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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 22.08.2016

+ W.P.(C) 7170/2016

VIBHAS ARORA

..... Petitioner

versus

REGIONAL PASSPORT OFFICER

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Nukul Gupta, Sr. Adv. with Mr. Tushar Gupta and Ms. S. Kashyap, Advocates

For the Respondents : Ms. Saroj Bidawat, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks a mandamus directing the respondent to issue/renew the passport of the petitioner. The petitioner had applied for a passport after the divorce of his parents. It is contended that the ground for divorce was desertion and neglect by the father.

2. On 27.06.2007, first passport was issued to the petitioner. In the Column of biological father, no name is mentioned. The passport mentions "NIL". The passport was valid upto 26.06.2017.

3. The petitioner has taken admission in the course of Master of Information

Systems in Australia. The session commenced on 27.07.2015 and ends on 30.06.2017. Since the passport of the petitioner originally issued expires before the conclusion of the said course, the petitioner applied for renewal /issuance of a fresh passport. In the application form submitted for renewal of the passport, the petitioner has once again, in the column of father's name, entered "NIL". Instead of issuing a fresh passport, the respondent cancelled the earlier passport and have refused to issue a fresh passport on the ground that it is mandatory to mention the biological father in the family details.

4. Two contentions are raised by the respondent in the affidavit filed. Firstly, it is contended that the software of the respondent does not permit acceptance of an application without disclosing the father's name and secondly in terms of Chapter 8, Clause IV (4.5) of the Passport Manual, it is mandatory to mention the name of both the parents in passport. It is contended that the deletion of the parents' name from the passport consequent to divorce is not permissible since the decree of divorce results in severance of the status of husband – wife but does not severe the relationship between the child and parents unless the parents has legally disowned the child.

5. The contentions raised by the respondent have been dealt with by a coordinate bench of this Court vide Judgement dated 17.05.2016 in WP(C) 155/2016 titled **"Shalu Nigam & Anr. Vs. The Regional Passport Officer & Anr."**

6. In my view the judgment squarely covers the case of the petitioner. Identical contentions, as are being raised in the counter affidavit were raised in that petition. Learned Judge in the said judgment has held as under: -

"11. This Court is of the opinion that the respondents can insist upon the name of the biological father in the Passport only if

it is a requirement in law, like standing instructions, manuals etc. In the absence of any provision making it mandatory to mention the name of one's biological father in the Passport, the respondents cannot insist upon the same.

12. In the present case, there is no legal requirement for insisting upon the father's name. Respondents' reliance on Clause 4.5 of Chapter 8 of Passport Manual 2010 is misplaced as the said Chapter deals with "change in entries in passport." It does not pertain to entries to be made in the first instance. Consequently, Clause 4.5 of Chapter 8 is not applicable to the present case.
13. In fact, a Coordinate Bench of this Court in *Ishmaan Vs. Regional Passport Office*, W.P.(C) 5100/2010 decided on 21st February, 2011 directed issuance of a passport to an applicant without mentioning her father's name on the ground that the instructions issued by the respondent itself permitted mentioning of only mother's name in the passport. The relevant portion of the said order is reproduced hereinbelow:-

"4. The Respondents have themselves enclosed another set of instructions in a reference letter (Annexure R-2) issued on 21st April 1999. Clause 3.2(a) thereof reads as under:-

"3.2 Child born out of wedlock or child having single parent (Reference letter No. V.I/402/2/1/97 dated 21.4.1999).

a) Cases where: (i) the mother who is an Indian citizen, claims that the biological father had no contact with the mother or the child after the child's birth; or where (ii) the child's father is either unknown (for example a child born after a rape etc.) or (iii) has terminated the relationship with the mother after conception.

In these cases, the PIA should obtain an affidavit from the mother to that effect sworn before a magistrate (Appendix 23). In these

cases, the name of the father should be left blank and should not be entered in the passport without his written consent. As admission by a woman of the birth of a child out of wedlock invites social stigma, it may be presumed that rarely would she utter a lie in this regard. However, to safeguard against cases of abduction/kidnapping, the PIA should insist on the affidavit of the mother being supported by a birth certificate from a hospital or the Registrar of Births and Deaths or a municipality."

5. It is plain that as far as the present case is concerned, with the decree of mutual divorce having been passed by the competent civil court in 2007 itself, the case of the Petitioner would be covered under Clause 3.2(a) of the above instructions dated 21st April 1999.

6. The Petitioner's mother should now produce before the Regional Passport Officer ('RPO') an affidavit sworn by her before the Magistrate in terms of Clause 3.2(a) within a period of two weeks. The said affidavit will also incorporate the necessary assertion that the Petitioner's mother will inform the RPO in the event she proposes to remarry. If such an affidavit is furnished, then the RPO will ensure that the name of the father in the passport of the Petitioner is left blank. The necessary correction in the passport be made within a further period of two weeks after the said affidavit is furnished."

19. This Court also takes judicial notice of the fact that families of single parents are on the increase due to various reasons like unwed mothers, sex workers, surrogate mothers, rape survivors, children abandoned by father and also children born through IVF technology.
20. Consequently, this Court is of the view that mother's name is

sufficient in certain cases like the present one to apply for Passport, especially as a single woman can be a natural guardian and also a parent.

23. In any case, technology is intended to ease and facilitate transactions and cannot be the basis for creating and defeating anybody's legal rights. If the only impediment, in way of granting the relief sought by the petitioners, is the software, the same ought to be suitably modified to accept the application of the petitioner No.2, if she is otherwise entitled for re-issuance of the Passport.
24. The fact that the respondents had on previous two occasions, in the year 2005 and 2011 issued Passport to petitioner No.2, without insisting on father's name, makes it evident that the said requirement is not a legal necessity, but only a procedural formality, which cannot be the basis of rejecting the petitioner No. 2's case. Consequently, it appears that legally and factually there is no impediment in issuing the Passport to the petitioner No.2, without mentioning her father's name.
25. Accordingly, the respondents are directed to modify their software and accept petitioner No.2's application and issue her a Passport without insisting upon mentioning her father's name. With the aforesaid direction, present petition and application stand disposed of. This Court places on record its appreciation for the services rendered by learned Amicus Curiae Mr. Amit Bansal.

7. In the present case also, the petitioner was issued a passport on 27.06.2007 without mentioning of the father's name. This is not a case where the parents' name is sought to be deleted from the passport consequent to a divorce. As held in the case of **Shalu Nigam** (*Supra*), reliance on Clause 4 of the Passport Manual is misplaced. As held in the said case, there is no legal requirement for insisting upon the father's name in the passport.

8. With regard to the contention of the respondent that the computer does not accept the application form without the name of the father, it is also noticed in **Shalu Nigam** (*Supra*) that the online application form requires one of the details out of the details of the father/mother/legal guardians. If the name of one out of three i.e. father/mother/legal guardians is sufficient for the purpose of filling of the form then the respondent cannot contend that the computer system does not accept the application form without the said detail.

9. Learned senior counsel for the petitioner contends that the petitioner's application form has been accepted and there was no difficulty in filling up/uploading the application form.

10. If such detail was mandatorily required to be filled in the application form, the respondent's software would not have accepted the application form. The fact that the form was accepted and processed establishes that such a condition is not a software requirement.

11. The respondent have also processed the application form though refusing to grant the renewal/issuance of fresh passport. It may also be noticed that in **Shalu Nigam** (*Supra*), this court had directed the respondents to rectify their software in case there was such impediment in making an application. Learned counsel for the respondent has fairly conceded that the judgment in **Shalu Nigam** (*Supra*) was not appealed again and has been accepted by the Respondents. However, she contends that the software till date has not been updated.

12. In view of the above, subject to the petitioner complying with other conditions, the respondents are directed to issue passport to the petitioner without insisting on the father's name being disclosed in the passport. In case, there is any impediment in the software accepting the application form without the father's

name, as contended by the respondent, the respondents shall modify their software, , as expeditiously as possible.

13. Since the petitioner has applied for the passport in the '*Tatkal* Category'. The passport be issued within three working days. The period of three working days has been fixed, as learned counsel for respondent submits, that in normal circumstances a passport in *Tatkal* Category would be issued within three working days.

14. The writ petition is accordingly disposed of.

15. Order dasti under the signatures of the Court Master.

AUGUST 22, 2016
'rs'

SANJEEV SACHDEVA, J

