



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRA BAABU

W.P(MD)No.24283 of 2016
and W.M.P(MD) Nos.17540 & 17541 of 2016

K.S.Ramaswamy

.. Petitioner

Vs.

1. Tiruchirappalli Municipal Corporation
Represented by its Commissioner,
Bharathidasan Salai,
Contonment,
Trichy District.

2. District Health/ Medical Officer,
Bharathidasan Salai,
Trichy Corporation,
Contonment,
Trichy District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus calling for the records in relation to the proceedings in எண் க.ஆ/பி.இ/Sri/646/2016 dated 28.09.2016 and dated 17.08.2016 Na.Ka.No.4861/2016/HN/Maiyam and dated 01.08.2016 Na.Ka.No.H.9/4861/2016 and quash the same and consequently direct the respondents to issue birth certificate/no entry certificate for K.R.Sruthi, D/o.K.S.Ramaswamy and R.Rukmani in accordance with law.

For Petitioner : Mr. R. Sureshkumar
For Respondents : Mr. T.S. Mohammed Mohideen
Additional Government Pleader
for Mr.N.S.Karthikeyan

O R D E R

The petitioner seeks for a mandamus calling for the records in relation to the proceedings in எண் க.ஆ/பி.இ/Sri/646/2016 dated 28.09.2016 and dated 17.08.2016 Na.Ka.No.4861/2016/HN/Maiyam and dated 01.08.2016 Na.Ka.No.H.9/4861/2016 and quash the same and consequently direct the respondents to issue birth certificate/no entry certificate for K.R.Sruthi, D/o.K.S.Ramaswamy and R.Rukmani in accordance with law.



2. The petitioner is aggrieved against the order dated 28.09.2016 issued by the second respondent wherein and whereby request of the petitioner for issuance of Birth Certificate to his daughter by name K.R.Shruthi was rejected on the reason that the said child was not born at the address referred to in the application. Such conclusion was arrived at by the second respondent based on an enquiry said to have been conducted by the concerned official of the second respondent office at the locality.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials placed before this Court.

4. The case of the petitioner is as follows:

The petitioner is a practising Lawyer. He was married to one Rukmani and a female child was born to them on 07.05.2001 at Door No.56, East Chitra Street, Srirangam, Trichy. The said female child was named K.R.Sruthi presently 15 years old and pursuing her education in S.R.V. Higher Secondary School, Samayapuram. Due to oversight, birth of his child was not brought to notice of Trichy Corporation and therefore it was not registered in the birth register of the Corporation. Therefore, the petitioner applied for issuance of Birth Certificate on 19.02.2016 followed by another application on 01.08.2016. The said application was rejected on the reasons as stated supra.

5. The learned counsel appearing for the petitioner contended that the second respondent is not competent authority to give a finding that her daughter was not born at the place mentioned in the application, that too, by conducting an enquiry behind the back of the petitioner. He thus contended that the second respondent can at the best only issue certificate indicating that no such entry is available in the register of the Corporation. Therefore, it is contended that if any such certificate is issued, the petitioner will approach the competent judicial Magistrate and work out his remedy.

6. Mr. Mohamed Mohideen, learned Additional Government Pleader appearing for the respondents fairly submitted that as per Section 13(3) of Tamilnadu Registration of Births and Deaths Act, 1969 the competent Magistrate alone is empowered to adjudicate and pass an order on the factum of the birth of the child, if such birth was not registered within one year of it's occurrence with the respondent Corporation. Therefore, he fairly submitted that the impugned order may be set aside and the matter may be remanded back to the second respondent for issuing 'No Entry Certificate' so as to enable the petitioner to approach the competent jurisdictional Magistrate for redressal of his grievance.

<https://hcservices.ecourts.gov.in/hcservices/>

7. As rightly pointed out by the learned Additional Government



Pleader, if birth of a child is not registered within one year of it's occurrence, the same shall be registered only on an order made by the Magistrate of I - Class or a Presidential Magistrate on payment of the prescribed fee. This is what the provision of law under Section 13(3) of the above said Act.

8. Admittedly, in this case, the petitioner has not registered the birth of his child at the time of birth. Therefore, the second respondent ought to have returned the application by issuing 'No Entry Certificate' so that the petitioner can redress his grievance before the competent Magistrate. Instead, the second respondent has chosen to give a finding as though the child was not born at the place mentioned in the application. In the considered view of this Court, such finding is beyond the scope and jurisdiction of the second respondent. Therefore, the impugned order is set aside and the matter is remitted back to the second respondent to issue 'No Entry Certificate' for K.R.Sruthi, D/o.K.S.Ramaswamy and R.Rukmani within a period of two weeks from the date of receipt of copy of this order.

9. On receiving such 'No Entry Certificate', it is open to the petitioner to seek redressal of his grievance by filing appropriate petition before the jurisdictional Magistrate as required under Section 13(3) of the said Act.

10. With the above direction, this writ petition is disposed of. No costs. Consequently, connected W.M.P.(MD) Nos.17540 and 17541 of 2016 are closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Tiruchirappalli Municipal Corporation,
Bharathidasan Salai, Contonment,
Trichy District.
2. District Health/ Medical Officer,
Bharathidasan Salai, Trichy Corporation,
Contonment, Trichy District.

+ 1 CC TO Mr.R.SURESH KUMAR, ADVOCATE IN SR No. 81661
+ 1 CC TO Mr.N.S.KARTHIKEYAN, ADVOCATE IN SR No. 81636

CM

TE/SKN/SAR-III : 03/01/2017 : 3P/5C
<https://hcservices.ecourts.gov.in/hcservices/>

W.P(MD)No.24283 of 2016 and
WMP(MD) Nos. 17540 & 17541 of 2016
19.12.2016