

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.23412 of 2016

Kris Michael D Silva

...Petitioner

Versus

1.Union of India,
Through Secretary,
Department of Ministry
of External Affairs,
Having office at Trikoot No.3,
Hudeo Building,
Bhikaji Kamaji Palace, New Delhi.

2.The Regional Passport Office,
Passport Seva Kendra: Saligramam,
No.1, Bhanumathi Ramakrishna Road,
Saligramam, Chennai - 600 093.

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to re-issue the passport by depicting the petitioner name as Kris Michael D Silva instead of Kishen and further depicting the surname as D Silva in the place of Kesavardhanan and further in the place of the Biological father name of the petitioner the step father name of the petitioner being Jude D Silva to be depicted as per the on line application dated 23.02.2016 vide application reference No.16-1001806867 submitted to the 2nd respondent.

For Petitioner : Mr.A.Palaniappan
For Respondent : Mr.C.V.Ramachandramoorthy for R2

O R D E R

The petitioner would state that he is a holder of passport bearing No.K4328493 issued by the Regional Passport Authority on 25.02.2013 and the same is valid up to 24.02.2023. In the said passport, the petitioner's

biological father name is mentioned as Kesavardhanan Jayarman and his mother name is indicated as Vidya Kesavardhanan. It is further stated by the petitioner that his biological father and mother are living separately from 05.04.2004, on account of difference of opinion arose between them and he has been brought up by his mother and the marriage itself was dissolved by virtue of divorce petition in O.P.No.4458 of 2015. After the divorce, the mother of the petitioner has converted into Christianity and Baptized on 22.07.2015 and certificate was also issued indicating that it has been registered in the Baptism Register kept at Annai Velankani Shrine, Besant Nagar, Chennai - 600 090. After the dissolution of the marriage, the petitioner's mother had married one Jude D Silva on 14.09.2015 and the said marriage was registered before the Registrar General of Births, Deaths and Marriages, Chennai - 600 028 and the Marriage Certificate was also issued by the said authority. Thereafter, the petitioner's mother name was changed as Vidya Regina from K.Vidya with effect from 22.07.2015 being the date of conversion. In this regard, Gazette Notification was issued on 02.09.2015. Similarly, the petitioner's name was also changed as Kishen Jude D Silva as per Gazette Notification dated 21.10.2015. Thereafter, once again he changed his name to Kris Michael D Silva as per Gazette Publication dated 11.11.2015. It is further submitted that the said name was also effected in the petitioner's saving account, Voter Identity Card and in the register maintained by the Anna University.

2. The petitioner would further state that his mother had applied for passport after the aforesaid marriage and the surname is depicted as D Silva and the said passport was issued on 16.02.2016. Thereafter, the petitioner had also applied on-line for re-issue of passport on 23.02.2016 to the 2nd respondent to indicate his name as Kris Michael D Silva in the place of Kesavardhanan Kishen and further depict the name of his father as Jude D Silva in the place of his biological father name Kesavardhanan. Since the second respondent has not processed the said application and keep it pending, the petitioner has come up with this Writ Petition.

3. The respondents have filed the counter affidavit. In the counter affidavit in paragraph No.7, it is stated that as per the MEA's circular dated 05.10.2009, the applicant should furnish the competent Court order, appointing the stepfather as the legal guardian. According

to the respondents, inspite of informing the petitioner of the said fact and the circular, the petitioner came forward to file this writ petition. It is further stated that if the petitioner furnish the competent Court's order to the respondent to the effect that Mr. Jude D'Silva is his legal guardian, the respondent may not have any objection to issue the passport, as sought for by the petitioner with the name of his stepfather as the legal guardian. In such view of the matter, te learned counsel for the respondents opposed the prayer sought for in this writ petition as not maintainable.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it. In a similar case reported in 2015-1 L.W. 943 [Mrs,B.S.Deepa Vs. The Regional Passport Officer, Chennai & Others], this Court has categorically stated that the Ministry of External affairs has to suggest measures and passport manual to be amended, because there is no such provision to delete the name of the biological father. Paragraph Nos.33 to 38 of the said order are extracted hereunder:

33. Unfortunately for the petitioner, the conditions stipulated in Section 9(3) may not be satisfied in the case on hand, to hold the adoption to be valid in the eye of law. The Explanation to Section 9 actually adds to the agony of the petitioner by declaring that the expressions "father" and "mother" do not include adoptive father and adoptive mother.

34. Therefore, the fundamental premise, on which, the Hindu Law of Adoptions proceeds is that the relationship between the biological parents and the children can never get severed, except in accordance with the provisions of this Act. In such circumstances, I do not know how Courts could issue directions to replace the name of the biological father or mother with that of the stepfather or mother. It is only in cases of legally valid adoptions that the names of the biological parents could be replaced by the names of the adoptive parents, as law recognises a severance of ties in such cases.

35. The cases of children surrendered to child care homes or abandoned by their

biological parents, do not pose great difficulty. In such cases, the first identity itself is born, only when the Court passes an order approving local or inter-country adoption. Since such adoptions are now well regulated by the earliest decision of the Supreme Court in Lakshmi Kant Pandey vs. Union of India [AIR 1984 SC 469] and the various guidelines issued by the Government of India, the Courts passing orders in terms of the provisions of the Guardians and Wards Act themselves issue appropriate directions to the Passport Office, to include the names of the adoptive parents in the passport issued to the child. But, as stated earlier, the children in such cases happen to be those abandoned by their biological parents. Therefore, there is no chance of any discrepancy between different types of certificates. But, cases such as the one on hand, pose a lot of difficulties, as I have pointed out earlier. While the Courts are certainly obliged to take care of the immediate interests of these children by giving certain directions to the Passport Office, the Courts cannot overlook the long-term needs and rights of these children. For instance, the right of a child to inherit the estate of its biological father, will get defeated by a direction to effect correction of entries in the statutory records.

36. Therefore, I am of the view that the Ministry of External Affairs is obliged to come up with innovative steps and measures to resolve problems of this nature. The Passport Manual may perhaps have to be amended suitably to incorporate additional columns in the applications for the issue of passports. Apart from the columns where the names of the biological parents are to be indicated, the application form may also contain additional columns where the names of the step-parents could be indicated, wherever applicable. This will reduce or even eliminate the possibility of any discrepancy between the entries in the Birth Register and the School Records or other records.

37. Such a step as suggested above, will also ensure that the rights guaranteed to children under the United Nations Convention on the Rights of the Child, 1989, to which India is a signatory, are protected. While it is necessary to secure a passport for the minor daughter of the petitioner at the earliest, it is also necessary to ensure that the emergent needs do not destroy the future rights of the child. Therefore, I am of the view that the writ petition could be disposed of with certain directions, both to the Union of India and to the respondents herein, so that persons similarly placed like the petitioner are not compelled to approach the Court every time for the issue of passports.

38. In view of the above, the writ petition is disposed of with the following directions:-

(1) The Ministry of External Affairs, Union of India may incorporate suitable provisions in the Passport Manual and incorporate suitable columns in the applications for the issue of passports, to enable the parties to indicate either the names of the biological parents or the names of the adoptive parents or the names of the step parents or all of them, according as the situation demands. It can be left to the will of the parties either to indicate the names of one or more of the biological parents along with the name/ names of the adoptive or step parent/parents or to indicate the names of all.

(2) In so far as the case on hand is concerned, the respondents shall issue a passport to the daughter of the petitioner, by indicating the name of R.Lakshmanan as the stepfather, in the column reserved for filling up the name of the father. The respondents are directed to issue passport within four weeks, upon the petitioner's application bearing File No.MA3067806994714 dated 10.7.2014.

There will be no order as to costs. Consequently, the above MP is closed.

5. Subsequently, the Delhi High Court passed an order in W.P.(C)155 of 2016 [Shalu Nigam and antoher Vs. The Regional Passport Officer and another], holding that the mother's name is sufficient in certain cases to apply for passport, especially when a single woman can be a natural guardian and also a parent and directed the respondents to modify their software and issue the passport without insisting upon mentioning the father's name.

6. This Court taking into consideration the above facts and circumstances and in the light of the view taken by this Court in the judgment reported in 2015-1-L.W.943 [Mrs,B.S.Deepa Vs. The Regional Passport Officer, Chennai & Others] and the judgment of the Delhi High Court in W.P. (C)155 of 2016 [Shalu Nigam and antoher Vs. The Regional Passport Officer and another], directs the second respondent to re-issue the passport by depicting the petitioner name as Kris Michael D Silva instead of Kishen and further depicting the surname as D Silva in the place of Kesavardhanan and also indicating the name of Jude D Silva as the stepfather in the place of the Biological father. The respondents are also directed to proceed further as per the earlier directions of this Court reported in 2015-1-L.W.943 [Mrs,B.S.Deepa Vs. The Regional Passport Officer, Chennai & Others].

7. The Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Secretary,
Union of India,
Department of Ministry
of External Affairs,
Having office at Trikoot No.3,
Hudeo Building,
Bhikaji Kamaji Palace, New Delhi.

2. The Regional Passport Office,
Passport Seva Kendra: Saligramam,
No.1, Bhanumathi Ramakrishna Road,
Saligramam, Chennai - 600 093.

+1cc to Mr.Ramachandramurthy, Advocate, S.R.No.72852
+1cc to Mr.Palaniappan, Advocate, S.R.No.73129

LRS (CO)
RS (25/01/2017)

W.P.No.23412 of 2016



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