

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30766 of 2015

S.K.Syed Rafiullah

.. Petitioner

V.

1.The District Collector,
Collectorate, Kanchipuram District.

2.The Commissioner
Pallavaram Municipality,
New Colony, Alandur Taluk,
Kanchipuram District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the second respondent and quash the impugned order dated 08.05.2015 in order Na.Ka.No.1746/2015/H1 and to direct the second respondent to issue a fresh correct date of birth certificate to the petitioner's son Master R.Amanullah.

For Petitioner ... Mrs.V.Preetha

For 1st Respondent ... Mr.R.Rajeswaran
Special Government Pleader

For 2nd Respondent .. Mr.P.Srinivas

ORDER

Heard Mrs.V.Preetha, learned counsel for the petitioner; Mr.R.Rajeswaran, learned Special Government Pleader for the 1st respondent and Mr.P.Srinivas, learned counsel for the 2nd respondent/Municipality and with their consent, the writ petition is taken up for final disposal.

2.The petitioner is before this Court for the second time for the purpose of rectifying the name of the petitioner's son into Birth Certificate. The petitioner earlier filed a writ petition in W.P.No.24253 of 2014 praying for issuance of a writ of mandamus to quash the order dated 01.04.2014 and to direct the 2nd respondent to delete the old name and to enter the correct name of the petitioner's son as 'R.Amanullah' in the

Birth Certificate dated 05.11.2012 based on his representation. The said writ petition was disposed of, by an order dated 19.02.2015, taking note of the orders passed in W.P.(MD).No.7303 of 2014 dated 10.06.2014 between A.James V. The Commissioner, Kodaikanal Municipality. Following the said order, the petitioner was directed to enclose a copy of the said order and submit one more representation and on such representation being submitted, the authority was directed to consider the same.

3.After the direction was issued, the impugned order has been passed on the ground that only formal errors can be corrected in the Birth Certificate. However, in the impugned order, there is no discussion or reference to the effect of the direction issued by this Court or there is nothing to show that the 2nd respondent applied his mind to the direction and order passed in the case of A.James V. The Commissioner of Kodaikanal Municipality in W.P.(MD).No.7303 of 2014.

4.The learned counsel for the petitioner submitted that the name of the petitioner's son was entered by the Hospital Authorities viz., Sree Balaji Medical College & Hospital, Chromepet as 'R.Syed Athiefullah'. But, his correct name is 'R.Amanullah' which has also been published in the District Gazette and the petitioner has also issued necessary paper publication. Therefore, the petitioner has requested for correction of his son's name in the Birth Certificate.

5.In the case of A.James V. The Commissioner of Kodaikanal Municipality, an issue arose as to whether the name of the person could be corrected in the Birth Certificate by correcting a mistake which according to the petitioner therein was due to inadvertence. The Madurai Bench of this Court, after taking into consideration of the earlier order passed in W.P.No.296 of 2007, dated 14.06.2007, directed the authorities to effect the correction. The operative portion of the order in W.P.(MD).No.7303 of 2014 dated 10.06.2014, reads as follows:

"3.Today when the matter was taken up for hearing, the learned counsel for the petitioner submitted that in identical matter, this Court following the judgment in W.P.No.296 of 2007, dated 14.06.2007, directed the respondents to amend the birth certificate within a specified time. Hence, following the same, a similar order has to be passed. The relevant portion of the judgment delivered by this Court in W.P.No.296 of 2007 dated 14.06.2007, reads as follows:

"3.It is a matter of fact that the claim of the petitioner deserves to be considered since the same has been changed

through the Gazette Publication. Under the circumstances, by granting the relief sought for by the petitioner in the writ petition to have his name changed in the school register, by effecting the necessary changes in the birth certificate, neither the Government nor the school authorities is going to have a serious prejudice caused to them considering the purpose of issuance of certificate as per the enactment.

4.Learned counsel appearing for the respondent submitted that there are no provision to effect the same. It is not necessary that the Act should contain Rule for every aspect, particularly in matters where such amendments are not going into the root of the matter, when other things are satisfied namely, the date of birth, parents name etc. and Gazette Publication recording the change in the name of the child.

5.In the circumstances, the concerned authorities are hereby directed to effect the necessary change in the birth certificate as per the Tamil Nadu Gazette Notification and the school authority is also directed to carry out the necessary change thereon."

3.The dictum laid down in the above order, is squarely applicable to this case. In the present case also petitioner's daughter name has been published as 'Priya' in the Government Gazette. In such circumstances, there cannot be any impediment for the respondents to correct the same in the birth certificate. Hence, the writ petition is allowed and the concerned respondent is directed to issue birth certificate to the petitioner's daughter who was born on 08.02.1979, and corrected as 'Priya' as per the publication made in the Government Gazette on 27.06.2012, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

6.The respondents are unable to distinguish the aforementioned decision nor pointed out as to in what manner it is distinguishable on the facts of the present case. In fact, in the said case, the correction was sought for after 32 years after the petitioner was born, whereas the petitioner has come

before this Court to correct the name of the petitioner's son less than two years of his birth. Therefore, no prejudice would be caused, especially when the correct name has been published in the Tamil Nadu Government Gazette and also in the Newspapers.

7. In the light of the above, the Writ Petition is allowed and the impugned order is quashed and the 2nd respondent is directed to issue Birth Certificate to the petitioner's son, who was born on 01.11.2012 and correct the same as "R.Amanullah" as per publication made in the Government Gazette dated 09.10.2013, within a period of three weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

Sgl

To

- 1.The District Collector,
Collectorate, Kanchipuram District.
- 2.The Commissioner
Pallavaram Municipality,
New Colony, Alandur Taluk,
Kanchipuram District.

- 1 cc to Government Pleader, Sr. 1832
1 cc to Mr.P.Srinivas, Advocate, Sr. 1430
1 cc to M/s. V. Preetha, Advocate, Sr. 1168

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