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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 548/2016

SHEFALI CHAWLA

..... Petitioner

Through: Ms. Deepa Arya, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Vivek Goyal, Advocate for
respondents No.1 and 2 with Mr. Giriraj
Sharma, LDC, Passport Office.

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Date of Decision: 22nd January, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM Appl. 2217/2016 (exemption) in W.P.(C) 548/2016

Allowed, subject to just exceptions.

W.P.(C) 548/2016

1. Present writ petition has been filed directing the respondent No.2 to issue Passport to the petitioner carrying the name of her stepfather in the column of father's name.
2. Issue notice. Mr. Vivek Goyal, learned counsel accepts notice on behalf of the respondents.

3. Learned counsel for petitioner states that respondents have objected to change of petitioner's father name on the ground that the birth certificate issued by the Municipal Corporation bears the name of the petitioner's biological father, while her other documents i.e. Marriage Certificate, Election Card, Permanent Account Number, Aadhar Card, School Certificate etc. bear her stepfather's name.
4. Learned counsel for petitioner states that petitioner would not like her biological father's name to be reflected in the column of the father as the petitioner was born after the biological father had deserted the petitioner's mother. She also states that the parents of the biological father turned out the petitioner and her mother from the matrimonial home soon after her birth.
5. Learned counsel for petitioner states that if the name of stepfather is not reflected in the Passport, it is likely to cause confusion and further complication everywhere including in petitioner's career and job.
6. Learned counsel for petitioner lastly states that petitioner has no knowledge regarding the biological father and she is not even aware as to whether the biological father is alive or dead.
7. On the other hand, learned counsel for respondents states that para 4(II) of the Chapter of Passport Manual, 2010, provides that the name of step parent can replace the name of the father/mother in the passport of the step child, only in the event of death of biological father/mother.
8. In the opinion of this Court, the issue raised in the present writ petition is no longer *res integra*. Consequently, this Court does not deem it appropriate to give an opportunity to the respondents to file their counter affidavit. The Supreme Court in ***ABC Vs. The State (NCT of Delhi)*** in ***Civil***

Appeal No.5003 of 2015 has held as under:-

“19. We are greatly perturbed by the fact that the Appellant has not obtained a Birth Certificate for her son who is nearly five years old. This is bound to create problems for the child in the future. In this regard, the Appellant has not sought any relief either before us or before any of the Courts below. It is a misplaced assumption in the law as it is presently perceived that the issuance of a Birth Certificate would be a logical corollary to the Appellant succeeding in her guardianship petition. It may be recalled that owing to curial fiat, it is no longer necessary to state the name of the father in applications seeking admission of children to school, as well as for obtaining a passport for a minor child. However, in both these cases, it may still remain necessary to furnish a Birth Certificate. The law is dynamic and is expected to diligently keep pace with time and the legal conundrums and enigmas it presents. There is no gainsaying that the identity of the mother is never in doubt. Accordingly, we direct that if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the Birth Certificate, unless there is a Court direction to the contrary. Trite though it is, yet we emphasise that it is the responsibility of the State to ensure that no citizen suffers any inconvenience or disadvantage merely because the parents fail or neglect to register the birth. Nay, it is the duty of the State to take requisite steps for recording every birth of every citizen. To remove any possible doubt, the direction pertaining to issuance of the Birth Certificate is intendedly not restricted to the circumstances or the parties before us.”

9. On 11th May, 2012, a Division Bench of this Court in ***Ms. Teesta Chatteraj Through her Mother/Natural Guardian Smt. Rajeshwari Chatteraj Vs. Union of India, LPA 357/2012*** has held that it is not essential to mention the name of the natural father and the name of the

person whom the mother of the child has afterwards married and who has adopted the child can be mentioned as father. The relevant portion of the said judgment is reproduced hereinbelow:-

*“24. In the present case also the biological father of the appellant has totally renounced the appellant and has not performed any of the fatherly duties. We fail to see as to how the mother can be restrained from lawfully including the appellant in her new family. Parental rights cannot be allowed to spring full blown from merely a biological connection. They require relationships more enduring. The biological connection only gives a right to develop a relationship and make contribution to child’s development. However if a parent does not grasp that opportunity, does not accept any measure of responsibility, the laws and the courts will hesitate to read any such rights in favour of a parent who has failed to do so. An observation to this effect can be found in a judgment of the Supreme Court of the United States in **Abdiel CABAN v. Kazim MOHAMMED** 441 U.S. 380 where it was observed that “in those cases where the father never has come forward to participate in the rearing of his child, nothing in the Equal Protection Clause would preclude the State from withholding from him the privilege of vetoing the adoption of that child.”*

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26. Moreover the primary objective in matters relating to adoption is of the welfare of the child. We are satisfied that the adoption aforesaid is for the welfare of the child. Courts cannot be blind to the practicalities and realities of life. It is evident from the documents on record that though the name of the appellant in the birth certificate is shown as “Teesta Ghosh” the name by which the appellant is admitted to the school is “Teesta Chatteraj” and in the school records the name of her parents is recorded as of the mother and adoptive father. A child of tender age becomes a target of unnecessary queries if his/her surname differs from that of her parents. Such difference also acts as a continuous reminder of the factum of adoption and can be a bar to a smooth, natural relationship between the

child and her parents. We therefore see nothing unusual in mother of the appellant, upon remarriage having given the appellant in adoption to her husband. The same is found to be a step permeating harmony in the family and to also create rights in favour of the appellant in the family of the husband of the mother of the appellant.

27. *Before parting with the subject, to obviate any further controversy we may also advert to the reasoning given in the letter dated 4th April, 2011. The letter dated 4th April, 2011 appears to suggest that the name only of the biological parents can be written in the passport. The same would be contrary to Section 12 of the Adoption Act providing for the adopted child, from the date of adoption being deemed to be the child of adoptive parents. The counsel for the respondent agrees that if the adoption is held to be valid, then the name of the adoptive father i.e. of Shri Surojit Chatteraj would be written as the name of the father of the appellant. The part of the letter dated 4th April, 2011 (supra) to the effect that the names of the biological parents only would be written is contrary to section 12 of the Act as per which on adoption the ties of the child in the family of birth are severed and replaced by those in the adoptive family.”*

10. In view of the aforesaid mandate of law, present writ petition is allowed and respondents are directed to issue a passport to the petitioner carrying the name of her stepfather in the column of father's name. The Passport shall be issued to the petitioner, as expeditiously as possible, preferably within a period of four weeks.

Order dasti.

MANMOHAN, J

JANUARY 22, 2016

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