

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

**WRIT PETITION No.24379 of 2016**

**ORDER:**

Vide the present writ petition, the petitioner seeks a mandamus declaring the action of the respondents, in directing to approach this Court instead of relying on the judgment and decree of the Principal Junior Civil Judge, Visakhapatnam, passed in OS No.924 of 2015, dated 25.11.2015, for correction of date of birth in his passport, as illegal and arbitrary.

It is admitted that, in OS No.924 of 2015, the Regional Passport Officer, Visakhapatnam, 2<sup>nd</sup> respondent herein, was the defendant. The said suit was decreed declaring the petitioner's date of birth as '05.04.1989' instead of '05.04.1984'. The Trial Court, accordingly, directed the 2<sup>nd</sup> respondent to correct the date of birth of the petitioner in his passport after collecting necessary charges and penalty, if any.

In view of the above directions in the suit, the 2<sup>nd</sup> respondent herein was supposed to correct the date of birth of the petitioner in his passport. However, the 2<sup>nd</sup> respondent failed to do so. Therefore, the petitioner approached the 2<sup>nd</sup> respondent on 07.01.2016 with an application to correct his date of birth as 05.04.1989 instead of 05.04.1984.

Counter-affidavit filed by the standing counsel was returned by the Registry on 27.08.2016. However, she has

produced a copy thereof in Court, sworn by Sri N.L.P.Chowdary, Passport Officer, Visakhapatnam - 2<sup>nd</sup> respondent herein, wherein it is stated that the Ministry of External Affairs, New Delhi issued certain guidelines, vide Circular No.VI/401/2/5/2001 dated 26.11.2015 and 13.01.2016 with reference to correction of date of birth in the passport. The relevant portion in the above circular is reproduced below:

*“Where an applicant claims clerical/technical mistake in the entry relating to birth/place of birth in the passport and asks for rectification/correction, in all such cases, the documents produced earlier as proof of date of birth/place of birth at the time of issue of passport may be perused (if not already destroyed) by PIA. In case, it is a clerical mistake either by the applicant or the PIA, date/place of birth correction may be allowed by issue of fresh booklet; in the former case by charging fee for fresh passport and in the latter ‘gratis’*

*If an applicant applies for the change of date of birth in the passport within a reasonable period of time i.e., within a span of five years from the date of issue of passport having the alleged wrong date of birth, with the birth certificate issued by the Registrar of Births & Deaths stating that the date of birth recorded in the passport was based on the entries mentioned documents other than the birth certificate, the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority. However, before the issuance of passport with changed date of birth, the Passport Authority shall also levy appropriate penalty on the applicant for obtaining passport on previous occasion by providing wrong information regarding his/her date of birth.”*

It is further stated that the Ministry of External Affairs in consultation with L&T, clarified that, since

Passport Act is a special Act, the lower courts have no jurisdiction to direct the Passport Issuing Authority in the matter of issue of passports and only higher Courts have jurisdiction to issue directions to the said authority. Hence, even after issuance of directions by the lower courts, such directions are not binding on the authority. Therefore, the respondents have not complied with the judgment and decree of the Principal Junior Civil Judge, Visakhapatnam, in OS No.924 of 2015, dated 25.11.2015.

In the last order, it is recorded by this Court that, if this is the understanding by the Passport Officer of a court order, like present one, he does not deserve to hold such post. Failure to comply with the judgment and decree in OS No.924 of 2015, dated 25.11.2015 and, as admitted in the counter-affidavit, amounts to contempt of court.

Accordingly, Registry was directed to issue a show cause notice to the 2<sup>nd</sup> respondent as to why contempt proceedings may not be initiated against him. This Court, while directing the 2<sup>nd</sup> respondent to file counter-affidavit within one week from the date of receipt of a copy of this order, directed his personal appearance also.

However, it was made clear that, by issuing contempt notice against the 2<sup>nd</sup> respondent, there was no embargo to correct the date of birth of the petitioner.

Pursuant thereto, 2<sup>nd</sup> respondent appeared in person.

On a query by this Court to the 2<sup>nd</sup> respondent, he would submit that decree was passed on 25.11.2015; communication was received from the Ministry on 26.11.2015; and appeal was filed only on 23.03.2016. On a further query as to why he has not filed appeal in time and whether any stay was granted, 2<sup>nd</sup> respondent had no answer. He would submit that the petitioner made application on 07.01.2016.

The Ministry of External Affairs, New Delhi, by office memorandum dated 26.11.2015, issued guidelines regarding change/correction of date of birth entries in the passport. The relevant portion of the guidelines, is as under:

- (i) xxxx
- (ii) *If an applicant applies for the change of date of birth in the passport within a reasonable period of time i.e. **within a span of five (5) years from the date of issue of passport having the alleged wrong date of birth**, with the birth certificate issued by the Registrar of Births & Deaths stating that the date of birth recorded in the passport was based on the entries mentioned documents other than the Birth Certificate, the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority. However, before the issuance of passport with changed date of birth, the Passport Authority shall also levy appropriate penalty on the applicant for obtaining passport on previous occasion by providing wrong information regarding his/her date of birth.*
- (iii) *The cases where the applicant comes to PIA for change/correction with regard to date of birth in the Passport after a period of five years from the date of issue of passport with alleged wrong date of birth, **no***

***such request shall be entertained/accepted by the PIA and be rejected out-rightly.***

*However, an exemption in this regard may be given to an applicant who was minor at the time when passport with alleged wrong date of birth was issued to him. As and when such an applicant after attaining the age of majority applies for the passport with the request to change the date of birth in the passport issued to him when he was minor, the PIA irrespective of the duration of the issuance of passport may accept his case for consideration and if it is satisfied with the claim and document(s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty.*

Accordingly, 2<sup>nd</sup> respondent, by fax/e-mail message dated 08.01.2016, sought clarification from the Ministry of External Affairs, Passport Office, wherein it was stated that the petitioner made application dated 07.01.2016 for reissue of passport, along with court order dated 25.11.2015, declaring his date of birth as 05.04.1989 instead of 05.04.1984, and requested for correction of date of birth. 2<sup>nd</sup> respondent, while drawing the attention of Ministry to office memorandum dated 26.11.2015, sought clarification whether to honour the court order and correct the date of birth of the petitioner in the passport or to file an appeal in higher court against the lower court order.

The Ministry of External Affairs, New Delhi, vide letter dated 19.02.2016, communicated to the passport authorities regarding change of date of birth in the passport. The relevant portion reads as under:

*“In case of any application involving change of DOB by more than two years as well as court orders directing in general the Ministry to modify its current policy on change of DOB, as elucidated in Ministry’s circulars dated 26/11/2015 and 13/01/2016, may be contested/appealed in higher courts, in order that the sanctity of the Indian passport issuance system is not undermined from global point of view, that would result in restrictions on movement of Indian citizens abroad.’*

Learned counsel appearing on behalf of the 2<sup>nd</sup> respondent submits that the petitioner filed appeal on 23.03.2016 which is listed before the court of appeal on 28.09.2016.

The 2<sup>nd</sup> respondent did not act immediately on the directions issued by the Trial Court. As admitted, even, the order copy of the Trial Court was not taken by the passport authorities and no communication was made to the petitioner that the order passed by the Trial Court was not applicable in view of the office memorandum dated 26.11.2015.

The 2<sup>nd</sup> respondent, who is present before this Court, stated that he is not bound by the orders of the Court. Moreover, he has to comply with the directions issued by his higher authorities.

In the counter affidavit filed by 2<sup>nd</sup> respondent, he stated that, in view of office memorandum dated 26.11.2015 issued by the Ministry of External Affairs, he did not comply with the order of the Trial Court. He would state that the order of the Trial Court has no binding effect and, as such, he has not committed contempt of the Court.

In the order dated 30.08.2016, as noted above, this Court observed that, if this is the understanding by the 2<sup>nd</sup> respondent - Passport Officer of a court order, like present one, he does not deserve to hold such post and, accordingly, Registry was directed to issue show cause notice against the 2<sup>nd</sup> respondent as to why contempt proceedings may not be initiated against him.

The 2<sup>nd</sup> respondent is present in Court. His behaviour, however, remained same. He does not know, when there are two orders, one administrative and the other judicial, which order would prevail. He would state before this Court that he is bound by the orders of the higher authorities.

At that stage, counsel for the 2<sup>nd</sup> respondent sought one hour time from the Court to file an affidavit under the signature of 2<sup>nd</sup> respondent. Accordingly, 2<sup>nd</sup> respondent filed an affidavit apologizing for the words used in the court-hall while submitting the case. He further stated that passport has been issued in today's date, and the same could be handed over only on 12.09.2016.

In view of the unconditional apology sought by 2<sup>nd</sup> respondent, I hereby accept the apology and warn him to be careful in future. Consequently, the contempt notice is discharged.

Be that as it may, 1<sup>st</sup> respondent should atleast depute such an officer who can understand the intricacy and respect the orders of Court. If any of the officer is aggrieved by any

order of the Court, the remedy available is to challenge in higher court. Without understanding the legal sanctity of the orders of court and without logic, if any officer continues to fight with the Court, then the officer would be sufferer of the Court order. The order may even disturb the service of the officer or may cause some other harm.

Since the relief sought for in the Writ Petition has already been granted, the Writ Petition is disposed of.

Miscellaneous Petition pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

**SURESH KUMAR KAIT, J**

Dt.09.09.2016  
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