

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

Writ Petition No. 25699 of 2011

ORDER

This writ petition is filed seeking a writ of mandamus declaring the order of the respondent dated 09.08.2011 directing the petitioner to furnish a decree from the Civil Court to correct his date of birth in his passport, as illegal, arbitrary and contrary to the Circular dated 29.10.2007 and also the judgment of this Court in **Mohd.Nasrullah Khan vs. Regional Passport Officer, Hyderabad¹** and consequently to set aside the same with a direction to the respondent to correct the date of birth of petitioner as per the Secondary School Certificate and other documentary evidence.

2. The admitted case of petitioner is that he applied for issuance of passport along with a sworn-affidavit in proof of his age, and on the basis thereof, the Passport Authority issued passport to him on 16.06.1995 showing his date of birth as 02.07.1974 instead of 02.07.1978. It is stated that even though the petitioner was in possession of Secondary School Certificate as on 05.11.1994 showing his date of birth as 02.07.1978, he has not enclosed the same to his application. Apart from that, there are some other school records to show that the date of birth of petitioner is 02.07.1978. However, the said records were not submitted at the time of applying

¹ 2005(1) ALT 95

for passport. He filed W.P.No.11381 of 2011 challenging the action of respondent in not receiving his application, and by order, dated 14.06.2011, this Court directed the respondent to receive and consider the application of petitioner for correction of his date of birth in terms of Government of India's Circular dated 29.10.2007 and pass appropriate orders in accordance with law. Accordingly, the application of petitioner was received by the respondent, but rejected the same by the impugned order dated 09.08.2011 stating that petitioner's case falls under Clause (d) of the Circular dated 29.10.2007 as there is conflict of documents, such as sworn affidavit to Secondary School Certificate, and directed him to furnish a declaratory Court order from Civil Court of First Class and expressed that there is no objection to renew the passport without any change in the date of birth of petitioner. This rejection of the authorities is challenged by the petitioner in the present writ petition stating that when the documentary evidence clearly shows that his date of birth is 02.07.1978, there is no question of obtaining the declaratory decree from the competent Civil Court.

3. In support of the contention of petitioner, learned counsel for petitioner relied upon two decisions of this Court in ***Mohd.Nasrullah Khan*** (1 supra) and in ***B.Laxman vs. Union of India***².

² W.P.No.14397 of 2010, dt. 25.06.2010

4. In **B. Laxman's** case (2 supra), the facts are similar to the present case and this Court held as under:

“It is to be noticed that this is a case where the petitioner relied upon his Secondary School Certificate issued by the competent authority as well as Pan Card and Driving License to substantiate his correct date of birth. In the circumstances, apparently the matter falls under clause (a) of the Circular, dated 18.04.2001 which provides for technical correction. Hence, in case the petitioner produces the necessary material to the satisfaction of the respondent to establish his correct date of birth, the mistake can be rectified by the respondent under Clause (a). A decree from the competent civil court is required only where Clause (c) of the instructions, dated 18.4.2001 is attracted. As the present case is not covered by Clause (c) the impugned order passed by the respondent calling upon the petitioner to produce the decree from the Civil Court cannot be sustained.

Accordingly, the impugned order is hereby set aside and the Writ Petition is disposed of with a direction to the respondent to reconsider the petitioner's application on the basis of the documentary evidence produced by him and pass appropriate orders in the light of the instructions, dated 18.04.2001 on or before 9.7.2010.”

5. Similarly, in **Mohd. Nasrullah Khan's** case (1 supra), similar view has been reiterated by this Court and held that as the petitioner has produced Secondary School Certificate to prove his correct date of birth, his claim is well supported and squarely falls under Clause (a) of the Circular, dated 18.4.2001, and therefore, directed the respondent therein to consider the application of petitioner therein along with the Secondary School Certificate and pass appropriate orders in the light of the observations made therein.

6. In the light of the above decisions of this Court, learned counsel appearing for petitioner submits that the passport authorities

were not justified in directing the petitioner to obtain a declaratory decree from the competent Civil Court for carrying out the correction of his date birth since the claim of petitioner is based on the Secondary School Certificate, which was not produced by him at the time of applying for passport.

7. The facts in the instant case are all together on different footing. The correction sought to be made by petitioner is not clerical in nature. On instructions, the respondent has produced the original application form submitted by petitioner on 25.02.1995 for passport. In the said application, petitioner declared his date of birth as 02.07.1974 and in Col.No.19-Educational Qualifications, he mentioned that he studied at home only. Along with the application, the petitioner also filed sworn affidavit certifying that he was born on 02.07.1974 and he has no documentary proof in support of his date of birth and he did not possess any educational qualifications as he studied at home only and declared that the said particulars furnished by him are all correct and he has not concealed or misrepresented any fact therein.

8. Contrary to the declaration made by petitioner in his sworn affidavit produced along with his application, he has stated in the present writ petition that he passed Secondary School Certificate examination in September, 1994 and the Certificate was also issued by the Board of Secondary Education on 05.11.1994. Therefore,

when the petitioner submitted his application on 25.02.1995 with the details mentioned above, he was very much in possession of the said certificate issued by the Board of Secondary Education certifying that he has passed SSC in September, 1994 itself. Therefore, it is a clear case where the petitioner had misrepresented the facts and gave a false sworn affidavit before the authorities and obtained passport with the date of birth as 02.07.1974. Yet, another aspect of the matter is that if the date of birth of petitioner is taken as 02.07.1974, as declared by him in his application and sworn affidavit, his age would be more than 21 years 5 months on the date of his application. However, if the date of birth, which is now sought to be corrected, is taken into account i.e., 02.07.1978, the petitioner would be aged about 17 years 5 months on the date of his application. Ostensibly, to overcome the said aspect, the petitioner gave a false declaration in the affidavit along with the application and on the basis of which, the passport was issued certifying that his date of birth as 02.07.1974 and more than 15 years thereafter, the petitioner applied for correction of his date of birth.

9. Learned counsel appearing for respondent has placed before this Court the Official Memorandum issued by the Ministry of External Affairs dated 26.11.2015, wherein it was mentioned that an application to correct the date of birth has to be made within 5 years from the date of issuance of the passport. Guideline No.4(i) to (iv) of the said Memorandum reads as under:

“4. Hence, the core principle of the judgment of the High Court of Kerala is that only the bonafide claims of the applications for the change/correction of the date of birth in the passport should be accepted and that too if the same are submitted by them within a reasonable time limit after the issuance of passport. In pursuance of the directions of the High Court, it has been decided that henceforth, all the PIA shall follow the following instructions/guidelines in order to consider the claims/request the applicant for the change/correction of entries regarding of date of birth in their passports:

- (i) 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' (same as mentioned in Ministry's Circular No.VI/401/2/5/2001, dated 29.10.2007).

- (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 and 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 is satisfied with the claim and documents submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty.

(iv) In no way, the Passport Authority will relegate the applicant to obtain the declaratory Court order to carry out changes with regard to date of birth in the passport, as the Passport Authority subject to the condition that the case has been submitted by the applicant within the stipulated limit of 5 years from the date of issuance of passport (except the cases of minor passport holder as detailed in para 5(ii) above) would now be eligible to accept the genuine cases irrespective of the difference of dates of birth".

In view of the above, the rejection of the request made by petitioner on the ground that the petitioner's case is squarely falls under Clause (d) of the Circular as there is conflict of documents such as sworn affidavit to secondary school certificate, cannot be said to be erroneous or arbitrary. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

10. The Writ Petition is accordingly dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

M.S.K.JAISWAL, J

13th October, 2017

sj

