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19.12.2023
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5798 of 2023

Ambalika Banerjee
Vs.
Union of India & Ors.

Ms. Jhuma Chakraborty,
Mr. Rahul Kumar Saha
...for the petitioner

Mr. Billwadal Bhattacharyya,
Mr. Ajit Kumar Mishra
...for the Union of India

Mr. Wasim Ahmed,
Sk. Md. Masud
...for the State

1. The petitioner contends that she was born in the year 1959 and not 1964. In the original passport granted to her and the re-issued passport, it is contended, the year of birth was erroneously depicted as 1964, whereas it should be 1959. It is submitted that the petitioner had initially produced several documents, including PAN Card, Aadhaar Card and Voters' Identity Card, which carried the wrong date of birth. Subsequently, those documents have been rectified and the petitioner produced the corrected documents before the authorities.

2. However, the Passport Authorities are insisting upon production of the Birth Certificate of the

petitioner, which the petitioner does not have. It is argued that since the Passport Authorities initially acted on other documents than the Birth Certificate, when the same documents have been rectified and were produced by the petitioner, the Passport Authorities have acted without jurisdiction in refusing to rectify the date of birth of the petitioner.

3. Learned counsel cites the judgments of two learned Single Judges of different High Courts. In the first, in the matter of *Simran Raj @ Salma Nat vs. Union of India & Anr.*, rendered by the High Court at Rajasthan (Jaipur Bench), it was *inter alia* observed by the Court that the Passport Authorities are always within their competence to direct the parties to produce relevant documents either from the Authorities functioning under the Births and Deaths Registration Act or from the Judicial Magistrate or from the Civil Court, as the case may be. On production of corrected documents, the Passport Authorities are required immediately to carry out necessary correction in the passport.

4. Thus, it is argued that even a Judicial Magistrate has the authority to issue a document evidencing the date of birth of the petitioner. The petitioner, in the present case, has produced an affidavit/declaration affirmed before the First Class

Judicial Magistrate, which ought to have been taken note of by the Passport Authorities.

5. In the other judgment, passed in *Nishant Singhal vs. Union of India & Ors.*, the Delhi High Court observed, *inter alia*, that the documents, such as the Aadhaar Card, 10th and 12th class mark sheets, which are a valid proof of date of birth, have been produced by the petitioner and the Passport Authorities cannot make a roving enquiry on their own and also are not competent to decide the veracity of date of birth.

6. It was observed that every citizen has a legal right to hold a passport and the right can be taken away only in accordance with law.

7. Learned Deputy Solicitor General appearing for the respondent-authorities places reliance on a report filed in the form of an affidavit by respondent nos. 1, 2 and 4. An Office Memorandum dated September 22, 2016 has been annexed thereto from which it is evident that in case of a correction of date of birth, the applicant has to provide the Birth Certificate and further state that the date of birth recorded in the passport was based on entries mentioned in documents other than the Birth Certificate.

8. It is also denied that any application has been made by the petitioner at all for rectification of date of birth.

9. Upon a perusal of the annexures to the writ petition, it appears that Annexure-P/4 at page 19 of the writ petition is an application for re-issuance of passport and not for rectification of date of birth. In the said application, under the head “Applying for”, the petitioner has written “Reissue”, which indicates that the application was for re-issuance. In fact, admittedly, passport has been reissued and the said application has spent its force.

10. A larger question, however, which arises is whether the Passport Authorities ought to be directed by the Court, in contravention of the Office Memorandum issued by the Ministry of External Affairs, Government of India, to mandatorily accept the documents which have been produced by the petitioner and not insist upon a Birth Certificate of the petitioner for the limited purpose of correction of date of birth in the passport.

11. Insofar as the cited judgments of the petitioner are concerned, in both the said cases, Birth Certificates had actually been produced by the applicant.

12. In such context, the Courts went on to observe that the Passport Authorities cannot suspect

documents issued by valid authorities on the issue of date of birth of the applicant.

13. In fact, in the judgment passed by the Rajasthan High Court, it was observed that the Passport Authorities are always within their competence to direct parties to produce relevant documents, either from the authorities functioning under the Birth and Deaths Registration Act or from the Judicial Magistrate or from Civil Court, as the case may be. Thus, the said observation clearly denotes that even as per the view of the said High Court, it is the discretion of the Passport Authorities as to what document they would ask for, for the purpose of correcting date of birth. The Court, in its observation, clearly gave certain alternatives, one of which is relevant documents from the authorities functioning under the Births and Deaths Registration Act, which has been precisely insisted upon by the authorities in the present case.

14. Insofar as the judgment of the Delhi High Court is concerned, in the said case also the Birth Certificate had been produced. The Court proceeded on the premise that the Passport Authorities acted *de hors* their jurisdiction in scrutinizing the veracity of such Birth Certificate.

15. It was, in fact, observed by the High Court that the Birth Certificate dated July 02, 2007 which has not been set aside, has to be given its full effect, indicating thereby that the applicant in the said case had actually produced a Birth Certificate, which was disbelieved by the Passport Authorities.

16. As opposed to the said cases, the present dispute is whether the Birth Certificate can be insisted upon by the Passport Authorities at all, since the petitioner has failed to produce such document.

17. Unfortunately for the petitioner, Clause (iii) of the Office Memorandum dated September 22, 2016, issued by the Government of India, Ministry of External Affairs, clearly stipulates that if an applicant applies for the change of date of birth within five years of the date of issue of passport having the alleged date of birth, the request of such an applicant irrespective of the difference in the date of birth may be considered by the PIA if the applicant is able to provide the Birth Certificate issued by the Registrar of Births and Deaths and further states that the DOB recorded in the passport was based on entries mentioned in documents other than the Birth Certificate. A provision for penalty is also stipulated therein.

18. Hence, as per the said Office Memorandum, which holds the field, in case of rectification of date of birth, an applicant has mandatorily to provide her Birth Certificate issued by the Registrar of Births and Deaths in addition to stating that the previous date of birth recorded in the passport was based on entries mentioned in the documents other than the Birth Certificate.

19. The said rider squarely applies to the present case. The initial passport and the re-issued passport in case of the petitioner were issued on the premise of other documents than the Birth Certificate, being Aadhaar Card, PAN Card, etc. Hence, in terms of Clause (iii) of the Office Memorandum dated September 22, 2016, the Passport Authorities have full right to insist upon production of the Birth Certificate while rectifying the date of birth, since the petitioner had previously produced documents other than the Birth Certificate.

20. I do not find any palpable irregularity or illegality on the part of the respondent-authorities or the infringement of any legal or fundamental right of the petitioner in the Passport Authorities insisting upon the Birth Certificate of the petitioner for the limited purpose of rectification of her date of birth in the re-issued passport.

21. Hence, there is no scope of interference in the present writ petition.

22. W.P.A. No. 5798 of 2023 is accordingly dismissed on contest without any order as to costs.

23. However, nothing in this order shall preclude the petitioner from applying in proper format along with her Birth Certificate for rectification of her date of birth in her passport.

24. If such an application is made with the said document, the respondent-authorities shall process the same as expeditiously as possible without being influenced in any manner by the present rejection of this writ petition.

25. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)