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W.P. No.34104 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P.No.34104 of 2024

S.Alarmelmangai

Vs.

... Petitioner

1.The Coimbatore City Municipal
Corporation Rep By Its Commissioner,
Coimbatore- 641 001.

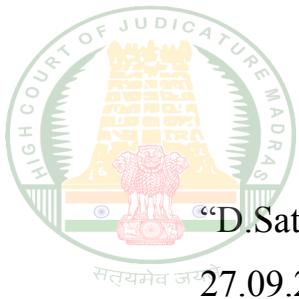
2.The City Health Officer
Public Health Division,
Coimbatore City Municipal Corporation,
Coimbatore- 641 001.

3.The Registrar Of Births and Deaths,
Coimbatore City Municipal Corporation,
Coimbatore- 641 001.

4.The Sub Registrar
Sub Registrar Office,
Singanallur, Coimbatore- 641 005.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in Na.Ka. No.598/ ME7/ 2023, dated 20.09.2023 passed by the 2nd respondent, quash the same and consequently direct respondents to make changes regarding father's name as



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“D.Sathish” instead of “M.S.Srinidhi” in the birth certificates dated 27.09.2017 (Registration No.2976) of petitioner's minor daughter S.Shivathmika

For Petitioner : Mr.D.Akaash
For R1 to R3 : Mr.D.R.Arunkumar
Additional Government Pleader
For R4 : Mr.C.Sathish
Government Advocate

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order passed in Na.Ka.No.598/ ME7/ 2023, dated 20.09.2023 by the 2nd respondent and to quash the same. The petitioner further seeks a consequential direction to the respondents to make necessary changes in the birth certificate dated 27.09.2017 (Registration No.2976/2017) of the petitioner's daughter S.Shivathmika, by substituting the name of “D.Sathish” in the place of “M.S.Srinidhi” in the column for the father's name.

2. The case of the petitioner is that she is the biological mother of S.Shivathmika (minor). Her marriage with one M.S.Srinidhi was solemnized on 09.03.2017 and registered before the 4th respondent in Serial No.86 of



2017. Thereafter, she gave birth to a female child, namely S.Shivathmika on 19.09.2017 and the birth was duly registered before the 3rd respondent on 27.09.2017 (Registration No.2976/2017). Subsequently, due to matrimonial incompatibility, the petitioner got separated from M.S.Srinidhi and has been leaving with her daughter from 24.05.2018. Under such circumstances, both have decided to apply for divorce by mutual consent.

3. The petitioner's husband, M.S.Srinidhi filed H.M.O.P.No.1667 of 2019 before the learned Principal Family Court, Coimbatore seeking divorce by mutual consent under Section 13 B of Hindu Marriage Act on 20.11.2019. After the statutory period of six months, both parties appeared and there was no possibility of reunion. Therefore, the learned Principal Family Court, Coimbatore, by judgment and decree dated 15.10.2020, granted divorce in H.M.O.P.No1667 of 2019, by mutual consent.

4. The petitioner was born on 04.02.1992. At the time of her divorce, she was about 28 years old. Thereafter, her parents arranged her second marriage with one D.Sathish. Accordingly, her marriage was solemnized with D.Sathish and duly registered in Serial



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No.HMR/Singanallur/80/2023 dated 09.03.2023 before the 4th respondent.

The petitioner is now living with her minor daughter, S.Shivathmika. In the birth certificate of her daughter, her father's name is mentioned as M.S.Srinidhi, which needs to be changed to D.Sathish. In fact, the petitioner executed a self-declaration deed dated 13.06.2023, which was registered before the 4th respondent vide document No.159 of 2023.

5. After registering the self declaration deed dated 13.06.2023, the petitioner submitted a petition dated 05.07.2023 to the 2nd respondent requesting to change the name of the father of her daughter from “M.S.Srinidhi” to “D.Sathish”. The 4th respondent also sent a communication in O.Mu.No.414 of 2023 dated 20.07.2023 to the 2nd respondent, confirming the registration of self-declaration deed dated 13.06.2023. On receipt of the said communication, the 2nd respondent passed the impugned order in Na.Ka.No.598/ME7/2023, dated 20.09.2023, refusing to change the father's name in the birth certificate of the petitioner's daughter, S.Shivathika. Aggrieved by the above said order, the petitioner has come forward with the present petition.



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6. The learned counsel appearing for the petitioner submitted that the 2nd respondent passed the impugned order without affording the petitioner an opportunity of hearing, in violation of the principal of natural justice. Therefore, the order passed without hearing personally is *non est* and void. He further submitted that the respondents failed to consider the welfare and future of the child, which ought to be of paramount importance. The petitioner, being the mother and natural guardian of the child, is solely responsible for her upbringing. There is no rival claim for custody pending before any other Court.

7. The learned counsel appearing for the petitioner placed reliance on the orders passed by this Court in the case of ***B.S.Deepa case (2015 (1) LW 943)*** and ***J,Nijish Archipald*** reported in ***2016 (7) MLJ 605***, where similar situations regarding the change of the father's name in the passport of the child were considered. The learned counsel further submitted that the deletion of the name of the biological father will not take away the rights of the child. Further, the decree that severs the matrimonial relationship between the husband and wife also results in the severance of the parental relationship.



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8. The learned counsel also submitted that this Court, by order dated 27.02.2024 in W.P.(MD).No.30055 of 2023, had considered identical situations and issued positive directions to the authorities to issue a revised birth certificate by substituting the name of the mother's second husband in the column titled 'name of the father'. It was contended that the impugned order infringes the child's right to life and dignity, which are guaranteed under Article 14, 19(1) and 21 of the Constitution of India.

9. The counter affidavit was filed by the 1st respondent on 13.02.2025 and the relevant paragraphs are extracted hereunder:

“6. I submit that section 15 of the Registration of Birth's and Death's Act, 1969 and Rule 11 of the Tamil Nadu Registration of Births and Deaths Rules, 2000 are extracted hereunder as follows:-

Registration of Birth's and Death's Act, 1969

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



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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.

Tamil Nadu Registration of Births and Deaths Rules, 2000

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

1. If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he Shall correct the error (by correcting or canceling the entry) as provided in section 15 and shall in the case of local authorities specified in column (1) of the Table below send an extract of the entry showing the error and how it has been corrected to the officer specified in column (2) thereof.”

Table



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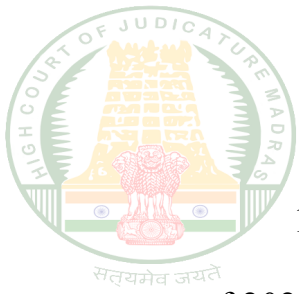


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<i>Local Authorities (1)</i>	<i>Officers (2)</i>
Village Panchayat	Village Panchayat President
Town Panchayat	Executive Officer
Contonment	-Do-
Municipality	Commissioner
Neyveli Lignite Corporation	Chief Health Officer
Corporation	Commissioner

10. Heard both sides and perused the materials available on record.

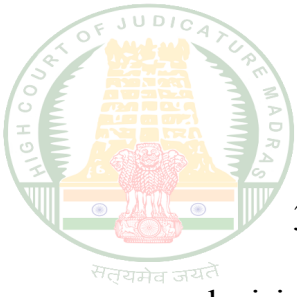
11. The issue in the present writ petition pertains to the change of the father's name in the birth certificate of the petitioner's daughter. In the birth certificate dated 07.11.2017, the father's name was mentioned as “M.S.Srinidhi”. The petitioner obtained a divorce by mutual consent from the said M.S.Srinidhi through a judgment and decree dated 15.10.2020 in H.M.O.P.No.1667 of 2019 passed by the Principal Family Court, Coimbatore. Subsequently, the petitioner executed a Deed of Declaration No.159 of 2023. Thereafter, she submitted a petition dated 05.07.2023 to the 2nd respondent, Corporation, requesting that the name of her daughter's father be changed from “M.S.Srinidhi” (erstwhile husband/divorce husband) to “D.Sathish”.



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12. The 4th respondent also issued a communication in O.Mu.No.414 of 2023 dated 20.07.2023 to the 2nd respondent, confirming the registration of the petitioner's self-declaration dated 13.06.2023. However, the 2nd respondent passed the impugned order stating that the father's name could not be changed in the birth certificate, based on the instructions of the 4th respondent, who asserted that the petitioner could not give the child in adoption to her second husband, namely D.Sathish. It was held that there was no possibility of the petitioner giving her daughter in adoption to the second husband, and on this ground, the request for change of the father's name in the birth certificate was rejected. The 2nd respondent passed the impugned order without affording the petitioner an opportunity of being heard, which is a violation of the principles of natural justice.

13. In addition, it is appropriate to refer to the order of this Court, relied upon by the learned counsel for the petitioner, rendered in *Mirunavdevi -vs- The commissioner, Madurai Corporation and another (W.P.(MD).No.30055 of 2023)*. In that case, when a similar plea was raised, the Hon'ble High Court has observed that:



3.The issue raised in this writ petition is no longer res integra. In the decision reported in **2015-1-L.W-943 (Mrs.B.S.Deepa vs. The Regional Passport Officer, Chennai & ors)** held as follows :

“38.In view of the above, the writ petition is disposed of with the following directions:-

(1) The Ministry of External Affairs, Union of India may incorporate suitable provisions in the Passport Manual and incorporate suitable columns in the applications for the issue of passports, to enable the parties to indicate either the names of the biological parents or the names of the adoptive parents or the names of the step parents or all of them, according as the situation demands. It can be left to the will of the parties either to indicate the names of one or more of the biological parents along with the name/ names of the adoptive or step parent/parents or to indicate the names of all.

(2) In so far as the case on hand is concerned, the respondents shall issue a passport to the daughter of the petitioner, by indicating the name of R.Lakshmanan as the stepfather, in the column reserved for filling up the name of the



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father. The respondents are directed to issue passport within four weeks, upon the petitioner's application bearing File No. MA3067806994714 dated 10.7.2014.”

This judgment was followed in a subsequent decision of this Court reported in (2016) 7 Mad LJ 605 (J.Nijish Archibald v. The Regional Passport Officer). I am inclined to adopt the very same approach. The respondent is directed to re-issue the passport to the petitioner by substituting the name of her stepfather J.Praveen in the place of her biological father Ashwin K as expeditiously as possible. ”

5.The present case involves substitution of the name of the biological father by the stepfather. The issue ought not to be approached from a technical angle. I make it clear that the deletion of the name of the biological father in the birth certificate will not in any way take away the rights of the child in the estate of the biological father. This clarification ought to address the concerns expressed by the learned standing counsel for the Madurai Corporation. The rights of the biological father can never be taken away, provided he is



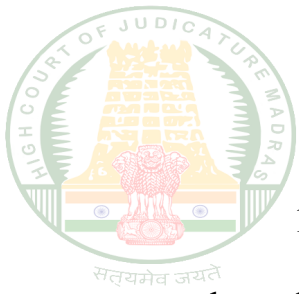
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ready to discharge his obligations as a parent. It is true that a decree of divorce severs the matrimonial relationship between the husband and wife and that it will not sever the relationship between the parents and the child. In this case, the petitioner obtained decree of divorce on the ground of her husband's desertion. The petitioner had succeeded in establishing the ground based on Section 13(1)(i-b) of the Hindu Marriage Act, 1955. The biological father of the child Nallusamy is nowhere in the scene. The child is now aged about seven years. It is the petitioner who is taking care of the child. The biological father has not contributed a single pie towards the well being of the child. There is a well known maxim “one who seeks equity must do equity”. The biological father can exercise his rights vis-a-vis the child, only if he is discharging his corresponding obligations.”

14. It is well settled that when it comes to matters concerning a child, the paramount consideration is the best interest of the child. The Court will not be bound by mere technicalities, but will instead focus on what serves the welfare of the child.



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15. In view of the above factual matrix of the facts and the ratio laid down by this Court in W.P.(MD) No.30055 of 2023, the impugned order in Na.Ka.No. 598/ ME7/ 2023, dated 20.09.2023, passed by the 2nd respondent, is liable to be quashed. Accordingly, the same is quashed. ***The respondents 1 and 2 are directed to make the necessary changes by substituting the name 'D.Sathish' in place of 'M.S.Srinidhi' in the birth certificate dated 27.09.2017 (Reg.No.2976 of 2017) of the petitioner's minor daughter S.Shivathmika, within a period of four weeks from the date of receipt of a copy of this order.***

16. This ***Writ Petition is disposed of*** with the above directions. No costs.

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rpl

Index : Yes/No

Speaking Order : Yes/No

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Coimbatore City Municipal Corporation,

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