

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 21.07.2016

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

W.P. (MD) .No.12866 of 2016

Deepa

.. Petitioner

Vs.

The Regional Passport Officer,
Regional Passport Office,
Race Course Road,
Madurai.

.. Respondent

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order of the respondent in 1600009-ADO-MDU dated 26.04.2016 and quash the same and consequently, direct the respondent to reprocess the petitioner's application No.MD1069273156516 and issue passport to the petitioner's minor son Gowshikh by mentioning the name of the child's adoptive father Mr.Vetrivel as the step father in the column reserved for filling up the name of the father.

For petitioner : Mr.K.K.Senthil

For respondent : Mr.N.Shanmugaselvan

ORDER

Mrs.Deepa, challenges the impugned order of the respondent, dated 26.04.2016, whereby, the issuance of a passport to the petitioner's minor son, namely, one Gowshikh, by mentioning the name of the child's adoptive father Mr.Vetrivel as a step-father in the column reserved for filling up of father, was negated by the respondent. Hence, the present Writ Petition has been filed.

2. The short facts, for disposal of this Writ Petition, are as follows:



2.1. The case of the petitioner is that originally, the petitioner was given in marriage with one Balram Subbiah, on 24.05.2002. Since her husband was impotent, the petitioner took ICSI treatment through unknown donor sperm for test tube baby and she gave birth to a male child on 02.07.2008 and he was named as C.B.Gowshikh. Thereafter, on account of difference of opinion, the petitioner filed H.M.O.P.No.133 of 2011 against her husband for dissolution of the marriage and the said H.M.O.P.No.133 of 2011 was allowed by the Court below, on 24.05.2002. Thereafter, on 02.02.2014, the petitioner remarried one V.S.Vetrivel and the marriage was registered with the Joint Sub-Registrar-II, Virudhungan, on 03.02.2014. Subsequently, the change in initial of the child was effected through a Gazette notification, on 23.04.2014. While so, when the petitioner applied passport for his son requesting the respondent to have an initial of the said Vetrivel, the respondent instructed the petitioner to furnish a Court order appointing the said Vetrivel, as a step-father. When that being so, originally, the petitioner filed W.P.(MD).No.2016 of 2016 for the issuance of a Writ of Mandamus directing the respondent to issue a passport to the petitioner's minor son Gowshikh mentioning the name of the child's adoptive father/petitioner's legally wedded new husband, within the time frame. The said Writ Petition came to be disposed of, by this Court, on 04.04.2016, in the following manner:-

"Today, when the matter is taken up for hearing, the learned counsel for the petitioner himself brought to the notice of this Court that subsequent to the filing of this Writ Petition, by virtue of an order dated 02.03.2016, the respondent directed the petitioner to file a fresh application for issuance of passport. However, he apprehends that even after filing a fresh application, they may insist necessary orders from this Court. The said apprehension cannot be accepted.

2. Needless to state that the issue in question is squarely decided by the Division Bench decision of this Court in W.P.No.29105 of 2014 dated 23.01.2015, followed by another decision made in W.P.No.14507 of 2015, the respondent will consider the each and every aspect of the case in tune with the orders passed by this Court cited supra and pass appropriate orders, as expeditiously as possible, after giving due opportunity of hearing to the petitioner.

3. Accordingly, this Writ Petition stands closed. No costs."

<https://hcservices.ecourts.gov.in/hcservices> Despite the afore-said order, dated 04.04.2016, made in W.P.(MD).No.2016 of 2016, the respondent has once again rejected the case of the petitioner citing the Circular of the



Ministry of External Affairs, dated 05.10.2009.

4. Learned counsel for the petitioner submitted that when this Court has already gone into the Circular issued by the respondent dated 05.10.2009 and issued a positive direction to the respondent to mention the adoptive father in the column meant for biological father, the respondent without looking into the order passed by this Court, has once again citing the very same Circular has refused to issue a passport. He further submitted that apprehending the rejection order, the petitioner, at the initial point of time, though moved a Writ Petition well in advance, this Court, dismissed the Writ Petition of the petitioner in W.P.(MD). No.2016 of 2016, but, directed the respondent to pass order as per the earlier orders passed by this Court, on the subject matter. Despite the said fact, the respondent has once again turned nelson's eye in respect of the request of the petitioner, driving the petitioner to once again approach this Court for the relief stated supra.

5. *Per contra*, the learned Standing Counsel appearing for the respondent submitted that the issuance of passport is a sensitive issue and it is well within the ambit of passporting authorities. It is pertinent to point out that in the earlier round of litigations, the Circular issued by the Ministry of External Affairs, dated 05.10.2009, has not been quashed by this Court, whereas, a suggestion has been put forward by this Court to the Ministry of External Affairs to have a Column for step-father also. To sum up, he pointed out that the contention of the petitioner cannot be countenanced, on the strength of earlier orders. In other words, as on date, the Circular issued by the respondent holds good in all respects.

6. I have heard the submissions made by both parties and carefully perused the materials available on record.

7. As per the notification issued by the Ministry of External Affairs, dated 05.10.2009, on the subject of inclusion of step-parents name in the passport against the column of father or mother in the passport, it is stated in the impugned order, in the following terms:-

" In the event of remarriage after divorce, the name of stepfather/stepmother cannot be written in the passport of children from the previous marriage. The relationship of the child to his biological parents subsists, even after divorce by parents. It is also not possible to leave the column of father or mother blank in the passport in such cases. Therefore, such applicants must write the name of their biological parents in the application form. However, if the father or stepmother is appointed by a court as legal guardian, the name of such step-parent can be written as legal guardian"



8. The undisputed facts are that the petitioner was given remarriage to one Vetrivel and the same was also properly registered in the office of the Joint Sub-Registrar II, Virudhungan District. When the petitioner wants to have the initial of the adoptive father for her child, namely, C.B.Gowshikh, it was negatived by the respondent on the strength of the afore-said Circular issued by the Ministry of External Affairs, CPV Division, Government of India, Notification No.V1/404/01/05/2008 dated 05.10.2009, more particularly, it is mentioned that the case of the petitioner will be considered subject to the production of court order appointing the step father as legal guardian.

9. At this juncture, it is apt to mention a judgment reported in **2015 (2) CTC 503, B.S.Deepa Vs. The Regional Passport Officer**, wherein in the penultimate paragraph, it is held as follows:-

"38. In view of the above, the Writ Petition is disposed of with the following directions:-

- (1) 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) Insofar 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 10.07.2014'

10. Therefore, the contention of the respondent was taken note of, by this Court, in the earlier round of litigations and it was rightly negatived in view of change in circumstances. Subsequent to the said order, two Writ Petitions came to be filed, in similar lines, before this Court, in W.P.(MD).Nos.13182 and 13217 of 2015, which came to be allowed by this Court by citing earlier order of this Court. In the present case, as a measure, the petitioner, after marrying the said Vetrivel, has taken steps for change in initial for her child and



the same was given a Gazette Notification dated 23.04.2014. Still, the request of the petitioner did not evoke any response.

11. Last but not the least, this court visualizing the situation gave a direction to the Ministry of External Affairs as early as in the year 2015 to add a column for an applicant indicating the step father's name. It is not known to this Court whether any development has taken place subsequently in this regard. Therefore, echoing the earlier orders of this Court, this Court has no hesitation to consider the prayer of the petitioner. In essence, the order impugned in this Writ Petition stands set aside and the respondent is directed to reprocess the petitioner's application and issue passport to the petitioner's son, indicating the step father's name, namely, the said Vetrivel, as an initial to the petitioner's son, namely, Gowshikh. Such exercise shall be done within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, this Writ Petition stands allowed. No costs.

Sd/
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To
The Regional Passport Officer,
Regional Passport Office,
Race Course Road,
Madurai.

+1 cc to MR.N.SHANMUGA SELVAM, Advocate Sr.No.38928

+1 cc to MR.K.K.SENTHIL, Advocate Sr.No.38709

W.P. (MD) .No.12866 of 2016
21.07.2016

SMA/PV/27/09/2016 :5P/4C