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

Date of Decision: 18th February, 2021

+ **W.P.(C) 2269/2021 & CM APPL.6595/2021**

RAHUL NEPAL

..... Petitioner

Through: Mr. Nitin K. Gupta, Mr. Naveen Dabas and Mr. Pushkar Aryal, Advocates. (M: 9711184111)

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. N.K. Srivastava, Senior Panel Counsel. (M: 9811235694)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).
2. The Petitioner has approached this Court seeking to change the date of birth in his passport, which was rejected by the Regional Passport Office, Delhi (*hereinafter*, 'RPO').
3. The case of the Petitioner is that passport bearing No.H6638919 was issued to him on 17th September, 2009, which was valid till 16th September, 2019. While applying for the passport, he had submitted his 10th Standard certificate, which was issued by the CBSE, wherein his date of birth is 15th April, 1971. Recently, while applying for a US Visa, he realized that his date of birth has wrongly been recorded in the passport. His birth certificate, issued by the North MCD, reflects his date of birth as 15th August, 1970. The RPO has, however, refused to accept his request for change of date of

birth on the ground that the Petitioner has utilized his passport with his date of birth as 15th April, 1971. The reasoning given by the Passport Office is as under:

*“2. Prima facie, 1st passport i.e. passport bearing number A4744422 dated 06/03/1998 valid up to 05/03/2008 was issued to the applicant with date of birth 15/04/1971 on the basis of documents submitted by him (applicant major) at the time of issuance of the said passport. It is to mention here that the applicant furnished copy of **School Certificate issued by C.B.S:E** in support of his date of birth as mentioned in the said passport.*

3. Therein, applicant completed his entire education on DOB as 15/04/1971 and also utilized passport twice as same DOB as in educational records. Also, relevant documents/records were consistently shown to the Passport Authority, School Board and even police authorities.

4. Aforesaid applicant never brought Birth Certificate to notice that underscores that Birth Certificate was not contemporaneous, but is freshly issued document, prima facie based on Aadhar & PAN Card that are declaratory information and no enquiry goes in details of such documents.”

4. Ld. counsel for the Respondent submits that the RPO also relies upon the order of this Court dated 9th October, 2018 in **W.P.(C) 10775/2018** titled **Taranjeet Singh Vohra v. UOI & Anr.** to justify not changing the date of birth.

5. On the other hand, ld. counsel for the Petitioner relies upon the

judgment of this Court in *Sunita Sawhney v. Union of India* [WP(C) 10839/2015, decided on 3rd December, 2015], wherein this Court has clearly held as under:

“16. To me it appears:

(I) That the respondents, at the time of issuance of Passport and for recording date of birth therein, should insist upon the applicant producing the Birth Certificate and only if the applicant states that his/her birth was not registered under the law aforesaid should other proof of date of birth be accepted. Ordinarily, the applicant should be asked to resort to delayed registration procedure under Section 13 (*supra*).

(II) That in the event of the applicant, at the time of issuance of Passport states that his/her birth was not registered and subsequently, while seeking correction of date of birth, producing (a) a Birth Certificate showing registration at time of birth or soon thereafter, the respondents, if satisfied of reasons given for being earlier ignorant of registration; or (b) a Birth Certificate obtained under the delayed registration procedure, the respondents should correct the date of birth on the Passport to bring it in consonance with the date of birth on the Birth Certificate.

(III) No application for change of date of birth on Passport, inconsistent with date of birth on Birth Certificate can be entertained. The applicant in such case should be directed to resort to procedure under Section 15 of Registration of Births & Deaths Act for correction thereof.

(IV) In no case can the respondents refuse to correct date of birth, after howsoever time the same may have been sought.

17. I say so because (a) Passport is an important document on which and on entries wherein a large number of other authorities/persons dealing with the holder of

Passport rely; (b) once birth is compulsorily required to be, registered under the law aforesaid, there is no reason why PIAs should not insist on production of Birth Certificate for making entry of date of birth on the Passport specially when the law also makes a provision for delayed registration; (c) however where, in the past. Passport has been issued with date of birth on basis other than Birth Certificate, correction of date of birth should be allowed only on production of Birth Certificate by following the delayed registration procedure, again in consonance with the law aforesaid; (d) the same will also fulfil the aim of the law aforesaid of accurate country wide data and not having a citizen whose birth is not registered in accordance with law of the country; (e) when the law aforesaid provides for enquiry by Magistrate as to the date of birth of a person whose birth was not contemporaneously registered, there appears to be no need for PIA to make own enquiry in this regard or to insist on obtaining declaration of Civil Court in that regard; (f) once a Birth Certificate is produced and the PIA is satisfied of genuineness thereof, correction of date of birth to bring it in consonance with Birth Certificate cannot be refused, whatsoever may be in delay in applying therefor; (g) inconsistent dates of birth can cause grave prejudice to the citizen and for which there is no sanction in law; (h) there can be diverse reasons for delay—for instance need for change in date of birth in Passport to bring it in consonance with Birth Certificate may be felt at fag end of life when the holder of Passport intends to migrate to be with children abroad and when such inconsistency is found to be an impediment; (i) the judgments aforesaid having given primacy, in the matter of date of birth, to the Birth Certificate, there is no reason to refuse to correct the date of birth on Passport on production of Birth Certificate.”

6. Ld. counsel for the Respondent submits that he wishes to seek instructions and that the judgment in **Sunita Sawhney (supra)** is not applicable.

7. After perusing the record, it is clear that the judgment in ***Sunita Sawhney (supra)*** would be applicable in the facts of the present case, inasmuch as the birth certificate, which has been placed on record, clearly reflects the Petitioner's date of birth as 15th August, 1970. The Aadhar card and other documents of the Petitioner have also been placed on record. There is no doubt that the 10th Standard certificate, wherein the wrong date of birth of the Petitioner is mentioned, was issued by CBSE, however, because of the same, the Petitioner should not be deprived of the right of correcting his date of birth in his passport. This issue has recently also been considered by this Court in ***Deep Chandra Harbola v. UOI & Anr. [W.P.(C) 6171/2020, decided on 2nd February, 2021]***, wherein this Court has followed the judgment in ***Sunita Sawhney (supra)***. The relevant portion of the said judgment is set out herein below:

“6. Heard ld. counsels for the parties. The Passport Authority, appears to have relied upon the office memorandum dated 26th November, 2015, issued by the CPV division, Ministry of External Affairs, prescribing guidelines with regard to change/ correction of dates of birth in passports already held by applicants. As per the said guidelines, clerical/technical mistakes in passports, including that of “place of birth” can be permitted only within a period of five years of issuance of the passport with the incorrect information and not beyond that. The relevant extract of the said Memorandum reads:

“(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 & 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.”

The order of the Passport Authorities refusing a change in the place of birth in the passport of the Petitioner, seems to be based on the aforesaid Office Memorandum.

7. *Ld. counsel for the Petitioner has relied upon the judgment of a ld. Single judge of this court in **Sunita Sawhney (supra)** wherein it was held as under:*

...

8. *In the abovementioned decision, the Court has categorically held that irrespective of the amount of delay which may have been there in applying for a change of date of birth, the same cannot be refused. As long as the genuineness of the birth certificate is not in dispute, the Applicant ought to be allowed to change the date of birth in accordance with the birth certificate. The same principle is also applicable to the change in place of birth.*

9. *Reliance is also placed upon the judgment in Nisha Kamboj (supra) wherein a ld. Single Judge of this Court has held:*

“4. However, keeping in view the aforesaid judgments cited by learned counsel for petitioner as well as the fact that the petitioner is relying upon a statutory document, namely, birth certificate issued under the Act, 1969, this Court is of the view that petitioner's request for change of place of birth should be examined by the passport authority itself.”

10. *The Petitioner's passport has now expired. Accordingly, the Petitioner is permitted to apply for a fresh passport with the correct place of birth, in terms of the birth certificate which has been placed on record. The earlier passport shall not come in the way of the Petitioner*

applying for a new passport, with the correct place of birth. Needless to add, the authorities would be entitled to verify the genuineness and accuracy of these documents and proceed with the application in accordance with law.”

8. In view of the facts and circumstances and the fact that prejudice would be caused to the Petitioner if there is further delay in the matter, as the Petitioner has submitted his application for correction of date of birth in 2018, the RPO is directed to issue a fresh passport to the Petitioner, upon an application being made by the Petitioner. The fresh passport should reflect the correct date of birth of the Petitioner as 15th August, 1970. The application shall be made within the next five working days. Upon the application being made, the RPO shall, after verification of the documents, grant the corrected passport to the Petitioner within a period of two weeks, as the Petitioner wishes to seek a US Visa to pursue his higher studies.
9. The present petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 18, 2021/dk/T

(corrected & released on 20th February, 2021)