

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.8319 of 2018

Mathumitha Ramesh

... Petitioner

Vs.

1.The Chief Health Officer,
The Public Health Care Department,
Trichy Municipal Corporation (Births and Deaths)
No.58, Bharathidasan Road, Cantonment,
Tiruchirappalli 620001.

2.The Sub Collector,
The Revenue Divisional Officer,
(Birth and Death Registration Department)
Collectorate, Trichirappalli 620 017.

3.The Assistant Commissioner,
K.Gopalapuram Circle,
Trichy Corporation.

4.The Commissioner,
Trichirappalli City Corporation,
Bharathidasan Road, Cantonment,
Tiruchirappalli 620001.

5.Charan Raj

(R5 impleaded vide order dated 24.04.2018
in W.M.P(MD)No.8189 of 2018)

... Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Mandamus, directing first respondent
to remove the name of Manish Madanpal Meena which was wrongly
recorded in the birth certificate of the petitioner's daughter Tavishi
Perara issued on 09.08.2017 by the fourth respondent.

For Petitioner : Ms.Shabnam
For Respondents 1,3&4 : Mr.N.S.Karthikeyan
Standing Counsel
For 2nd Respondent : Mr.S.Nagarajan,
Special Government Pleader.
For 5th Respondent : Mr.AR.Ram

ORDER

The petitioner, who had been separated by an order of divorce on mutual consent, has given birth to a child namely, Tavishi Perara on 23.04.2017. The birth of the child was through an intrauterine fertility treatment. The insemination was done with the help of a semen donor.

2.After birth of the child, the fourth respondent herein had issued a birth certificate for Tavishi Perara, in which the petitioner's name has been shown as mother of the child and Mr.Manish Madanpal Meena has been shown as father of the child. Since the said Mr.Manish Madanpal Meena is neither the father of Tavishi Perara nor the husband of the petitioner herein but only happened to extend some help to the petitioner in the hospital, the petitioner had sought for rectification of birth certificate by having the name of Mr.Manish Madanpal Meena removed. However, by an order dated 04.09.2017, passed by the first respondent, the petitioner's request was rejected on the ground that the mistakes and errors in the names of the father alone can be rectified and removal of the name from the birth

certificate is not contemplated under the relevant law. Challenging the same, the petitioner herein had filed W.P.(MD)No.20839 of 2017 and this Court by an order dated 13.11.2017, granted liberty to the petitioner to approach the concerned Revenue Divisional Officer with a representation seeking for required rectification. When the petitioner approached the Revenue Divisional Officer with the representation, the same was rejected on 08.01.2017 on the ground that the Registrar is the competent authority for rectification of the birth certificate. It is in this background, the present writ petition has been filed.

3.Ms.Shabnam, the learned counsel appearing for the petitioner submitted that under Section 15 of the Registration of Births and Deaths Act, 1969 r/w Rule 11 of the Tamil Nadu Registration of Births and Deaths Rules, 2000, it is the Registrar, who is the competent authority to carry out correction of errors in the birth certificate. The learned counsel further submitted that in view of the mistake committed by the authorities, they have been made to run from pillar to post before various authorities for no fault of theirs. The learned counsel by relying upon the affidavits filed by Mr.Manish Madanpal Meena and the husband of the petitioner namely, Mr.Charan Raj submitted that both of them have affirmed that they are not the father of the child, since the petitioner was impregnated

through intrauterine insemination with the help of a semen donor and the name of the father of the child required to be left blank. In support of her contention, the learned counsel had relied upon the affidavit filed by the petitioner stating that the pregnancy was through intrauterine fertility procedure.

4.The learned standing counsel appearing for the respondents 1, 3 and 4 submitted that they are not the competent authority for carrying out the rectification in the birth certificates and that the Director of Birth and Death is the competent authority to carry out the rectification.

5.Mr.AR.Ram, learned counsel, appearing for the 5th respondent submitted that the fifth respondent is neither the father of the child nor is he interested in the life of the petitioner herein, since he has already been separated through divorce proceedings.

6.I have carefully considered the submissions made by the respective counsel.

7.Insofar as the authority, who is competent to carry out the rectifications of the errors in the birth certificates, is concerned, it would be relevant to have a glance at the following provisions under

the Registration of Births and Deaths Act, 1969 and the Tamil Nadu Registration of Births and Deaths Rules, 2000:-

"Correction or cancellation of entry in the register of births and deaths:-

15.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 there-to the date of the correction or cancellation."

"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

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

(2) *In the case referred to in the sub-rule (1) if the register-is-not in his possession, the Registrar shall make a report to the officer specified in the table in sub-rule (1) and call for the relevant register and after enquiring into the matter, if he is satisfied that such error has been made, necessary correction.*

(3) *Any, such correction as mentioned in sub-rule (2) shall be countersigned by the officer specified in the Table in sub-rule (1) in this behalf when the register is received from the Registrar.*

(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 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.*

(5) Notwithstanding anything contained in sub-rules (1) and (4), the Registrar shall make a report of any correction of the kind referred to therein giving necessary details to the officer specified in the table in sub-rule (1).

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorized by the Chief Registrar by general or special order in this behalf under section 25 and on hearing from him take necessary action in the matter.

(7) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9."

8.A cursory reading of the aforesaid provisions clearly indicates that it is the Registrar of Birth and deaths, who is the competent authority, for carrying out the errors in the birth certificate. The submissions of the learned standing counsel for the respondents 1, 3 and 4 has no basis, since neither the Act nor the Rules does not provide so. While that being so, the first respondent herein, while passing the order dated 04.09.2017, rejected the representation on the ground that only the defects in the name of the father alone can be made and that there is no provision for correction of errors. Section 15 of the Registration of Births and Deaths Act,

1969, r/w Rule 11 of the Tamil Nadu Registration of Births and Deaths Rules, 2000, clearly indicates that the Registrar is well within his powers to carry out any errors that may have crept in the birth certificates.

9.It may be pertinent to mention here that the petitioner had given birth to a child through "Intrauterine Fertility Treatment", and her child, Tavishi Perara, was born on 23.04.2017. The name of Mr.Manish Madanpal Meena had been wrongly included in the birth certificate as the child's father. The affidavit of Mr.Manish Madanpal Meena, dated 31.01.2018 evidences that he is no way related to the petitioner and that the petitioner was only an acquaintance who had helped her on humanitarian ground in the hospital, during the time of her delivery.

10.The erstwhile husband of the petitioner namely, Charan Raj / fifth respondent has also filed an affidavit dated 24.04.2018, where he has categorically stated that the petitioner had become pregnant through intrauterine fertility treatment with the help of a semen donor and that he has no connection whatsoever with the parentage of the petitioner's child.

11. In view of the affidavits of Mr. Manish Madanpal Meena and the fifth respondent and taking note of the affidavits filed by the petitioner before this Court stating that the child was born through intrauterine fertility procedure, it can only be concluded that the name of Mr. Manish Madanpal Meena, has been wrongly incorporated in the birth certificate and hence his name requires to be deleted.

12. An incidental issue that arises for consideration is as to the authority of the officials to insist the petitioner from declaring the identity of the father of the child. Neither the Registration of Births and Deaths Act, 1969 nor the Tamil Nadu Registration of Births and Deaths Rules, 2000 stipulate that the name of the father of the child should be recorded in the register as prescribed under Section 16 of the Act. The prescribed form No.V for issuance of Birth Certificate, however, carries a column for the name of the father of the child. In a case like that of the petitioner herein, the name of the father of the child cannot be disclosed, since the same is from a semen donor. The confidentiality of the donor requires to be protected and there could be a possibility of serious prejudice being caused to the said donor, if his identity is disclosed.

13. There are also cases where women are constrained to raise children with their own sources in view of their unwilling and unconcerned partners. It would be totally unjustifiable to insist such

single or unwed mothers to compel them to declare the name of the father of the child who has chosen to abandon the child. As mentioned earlier, neither the Act nor the Rule mandates the disclosure of the identity of the father of the child. As such, the authorities concerned cannot insist for the name of the father when the details of the birth is registered in their books. At the most, the authorities concerned can require the mother to establish that the child was born from her womb, for which purpose, a duly sworn in affidavit of the mother would suffice. In support of the aforesaid ratio, the learned counsel for the petitioner relied upon a judgment of the Hon'ble Apex Court reported in **AIR 2015 SC 2569 (ABC Vs. The State (NCT of Delhi))**. While holding that the authorities handling an application for a birth certificate from a single parent or unwed mother can only seek for an affidavit from her for the purpose of issuance of birth certificate and not otherwise, the Hon'ble Apex Court observed as follows:-

"19. We are greatly perturbed by the fact that the Appellant has not obtained a Birth Certificate for her son who is nearly five years old. This is bound to create problems for the child in the future. In this regard, the Appellant has not sought any relief either before us or before any of the Courts below. It is a misplaced assumption in the law as it is presently perceived that the issuance of a Birth Certificate would be a logical corollary to the Appellant succeeding in her

guardianship petition. It may be recalled that owing to curial fiat, it is no longer necessary to state the name of the father in applications seeking admission of children to school, as well as for obtaining a passport for a minor child. However, in both these cases, it may still remain necessary to furnish a Birth Certificate. The law is dynamic and is expected to diligently keep pace with time and the legal conundrums and enigmas it presents. There is no gainsaying that the identity of the mother is never in doubt. Accordingly, we direct that if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the Birth Certificate, unless there is a Court direction to the contrary. Trite though it is, yet we emphasise that it is the responsibility of the State to ensure that no citizen suffers any inconvenience or disadvantage merely because the parents fail or neglect to register the birth. Nay, it is the duty of the State to take requisite steps for recording every birth of every citizen. To remove any possible doubt, the direction pertaining to issuance of the Birth Certificate is intendedly not restricted to the circumstances or the parties before us.

20. We think it necessary to also underscore the fact that the Guardian Court as well as the High Court which was in seisin of the Appeal ought not to have lost sight of the fact that they had been called upon to discharge their parens patriae jurisdiction. Upon a guardianship petition being laid before the Court, the concerned child ceases to be in the exclusive

custody of the parents; thereafter, until the attainment of majority, the child continues in curial curatorship. Having receiving knowledge of a situation that vitally affected the future and welfare of a child, the Courts below could be seen as having been derelict in their duty in merely dismissing the petition without considering all the problems, complexities and complications concerning the child brought within its portals."

14.The above observation is self explanatory. In the present case, the hospital in which the petitioner had given birth to a child had certified that the petitioner herein had delivered an alive girl on 23.04.2017 at 10.47 a.m. at Cethar Hospital, Trichy. The petitioner herein had also filed an affidavit before the authorities that the child was born from her womb. In the affidavit filed before this Court, the petitioner had clearly stated that she got pregnant through "intrauterine insemination" through which, she delivered the girl baby namely, Tavishi Perara on 23.04.2017 at Cethar Hospital, Trichy.

15.In the light of these statements made in the affidavit and also taking cognizance of the fact that the identity of the semen donor cannot be revealed, it follows that the authorities cannot insist for disclosure of the name of the father of the child. Accordingly, an interim order came to be passed by this Court on 24.04.2018 directing the first respondent to remove the name of Mr.Manish

Madanpal Meena in the birth certificate of the petitioner's daughter namely, Tavishi Perara born on 23.04.2017 and the matter is directed to be listed today for reporting compliance.

16.Today, when the matter came up for hearing, the learned counsel for the fourth respondent submitted that pursuant to the directions of this Court dated 24.04.2018, the birth certificate of the the petitioner's daughter namely, Tavishi Perara born on 23.04.2017 at Cethat Hospital, Trichy has been rectified in their register and a certificate has also been issued in which the name of the father of the child has been left blank and the petitioner's name has been shown as the mother of Tavishi Perara.

17.As such, the grievance of the petitioner has been met. Hence, no further orders are required in the present writ petition. Accordingly, the writ petition stands closed. No costs.

11.06.2018

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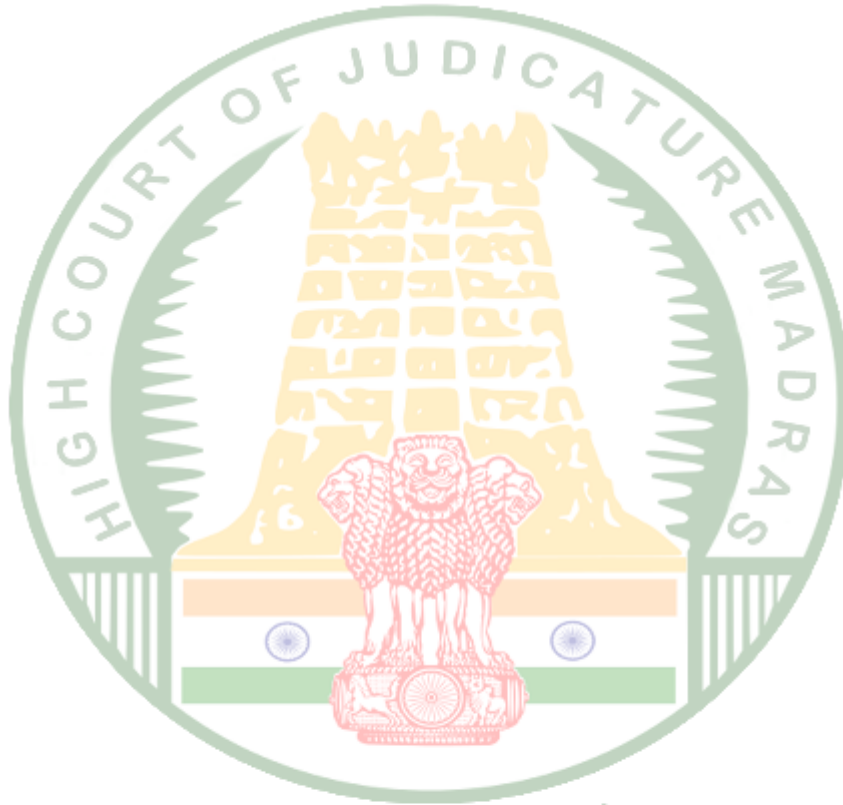
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To

The Sub Collector,
The Revenue Divisional Officer,
(Birth and Death Registration Department)
Collectorate, Trichirappalli 620 017.

M.S.RAMESH,J

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