



W.P(MD)No.28017 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28017 of 2022

and

W.M.P.(MD)No.22095 of 2022

M.Syed Ibrahim Sha

... Petitioner

Vs.

1.The Additional Chief Secretary /
Commissioner of Revenue Administration and
Disaster Management,
Chepauk, Chennai – 5.

2.The District Collector,
Virudhunagar,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Lr.No.RA.3(3)/15727/2006 dated 06.11.2022 and quash the same as illegal and consequently direct the 1st respondent to alter the petitioners date of birth in the service register as 29.09.1964 instead of 26.05.1963 within the period that may be stipulated by this Court.



W.P(MD)No.28017 of 2022

For Petitioner : Mr.Ajmal Khan, Senior Counsel,
For M/s.Ajmal Associates.

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Special Government Pleader for the respondents.

2.The petitioner is presently working as Divisional Excise Officer in the Revenue Department. He was appointed as Typist on 28.11.1995. He was promoted as Assistant on 29.12.2001. He became Deputy Tahsildar on 09.07.2011. He was promoted as Special Tahsildar on 24.03.2015. The petitioner sought correction of his date of birth in the service register. The petitioner's date of birth is presently shown as 29.09.1964. He wants it to be altered as 26.05.1963. When he originally made such a request in the year 1999, it was rejected vide order dated 21.03.2005. Questioning the same, the petitioner filed W.P.(MD)No.1337 of 2006. Vide order dated 08.08.2011, the writ petition was allowed and the case was remitted to the competent authority



W.P(MD)No.28017 of 2022

to consider the application filed by the petitioner afresh and in accordance with law. Pursuant to the said direction, the issue was re-visited and once again vide order dated 06.11.2022, the Commissioner of Revenue Administration and Disaster Management, Chepauk, Chennai rejected the petitioner's request for alteration of date of birth. Challenging the same, the present writ petition came to be filed.

3.The learned senior counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and he called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents.

5.The original register of birth maintained by Thirumangalam municipality was also produced. The contention of the learned senior counsel for the petitioner is that the parents of the petitioner got married on 08.05.1963 and that therefore, it was inconceivable that the petitioner could have been born on 26.05.1963. Secondly, the birth certificate produced by the petitioner clearly indicates that the petitioner was born to his parents only on 29.09.1964. At the



W.P(MD)No.28017 of 2022

time of birth, a child is normally not named and that is how the column pertaining to the name of the child was originally left blank. In the year 1989, a proper birth certificate was obtained and in the said certificate not only the name of the petitioner is mentioned but his parents names are also correctly mentioned. The Hon'ble Supreme Court in the decision reported in **(2009) 7 SCC 283 (CIDCO Vs. Vasudha Gorakhnath Mandevlekar)** held that the death and birth register maintained by the statutory authorities raises a presumption of correctness and that entries made therein are admissible in evidence in terms of Section 35 of the Evidence Act and that it would prevail over an entry made in the school register, particularly, in the absence of proof that the same was recorded at the instance of the guardian of the respondent. It is further submitted that the said decision was followed by this Court in more than one decision. Reliance is placed on the decision reported **(2011) 4 MLJ 815 (K.C.Kalaikovan v. Commissioner)** and the order dated 27.04.2021 made in W.A.No.1297 of 2020. The learned senior counsel for the petitioner submits that the reasons set out in the impugned order are clearly not sustainable.

6.It is true that when the petitioner's request was rejected on the earlier occasion, this Court set aside the same and remanded the matter. The competent authority had been mandated to pass a detailed speaking order



W.P(MD)No.28017 of 2022

showing as to why the certificate issued by the Registrar of Births and Deaths could not be relied upon. The competent authority had given the following reasons as to why the certificate relied on by the petitioner cannot be accepted:-

“13) On verification of 1964 year Birth Register of Tirumangalam Municipality, it is found that one unnamed male child born to Thiru.Sulthan and Tmt.Nainamal bibi on 29.09.1964 and the event of birth has been registered in Annual No.636 and Monthly No.6. The column in the name of "no of the live birth" is mentioned as "1". Later on, the petitioners name has been inserted in the original birth register on 01.03.1989 and father's name has been altered as "A.M.Mohamed Sultan" on 30.03.1989 by the Birth and Death Registrar.

15) The petitioner's name was inserted in the 1964 year Birth Register on 01.03.1989 and fathers name was altered as "A.M.Mohamed Sultan" after a lapse of nearly 25 years by the Birth and Death Registrar of Tirumangalam Municipality.

16) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case. The above facts was not shown in the original birth Register. Besides, it is



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W.P(MD)No.28017 of 2022

also not known based on which documents the Birth and Death Registrar has decided that the entries in annual no. 636 is belongs to the petitioner. In view of above, the Birth extract issued by the Commissioner, Tirumangalam municipality on 30.03.1989 could not be relied upon. Further, the petitioner has not submitted any conclusive proof to prove his date of birth as 29.09.1969, other than the Birth extract.

17) It is also pertinent to mention here that the petitioners father had signed the declaration part in the Secondary School Leaving Certificate Book wherein, the date of birth is mentioned as 26.05.1963 and acknowledged that no changes will be demanded in future. Further, the petitioners father was not prohibited to rectify the date of birth of the petitioner given before the School authorities at that time.”

7.It is true that the entries made in the register of birth and death will carry presumption. However, it must be noted that in the original entries made in the register, the column pertaining to the name of the child was left blank. The petitioner's name was inserted only in March 1989. The correction of the name of Sulthan as A.Mohamed Sulthan does not appear to be in order. The correction and the insertion of the petitioner's name were based on the letter given by the local municipal councillor. The Commissioner who is the competent authority under the Act had not conducted any enquiry. The name of



W.P(MD)No.28017 of 2022

the petitioner has been entered for the asking. If entries have been made in the birth register without holding proper enquiry and a revised certificate is issued on that basis, such a certificate will not carry presumption. Of course, if convincing materials have been brought on record that the petitioner's parents got married only in May, 1963, then a case stands made out. Except producing photocopy of the marriage invitation card, nothing else has been produced before this Court. The petitioner's parents belonged to Islam and definitely entry would have been made in the nikha register maintained by the local jamaat. If the petitioner had produced the entry in the nikha register pertaining to his parents' marriage, then alteration in the service register could have been effected. There is nothing on record to show that the male child born A.Mohamed Sulthan and Nainammal Beebi on 29.09.1964 was the petitioner. The petitioner was born with as many as six siblings. Four of them are brothers and two of them are sisters. It is quite possible that the petitioner was born in the year 1963 and another male child was born on 29.09.1964. The petitioner joined service only in the year 1995. The petitioner could have very well entered his date of birth as 29.09.1964 even while entering his service. Because of these circumstances, the competent authority felt that the birth certificate relied on by the petitioner cannot be accepted. The competent authority had duly applied his mind. I am not able to conclude that the



W.P(MD)No.28017 of 2022

approach of the competent authority is perverse or it has been exercised in an arbitrary manner. No case for interference is made out and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

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W.P(MD)No.28017 of 2022



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W.P(MD)No.28017 of 2022

G.R.SWAMINATHAN, J.

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W.P(MD)No.28017 of 2022

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