport holder as detailed in para 5(ii) above) would now be eligible to accept the genuine cases irrespective of the difference of dates of birth.*

5. In view of the above, all the Passport Issuing Authorities are hereby requested to follow the above guidelines scrupulously to consider the requests of applicants for change/correction of dates of birth entries in the passports. Provisions contained in Chapter '4 and 8' of the Passport Manual, 2010 stand revised to the extent as stipulated above."

8. The counsel for the respondents No.1&2 has also handed over a copy of the judgment dated 23rd June, 2015 of the High Court of Kerala in W.P.(C) No.9073/2015 titled ***Jayakumar Vs. The Regional Passport Officer*** referred to in the aforesaid OM.

9. The Passport presently held by the petitioner, showing her date of birth as 22nd June, 1961, was issued on 20th July, 2012 and the petitioner claims to have approached the Passport Authorities for change of her date of birth therein and / or for issuance of a new Passport showing her date of birth as 20th June, 1961 prior to the filing of this petition i.e. within the period of five years. Thus, as per the aforesaid OM dated 26th November, 2015 also, the respondents are required to examine the case of the petitioner under Clause 4(ii) thereof and to if satisfied, effect the change. It appears that the request of the petitioner was not considered awaiting the issuance of the OM supra.

10. However, rather than disposing of this petition with the said direction alone, it is deemed appropriate to record my own observations on the subject for consideration of the respondents.

11. The Parliament has enacted the Registration of Births and Deaths Act, 1969 to provide for the regulation of registration of births and deaths and for

matters connected therewith. Section 8 thereof imposes a duty on the head of the household and / or on the medical officer in charge of the hospital, health centre, maternity or nursing home and / or on the jailer in charge and / or on the person in charge of any boarding-house, lodging-house etc. and / or on the local police to lodge information of the births and deaths respectively in the house or hospital or health centre or maternity or nursing home or jail or boarding-house or lodge-house etc. or in a public place. Section 10 thereof also imposes a duty on the midwife or any other medical or health attendant at a birth or death to notify every birth or death to the Registrar constituted under the said Act. Sections 11 & 12 of the Act require for a register to be kept of such births and deaths and of furnishing of extract thereof. Rules framed under the Act provide the time within which the birth / death has to be so got registered. Delhi Registration of Births & Deaths Rules, 1999 provide a time of twenty one days. Section 13 of the Act provides for delayed registration of births and deaths, after the period prescribed therefor, (i) within thirty days, on payment of late fee; (ii) within a period of one year, with the written permission of prescribed authority and on payment of prescribed fee and production of affidavit; and, (iii) after a delay of more than one year, after an enquiry in that regard by the Magistrate

of the First Class or the Presidency Magistrate, as the case may be. Section 15 provides for the correction of the entry in the aforesaid register. Section 23 of the said Act provides for penalties for non-compliance with the provisions thereof. Section 26 constitutes the Registrars under the said Act to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

12. Section 74 of the Indian Evidence Act, 1872 prescribes that documents forming the acts or records of the acts of the sovereign authority, official bodies and tribunals and of public officers, legislative, judicial and executive of India and public records kept of private documents, are public documents. As distinct therefrom, all other documents, under Section 75 are private documents. The difference between public and private documents in the matter of evidence is in the matter of proof thereof. The public officer having the custody of public documents are by Section 76 of the Evidence Act required to, on demand, furnish certified copy thereof and Section 77 provides that such certified copies may be produced in proof of the contents of the public documents of which they purport to be certified copies. As distinct therefrom, the private documents have to be proved by producing originals thereof.

13. My legal research as to the status of the Register of Birth & Death maintained under the Act supra and the Certificates of Birth & Death issued of extracts thereof shows that:

(A) A Division Bench of the High Court of Punjab & Haryana in ***Bansi Ram Naru Ram Vs. Jit Ram Gehru Ram*** MANU/PH/0269/1963 held that as against the evidence as to age in birth registers, the entry in school records is considered to be of inferior quality; the entry in birth register was held to be much more contemporaneous than the entry in school register and therefore more reliable and inspiring greater confidence.

(B). The High Court of Karnataka in ***Vanajakshamma Vs. P. Gopala Krishna*** AIR 1970 Mys. 305 held that the extract of a birth register maintained under the Act is a public document to be read in evidence.

(C) Supreme Court in ***Harpal Singh Vs. State of Himachal Pradesh*** (1981) 1 SCC 560 held that since the entry in a birth and death register is made by concerned official in discharge of his official duties, it is admissible in evidence and it is not necessary to examine the author thereof.

(D) The High Court of Karnataka in ***Khataalsaheb Wd. Khadirsahab Inamdar Vs. Ameersahab*** MANU/KA/0317/1994, on consideration of a plethora of case law, concluded that an entry in a birth and death register is admissible in evidence to show that a particular person by that name mentioned in the certificate was born or dead on that particular day, though cannot be evidence of paternity of a person mentioned there, because it is not the duty of the Registrar under the said Act to make any enquiry with respect to the entry as to paternity. It was further held that the certificate under the Act cannot be used for any purpose other than to prove the date of birth or death.

(E). A Division Bench of the High Court of Bombay in ***Shri Joaquim Constantinho Carvalho Vs. State*** MANU/MH/0552/1995 held that for determination of the age of a prosecutrix in a case of rape, a birth certificate issued by the Municipal Council being a public record is to be presumed to be authentic and correct and is to prevail upon the birth certificate issued by the Church.

(F) This Court in ***Km. Para Vs. Director, Central Board of Secondary Education*** 111 (2004) DLT 573 held that to resolve a conflict between the dates of birth, the document which has been

issued under the Registration of Births and Deaths Act has to be given effect to.

(G) Supreme Court in ***Ravinder Singh Gorkhi Vs. State of U.P.*** (2006) 5 SCC 584 held that entries in births and deaths register made by a public servant in discharge of official duty are relevant and admissible in evidence.

(H). The High Court of Orissa in ***Siba Prasad Jena Vs. Puspanjali Jena*** MANU/OR/0584/2007 held a birth certificate issued under the Act aforesaid to be a public document admissible in evidence, without requiring any further proof thereof.

(I) A Division Bench of the High Court of Punjab & Haryana in ***Resham Singh Vs. Union of India*** MANU/PH/0664/2007 held that a date of birth in the Passport entered on the basis of Matriculation Certificate is liable to be corrected on the basis of the date of birth in the birth certificate as primacy has to be accorded to date of birth reflected in birth certificate. It was further observed that the PIAs had misunderstood legal nature of a birth certificate issued under the aforesaid Act and had erred in rejecting the application for correction of the date of birth on the Passport.

(J) The High Court of Bombay in ***Jayant Gopalrao Pachade Vs. Motilal Kuber Kanoje*** MANU/MH/0960/2008, relying on ***Gopi Chand Arya Vs. Sm. Bedamo Kuer*** AIR 1966 SC 231, held that a birth / death certificate being an entry made by a public servant in the ordinary course of his public duty and which entry is a public document, must have a presumption of correctness attached to it. It was further held that an entry in a birth or death register is conclusive evidence, unless disproved.

(K) The High Court of Gujarat in ***Arpanaben Krunal Shah Vs. Regional Passport Office*** MANU/GJ/0581/2008 held that as per the scheme of the Act aforesaid, entries in the register of birth and death are to be considered as correct, unless any declaration is otherwise of a competent Civil Court. It was further held that the PIAs when approached for correction of date of birth on the Passport are to normally treat the entries in the birth register as valid for the purpose of correction in Passport already issued and particularly, as against evidence of School Leaving Certificate weightage deserves to be given to the certificate of birth. It was further held that the Passport Authority can make correction in the Passport already issued, if

genuine and proper circumstances are placed before it. A direction was accordingly issued for correction of date of birth in the Passport already issued to bring it in consonance of date of birth in the birth certificate.

(L) Supreme Court in ***CIDCO Vs. Vasudha Gorakhnath Mandevlekar*** (2009) 7 SCC 283 held that entry in a birth register prevails over an entry in school register. It was further held that entries in a birth and death register raise a presumption of correctness.

(M) The High Court of Orissa in ***Bikram Ray Vs. Smt. Jema Hembram*** MANU/OR/0007/2010 held that a certificate of birth issued under the aforesaid Act is a public document admissible in evidence and it is not necessary to prove who made the entries and what was the source of information. It was held that the register maintained under the said Act being a public document, presumption of correctness attaches to it.

(N) The High Court of Punjab & Haryana in ***Surender Vs. State of Haryana*** MANU/PH/2144/2011 held that the certified copy of birth certificate is admissible in evidence without any further proof.

(O) This Court in ***Abbas Hussain @ Munim Vs. Govt. of NCT of***

Delhi MANU/DE/4138/2012 held that the object of introduction of registration of births and deaths vide the Act supra is to give legal status to the official machinery for registration of births and deaths.

(P) The High Court of Punjab & Haryana again in *Ms. Seerat Khara Vs. Central Board of Secondary Education* MANU/PH/0917/2013 held that birth certificate being a public document is presumed to be genuine in terms of Sections 79 & 80 of the Evidence Act.

(Q) Supreme Court recently in *Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Co. Ltd.* (2014) 6 SCC 434 held that the High Court had committed a grave miscarriage of justice by not accepting the birth certificate as conclusive proof of age, the same being an entry in the public record.

(R) A Division Bench of the High Court of Punjab & Haryana recently in *Ambika Kaul Vs. Central Board of Secondary Education* MANU/PH/1050/2015 held that the Registration of Births and Deaths Act was enacted with an object to have adequate and accurate country wide data for registration of births and deaths in the country and the said Act gives statutory recognition to the birth certificates and carries

a presumption of correctness.

14. The petitioner, along with the petition has filed the Birth Certificate issued under the Registration of Births and Deaths Act by the Cantonment Board, Ambala Cantt showing her date of birth as 20th June, 1961 and the date of registration of such birth as 7th July, 1961. In the face of the said document, the plea in the petition, of no registration of birth of petitioner having been recorded is obviously incorrect. The fact that the petitioner applied for and obtained, extract of the register under the Act aforesaid recording her birth, on 29th September, 2015, being the date on which the Birth Certificate was issued, does not take away from the factum of the birth of the petitioner having been registered in accordance with Act aforesaid. The petitioner has also not stated as to under what circumstances, she at the time of having her old Passport issued on 30th December, 1998 gave her date of birth as 22nd June, 1961 and what documents she then submitted in proof of her date of birth or why she did not earlier apply for and obtain her Birth Certificate. I clarify, that the registration of birth of the petitioner is not under Section 13 providing for delayed registration. The same date of birth continued in the fresh Passport issued on 20th July, 2012 as aforesaid.

15. The respondents, while considering the request of the petitioner in

terms of the OM supra, would of course be expected to go into the said aspects.

16. To me it appears:

(I) That the respondents, at the time of issuance of Passport and for recording date of birth therein, should insist upon the applicant producing the Birth Certificate and only if the applicant states that his/her birth was not registered under the law aforesaid should other proof of date of birth be accepted. Ordinarily, the applicant should be asked to resort to delayed registration procedure under Section 13 supra.

(II) That in the event of the applicant, at the time of issuance of Passport states that his/her birth was not registered and subsequently, while seeking correction of date of birth, producing (a) a Birth Certificate showing registration at time of birth or soon thereafter, the respondents, if satisfied of reasons given for being earlier ignorant of registration; or (b) a Birth Certificate obtained under the delayed registration procedure, the respondents should correct the date of birth on the Passport to bring it in consonance with the date of birth on the Birth Certificate.

(III) No application for change of date of birth on Passport, inconsistent with date of birth on Birth Certificate can be entertained.

The applicant in such case should be directed to resort to procedure under Section 15 of Registration of Births & Deaths Act for correction thereof.

(IV) In no case can the respondents refuse to correct date of birth, after howsoever time the same may have been sought.

17. I say so because (a) Passport is an important document on which and on entries wherein a large number of other authorities/persons dealing with the holder of Passport rely; (b) once birth is compulsorily required to be registered under the law aforesaid, there is no reason why PIAs should not insist on production of Birth Certificate for making entry of date of birth on the Passport specially when the law also makes a provision for delayed registration; (c) however where, in the past, Passport has been issued with date of birth on basis other than Birth Certificate, correction of date of birth should be allowed only on production of Birth Certificate by following the delayed registration procedure, again in consonance with the law aforesaid; (d) the same will also fulfil the aim of the law aforesaid of accurate country wide data and not having a citizen whose birth is not registered in

accordance with law of the country; (e) when the law aforesaid provides for enquiry by Magistrate as to the date of birth of a person whose birth was not contemporaneously registered, there appears to be no need for PIA to make own enquiry in this regard or to insist on obtaining declaration of Civil Court in that regard; (f) once a Birth Certificate is produced and the PIA is satisfied of genuineness thereof, correction of date of birth to bring it in consonance with Birth Certificate cannot be refused, whatsoever may be in delay in applying therefor; (g) inconsistent dates of birth can cause grave prejudice to the citizen and for which there is no sanction in law; (h) there can be diverse reasons for delay—for instance need for change in date of birth in Passport to bring it in consonance with Birth Certificate may be felt at fag end of life when the holder of Passport intends to migrate to be with children abroad and when such inconsistency is found to be an impediment; (i) the judgments aforesaid having given primacy, in the matter of date of birth, to the Birth Certificate, there is no reason to refuse to correct the date of birth on Passport on production of Birth Certificate.

18. I am also of the opinion that whenever a change of date of birth on Passport is effected, it should be so visible so that other persons dealing with holder of Passport, on basis of Passport, are also aware of such change

having been effected with effect from a particular date.

19. I however add that this petition, not concerned with other issues, the observations thereon can by no means be conclusive. However, since this Court is inundated with such petitions, need was felt to deal with the subject comprehensively for consideration of authorities concerned and with a view to curtail litigation.

20. The petition thus succeeds. The Passport Issuing Authority concerned is directed to, on or before end of February, 2016, consider the request of the petitioner for change of date of birth in her Passport and to, if satisfied, either correct the date of birth, either on the existing Passport or by issuing a new Passport and if of the view that the petitioner is not entitled to such change, to give detailed reasons therefor.

Needless to state the petitioner if remains aggrieved to have the remedy in law.

No costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 03, 2015

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(corrected & released on 7th January, 2016)