



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 5388/2022**

NISHANT SINGHAL

..... Petitioner

Through: Mr. Rohit Rathi and Mr. Rahul Chauhan, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Advocate for R-1 to R-3/UoI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present writ petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking quashing of the Order dated 27.02.2020 issued by the JS (PSP) & CPO Appellate Authority, Patiala House, New Delhi in Appeal No. VIII/402/App-176/2019, whereby the Learned Court upheld the order dated 07.11.2019 passed by the Passport Officer who rejected the request of change in Date of Birth in the petitioner's passport.

2. The Appellate Authority in its Order dated 27.02.2020 held that the appellant therein, who is the Petitioner before this Court, had obtained a passport which was renewed twice while being a minor, with the same Date of Birth 16.01.2003 as reflected on Birth Certificate dated 11.02.2003. It



was observed that after the second renewal, the Petitioner was issued a new Birth Certificate dated 02.07.2007 with Date of Birth as 16.07.2003. The impugned order further noted that the Birth Certificate dated 11.02.2003 was apparently issued even before the birth of the Petitioner and hence, the request by the Petitioner for change of Date of Birth to 16.07.2003 is not bonafide and thereby the request of the Petitioner was rejected.

3. Shorn of unnecessary details, the facts of the present case are as follows:

4. It is the case of the Petitioner that while the Petitioner herein was a minor, his parents got him issued a passport bearing no. F5283651 dated 20.12.2005 with his Date of Birth shown as 16.01.2003 on the basis of a birth certificate dated 11.02.2003 bearing registration no.488. Subsequently, realising the mistake in the Date of Birth in the Birth Certificate dated 11.02.2003, the parents of the Petitioner in the year 2007 approached the Registrar of Birth and Death, Nagar Nigam, Meerut, Uttar Pradesh and got the Date of Birth changed to 16.07.2003 and new Birth Certificate dated 02.07.2007, bearing registration no.6374 was issued.

5. The passport of the Petitioner, whilst he was a minor got renewed twice on an application made by the parents bearing passport no. J- 1544493 dated 07/06/2010 and renewed *vide* passport bearing no. M-3003555 dated 17/10/2014. Thereafter on 11.06.2019, the Petitioner applied to the office of Regional Passport Office, Ghaziabad, U.P. for renewal of his passport by endorsing his correct date of birth as 16.07.2003, wherein reference was made to his Senior School Certificate, Aadhaar Card, certificate of cancellation of old Birth Certificate and valid new Birth Certificate issued by the Registrar, Nagar Nigam, Meerut.



6. The application for change of Date of Birth in the Regional Passport Office was rejected by the Regional Passport Officer *vide* order dated 07.11.2019 by holding in para 3 of the order as under:

“The birth certificate used to obtain the first/previous passport was issued even before the new date of birth claimed by the applicant (Obviously the old birth certificate was in existence before the new date of birth of the applicant). Thus, the claim for correction/change in the date of birth seems not genuine/bonafide. Therefore, request for correct/change of date of birth may not be considered at this stage. However, if you desire to obtain passport as per date of birth recorded in your first/previous passport you may visit this office at any working day after prior appointment.”

7. Aggrieved by the Order dated 07.11.2019 passed by the Regional Passport Office, the Petitioner preferred an appeal dated 26/11/2019 under Section 11 of the Passports Act, 1967, before the Appellate Authority, Joint Secretary (PSP) & Chief Passport Officer, Patiala House Annexe, Ministry of External Affairs, New Delhi, which came to be rejected *vide* the impugned order herein dated 27.02.2020.

8. Material on record shows that considering the Petitioner's date of birth as 16.07.2003, he has attained majority on 16.07.2021, whereafter this petition came to be filed by him challenging the impugned order.

9. Notice was issued in the present writ petition by this court and the pleadings stand complete.

10. It has been argued by the Ld. Counsel for the Petitioner that on the basis of an error on the part of parents, the Petitioner cannot be made to suffer. He submits that as soon as the parents realised the error on the first



Birth Certificate dated 11.02.2003, an application for correction of the date was filed before the Registrar of Birth and Death, Nagar Nigam, Meerut, Uttar Pradesh, who in turn corrected the Date of Birth to 16.07.2003 by issuing a new Birth Certificate dated 02.07.2007, bearing registration no.6374. Thereafter, an application to the Regional Passport Office was also made to re-issue the passport with the correct date of birth.

11. To support the case of the Petitioner, the Ld. Counsel for the Petitioner made reference to Office Memorandum No. VI/401/2/5/2021 issued by the Ministry of External Affairs, CPV Division wherein Clause 4 proviso (iii) provides that a request of change in date of birth can only be considered after five years of its issuance with the alleged wrong date of birth, if an applicant who was a minor at the time when the passport with the alleged wrong date of birth was issued to him. It further provides that after attaining majority, the applicant, if he applies for a change of Date of Birth in the passport, the Passport Issuing Authority irrespective of the duration of the issuance of passport, may accept a case for consideration and if satisfied, may accept the request for change in Date of Birth without imposition of any penalty.

12. The Ld. Counsel for Petitioner submits that the Passport Office, the Respondent herein, never challenged the new Birth Certificate issued by the Registrar of Birth and Death, Nagar Nigam, Meerut, Uttar Pradesh, nor did they challenge the Aadhar Card or the Senior School Certificates of the Petitioner which bears the correct Date of Birth which is 16.07.2003. It was further argued that the Passport Authority has no authority to usurp the power of a statutory authority being the Nagar Nigam, who is competent to issue Birth Certificates.



13. The Ld. Counsel for the Petitioner has also placed reliance upon a judgement passed by a Division Bench of this Court in **LPA No.46/2019** titled as 'The Regional Passport Officer vs Jatin Saini & Anr.' which was similar in facts to the present case wherein it was observed as under :

"2. We have heard the counsels for both sides at length and it appears from the facts of the case that the date of birth of respondent (original petitioner) had been duly recorded with births and deaths registration authority as 21.12.1995 and the birth certificate was issued to that effect. On the basis of this birth certificate, application was preferred by the mother of the respondent (original petitioner) for getting a passport from the appellant (original respondent). At the relevant time the respondent (original petitioner) was a minor and therefore the mother had also filed an affidavit stating the date of birth as 21.01.1995 which was recorded by the authority under The Registration of Births and Deaths Act, 1969 (hereinafter referred to as "the Act, 1969").

3. It appears that thereafter another birth certificate had also been issued by the concerned authority under the Act, 1969 stating the date of birth of the respondent (original petitioner) as 21.01.1995. The respondent (original petitioner) has now applied for renewal of the passport with the date of birth as 21.01.1995. The correction in the entry of the registration is in accordance with law, especially under Section 15 of The Registration of Births and Deaths Act, 1969. For the ready reference Section 15 reads as under:

"15. Correction or cancellation of entry in the register of births and deaths. — If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form



or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.”

4. Now there is only one birth certificate which reveals the date of birth of respondent (original petitioner) as 21.01.1995. This appellant has never challenged the correction of the date of birth issued by the authority under the Act 1969. Thus, the cancellation of the earlier birth certificate by the authority under the Act, 1969 has attained its finality.

5. In view of the aforesaid facts, now there is one date of birth of the respondent as per the certificate issued by the authority under the Act, 1969 which reveals the date of birth of the respondent (original petitioner) as 21.01.1995. Hence, the appellant has no option but to accept the only certificate which is in existence under the Act, 1969. Now, there are no two birth certificates under the Act, 1969.

6. These aspects of the matter have been properly appreciated by the learned Single Judge while disposing of W.P.(C) 11669/2018 vide judgment and order dated 29.10.2018. Hence, we are in full agreement with the finding of the learned Single Judge in the order dated 29.10.2018 and see no reason to allow this letters patent appeal.”

(emphasis supplied)

14. The Ld. Counsel appearing for the Respondent/Passport Authority contends that the Petitioner herein got a passport issued in his favour on the



basis of the first Birth Certificate dated 11.02.2003 and then got the passport renewed twice again on the basis of his first Birth Certificate, whilst in possession of the new Birth Certificate dated 02.07.2007.

15. The Ld. Counsel for the Respondent/Passport Authority further stated that the Passport Authority rejected the application of the Petitioner for the change in Date of Birth as the act of the Petitioner seemed completely malafide as the first Birth Certificate used for the issuance of the first passport in the year 2005 was created even before the alleged date of birth of the Petitioner. Evidently, approximately 14 years had passed since after issuance of his first passport and the Passport Authority is apprehensive that the petitioner might misuse the passport if the same is renewed or re-issued with a new Date of Birth, as prayed for by the Petitioner.

16. The Ld. Counsel appearing for the Respondent/Passport Authority also placed on record before this Court the Rules notified by the Government of Uttar Pradesh under the Registration of Births and Deaths Act, 1969 dated 03.01.2003 in which emphasis was laid on Rule 11(1) which reads as under:

“11- Correction or cancellation of entry in register of births and deaths-

(1) If a report is made to the Registrar that a clerical or formal error has been made in the register or if any such error otherwise becomes known to him and the register is in his possession, the Registrar shall hold an inquiry into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall give an extract of such entry



*showing what the error was and how it was rectified.
Corrected, will send to the District Registrar.”*

17. It is the case of the Respondent that the procedure as per the Rule 11(1) was not followed by the Registrar and there was no proper inquiry done by the authorities into the matter before issuing a fresh Birth certificate with the Date of Birth as 16.07.2003.

18. The Ld. Counsel has also contended that the writ petition filed by the Petitioner herein is bad for non-joinder / mis-joinder of parties as the Petitioner has not impleaded the Nagar Swasthya Adhikari, Nagar Nigam Meerut, for explaining the procedure to be followed by them for issuing a revised/ amended birth certificate.

19. It was further argued that the Office Memorandum No. VI/401/2/5/2021 would be applicable only if bonafide documents are produced by the Petitioner before the Passport Issuing Authority which is not so in the present case and therefore the decision of the Passport Authority and the impugned order passed by the Ministry of External Affairs, Office of the Joint Secretary (PSP) And Chief Passport Officer, PSP Division, Patiala House is valid in law and does not merit interference. Reliance has also been placed on a Judgment dated 23.06.2015 passed by the High Court of Kerela in **W.P. (C) No. 9073/2015** titled 'Jayakumar vs The Regional Passport Officer'.

20. Heard the Ld. Counsel for the Parties and perused the material on record.

21. It is an undisputed fact that the parents of the Petitioner got a Birth Certificate issued in the name of the Petitioner herein dated 11.02.2003 with Date of Birth as 16.01.2003 from the Nagar Swasthya Adhikari, Nagar



Nigam, Meerut on the basis of which the passport bearing no. F5283651 was issued in the name of the Petitioner, by the Passport Authority/ Respondent No.3 herein. Further, it is also admitted that 2 renewals of the passport were done by the Respondent No.3 on the basis of the same birth certificate in the years 2010 and 2014. It is also an admitted fact that on 02.07.2007 a fresh birth certificate with an amended Date of Birth as 16.07.2003 was issued in the name of the petitioner by the Nagar Nigam, Meerut on an application by the parents of the petitioner.

22. The application for renewal of the passport was made by the parents of the Petitioner in the year 2019 on the basis of the new Birth Certificate reflecting the Date of Birth as 16.07.2003. It is evident from a perusal of records that to substantiate the change in Date of Birth, the application before the respondent no.3 was supported with Senior School Certificate, Aadhar Card and the new Birth Certificate issued by the Nagar Nigam along with a letter dated 04.10.2019 from Nagar Nigam cancelling the old Birth Certificate. However, the application came to be rejected by the Passport officer, which was thereafter challenged by the petitioner before the Appellate Authority, the Joint Secretary (PSP) & Chief Passport Officer, M.E.A, P.S.P Division, Patiala House Annexe, New Delhi, which ultimately came to be rejected on 27.02.2020 and is impugned before this Court.

23. As of 2021, the Petitioner has attained majority, which is evident from his 12th class marksheet which has been placed on record.

24. The Office Memorandum issued by the Ministry of External Affairs / respondent no.2 dated 26.11.2015, Clause 4(iii) is reproduced herein for the sake of reference:



“Subject: Guidelines with regard to change/ correction of dates of birth entries in the passport of an applicant already held by him/her- reg.

.....

“4(iii)The cases where the applicant comes to PIA for change/correction with regard to date of birth in the Passport after a period of five years from the date of issue of passport with alleged wrong date of birth, no such request shall be entertained/accepted by the PIA and be rejected out rightly.

However, an exemption in this regard may be given to an applicant who was minor at the time when passport with alleged wrong date of birth was issued to him. As and when such an applicant after attaining the age of majority applies for the passport with the request to change the date of birth in the passport issued to him when he was minor, the PIA irrespective of the duration of the issuance of passport may accept his case for consideration and if is satisfied with the claim and document(s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty.”

(emphasis supplied)

25. OM dated 26.11.2015 lays down the procedure for change/ correction of dates of birth entries in a passport of an applicant already held by him/her. It has been notified by the Ministry of External Affairs/ Respondent No.2 that claims in the change of Date of Birth in a passport after the lapse of 5 years of issuance of the same will be entertained only if the applicant was a minor at the time when the passport was issued with the alleged wrong date and such an applicant after attaining the age of majority applies for change in Date of Birth in the passport.



26. It is apparent from the submissions made on behalf of the Respondent No.3 that only considering the fact that a passport was issued to the petitioner with Date of Birth as 16.01.2003 on the basis of Birth Certificate dated 11.02.2003 and the passport was renewed twice on the basis of the same certificate, the Respondent No.3 has denied the request of the Petitioner. The Respondent has disregarded the other valid documents submitted by the petitioner on a mere apprehension of fraud and ill-intent. No document on record has been placed by the Respondent No.3 to substantiate their apprehension. Further, no explanation has been provided by the Respondent to establish their basis of rejecting the application of the Petitioner supplemented with validly issued government documents. An application for renewal of passport cannot be denied only on the basis of an apprehension that the earlier passports would have been misused. Denial of passport has the effect of seriously impeding the rights of a citizen. The application for passport can be denied only on valid grounds. In the present case, the only reason that is being put forward by the Respondent is a mere possibility that the earlier passports which had been issued on the basis of Birth Certificates dated 11.02.2003 and 02.07.2007 could have been misused which can never be a valid ground for denial of issuing the passport. The Petitioner has submitted all the relevant documents and has given his correct date of birth. The mistake done by the parents of the Petitioner in giving the wrong date of birth cannot be put against the Petitioner.

27. The challenge of the Respondent on the validity of the new Birth Certificate issued by the Nagar Nigam has been made by referring to Rule 11 notified by the Government of Uttar Pradesh under the Registration of Births and Deaths Act, 1969, stating that no proper procedure was followed



by the Registrar. This court had raised a query to the Registrar, Birth and Death Department, Nagar Nigam, Meerut (Respondent No.4), the statutory authority for issuing Birth Certificates to clarify the discrepancies between the two Birth Certificates dated 11.02.2003 and 02.07.2007, cannot be accepted. The Birth Certificates dated 11.02.2003 and 02.07.2007 is not the subject matter of challenge in these proceedings as it has been stated that the passport authority is not competent to challenge the same. It has been stated on affidavit by the Respondent no.4 that in exercise of power vested under Section 15 of the Registration of Births and Death Act, 1969, after being satisfied, the first Birth Certificate dated 11.02.2003 was cancelled and revised Birth Certificate dated 02.07.2007 with Date of Birth as 16.07.2003 was issued to the applicant/ petitioner herein. The Birth Certificate dated 02.07.2007 which has not been set aside has to be given its full effect.

28. From the above discussion and by referring to the judgment passed by a Division Bench of this Court in **LPA No.46/2019** titled as 'The Regional Passport Officer vs Jatin Saini &Anr.', this Court is of the view that the respondent no.3 is not the appropriate statutory authority to hold that change in date of birth from 16.01.2003 to 16.07.2003 is invalid. Documents such as the Aadhar Card, 10th and 12th class marksheets which are a valid proof of date of birth, have been produced by the Petitioner. The Passport Authority cannot make a roving enquiry on its own and also is not competent to decide the veracity of Date of Birth. Every citizen has a legal right to hold a passport and the right can be taken away only in accordance with law. The authorities are bound to follow the procedure prescribed under law and can refuse to renew/cancel a passport only on grounds prescribed in law.



29. No doubt that the Passport authorities have the power to verify the veracity of the documents produced by an applicant substantiating his claim for change of Date of Birth, but they cannot hold that the authority issuing the date of birth certificates have not done their job properly, which argument cannot be accepted. The Impugned Order is set aside. The Respondent No.3 is directed to issue a fresh passport to the Petitioner with the correct Date of Birth as 16.07.2003 in accordance with the government documents produced by him, in accordance with law.

30. In accordance with the above directions, the present writ petition is allowed. Pending applications, if any, stand disposed of.

SUBRAMONIUM PRASAD, J

JULY 18, 2023

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