



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

CORAM

THE HON'BLE Mr.JUSTICE R.SURESH KUMAR

W.P.(MD) No.6601 of 2016

Biji Rose

... Petitioner

-vs-

The Regional Passport Officer,
Passport Office,
Race Course Road,
Madurai-625 002.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to correct the date of birth in the passport of the petitioner bearing No.H8453963 as 11.10.1985 instead of 11.10.1984 in accordance with the birth certificate and Transfer Certificate by considering the petitioner's representation dated 09.03.2016 within a stipulated period that may be fixed by this Court.

For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.V.Kathirvelu

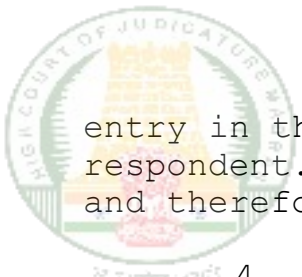
Assistant Solicitor General of India
Assisted by Mr.K.R.Laxman

O R D E R

The prayer sought for in this Writ Petition is for a Writ of Mandamus, to direct the respondent to correct the date of birth in the petitioner's passport bearing No.H8453963 as 11.10.1985, instead of 11.10.1984, in accordance with the birth certificate and Transfer Certificate by considering the petitioner's representation dated 09.03.2016.

2. Heard Mr.S.C.Herold Singh, learned counsel, appearing for the petitioner and Mr.V.Kathirvelu, learned Assistant Solicitor General of India, assisted by Mr.K.R.Laxman, learned Central Government Standing Counsel, appearing for the respondent.

3. The petitioner obtained passport bearing No.H8453963 in the year 1995. At that time, the petitioner was approximately ten years old. After that, the passport has got renewed time and again and last such renewal was made on 21.05.2018. Only recently, the petitioner came to know that, her date of birth has been wrongly made in the concerned School Register ie., 11.10.1984, instead of 11.10.1985. Therefore, in order to rectify the same, by making her



entry in the said passport, the petitioner has made a request to the respondent. However, the same has not been considered positively and therefore, the petitioner is before this Court.

4. I have heard Mr.V.Kathirvelu, learned Assistant Solicitor General of India, assisted by Mr.K.R.Laxman, learned Central Government Standing Counsel, appearing for the respondent, by relying upon the counter affidavit filed by the respondent and also relying upon the Office Memorandum issued by the Ministry of External Affairs, dated 26.11.2015, made submissions that, if at all any change of date of birth has to be carried out in the passport already issued, necessary application with documents shall be filed by the passport holder within a period of five years from the date of issuance of passport and if beyond five years, it is made, the said application can be outrightly rejected.

5. In order to support his argument, the learned Assistant Solicitor General, appearing for the respondent has relied upon Clause 4(iii) of the said Office Memorandum, which reads thus:-

"(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 document (s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty."

6. The learned Assistant Solicitor General appearing for the respondent would further submit that, there is some exemption provided for the minor, who received the passport originally during his minorship to make such application on attainment of majority and in this regard, the second paragraph of Clause 4 (iii) has been relied upon by the learned Assistant Solicitor General and therefore, he further submits that, insofar as the case of the petitioner is concerned, her date of birth, assuming that, it is 11.10.1985, she attained the majority in the year 2003, therefore, within the period of five years, the petitioner, on attaining majority, should have made application for making correction in the passport regarding the date of birth. However, the petitioner has not made any application for making such correction and in this regard, it is pointed out by the learned Assistant Solicitor General



appearing for the respondent that, her last renewal was done in the year 2018 and renewal of passport was given on 21.05.2018. However, at that time, the petitioner did not raise this issue of wrong entry of date of birth and therefore, it is nothing but a belated application filed beyond the five years period prescribed under the Office Memorandum and therefore, based on such belated application, the request of the petitioner cannot be considered. Therefore, on the ground of delay itself, the said application is liable to be rejected and cannot be considered, the learned Assistant Solicitor General contended.

7. I have considered the submissions made by the learned counsel appearing for the petitioner as well as the learned Assistant Solicitor General appearing for the respondent and perused the materials placed before this Court.

8. As has been rightly pointed out by the learned Assistant Solicitor General appearing for the respondent, the Office Memorandum dated 26.11.2015, has made it clear that, under Clause 4 (iii), the application, for change of date of birth to be entered in the passport already issued, shall be made within a period of five years from the date of such issuance of the passport and if the passport holder is a minor at the time of issuance of passport, on attaining majority, the passport holder can give an application within a period of five years. Here, in the case on hand, even though, the petitioner was a minor at that time, subsequently, having attained majority in the year 2003, she did not make any application. Assuming that, the Office Memorandum has been issued only on 26.11.2015, therefore, it cannot have any retrospective effect on the passport holder to file such application within a period of five years period. Here, in the case on hand, even though the memorandum has been issued only on 26.11.2015, even after issuance of this Office Memorandum, the petitioner has not made any application immediately. Even during the last renewal period that had taken place on 21.05.2018, no such plea was raised by the petitioner. Therefore, this Court can safely conclude that, the petitioner, first of all, has not applied to the respondent for making such correction in the entry of the passport regarding the change of date of birth, immediately after attaining the majority, that was in the year 2003, and the five years period from that date ended in the year 2008. Therefore, it is a clear case of belated application beyond the scope of five years prescribed under the Office Memorandum and therefore, the said belated application cannot be directed to be considered by the respondent for issuance of passport with corrected date of birth.

9. Law is well settled in this regard that prerogative writs especially, in the nature of Writ of Mandamus cannot be issued to the statutory authorities directing them to pass orders in violation of the said statutes. Therefore, this Court do not want to issue any such Mandamus to pass the order in violation of their own statutes of the respondent.



10. In that view of the matter, this Court is not inclined to accept the prayer sought for herein by the petitioner. Accordingly this Writ Petition fails and the same stands dismissed. No costs.

WEB COPY

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To
The Regional Passport Officer,
Passport Office,
Race Course Road,
Madurai-625 002.

+1 CC to Mr.S.C.HEROLD SINGH, Advocate SR-70012.
+1 CC to Mr.K.R.LAXMAN, Advocate SR-70629.

W.P. (MD) No.6601 of 2016
19.06.2019

CS: 12/07/2019 4P 4C