

Pushpendra Singh Diwaniyan Vs Union of India (UOI) and Others

Court: Delhi High Court

Date of Decision: Aug. 4, 2009

Acts Referred: General Clauses Act, 1897 " Section 21

Citation: (2010) 7 RCR(Civil) 1263

Hon'ble Judges: Sanjiv Khanna, J

Bench: Single Bench

Advocate: Parminder Kaur, for the Appellant; Rajiv Ranjan Mishra, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Sanjiv Khanna, J.

Petitioner wants to change his date of birth as recorded in his passport from 15th August, 1950 to 15th August, 1953.

This is peculiar as the petitioner had thought and had asked for change of his date of birth, allegedly on the basis of school certificate of Vth Class,

after he has already retired from service. It is not possible to decipher what advantage the petitioner may gain by changing his date of birth.

However, I need not go into the said aspect in detail, as the only question involved in the present writ petition is whether the respondents can

consider and examine the request of the petitioner for change of date of birth as recorded in his passport.

2. The respondents in the counter affidavit have relied upon Circulars dated 18th April, 2001 and 29th October, 2007. Relevant portions of the

said Circulars read as under:

Circular dated 18.04.2001

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e. School/educational

authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e. municipal

authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of

jurisdiction, certifying the valid date of birth/place of birth.

Circular dated 29.10.2007

(c) Where files have already been destroyed. PIAs could use their discretion in correction of date of birth without a Court Order, where such

correction is only in months (not more than two years) and applicants provide satisfactory explanation that the same document(s) was provided at

the time of initial passport application. Fresh fees will be charged.

(d) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e. School/educational

authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e. Municipal

authorities etc., resulting in conflicting documents for valid proof, the PIA should direct the applicant to procure an order from a First Class Judicial

Magistrate, to effect the change as per Passport Manual 2001 (In some States, this function is discharged by Civil Magistrates).

3. Date of birth is recorded in the passport of the petitioner on the basis of his school leaving certificate. Therefore the said clauses of the Circular

will apply. In terms of the said Circulars, the respondents are insisting upon declaratory order from a First Class Judicial Magistrate to effect the

change as per Passport Manual, 2001.

4. A similar controversy has arisen before the Bombay High Court in the case of Jigar Harish Shah Vs. Union of India and Others, . Bombay High

Court dissented from the view taken by the Kerala High Court and held that in view of Section 21 of the General Clauses Act, the Passport

authorities have requisite jurisdiction and authority to make necessary corrections in case a wrong entry has been made. Accordingly, it was

observed as under:

....In this matter, however, when the provisions of Section 21 of the General Clauses Act have been brought to our notice and when we see that

correction in the Passport in relation to the entries therein including in relation to the date of birth can be made by the Passport authority itself

having regard to the provisions of Section 21 of the General Clauses Act, we do not feel it proper to refer the matter to the Judicial magistrate

whose Courts, we are aware, are already overburdened and further in particular when the Judicial magistrates have not been conferred with such a

jurisdiction under any law. We, therefore, instead of issuing a direction to the Judicial Magistrate in this matter, direct the Passport Authority itself

to hold an enquiry on hearing the petitioner in relation to the petitioner's claim about his correct date of birth and in case the Passport Authority is

satisfied with regard to the claim put forth by the petitioner, we further order it to effect the necessary change in the Passport issued in favour of the

petitioner. Petition is allowed in the above terms. Rule is made absolute.

5. It also appears that Chief Metropolitan Magistrates in Delhi have been following the view taken by the Bombay High Court in the case of Jigar

harish Shah (supra) and directing the authorities to examine any request for change/amendment in the date of birth and accept or reject the same on

merits without insisting upon a declaratory decree. The petitioner has filed on record one such order dated 27th April, 2007 passed by the

Additional Chief Metropolitan Magistrate.

6. As per the decision of the Bombay High Court in Jigar Harish Shah (supra) the respondent-authorities have requisite power to examine any

claim for change of date of birth in view of Section 21 of the General Clauses Act on merits. The respondent authorities in view of the aforesaid

position, should not delegate the matter and ask for declaration from the court of First Class Judicial Magistrate. As noted by the Bombay High

Court, First Class Judicial Magistrates are overburdened and deciding an issue regarding declaratory decree will unnecessarily delay adjudication

in other cases and increase dockets. Decision whether or not date of birth on the passport has been correctly recorded is an administrative matter

which can be easily decided by the respondents on merits. It is a different matter that the claim may not be genuine and is required to be rejected.

7. In view of the aforesaid, the present Petition is disposed of with directions to the respondents to examine the claim of the petitioner for change of

date of birth. It is clarified that this Court has not expressed any opinion on the merits of the claim made by the petitioner for change of his date of

birth. It is open to the respondents to reject or accept the said claim.