



WP (MD) No.13468 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.13468 of 2023
and
WMP(MD)No.11351 of 2023**

T.Narayanadhas

... Petitioner

Vs

The Registrar of Births and Deaths,
Nagercoil Corporation Office,
Nagercoil,
Kanyakumari District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the respondent passed by the impugned notice in Na.Ka.No.H3/11498/2022, dated 18.05.2023 and set aside and issue the birth certificate in the name of P.Yazhini instead of P.Mubina .

For petitioner : Mr.H.Velavadhas.

For Respondent : Mr.F.Deepak



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ORDER

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This writ petition has been filed by the grand father of a child challenging the order of the respondent / the Registrar of Births and Deaths, Nageroil Corporation, in and by which, the request for change of his grand daughter's name in the birth certificate has been rejected.

2.The learned Counsel for the petitioner submits that the petitioner's daughter, son-in-law and grand daughter are residing in abroad. Her grand daughter was born on 21.04.2013 in a private hospital at Nagercoil. Now she is studying 4th standard in Abudhabi. Initially her name was Mubina.P and it has been now changed as Yazhini.P and this name change has also been effected in passport, aadhaar and even in government gazette also. The birth certificate with new name is required for the purpose getting visa. The petitioner has earlier submitted an application to the respondent, which was not considered by the respondent. Therefore, the petitioner has earlier filed a writ petition in WP(MD)No.2472 of 2023 for a writ of mandamus to direct the respondent to issue new birth certificate. This Court vide order dated 08.02.2023 directed the respondent to dispose of the petitioner's representation. However, the respondent vide the impugned order has rejected the request for name change.



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3.The learned Counsel for the petitioner has placed reliance on the orders this Court passed in WP(MD)No.161 of 2021, dated 21.06.2021 and WP(MD)No.2876 of 2022, dated 25.01.2023 and submits that in similar such circumstances this Court has granted the relief for name change, by referring the decision of the Hon'ble Apex Court reported in Jigya Yadav Vs CBSE reported in 2021 OnLine SC 415).

4.The learned Counsel for respondent submits that the petitioner's grand daughter is in abroad and as per the provisions of the Tamil Nadu Registration of Births and Deaths 1969 only corrections in the name could be effected but the entire name cannot be changed as sought for by the petitioner. Therefore, the petitioner's request has been rejected.

5.This Court has considered the rival submissions and perused the materials placed on record.

6.The petitioner claims that his grand daughter's name was Mubina.P and now it has been changed as Yazhini.P in all the documents including the Tamil Nadu Government Gazette, dated 17.02.2021. She needs the birth certificate with



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the new name for getting visa. However, the respondents rejected the request that there is no provision. Perusal of the records shows that this Court in the earlier occasions had granted similar such reliefs. The Hon'ble Apex Court has also held that the right to control one's identity is one's fundamental right. This Court in WP(MD)No.28726 of 2022 by order dated 25.01.2023 has held as follows:

“ No doubt the statutory provisions as well as the instructions framed by the authorities are in support of the stand taken by the learned Additional Advocate General. However, this Court had consistently conceded similar requests. My attention is drawn to the order dated 21.06.2021 made in W.P.(MD)No.161 of 2021 (Pandiselvi V. The Commissioner, Periyakulam Municipality, Periyakulam). Paragraph Nos.5 and 7 of the said order reads as follows:

5. In the considered view of this Court, several orders have been passed by this Court, wherein, this Court has taken into consideration the fact that except the birth certificate, in all the other certificates, the name is different and therefore, this Court had directed appropriate correction to be made in the birth certificate also. Useful reference can be made to the order passed by this Court in W.P.(MD) No.6626 of 2019, dated 10.09.2020. The relevant portions in the order are extracted hereunder:



5.Though I find the submission of the learned standing counsel to be persuasive, the learned counsel appearing for the petitioner brought to my attention to the order dated 07.01.2016 made in W.P.No.30766 of 2015 (S.K.Syed Rafiullah V. The District Collector and Another). The learned Judge in the said order had held as follows:

5.In the case of A.James V. The Commissioner of Kodaikanal Municipality, an issue arose as to whether the name of the person could be corrected in the Birth Certificate by correcting a mistake which according to the petitioner therein was due to inadvertence. The Madurai Bench of this Court, after taking into consideration of the earlier order passed in W.P.No.296 of 2007, dated 14.06.2007, directed the authorities to effect the correction. The operative portion of the order in W.P. (MD).No.7303 of 2014 dated 10.06.2014, reads as follows:

“3.Today when the matter was taken up for hearing, the learned counsel for the petitioner submitted that in identical matter, this Court following the judgment in W.P.No.296 of 2007, dated 14.06.2007, directed the respondents to amend the birth certificate within a specified time. Hence, following the same, a similar order has to be passed. The relevant portion of the judgment delivered by this Court in W.P.No.296 of 2007 dated 14.06.2007, reads as follows:

“3.It is a matter of fact that the claim of the petitioner deserves to be considered since the same has been changed through the Gazette Publication. Under the circumstances, by granting the relief sought for by the petitioner in the writ petition to have his name changed in the



school register, by effecting the necessary changes in the birth certificate, neither the Government nor the school authorities is going to have a serious prejudice caused to them considering the purpose of issuance of certificate as per the enactment.

4.Learned counsel appearing for the respondent submitted that there are no provision to effect the same. It is not necessary that the Act should contain Rule for every aspect, particularly in matters where such amendments are not going into the root of the matter, when other things are satisfied namely, the date of birth, parents name etc. and Gazette Publication recording the change in the name of the child.

5.In the circumstances, the concerned authorities are hereby directed to effect the necessary change in the birth certificate as per the Tamil Nadu Gazette Notification and the school authority is also directed to carry out the necessary change thereon.

4.The dictum laid down in the above order, is squarely applicable to this case. In the present case also petitioner-s daughter name has been published as -Priya- in the Government Gazette. In such circumstances, there cannot be any impediment for the respondents to correct the same in the birth certificate. Hence, the writ petition is allowed and the concerned respondent is directed to issue birth certificate to the petitioner-s daughter who was born on 08.02.1979, and corrected as -Priya- as per the publication made in the Government Gazette on 27.06.2012, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.



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6.The respondents are unable to distinguish the aforementioned decision nor pointed out as to in what manner it is distinguishable on the facts of the present case. In fact, in the said case, the correction was sought for after 32 years after the petitioner was born, whereas the petitioner has come before this Court to correct the name of the petitioner-s son less than two years of his birth. Therefore, no prejudice would be caused, especially when the correct name has been published in the Tamil Nadu Government Gazette and also in the Newspapers.

7.In the light of the above, the Writ Petition is allowed and the impugned order is quashed and the 2nd respondent is directed to issue Birth Certificate to the petitioner-s son, who was born on 01.11.2012 and correct the same as “R.Amanullah“ as per publication made in the Government Gazette dated 09.10.2013, within a period of three weeks from the date of receipt of a copy of this order. No costs.?

6.In my view the aforesaid decision is squarely applicable.

7.The petitioner-s original name was R.N.V.Ragavan. He was born on 24.10.1995. The birth certificate issued by the respondents says so. Later, the petitioner got his name changed as V.Balaji. It was also duly published in the Tamilnadu Government Gazette, dated 30.03.2005. A copy of the same has also been enclosed in the typed set of papers. The petitioner now wants the corresponding correction to be made in the birth certificate.

7. In view of the above, the present case is also squarely covered by the above order and the impugned rejection order dated 09.10.2020 issued by the first respondent is hereby quashed and there shall be a



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direction to the first respondent to incorporate the name of the petitioner as -Pandiselvi- in the birth certificate and issue a fresh birth certificate to the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order.

7. My attention is also drawn to the decision of the Hon-ble Apex Court in the decision reported in 2021 SCC OnLine SC 415 (Jigya Yadav V. CBSE). The Hon-ble Apex Court held that the right to control one's identity is one's fundamental right. The issue can be approached from yet another angle. The petitioner-s husband went to Mexico for his employment. The petitioner obviously wants to be with her husband. She wants to take her child along with her. If the petitioner-s request is not accepted, certainly, the child's future prospects will be seriously affected. The petitioner-s counsel states that Mexican Embassy has made it clear that unless the petitioner produces the corrected Birth Certificate issued by the respondents, it will not be able to issue Visa for the petitioner-s child. The right to move abroad is a fundamental right. The petitioner-s child is entitled to be with the petitioner. If the petitioner-s request is rejected, her rights will be seriously infringed. Looking from this perspective, I am inclined to set aside the order impugned in this writ petition. It is accordingly set aside. The respondents are directed to issue correct Birth Certificate as prayed for by the petitioner. This shall be done as expeditiously as possible.”



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7. Applying the ratio laid down in the above cited judgments, this writ petition is allowed. The impugned order is set aside. The respondent shall issue new birth certificate as requested by the petitioner within a period four weeks from the date of receipt of a copy of this order. No cost. Consequently connected miscellaneous petition is closed.

13.07.2023

NCC – Yes / No
Internet – Yes / No
Index – Yes / No
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To

The Registrar of Births and Deaths,
Nagercoil Corporation Office,
Nagercoil,
Kanyakumari District.



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B.PUGALENDHI, J.

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