

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.06.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. No. 17941 of 2019

N.S. Ziaudeen

... Petitioner

-vs-

1. The Director of School Education,
Chennai - 600 006.
 2. The Deputy Director (Service),
Government Examinations,
Chennai - 600 006.
 3. The District Educational Officer,
(South School Campus),
Mohanur Road,
Namakkal - 631 001.
 4. The Head Master,
Government Higher Secondary School (South),
Mohanur Road,
Namakkal - 631 001.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the First Respondent to issue necessary approval for altering the date of birth of the Petitioner from 19.09.1958 to 19.09.1960 in the S.S.L.C. Book and S.S.L.C. Mark Sheet and other school records within the time frame fixed by this Court.

For Petitioner : Mr. T. Ramkumar

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O R D E R

The date of birth of the Petitioner in the Secondary School Leaving Certificate has been entered as 19.09.1958. Claiming that the date of birth of the Petitioner had not been registered within the stipulated time under the provisions of the Registration of Births and Deaths Act, 1969, the Petitioner had obtained an order dated 21.02.1989 in C.M.P. No. 879 of 1989 from the Judicial Magistrate-I,

Namakkal under Rule 10(3) of the Tamil Nadu Births and Deaths Registration Rules, 1977, granting sanction to register his birth as 19.09.1960 in the Birth and Death Register maintained by the Commissioner, Namakkal Municipality. Long thereafter, the Petitioner obtained an order dated 12.09.2018 in W.P. No. 40855 of 2016 for a direction to the Commissioner, Namakkal Municipality to issue certified copy of the Birth Certificate by considering his representations dated 30.03.2016 and 24.06.2016. Thereafter, the Petitioner obtained Birth Certificate dated 25.10.2018 from the Namakkal Municipality mentioning his date of birth as 19.09.1960, which has been registered on 24.04.1989 on the basis of the aforesaid entry made in the Birth and Death Register in Namakkal Municipality. The Petitioner now seeks a direction in this Writ Petition to the Director of School Education, who is the First Respondent, to issue necessary approval for altering his date of birth from 19.09.1958 to 19.09.1960 in the S.S.L.C. Book and S.S.L.C. Mark Sheet, within a time frame that may be fixed by this Court.

2. Heard Mr. T. Ramkumar, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

3. It is not in dispute that the birth of the Petitioner had not been registered within the stipulated time as provided under the provisions of the Registration of Births and Deaths Act, 1969, and it was only after a long delay of 28 years that he had approached the then authority, viz., Judicial Magistrate-I, Namakkal, for condoning the delay in registering his birth. The credibility of such questionable orders have been adversely commented upon by the Division Bench of this Court in P. Duraisamy -vs- State of Tamil Nadu (order dated 13.04.2017 in H.C.P. No. 3043 of 2014 etc., batch) as follows:-

"7. We will illustrate this with an example. Supposing "A" wants a date of birth certificate to the effect that he was born on 01.01.1970, he will first scout and find out which Magistrate is readily issuing the certificate without much ado. If he learns that the Metropolitan Magistrate in Chennai is very amiable, then, he will give a representation to the Commissioner, Corporation of Chennai, stating that his mother delivered him on 01.01.1970 in a Chennai address and ask for a birth certificate. The Corporation of Chennai will check their records and naturally, the birth would not have been entered in the register. So,

they will issue a Non-Registration Certificate. Armed with the certificate, "A" will file a petition under Section 13(3) of the Registration of Births and Deaths Act, 1969 (for brevity "the RBD Act") read with Rule 9(2) of the Tamil Nadu Registration of Births and Deaths Rules, 2000 (for brevity "the TNRBD Rules") arraying the Commissioner, Corporation of Chennai as a party respondent, before the Metropolitan Magistrate, Chennai. Invariably, the Commissioner, Corporation of Chennai, who is neither a contesting party nor has any interest in the lis, would remain ex parte. On the orders of the Magistrate, "A" will give a paper publication in a recondite vernacular newspaper to the effect that he was born on 01.01.1970 at the given address; that he has filed a petition before the said Magistrate; that the case is posted to a said date; and that if anyone has objection, he/she can appear before the Magistrate on the said date and file his/her objections. On the appointed date, the case will be called in the open Court. None will come up with any objection. The Magistrate will record the statement of "A" on oath and pass an order directing the Commissioner, Corporation of Chennai, to enter the date of birth of "A" as 01.01.1970 in the Births and Deaths Register. Thereafter, "A" will obtain a date of birth certificate to the effect that he was born on 01.01.1970.

8. Over a period of time, the legal fraternity has evolved "Birth and death jurisprudence" and some members have even carved out for themselves a monopolistic niche, in the Magistrate Courts and would allow none to venture into their territory. The Birth Certificates so obtained are mostly used for extending the date of superannuation or to set up claims of juvenility in criminal cases. Similarly, how such death certificates help one to set up civil claims is limpid from the facts of the case in CrI.O.P.3868 of 2016, which we have set out in the later portion of this order."

Having regard to the aforesaid sordid state of affairs which this Court has taken judicial note, there is nothing to show that the entry of the birth of Petitioner as 19.09.1958 in the S.S.L.C. Book, which was in existence on 21.02.1989, was taken into account when the Judicial Magistrate-I, Namakkal has passed the order while condoning delay to register his birth as 19.09.1960 under the

Registration of Births and Deaths Act, 1969. When the Petitioner had not then placed that crucial material fact before the Judicial Magistrate, he cannot be allowed to take advantage of his own wrong by seeking to get the entry in the S.S.L.C. Book corrected on the basis of the entry made in the Birth and Death Register at this distance of time.

4. It is well settled position that the discretionary powers of this Court under Article 226 of the Constitution, have to be exercised judiciously and cannot be allowed to be abused to unsettle entries in public records without satisfactory explanation. In the aforesaid incontrovertible fact situation coupled with the inordinate delay and laches on the part of the Petitioner in seeking the correction of his date of birth in the S.S.L.C. Book, there does not appear to be any justification to entertain this Writ Petition for granting the relief that has been sought.

5. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vjt
To

1. The Director of School Education,
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+1cc to Mr.T.Ram kumar , Advocate SR.No. 53325

W.P. No.17941 of 2019

A.SK(06/09/2019)