

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.34205 of 2021

In the matter of an application under Articles 226 of the
Constitution of India.

Sachala Patnaik Petitioner

-Versus-

The State of Odisha & others Opp. Parties

For Petitioner: - M/s. Ashok Das,
M.R. Dash, S.A.K. Dora &
G.R. Behera

For Opposite party Nos.1,2,4 & 5: Mr. D.K. Mohanty,
Addl. Standing Counsel

For Opposite party Nos. 3 & 6: M/s. Ramesh Sahoo,
S. Pradhan &
S. Mishra

P R E S E N T:

MR. JUSTICE BISWAJIT MOHANTY

Date of Hearing: 28.07.2022

Date of Judgment: 02.08.2022

B. Mohanty, J. This writ application has been filed by the petitioner
praying for quashing of the order dated 22.02.2021 passed by the
Executive Magistrate, Berhampur in Misc. Case No.79 of 2021

rejecting her prayer for a direction to Registrar of Births and Deaths, Berhampur Municipal Corporation, Berhampur (opposite party No.6) for recording her date of birth to be 08.04.1945. Additionally she has prayed that a direction be issued to the opposite party No.3 to register and issue the birth certificate to her.

2. The case of the petitioner is that she is a lady of 77 years and a retired Government employee. She is a permanent resident of Berhampur in the district of Ganjam. After retirement from service and after death of her husband, she has been residing at Berhampur along with her only daughter. After marriage, the daughter is now permanently staying in United States of America and since the petitioner is suffering from various diseases and nobody is there to look after her, for which she wants to go to U.S.A. so that her daughter can take care of her. For that purpose, she has to obtain a Green Card from U.S.A. for which, birth certificate is necessary. From the non-availability certificate issued under Section 17 of the Registration of Births and Deaths Act, 1969, for short 'the Act' by Registrar of Births and Deaths of Berhampur Municipal Corporation under Annexure-1, the petitioner could come to know that event of her birth has not been registered by the authorities. In such background, she filed Misc. Case No.79 of 2021 before the Executive Magistrate, Berhampur along with necessary documents for a direction to Registrar of

Births and Deaths, Berhampur Municipal Corporation, Berhampur (opposite party No.6) for issuance of birth certificate in her favour reflecting her date of birth to be 08.04.1945. However, the said application was rejected by the Executive Magistrate, Berhampur on 22.02.2021 under Annexure-2 on the ground that since 'the Act' is prospective in nature and it regulates only the events that have taken place after coming into force 'the Act', he cannot issue the order to Registrar of Births and Deaths, Berhampur Municipal Corporation (opposite party No.6) for issuance of birth certificate as the petitioner was born much earlier i.e. on 08.04.1945. Challenging the same, the present writ petition has been filed with the above noted prayers.

3. Despite notice, opposite party Nos.1, 2, 4 & 5 have not filed any counter. A counter affidavit has been filed by the opposite party Nos.3 & 6. There they have stated that for issuance of Green Card, no birth certificate is necessary and since the date of birth is 08.04.1945, no birth certificate can be issued under 'the Act' which is prospective in nature. Accordingly, they have defended the impugned order passed by the opposite party No.5. In this context, they have also relied on Odisha Registration of Births and Deaths Rules, 1970, for short '1970 Rules'.

4. Mr. Das, learned counsel for the petitioner relying on affidavit dated 30.11.2021 filed by the petitioner enclosing a copy

of Matriculation Certificate issued by the Board of Secondary Education, Odisha in her favour submitted that the date of birth of the petitioner as per the said certificate is 08.04.1945 and though relying upon the said document, the petitioner has applied for issuance of birth certificate under Section 13(3) of 'the Act' as the birth was not registered within one year of its occurrence, however, such prayer has been rejected by the Executive Magistrate, Berhampur under Annexure-2 without application of mind by referring to non-existent provisions of law like Section 13(4)(8) of 'the Act' and the '1970 Rules'. He submitted that such rejection order has been passed by the Executive Magistrate, Berhampur on a wrong interpretation with regard to the operation of 'the Act'. He submitted that no doubt 'the Act' is prospective in nature but it also takes into account the events which have taken place before coming into force of 'the Act'. In this context, he relied on an unreported Division Bench order of this Court in the case of **Kamala Singh Vs. Registrar of Birth and Deaths-cum-Executive Officer, Anandapur and another** passed in O.J.C. No.5701 of 2001. Accordingly, he contended that the impugned order should be set aside and direction be given to opposite party No.6 for issuance of birth certificate to the petitioner.

5. In reply, Mr. D.K. Mohanty, learned Additional Standing Counsel stoutly defended the impugned order under

Annexure-2 saying that since 'the Act' is prospective in nature, it will only apply to the events which have taken place after coming into force of 'the Act' and not to a birth which took place earlier. Since the petitioner was born much prior to coming into force of 'the Act', rightly the Executive Magistrate, Berhampur has refused to entertain her application for a direction to the opposite party No.6 for recording/registering her date of birth as 08.04.1945 and for issuing the consequential birth certificate.

6. Mr. R. Sahoo, learned counsel appearing for opposite party Nos.3 & 6 also supported the stand taken by Mr. Mohanty, learned Additional Standing Counsel.

7. Heard Mr. A. Das, learned counsel for the petitioner, Mr. D.K. Mohanty, learned Additional Standing Counsel and Mr. R. Sahoo, learned counsel representing opposite party Nos.3 & 6.

8. The basic facts of this case are not in dispute and are as follows. The birth of the petitioner was never registered by the municipal authorities and, accordingly, when applied, non-availability certificate was issued under Annexure-1 by the opposite party No.6 on 23.11.2020. In such background, she filed a petition under Section 13(3) of 'the Act' praying for issuance of necessary direction to opposite party No.6 for recording/registering her date of birth as 08.04.1945. However, such an application has been rejected vide impugned order under Annexure-2 on the

ground that since 'the Act' and the '1970 Rules' are prospective in nature and they regulate only the event that have taken place after coming into force of 'the Act' and the above noted Rules and since the birth of the petitioner took place much prior to coming into force of the above noted Act and '1970 Rules', therefore, the prayer of the petitioner for a direction to opposite party No.6 for issuance of birth certificate cannot be acceded.

9. Scanning of the impugned order under Annexure-2 shows gross non-application of mind by the Executive Magistrate, Berhampur. The Magistrate has referred to Section 13(4)(8) of 'the Act' which does not exist in the statute book. He has also referred to '1970 Rules' which has been repealed long back by the Odisha Registration of Births and Deaths Rules, 2001, for short "2001 Rules". Further at various places he has referred to date of death, death certificate etc. in the order, which were not at all the matters in issue. Though he has referred to Sub-Section 1 of Section 1 of 'the Act', the said provision nowhere indicates that 'the Act' and '1970 Rules' came into force with effect from 01.07.1970 as indicated in the impugned order. The said Sub-Section only reads as follows:

"This Act may be called The Registration of Births and Deaths Act, 1969".

Rather Sub-Section 3 of Section 1 of 'the Act' makes it clear that 'the Act' will come into force in a State on such date as the Central

Government may, by notification in the Official Gazettee, appoint.

It is not disputed that 'the Act' came into force in 1970 and Section 13 of 'the Act', which is relevant for our purpose reads as follows:

"13. Delayed registration of births and deaths

– (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorized in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action."

10. Sub-Section 3 of Section 13 of 'the Act' is important in this case as under the said provision, the petitioner has applied for issuance of necessary direction to opposite party No.6 for registration of her birth date. The said Sub-Section as well as other Sub-Sections of Section 13 uses the phrase 'any birth or death'. Thus there exists great emphasis on the phrase 'any birth or death'. This phrase cannot be interpreted only to mean birth or

death occurring only after coming into force of 'the Act'. If such a restricted interpretation is given, then the same will cause great injustice to persons born before the coming into force of 'the Act'. The very use of word 'any' makes it clear that it applies to cases of all births whether occurring prior to or after the commencement of 'the Act'. It is settled that a statute cannot lose its prospective operational character because a part of the requisites for taking actions under it is drawn from a time antecedent to its passing. Secondly, even otherwise in the present case, the petitioner never made a prayer for registering her date of birth from a date prior to coming into force of 'the Act'. Thirdly, a general survey of Section 13 of 'the Act' would show that the main intention of the said section appears to give relief to the persons, who apply for registration of births and deaths after some amount of delay. For all these reasons, it cannot be said that the births and deaths which occurred before coming into force of 'the Act' cannot be taken into account by the authorities under 'the Act' for the purpose of issuance of birth or death certificate. Lastly, this Court in the case of **Kamala Singh** (supra) has made it clear that though 'the Act' is prospective in nature, however, Sub-Section (3) of Section 13 clearly covers past cases where no entry could be made within the time prescribed. In order to make things clear, the relevant portion of the above noted order is quoted hereunder:

“The Registration of Births and Deaths Act, 1969 (hereinafter referred to as ‘the Act’) has been enacted with a view to get adequate and accurate countrywide registration data for purposes of national planning and other development programmes. The Preamble of the Act indicates that the Act was enacted to provide for regulation of births and deaths.

Sub-section (3) of Section 13 of the Act provides that any birth or death which has not been registered within one year of its occurrence shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee. Although the Act is prospective in nature, sub-section (3) of Section 13, referred to above, seeks to cover past cases where no entry could be made within one year of the occurrence, i.e. birth or death. This being the legal position, the learned Magistrate has clearly failed to exercise jurisdiction vested in him by law by observing that the death of the husband of the petitioner being on 09.11.1958, i.e. prior to the commencement of the Act, he cannot pass any order”.

In my humble opinion, the case of the petitioner is covered by the ratio of the above noted order. In such background, it is clear that the learned Magistrate has committed an error by giving a restrictive interpretation to the provisions of the statute.

11. For the above noted reasons, the impugned order dated 22.02.2021 passed by the Executive Magistrate, Berhampur in Misc. Case No.79 of 2021 under Annexure-2 is hereby quashed and the matter is remitted back to the Magistrate for his reconsideration. The Magistrate is directed to complete such exercise within a period of four weeks from the date of production

of certified copy of this judgment and communicate the result of such exercise to the petitioner as well as opposite party No.6.

12. Accordingly, the writ petition is disposed of.

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Biswajit Mohanty, J.

Orissa High Court, Cuttack
The 2nd of August, 2022 /Prasant

