



W.P.No.15834 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.15834 of 2023
and WMP.Nos.15283 & 15284 of 2023

Mubarak Alikhan

..... Petitioner

Vs

1.The Director

Department of Public Health and Preventive
Medicine cum Chief Registrar of Births and Deaths
DMS Complex
Anna Salai
Chennai – 600 006.

2.The Deputy Director of Health Sciences

O/o. The Deputy Director of Health Services
Cuddalore.

3.The District Revenue Officer cum

Registrar of Births and Deaths
District Collectorate
Cuddalore.

4.The Executive Officer

Town Panchayat
Lalpettai
Kattumannarkoil Taluk
Cuddalore District.

.... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 08.05.2023 issued by the second respondent in Na.Ka.No.5803/A3/2022 and the consequential order passed by the fourth respondent dated 17.05.2023 in Na.Ka.No.48/2023/A1 and quash the same.

[Prayer Amended as per order dated 24.08.2023 in WMP.No.23610 of 2023 in W.P.No.15834 of 2023]

For Petitioner : Mr.G.Pugazhenthir

For Respondents : Mr.G.Ameedius
Government Advocate for R1 to R4

ORDER

The petitioner herein challenges the proceedings of the Deputy Director of Health Services, Cuddalore, the second respondent, dated, 08.05.2023, by which she had ordered removal of the birth registration of certain Afreen John, who is said to have born on 10.12.2004.

2. The second respondent has filed his counter, in which it is alleged that the Additional District Birth and Death Registrar had inspected Shifa Hospital, Cuddalore, and on verification of the records maintained at the hospital, he neither found an evidence to establish that a child was born to Mr.Mubarak



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Alikhan and his wife Kishore John, and that there was no record to indicate that the petitioner's wife was admitted in the said hospital for delivery. Even on verification of the registration records for the year 2004 at the concerned Sub-Registrar office, it came to light that there was no record that the birth of petitioner's child was registered. This apart, the birth of the petitioner's child has found entry on 03.01.2005 in the birth register, but the birth registration number given was 356/2004, which pertains to the year 2004. And moreover the birth reporting form (Form-I) was found to have pasted in the birth register. It is also alleged that one of the Medical Practitioner of Shifa Hospital has admitted in his report that the staff of Lalpet Town Panchayat had fraudulently obtained his signature in the birth reporting form. In his counter, the second respondent has drawn the attention of the Court to the provisions of the Act, and would submit that if any entry in the birth or death register has been made improperly or fraudulently in violation of the Act or the State Rules, such entries can be cancelled and penal action may be taken against the persons found guilty. It is in this circumstances, the impugned order came to be passed.

3. According to the petitioner, his child Afreen John was born to him in Shifa Nursing Home, Lalpettai on 10.12.2004. But in the impugned order, the



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second respondent states that the register maintained by the Shifa Nursing Home nowhere refers to the admission of child's mother for delivery in the hospital, nor is there any entry made about the birth of the child. Secondly, it also makes a statement that the child birth was not immediately registered, and it was registered some three weeks later, to be precise on 03.01.2005, and it was entered in the birth register with Registration Number 356/2004, (which pertains to the year 2004) and even this detail is seen to have pasted. The second respondent was suspicious about this entry and hence chose to remove the registration of the birth of Afreen John, off the register.

4. Heard the learned counsel for the petitioner, and Mr.G.Ameedius, learned Government Advocate for respondents 1 to 4.

5. The learned counsel for the petitioner brought to the notice of the Court, the proceedings of the District Collector, dated 07.02.2019, wherein he had certified that the registration of birth of Afreen John in the birth register is correct, for arriving which conclusion, he relied on the report of the Tahsildar. The learned counsel submitted that at any rate the petitioner was given an opportunity to explain it, before the impugned proceedings was passed.



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6. On a reading of Registration of Birth and Death Act, 1969, this Court finds that the statute has created certain statutory authority such as Registrar General of India, the Chief Registrar, the District Registrar and the Registrars. And it also vests them with certain powers vis-a-vis the registration of births and deaths. It is not adequately known under what capacity the District Collector had issued the proceedings dated 07.02.2019. Unless the District Collector was constituted as a *persona designata* for discharging the duties under Registration of Birth and Death Act, his statement regarding the correctness of the birth of Afreen John may not be conclusive.

7. Having observed thus, this Court is only inclined to react to the second part of the petitioner's submission where he complains that no opportunity of hearing was given to the petitioner, before the impugned proceedings was passed. This Court, therefore is constrained to set aside the impugned proceedings, and remand the matter back to the second respondent, who will now hold an enquiry after giving the petitioner due right of hearing and dispose of the matter strictly in accordance with law.

8. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes / No

Speaking order / Non-speaking orders



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To:

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N.SESHASAYEE.J.,

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