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W.P. No. 35502 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 35502 of 2023
and
W.M.P. No. 35468 of 2023**

N.Jaya Prathab

... Petitioner

-VS-

1. The Commissioner,
Erode City Municipal Corporation,
894, Brough Road,
Erode – 638 001.

2. The Assistant Executive Engineer cum Assistant Commissioner,
Zone – II, Periyachemur,
Erode City Municipal Corporation,
Erode.

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent in Na. Ka. No. H.1/2834/2023 dated 03.10.2023, quash the same and consequently direct the First and Second Respondents to issue a corrected Birth Certificate in which his name shall be corrected from N.Prathab to N.Jayaprathab as per the publication made in Tamil Nadu Government Gazetted Part – VI Section 4 dated 21.06.2023 in Page 829 in Serial No. 11353.



WEB COPY



W.P. No. 35502 of 2023



WEB COPY



W.P. No. 35502 of 2023

For Petitioner : Mr. C.Vigneswaran
For Respondents : Mr. M.Rajamathivanan,
Standing Counsel

ORDER

Heard Mr. C.Vigneswaran, Learned Counsel for the Petitioner and Mr. M.Rajamathivanan, Learned Standing Counsel, who takes notice for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The grievance ventilated by the Petitioner is that his name has been mistakenly entered as 'N.Prathab' instead of 'N.Jayaprathab' in the Birth Certificate of his son, viz., Vihan, born on 16.11.2022 in Maruthi Medical Center, Perundurai Road, Erode – 638001, and he had made a request along with a copy of the Gazette publication made on 14.06.2023 to the Respondents to correct it, but it was declined by Proceedings in Na. Ka. No. H.1/2834/2023 dated 03.10.2023 of the Second Respondent referring to the Letter R. No. 85876/SBHI.I/S1/2001 dated 18.07.2001 from the Director of Public Health, Chennai to all Commissioners of Corporations and Municipalities informing that if the name is changed for any reason subsequent to the date of



W.P. No. 35502 of 2023

birth for which Gazette Notification has been obtained, both Birth Certificate and Gazette Notification are to be used for all purposes as the proof of date of birth (Birth Certificate) and as proof of name (Gazette Notification) respectively. The said order is challenged in this Writ Petition with a consequential direction seeking to correct the said mistake in the name of the Petitioner in the Register of Births relating to his son maintained by the Respondents under the Registration of Births and Deaths Act, 1969 (hereinafter referred to as 'the RBD Act' for short).

3. Learned Counsel appearing for the Respondents strenuously contends that the only document produced by the Petitioner for the correction in the name is the Gazette Notification that had been published on 14.06.2023, which is obviously after the birth of his son on 16.11.2022, and that the Respondents cannot be faulted in declining to make any entry of change of name in the entries in the Register of Births in accordance with the directives contained in the said Letter R. No. 85876/ SBHI.I/S1/2001 dated 18.07.2001 from the Director of Public Health, Chennai to all Commissioners of Corporations and Municipalities, which squarely applies to the facts of this case.



W.P. No. 35502 of 2023

4. At this stage, Learned Counsel for the Petitioner has brought to notice

that his name as 'N.Jayaprathab' has been entered in his Aadhaar Card No.

8260 7441 0027 issued on 14.09.2013, which is prior to the birth of his son.

5. In this context, it must be pointed out that Section 15 of the RBD Act reads as follows:-

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.

It is also be beneficial to refer to Rule 11(4) of the Tamil Nadu Registration of Births and Deaths Rules, 2000 (hereinafter referred to as 'the RBD Rules' for short) extracted below:-

11. Correction or cancellation of entry in the register of births and deaths under Section 15:

(4) *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*



W.P. No. 35502 of 2023

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.

6. In terms of Section 15 of the RBD Act read with Rule 11(4) of the RBD Rules, it shall be incumbent upon the concerned authority to conduct an enquiry into the matter, if any application is made by the Petitioner for correction in the entries of the birth of his son in the Register of Births maintained by the Respondents under the RBD Act.

7. In view of the foregoing discussion, this Court without expressing any view on the merits of the controversy involved, passes the following order:-

- (i) if the Petitioner makes any fresh application with supporting documents showing his name as 'N.Jayaprathab' prior to the date of birth of his son, viz., Vihan, for correction of the mistaken entry said to have been made in the Register of Births maintained by the Respondents under the RBD Act in respect of his son, it shall be immediately examined in terms of the relevant rules by the concerned authority, uninhibited and uninfluenced by the impugned order;



W.P. No. 35502 of 2023

- (ii) if it is found that any other details or supporting documents is necessary, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 10 working days for the same;
- (iii) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and all other persons concerned to explain their position in that regard; and
- (iv) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment.

In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

05.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024

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W.P. No. 35502 of 2023

To

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W.P. No. 35502 of 2023

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W.P. No. 35502 of 2023

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