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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.51 OF 2021

Mr. Charles Mario Fernandes,
S/o Mr. Caetano Francisco Fernandes,
R/o Resident of House No.885, Shelim,
Loliem Canacona Goa. ... Petitioner.

Versus

1. The Registrar of Births and Deaths,
Margao Municipal Council,
Margao, Goa.

2. The Registrar of Birth and Death,
Village Panchayat Loliem-Polem,
Canacona Goa.

3. The Chief Registrar of Birth and Death,
Directorate of Planning, Statistics and
Evaluation,
Pt. Deendayal Upadhyay Bhavan,
Near Pundalik Devasthan,
Alto-Porvorim, Bardez Goa.

4. State of Goa
Through Its Chief Secretary,
At Secretariat,
Porvorim Goa.

5. Gracias Maternity Hospital
Nursing Home
M. Menezes Rd. Opp. Margao
Near Loyola High School,
Margao Goa 403601 ... Respondents.

Mr Dharmanand Vernekar with Mr J. Velip, Advocates for the
Petitioner.

Mr Somnath Karpe with Mr Anand Shirodkar, Advocates for

Respondent No.1.

Mr Geetesh Shetye, Additional Government Advocate for
Respondent Nos.3 and 4.

CORAM: VALMIKI SA MENEZES, J.

DATED: 7 December, 2023

ORAL JUDGEMENT:

1. Rule. Rule made returnable forthwith with the consent of the learned Counsel for the parties. Learned Counsel for the Respondents waive service.

2. This petition filed under Article 227 of the Constitution of India takes exception to the order dated 23.10.2019 passed by the Chief Officer of the Margao Municipal Council, who under the Registration of Births and Deaths Act, 1969 (the Act), is designated as the Registrar in terms of Section 7 thereof. The impugned order refuses the Petitioner's application dated 09.07.2018 for cancellation of his birth registered in the records of the Municipal Council, claiming that an error was made in reporting his birth from a Hospital – Respondent No.5, when in fact his birth took place at his residence on 09.04.1982. The application essentially is filed under the provisions of Section 15 of the Act read with Rule 11 of the Goa Registration of Births and Deaths Rules, 1999 (the Rules).

3. The case of the Petitioner is that after he was born to Lourdes Tessie Alice Do Socorro Teles at her residence at Xelim, Loliem, Canacona, Goa, after which the Petitioner's grandfather Santano Sebastiao Fernandes reported the birth in terms of the provisions of the Act by submitting Form 2 of the live birth of the Petitioner to the Village Panchayat of Loliem,

pursuant to which the entry was made of the Petitioner's birth under Entry No. b/21/1982 on 26.04.1982.

The Petitioner then avers that due to certain complications in the birth, his mother was shifted along with the Petitioner to Gracias Maternity Hospital Nursing Home (Respondent No.5) at Margao, where during the recovery of the mother, yet another Form 2 was submitted by the Hospital to the Margao Municipal Council (Respondent No.1) for registering the Petitioner's birth. This birth was registered by the Respondent No.1 under Entry No. B/1823/1982 on 14.06.1982. There are thus, two entries of registration of the Petitioner's birth, which situation according to the Petitioner needed to be corrected for which purpose, he filed an application to the Respondent No.1 to delete the second entry of birth.

4. It is the allegation of the Petitioner that the Respondent No.1 has not carried out any inquiry as required in terms of Rule 11 of the Rules to ascertain the truth in the statements made in the application, nor any opportunity was given to the Petitioner to place before the authority the requisite material referred to in Rule 11 to enable the Registrar to take a decision in terms of Sub-Rule 4 of the said Rules.

5. After hearing the learned Counsel for the parties for some time, it appears that the Registrar/Chief Officer has taken a decision accepting the entry at the behest of the Hospital as the correct one. However, it appears, without getting into the rival contentions of the parties, that no formal inquiry was made into the material stated in the application nor was any opportunity given to the Petitioner to place on record affidavits or statements of two witnesses who were familiar with the facts at the time of

delivery of the Petitioner that is on or around 09.04.1982.

6. During the course of the hearing of the matter, a statement is made by the learned Advocate for the Petitioner that he is willing to place on record of the Respondent No.1 affidavits of the Petitioner's mother as also a fresh affidavit of the Petitioner's father or any other witnesses to the event of his birth to enable the Registrar/Chief Officer to pass necessary orders in terms of Rule 11. In that view of the matter, considering the interest of justice and the prejudice which would otherwise be caused to the Petitioner in having two entries of birth, I am of the view that the impugned order needs to be set aside and is hereby set aside, to enable the Petitioner to place the aforementioned affidavits and any other material in his possession before the Chief Officer/Registrar.

7. Consequently, the impugned order is quashed and set aside. The Petitioner shall file the affidavits or any other material referred to in the preceding paragraphs within a period of two weeks from today before the Chief Officer/Registrar, who shall then hear the Petitioner and consider this material before passing a fresh order in terms of Sub-Rule 4 of Rule 11 of the Rules. The Chief Officer is requested to dispose of the application preferably within a period of one month from today. Rule is made absolute in the above terms. No costs.

VALMIKI SA MENEZES, J.