

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.33084 of 2016

P.Abhishek Jain

... Petitioner

Vs.

The Regional Passport Officer,
Regional Passport Office,
No.1, Banumathi Ramakrishna Road,
Saligramam, Chennai - 600 093. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to process the petitioner's passport application in file No.MA1067880724314 without insisting on the No Objection Certificate from the petitioner's Biological Father Mr.Sushil Kumar Bansal and direct issuance of passport within the time to be fixed by this Court.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.S.Pavesh Kannan, ACGSC
Standing Counsel

O R D E R

Mr.S.Pavesh Kannan, learned Standing Counsel, takes notice on behalf of the respondent. By consent of the counsel, the Writ Petition itself is taken up for disposal at the admission stage.

2. The learned counsel for the petitioner has submitted that the grievance of the petitioner is that he applied for passport and the same has not been processed by the respondent for want of No Objection Certificate from the petitioner's biological father. According to the petitioner, he was born on 17.3.1994. His mother Mrs.P.Reena and his biological father Mr.Sushil Kumar Bansal were separated by a decree of divorce made in H.M.O.P.No.150 of 2004 before the family Court at Madurai. The petitioner was brought up by his mother Mrs.P.Reena with the aid and support of his maternal grand father. After some time, his mother Mrs.P.Reena married Mr.P.Prakash Chand Jain on 27.8.2010 and the marriage was registered on 29.10.2010. Thereafter, the said P.Prakash Chand

Jain took the petitioner in adoption and a formal Deed of Adoption was registered on 30.08.2012 before the Sub-Registrar at Anna Nagar. The Deed of Adoption dated 13.8.2012 was registered as Document No.847 of 2012. His adoptive father, viz., Mr.P.Prakash Chand Jain has also caused publication in the Tamil Nadu Government Gazette about the factum of adoption, which was published at Page No.2681 PART VI Section 4 of the Tamil Nadu Government Gazette published on 31.10.2012. In all his School Certificates and Driving Licence and Voter Card, the name of adoptive father, viz., Mr.P.Prakash Chand Jain is mentioned. Therefore, the respondent's insisting for No Objection Certificate from the petitioner's biological father is not proper and not known to law. In support of his contention, he relied on the decision of this Court in B.S.Deepa vs. The Regional Passport Officer reported in 2015 (2) CTC 503, 2015-1-LW943.

3. Heard the learned counsel appearing for the parties.

4. It is seen from the typed set of papers that the petitioner was legally adopted by his adoptive father and Adoption Deed dated 13.8.2012 was registered as Document No.847 of 2012 and the factum of adoption was published at Page No.2681 PART VI Section 4 of the Tamil Nadu Government Gazette published on 31.10.2012. Apart from that, the petitioner's School Certificates, Driving Licence, Voter I.D., etc. bears the name of his adoptive father. In such circumstances, the respondent is not justified in insisting for "No Objection Certificate" from the petitioner's biological father.

5. In identical circumstances, in B.S.Deepa vs. The Regional Passport Officer in W.P.No.29105 dated 23.1.2015 reported in 2015 (2) CTC 503, 2015-1-LW943, which is relied on by the learned counsel for the petitioner, this Court has allowed the Writ Petition granting the similar relief. The relevant Paragraphs are extracted hereunder:

"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.

6. The aforesaid decision was subsequently followed by this Court in J.Nijish Archibald Vs. the Regional Passport Officer, Madurai reported in MANU/TN/1833/2016 and disposed of the Writ Petition. In Paragraph 8, it has been held as follows:

"8. Also this Court aptly points out the order dated 13.10.2014 in W.P.No.6755 of 2014 between Jigna Mahesh v. Union of India, through Secretary Department of Ministry of External Affairs and another, wherein it is observed that since the Biological father had given up all rights in favour of the Biological mother at the time of divorce and also since there was a Deed of Adoption executed by the Biological father himself in favour of the person, who married the Biological mother, it is held that there was break up of ties between the Biological father and the child."

7. Considering the facts of the case and in light of the above decisions, the respondent is directed to consider the application to issue Passport in respect of the petitioner's Passport Application in file No.MA1067880724314 without insisting on "No Objection Certificate" from the petitioner's Biological Father - Mr.Sushil Kumar Bansal, within a period of four weeks from the date of receipt of a copy of this order if it is otherwise in order. Accordingly, the Writ Petition is allowed. No order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/ जयते

Sub Asst. Registrar

copy to:

The Regional Passport Officer,
Regional Passport Office,
No.1, Banumathi Ramakrishna Road,
Saligramam, Chennai - 600 093.

+1 cc to Mr.V.Srikanth,advocate,sr.59508

+1 cc to Mr.S.Pavesh kannan,advocate,sr.58887.

lrs(co)

krd 5/12

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