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

+ **W.P.(C) 155/2016 & CM APPLs. 684-685/2016**

SHALU NIGAM & ANR Petitioners

Through Petitioner no.1 in person.

versus

THE REGIONAL PASSPORT OFFICER & ANR Respondents

Through Mr. Amit Bansal, Advocate and
Amicus Curiae and Ms. Seema Dolo,
Advocate.

Mr. Rajeev Kumar, Advocate for R-1
and 2.

Reserved on : 07th April, 2016

Date of Decision : 17th May, 2016

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CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Petitioner No.1 by way of the present writ petition has sought reissuance of her daughter-petitioner No.2's passport without insisting upon her father's name being mentioned in the application.
2. Petitioner No.1, who appeared in person, stated that she is divorced from her husband and has raised petitioner No.2 as a single parent since

her birth on 24th August, 1997. She contended that the biological father had completely abdicated his responsibilities towards petitioner No.2 since her birth.

3. Petitioner No.1 stated that the respondents insistence upon petitioner No.2 mentioning her father's name in the application violated the rights of petitioner No.2 to determine her name and identity. She pointed out that the entire record of petitioner No.2-daughter which included her educational certificates and Aadhar Card etc. did not bear the name of her father. She submitted that if the directions sought for in the present petition are not issued, the petitioner No.2-daughter would be compelled to alter her identity that she had been using since her birth as daughter of petitioner No.1 rather than of her biological father. According to her, through the malafide, arbitrary and discriminatory decision of respondents, petitioner No.2 was being compelled to mention the name of her biological father who had refused to accept her because she is a female child. She emphasised that respondents had originally in the year 2005 and subsequently in 2011 issued a Passport without insisting upon petitioner No.2's father.

4. Mr. Rajeev Kumar, learned counsel for respondent No.1 stated that the computerised Passport application form has a column with regard to father's name under the heading 'Family Details'. He stated that the said form must be filled by the petitioner No. 2. In support of his contention, he relied upon Chapter 8, Clause IV (4.5) of the Passport Manual which reads as under:-

"IV. Parent name not to be deleted from passport consequent to Divorce

4.5 Request for deletion of parent name from passport due to parents' divorce should not be accepted. By virtue of the divorce decree, only the relation as wife and husband severs. The divorce decree does not result in severance of the relation between the child and the parent, unless the parent has legally disowned the child."

5. Mr. Rajeev Kumar, learned counsel for respondent No.1 submitted that it is a well recognized principle of law that the relationship between parents and children do not get dissolved, except in cases of valid adoption. Consequently, according to him, the name of the father has to be mentioned by petitioner No. 2, before the petitioner No.2's application for issuance of Passport can be considered. In support of his submission, he relied upon a judgment of the Madras High Court in ***Mrs. B.S. Deepa vs. The Regional Passport Officer, Writ Petition No.29105/2014***.

6. Keeping in view the important question of law that was involved in the present proceedings, this Court vide order dated 22nd January, 2016 had appointed Mr. Amit Bansal, Advocate, as the learned Amicus Curiae.

7. Mr. Amit Bansal, learned Amicus Curiae, pointed out that in ***Kavneet Kaur vs. Regional Passport Office, W.P.(c) 3582/2014*** decided on ***31st July, 2014*** a Coordinate Bench of this Court had set aside the order of Ministry of External Affairs, by which the petitioner's request for including the name of her step father as her father in the Passport had been denied. He stated that the Court allowed the said writ petition principally

on the ground that the said request was not in violation of any provision of the Passport Manual and further on account of the fact that all relevant documents mentioned the name of her step father and any variance in the Passport would create confusion.

8. Mr. Amit Bansal submitted that in *Ms. Teesta Chatteraj vs. Union of India, LPA 357/2012* decided on 11th May, 2012, a Division Bench of this Court had held that no rights of a biological father can be recognized by any Court of law who had failed to discharge any responsibility towards his child.

9. Learned Amicus Curiae pointed out that in *R. Gayathri vs. Regional Passport Officer, W.P.(c) 14182/2013* the High Court of Madras on 16th May, 2013 allowed the petitioner to mention the name of her step father in her Passport instead of the name of her biological father on the grounds of fair play, equity and prudence as the petitioner had been brought up by her step father only and her school records too reflected the name of her step father as her father.

10. Mr. Bansal laid emphasis on the judgment of the Supreme Court in *Githa Hariharan vs. RBI, (1999) 2 SCC 228*, wherein it had been held that the mother can act as natural guardian of child, inter alia, in the event the father is indifferent towards the child or if the child is put under custody of mother by mutual understanding between the parents. In the said case, the Supreme Court further directed the organizations like RBI to formulate a methodology to meet such situations where the child is being brought up by the mother only.

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."

14. The present respondents on 20th February, 2015 in **W.P.(C) 845/2015, Priyanshi Chandra Vs. Regional Passport Office** had, on instructions, stated before a Coordinate Bench of this Court that the request of the applicant, to issue her a fresh passport, without mentioning her father's name would be granted if she produces an affidavit in terms of Clause 3.2(a) of the

Instructions contained in letter dated 21st April, 1999.

15. In the opinion of this Court, the judgment of Madras High Court in ***Mrs. B.S. Deepa*** (supra) offers no assistance to the respondents. Firstly, the issue involved in the aforesaid Madras High Court judgment was the validity of the adoption deed on the basis of which the petitioner had sought a direction to respondents to mention the name of her adoptive father as father's name in the passport. In the present case, the petitioner no. 2 does not want to mention her father's name at all in her passport. Secondly, the Madras High Court keeping in view the evolving societal norms relating to divorce, remarriage, single parents etc. directed the respondents to mention the name of the step father of the applicant on her passport instead of her biological father's name. Thirdly, Madras High Court after detailed discussion on the requirement and insistence upon by the respondents on mentioning father's name in a person's passport had directed the Ministry of External Affairs to incorporate suitable provision in the passport manual making it optional for the parties to indicate the names of one or more biological parent in the said form. Consequently, the respondents were in essence directed by the Madras High Court to reconsider their requirement of making it mandatory for the applicants to mention the name of their biological father in their application form for issuance of passports.

16. In fact, this Court in ***Rahul Gupta Vs. Union of India & Anr., 2014 SCC OnLine Del 265*** has held that Section 17 of the Registration Act, 1908 does not provide for compulsorily registration of an adoption deed.

17. The Supreme Court in ***ABC Vs. State (NCT of Delhi), AIR 2015 SC 2569*** has held that it is not imperative for an unwed mother to specifically notify the putative father of the child whom she has given

birth to of her petition for appointment as the guardian of her child. The Supreme Court in the said judgment has held as under:-

"9.In situations such this, where the father has not exhibited any concern for his offspring, giving him legal recognition would be an exercise in futility. In today's society, where women are increasingly choosing to raise their children alone, we see no purpose in imposing an unwilling and unconcerned father on an otherwise viable family nucleus. It seems to us that a man who has chosen to forsake his duties and responsibilities is not a necessary constituent for the wellbeing of the child.....

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11.Any responsible man would keep track of his offspring and be concerned for the welfare of the child he has brought into the world; this does not appear to be so in the present case, on a perusal of the pleading as they presently portray.....

12. We recognize that the father's right to be involved in his child's life may be taken away if Section 11 is read in such a manner that he is not given notice, but given his lack of involvement in the child's life, we find no reason to prioritize his rights over those of the mother or her child.....

13.the welfare of the child would be undermined if the Appellant is not compelled to disclose the identity of the father, or that Court notice is mandatory in the child's interest. On the contrary, we find that this may well protect the child from social stigma and needless controversy.

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15.The views of an uninvolved father are not essential, in our opinion, to protect the interests of a child born out of wedlock and being raised solely by his/her mother..... The sole factor for consideration before us, therefore, is the welfare of the minor child, regardless of the rights of the parents.....

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18.The provisions of the Convention which we have extracted indeed reiterate the settled legal position that the welfare of the child is of paramount consideration vis a vis the perceived rights of parents not only so far as the law in India is concerned, but preponderantly in all jurisdictions across the globe....."

(emphasis supplied)

18. The Supreme Court in the case of **ABC** (supra) also quoted with approval the Convention on the Rights of the Child in particular its Article 12 which reads as under:-

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

(emphasis supplied)

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.

21. This Court further finds merit in the submission of the petitioners that if the respondents direction to petitioner No.2 to mention her father's name is not quashed, it would compel the petitioner No.2 to alter not only her name, but also her identity that she had been using since her birth i.e. daughter of petitioner No.1 rather than her biological father who had abandoned her at the time of her birth.

22. As regards the contention of the respondents that the computer does not accept the application form without the name of the father being filled up, this Court was informed by the learned Amicus Curiae that the online Passport application as updated on 29th January, 2016 provides that in the column of Family Details, only one detail out of the details of Father/Mother/Legal Guardian, is mandatory and required to be filled.

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.

MANMOHAN, J

MAY 17, 2016

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