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

Date of decision: 18th February, 2021

+ **W.P. (C) 10143/2020**

ABHINAV SHARMA

..... Petitioner

Through: Mr. Arvind Kumar, Advocate. (M:
9810676750)

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Mr. Amit Mahajan, CGSC with Ms.
Kritagya Kumar Kait, Advocate. (M:
9968955368)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).
2. Despite 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 observed that for change of date of birth, the passport office ought to accept the birth certificate, the filing of writ petitions seeking the change of date of birth does not seem to abate.
3. In the present case, the Petitioner had his old passport bearing No. F2934532 issued to him on 17th March, 2005, with validity period up to 16th March, 2010, when he was a minor. In the said passport, his date of birth was recorded as 18th August, 1997. In March/April, 2019, the Petitioner applied for issuance of a new passport wherein he gave his date of birth as 18th February, 1998. In the said application he is stated to have not disclosed his previous passport. Since the date of birth was different in the new

W.P.(C) 10143/2020

Page 1 of 6

application, he was, asked to provide his birth certificate with the said date of birth. The Petitioner provided his birth certificate, as issued by the Nagar Palika Parishad, Muzaffarnagar, which reflected the names of his parents and his date of birth as 18th February, 1998. At that stage, the Regional Passport Office (*hereinafter*, 'RPO') sought to verify the said birth certificate from the Nagar Palika Parishad, Muzaffarnagar and received two letters. The first letter was of November, 2019, by which the Nagar Palika Parishad, Muzaffarnagar verified the name of the Petitioner, his parentage as also his date of birth. The cancellation of the earlier birth certificate was confirmed on 24th December, 2019. Both letters are set out herein-below:

Letter/SWAo-Vo/2019-20

Dated /11/2019

Subject- WITH REGARD TO
VERIFICATION OF DATE OF BIRTH

"In above matter and with regard to your office letter No. D.L.1063735088819 dated 06.11.2019 it is inform that the Date of Birth verification about Abhinav Sharma son of Arun Kumar Sharma 238 Brahmpuri Muzaffarnagar received. Which is registered on registration no. 13221/04.11.19 dated 05.11.2019. In which the name of child is Abhinav Sharma son of Shri Arun Kumar Sharma and mother name is Sudha Sharma and date of birth is 18.02.1998. The above date of birth certificate is issued by the Nagar Palika Parishad, Muzaffarnagar. The above birth certificate is hereby verified."

Letter: 748/SWAo-Vo/2019-20

Dated: 24/12/2019

Subject- **in relation to cancellation of birth certificate of Abhinav Sharma (in answer**

to letter Ref No. DL 106375088819)

“In above matter it is inform that Abhinav Sharma son of Arun Kumar Sharma 238 Brahmpuri Muzaffarnagar pin code 251001 whose date of birth dated 18.08.1997 is registered on registration no. 02 dated 22.12.2004, is cancelled on the application of the applicant after verifying all the evidence produced by the applicant from the record of the birth and death nagar palika parishad Muzaffarnagar.”

4. The objection of the RPO was that the cancellation and the confirmation ought to have been reflected in the same letter. Another objection was that the birth certificate was a new birth certificate and the date of registration was not matching.

5. This Court has perused the documents on record. Clearly, the RPO has received a confirmation from the Nagar Palika Parishad, Muzaffarnagar informing the date of birth of the Petitioner as 18th February, 1998. The cancellation of the earlier birth certificate has also been confirmed by the Nagar Palika Parishad, Muzaffarnagar.

6. Despite repeated representations, the RPO has not issued a passport to the Petitioner. Ld. counsel for the Respondent relies upon the Office Memorandum dated 26th November, 2015 issued by the Ministry of External Affairs for change of date of birth. The relevant extract of the same reads as under:

“(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.

(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.

7. As per the above guidelines, it is clear that in case the first passport was issued when the applicant was a minor, an application for change of date of birth can be made even after the expiry of five years and once the RPO is satisfied, the same shall be amended.

8. The second guideline relied upon by the passport office is Section 6.3 of Chapter 3 of the Compendium of Instructions/Guidelines Relating to

Issue of Passports in India/Abroad. The said guideline reads:

“6.3 If an applicant applies for correction of date of birth in the passport on the basis of a fresh or corrected birth certificate (the original BC was submitted earlier for issue of the first passport), the following procedure be followed:

a) In case of furnishing of a new amended BC with the same date of registration and registration number of the old BC by the same authority, application for change in DOB be processed subject to physical verification of the new BC;

b) In case of furnishing of a new BC by a different authority in replacement of old BC by another authority, the PIA shall insist on cancellation of the old BC and after physical verification of the cancellation certificate and the fresh BC from issuing authorities, application for change in DOB be processed;

c) In case of furnishing of a new BC where the first passport was obtained using other documents like educational school certificates etc., application for change in DOB be processed subject to physical verification of the new BC and other supplementary documents (if required)”

It is also clear from the above guideline that for the purpose of a new amended birth certificate, the change in date of birth can be processed subject to physical verification of the new Birth Certificate. In case of (b) i.e., where a new birth certificate is issued by a different authority in replacement of the old birth certificate by another authority, the passport office can insist on cancellation of the old birth certificate and physical verification can be done of the cancellation certificate and the new birth certificate from the issuing authorities. Thereafter, the application for change of date of birth can be processed. On the strength of the above guideline, the

passport office insists that the birth certificate ought to bear the same date of registration and registration number. However, a perusal of the above guideline shows that 6.3(b) has no application in the present case. The authority that has issued the old and the new birth certificate are the same. The said authority has also confirmed the cancellation of the old birth certificate as also the issuance of the new one. These guidelines nowhere require that the confirmation and cancellation ought to be in the same letter of the Nagar Palika concerned. To insist on both facts being stated in one letter would be nothing but pure harassment of the Petitioner. The RPO is expected to facilitate issuance of passport and not create hindrances for applicants.

9. In view of the above, as also following the judgments of this Court in *Sunita Sawhney (supra)* and considering that the Nagar Palika Parishad, Muzzaffarnagar has confirmed the new date of birth, and the issuance of a new birth certificate, the application of the Petitioner for a fresh passport be processed and the same be issued within two weeks.

10. The 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 and released on 23rd February, 2021)