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

+ **W.P.(C) 727/2024**

POOJA BHARDWAJ & ANR.

.....Petitioners

Through: Mr. Akshansh Gupta and Ms. Priya Mittal, Advocates.

versus

**MUNICIPAL CORPORATION OF DELHI
& ORS.**

.....Respondents

Through: Mr. Puneet Yadav, Additional Standing Counsel for MCD.

Ms. Nidhi Raman, CGSC with Ms. Archanan Survey, Mr. Zubin Singh and Mr. Arnav Mittal, Advocates for UOI.

Mr. Mohit Bhardwaj, Advocate for R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

27.01.2025

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1. This writ petition is preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking a direction to cancel/reject the Birth Certificate dated 17.09.2003 bearing registration no. 45 in case of Petitioner No.1 showing incorrect date of birth, i.e., 21.11.1998 and Birth Certificate showing incorrect date of birth as 25.05.1994 in case of Petitioner No.2, with a further direction to Respondent No.2 to issue fresh Passports with correct date of birth of Petitioner No.1 being 21.11.1999 and in case of Petitioner No.2 being 25.12.1995.

2. Learned counsel for the Petitioners submits that Petitioner No.1 was three years ten months old when Birth Certificate was issued by MCD on the orders of SDM, South Delhi and bears a wrong date of birth, i.e., 21.11.1998. Petitioner No.1 was actually born on 21.11.1999 in a homebirth



and therefore no Birth Certificate was issued through a hospital. She was also homeschooled till 2004, however, various documents, such as Class Xth and XIIth Certificates, Graduation and Post-Graduation Degrees, Aadhar Card, Pan Card, Driving Licence, Bar Council of Delhi ID Card reflect her correct date of birth. It is urged that the problem has arisen since Petitioner's old Passport bears an incorrect date of birth and when she applied for a fresh Passport online on 28.01.2020 and attached the previous Passport issued on 27.05.2009, which had expired on 26.05.2014, she was informed that only after the earlier Birth Certificate was cancelled by MCD, a new Passport could be issued with the correct date of birth.

3. In case of Petitioner No.2, learned counsel submits that he was born on 25.12.1995 in a homebirth which explains why there is no Birth Certificate issued by any hospital. Petitioner No.2 was homeschooled in the early years and later went to a Boarding School in Rajasthan in 2004 in Class-IV. All his Government related documents, such as Aadhar/PAN /Voter ID Cards, Driving License and Class Xth and XIIth Certificates have the correct date of birth, but the earlier issued date of birth Certificate bears the incorrect date, i.e., 25.05.1994. It is submitted that a Passport was issued to Petitioner No.2 on 11.05.2009, which expired on 10.05.2014. However, the expired Passport was misplaced on 08.03.2013, for which FIR bearing SO No. 430/2014 was lodged. Petitioners applied for fresh Passports on 28.01.2020, but the same have not been issued on the ground that Petitioners have two Birth Certificates bearing two different dates of birth. Learned counsel submits that in these circumstances, Petitioners were constrained to approach this Court for a direction to cancel the incorrect Birth Certificates and for issuance of fresh Passports bearing correct dates.



4. Learned counsel appearing for Respondent No.3/SDM submits that the allegedly incorrect Certificates were issued at the behest of the father of the Petitioners as admittedly, their births took place at home and there are no supporting documents from any hospital. As per Section 13 of the Registration of Births and Deaths Act, 1969 ('1969 Act'), any birth or death of which delayed information is given to the Registrar after one year of its occurrence, shall be registered only on an order made by a District Magistrate or Sub-Divisional Magistrate or by an Executive Magistrate authorized by the District Magistrate, having jurisdiction over the area, where the birth or death takes place, after verifying the correctness, on payment of prescribed fee. In the year 2016, Petitioners applied for issuance of delayed birth orders before the Executive Magistrate with dates of birth being 21.11.1999 and 25.12.1995, respectively and accordingly, Order no. No. 90630000045500 dated 16.04.2016 and Order No. 90630000045435 dated 13.04.2016 were issued by the Executive Magistrate in favour of the Petitioners. Despite knowing the existence of earlier Birth Certificates obtained by their father, Petitioners gave false affidavits to the effect that they had not obtained any birth certificate earlier from any Government Agency or Department in India. The factum of Petitioners being aware of existence of earlier birth certificates stands established from the Passports issued to them earlier, which are stated to have expired and/or lost. It is also argued that under Section 15 of 1969 Act only the Registrar of Births and Deaths can examine this issue and correct the error or cancel the entry by a suitable entry in the margin and it is not within the competence of the SDM/Executive Magistrate to cancel the earlier Birth Certificates.



5. Having heard learned counsels for the parties, in my view, counsel for Respondent No.3 is right in his submission that disputed questions of fact have been raised by the Petitioners in the present writ petition. There are averments that earlier incorrect Certificates were issued at the behest of father of the Petitioners as both the Petitioners were born at home, which also explains why there is no hospital record. From the averments it is unclear under what circumstances fresh Birth Certificates were issued and/or why the earlier Passports were made with the alleged incorrect dates of birth. Moreover, under Section 15 of 1969 Act, it is the Registrar of Births and Deaths who is the Competent Authority to correct or cancel the entries pertaining to births and deaths, if it is proved to his satisfaction that any entry in any Register kept by him under the Act is erroneous in form or substance or has been fraudulently or improperly made. The Competent Authority has not been arrayed as a party to this writ petition, for reasons best known to the Petitioners. In these facts and circumstances, in my view, it would be appropriate to remand the matter to the Registrar of Births and Deaths to look into the matter and take a decision in accordance with Section 15 of the 1969 Act. Before taking a decision, the learned Registrar shall call upon the Petitioners for a personal hearing for which time, date and venue will be intimated well in advance, in writing. It will be open to the Petitioners to furnish documents to support their case. Decision will be taken within a period of six weeks from the date of conclusion of the personal hearing and communicated to the Petitioners.

6. Needless to state, in case of any surviving grievance, Petitioners will be entitled to take recourse to legal remedies.

7. It is made clear that this Court has expressed any opinion on the



merits of the case and the decision shall be taken independent of the allegations made against the Petitioners in the affidavit dated 09.08.2024, filed on behalf of Respondent No.3 and in accordance with law.

8. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

JANUARY 27, 2025/shivam