

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.35908 of 2015

D.Sundharamoorthy

.. Petitioner

Vs.

The Regional Passport Officer,
No.158/785, Royala Towers,
No.2, 3 and 4th Floor,
Anna Salai, Mount Road,
Chennai-600 002.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondent to consider the representation of the petitioner, dated 17.09.2015 and re-issue the passport to the petitioner.

For Petitioner : Mr.N.Jayakumar

For Respondent : Mr.G.Venkatesan,

Central Government Standing Counsel

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondent to consider the representation of the petitioner, dated 17.09.2015 and re-issue the passport to the petitioner.

2. In the affidavit filed in support of the Writ Petition, it is averred by the petitioner that he applied for re-issuance of his passport to the respondent, as he lost the passport. The application Reference Number is 14-1005689797 and the File Number is MA 1077982769714. The petitioner lost his passport on 30.06.2014 in a bus, while he was making arrangements for renewal of his passport. The attempts to trace the passport, which had been lost, ended in vain. The petitioner gave a Police complaint and also made public notification. There is no positive response. Since the period of the passport of the petitioner already expired, he applied for re-issuance and renewal of his passport through "on-line" on 03.07.2014 and paid appropriate fees for the same. Though the said request was

considered, the respondent, vide endorsement dated 13.04.2015, kept the application pending stating "Court order to change the date of birth in passport". It is further stated by the petitioner that his date of birth is 16.06.1980, which is reflected in his school certificates and in all other official papers. But, his date of birth has been wrongly mentioned in the lost passport as 13.05.1975. It is the grievance of the petitioner that he has absolutely not noticed the mistake till he applied for re-issuance of passport.

3. Thereafter, the petitioner approached the concerned Tahsildar for issuance of Birth Certificate with correct date of birth and the Tahsildar refused to issue the same for the reason that the records pertaining to the year 1980 is not available with them. Hence, the petitioner filed a petition before the Judicial Magistrate Court No.2, Thirupathur, Vellore District, and on the basis of the oral and documentary evidence, the learned Judicial Magistrate, by order dated 09.02.2015, directed the Tahsildar to issue Birth Certificate, recording his date of birth as 16.06.1980. It is the grievance of the petitioner that he obtained the order copy of the Court only after his application for re-issuance of passport. In proof of the correct date of birth, namely 16.06.1980, the petitioner is possessing School Certificate, Birth Certificate and the above said Court order.

4. It is the further case of the petitioner that he gave a representation, dated 17.09.2015 to the respondent by enclosing all the documents including v the copy of the said order of the Court, for re-issuance of passport. Though the said representation has been received on 21.09.2015, the same has not been considered by the respondent till date. It is the further grievance of the petitioner that he is suffering from financial problems and a job in abroad will certainly help his family. Since no action is taken by the respondent, the petitioner has filed this Writ Petition for the above relief.

5. On the above pleadings, this Court heard the submissions of the learned counsel for the petitioner. Learned Central Government Standing Counsel opposed for granting the prayer sought for by the petitioner and submitted that the Government of India, Ministry of External Affairs, CPV Division, PV-I Section, New Delhi, by Office Memorandum, dated 26.11.2015 in No.VI/401/2/5/2001, has issued directions/guidelines with regard to the correction/change of entries regarding the date of birth in the passport, based on an order of the Kerala High Court order in W.P.(C).No.9073 of 2015, dated 23.06.2015 (Jayakumar Vs. The Regional Passport Office), in which, the Kerala High Court has made some observations on the subject. In the said Office Memorandum, the time limit for issuance of passport with regard to change in entires, has also been specified by the

Government of India. It is worthwhile to quote the relevant portion of the said Office Memorandum, as follows:

"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 W.P.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. " "

6. It is the bone of contention of the learned CGSC by relying upon the above said Office Memorandum that since there is inordinate delay on the part of the petitioner in seeking for correction of date of birth in his passport, the prayer in the Writ Petition may not be granted.

7. Irrespective of the submissions made on either side, I am of the opinion that as the petitioner has made a representation, dated 17.09.2015 to the respondent for re-issuance of lost passport with correct date of birth (16.06.1980), and in this Writ Petition, since the petitioner has only sought for a mandamus to consider the said representation, this Court, without going into the merits of the case, directs the respondent to consider the said representation of the petitioner, dated 17.09.2015, conduct enquiry, afford an opportunity of personal hearing to the petitioner and necessary parties if any, consider the petitioner's explanation. Thereafter, the respondent is directed to pass appropriate orders, on merits and in accordance with law, and also taking note of the dictum laid down by the Kerala High Court in the above said order and also the guidelines issued by the Government of India in the above said Office Memorandum of the Ministry of External Affairs, and also their applicability to the claim projected by the petitioner. The above said exercise shall be completed by the respondent by disposing of the said representation within a period of six weeks thereafter. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner and it is for the respondent to decide the same based on the above documents and relevant evidence available on record.

8. With the above observations and directions, the Writ Petition is disposed of. No costs.

सत्यमेव जयते

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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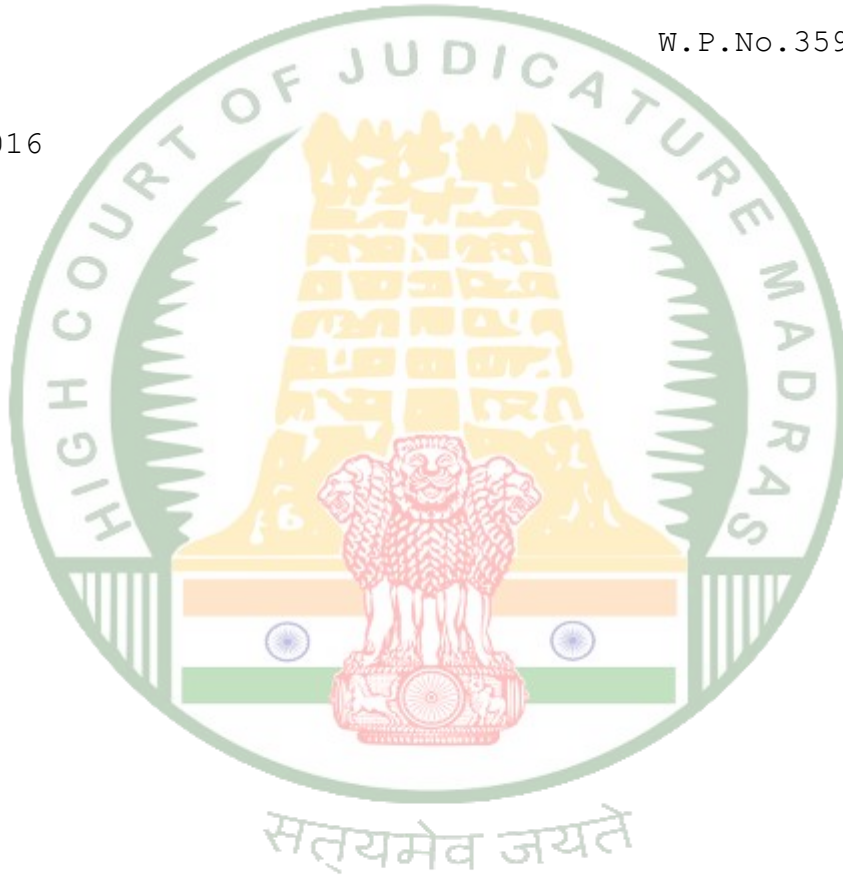
The Regional Passport Officer,
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+1 cc to Mr.G.Venkatesan Advocate sr.23299

+1 cc to Mr.N.Jayakumar Advocate sr.23340

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