

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 09TH DAY OF JULY 2020 / 18TH ASHADHA, 1942

WA.No.778 OF 2020

AGAINST THE ORDER DATED 29.05.2020 IN WP(C) 10610/2020(A) OF HIGH COURT  
OF KERALA

APPELLANT/WRIT PETITIONER:

VASU SASI  
AGED 53 YEARS  
S/O. K. VASU, RESIDING AT CHIRAVILAPUTHENVEEDU,  
THALAKKULAM, BHOOTHAKKULAM P.O, PARAVUR, KOLLAM,  
PIN 691 302.

BY ADV. SMT.A.JANI

RESPONDENTS/RESPONDETS:

- 1 UNION OF INDIA  
REPRESENTED THROUGH MINISTRY OF EXTERNAL AFFAIRS,  
REGIONAL PASSPORT OFFICE, SNSM BUILDING, KARALKADA  
JUNCTION, PETTAH P.O, TRIVANDRUM PIN 695 024
- 2 PASSPORT OFFICER,  
KOLLAM PASSPORT SEVA KENDRA, 74 BUILDING, MC  
VIII/1578/715A, SN TRUST COMPLEX, NEAR KOLLAM MUNICIPAL  
CORPORATION OFFICE, VELLAPPALLY NAGAR, KOLLAM 691 001.
- 3 ASSISTANT PASSPORT OFFICER,  
KOLLAM PASSPORT SEVA KENDRA, 74 BUILDING, MC  
VIII/1578/715A, SN TRUST COMPLEX, NEAR KOLLAM MUNICIPAL  
CORPORATION OFFICE, VELLAPPALLY NAGAR, KOLLAM 691 001.

R1-3 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA

SRI.T.C.KRISHNA, APPEARING FOR ASG, SRI.P.VIJAYAKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06-07-2020, THE  
COURT ON 09-07-2020 DELIVERED THE FOLLOWING:

**'CR'**

**JUDGMENT**

**Dated this the 9th day of July 2020**

**SHAJI P. CHALY, J**

This appeal is directed against the judgment of the learned Single Judge dated 29.05.2020 in W.P.(C) No. 10610 of 2020, whereby the writ petition was dismissed declining the relief sought for by the writ petitioner for a direction to the Passport Officer, Kollam Passport Seva Kendra, Kollam, to carry out the correction of date of birth of the appellant in the passport.

2. Brief material facts for the disposal of the writ appeal are as follows:

The petitioner is holding an Indian passport bearing No.L 6693000. The last renewal of the passport was during the year 2014 and it is for the period from 20.02.2014 to 19.02.2024. Nowhere in the writ petition, the date of issuance of the passport to the appellant for the first time is mentioned, however to some extent it is discernible from Ext P1 copy of passport. The issue raised by the appellant was that his date of birth is wrongly shown in Ext.P1 passport as 20.01.1959, instead of the actual date of birth of 20.12.1965. It is the case of the appellant/writ petitioner that in all the relevant records, such as birth certificate, matriculation certificate, aadhar card, produced as Exts.P2 to P4, the date of birth is

shown as 20.12.1965. According to the appellant, the mistake had occurred due to the incorrect information given by the passport agent of the writ petitioner to the passport authority, or a mistake committed by the passport authority itself. Anyhow, to correct the passport accordingly, the writ petitioner has submitted Ext.P6 application and paid the requisite fee evident from Ext. P5. The Passport Officer, according to the appellant/writ petitioner, after scrutinising the application, has returned the same stating that there is a delay of 6 years in preferring an application for correcting the wrong entry and as per the Passport Manual, 2010, the application for correcting the entry cannot be entertained. The learned Single Judge has dismissed the writ petition holding that during all those years, the appellant, who was aware of the wrong entry of date of birth, has not chosen to make any application for correcting the same. It was also found that by virtue of the circular dated 26.09.2016, a time frame of 5 years is prescribed for correcting the entries in the passport and since the application submitted by the appellant has exceeded the period fixed in the circular specified above, the Passport Officer cannot correct the passport, and therefore, there is no illegality in the action of the Passport Officer returning the application seeking correction to the appellant.

3. The appeal is filed basically contending that the judgment rendered by the learned single Judge is against the proposition of law laid down by a

Division Bench of this court in *Union of India v. Sunil Kumar* [2015 (3) KLT 501 =2015 KHC 3697]) placing reliance on the Passport Manual, 2010, and therefore, the impugned judgment of the learned single Judge is irregular and is liable to be interfered with by this Court exercising the power conferred under Section 5 of the Kerala High Court Act. It is also submitted that the Passport Issuing Authority ought to have proceeded as per the Passport Manual, 2018, whereby the procedure for correction of wrong entry in the passport with regard to the date of birth is prescribed.

4. The sum and substance of the contention put forth by the appellant is that the action of the Passport Officer not following the procedure prescribed by the Government of India in the Manual issued in 2018 is arbitrary and illegal and the learned Single Judge has overlooked the law on the point and therefore, interference is justified in the appeal.

5. The learned Central Government Counsel has produced the office memorandums dated 26.11.2015 and 22.09.2016, which are the guidelines relating to the change/correction of date of birth in the passport. Relying upon the said circulars it is submitted that, going by the procedure prescribed under the notification dated 22.09.2016, an application for correction of date of birth can be entertained only if it is submitted within 5 years of the date of issue of passport having the alleged date of birth and if a request is made along with the birth certificate issued by the Registrar of Births and Deaths explaining as to how the mistakes have crept in the passport. So also, it is pointed out that

the procedure prescribed for change in the date of birth as per the Compendium of Instructions/Guidelines was issued by the Government only on the basis of the Circular dated 22.09.2016 and therefore, the claim raised by the appellant that the passport authority is vested with powers to correct the date of birth in the passport, irrespective of any period, cannot be sustained under law.

6. We have heard the learned counsel for the appellant, Adv. Sri. Jani A and the learned Central Government Counsel, Sri. T.C. Krishna, and perused the pleadings and documents on record.

7. Learned counsel for the appellant addressed the arguments in accordance with the contentions discussed above. Learned Central Government Counsel has submitted that the judgment in *Sunil Kumar* (supra) was rendered by the Division Bench of this Court on the basis of the Passport Manual, 2010 and in view of the office memorandum dated 22.09.2016, wherein a period of 5 years is prescribed for correction of date of birth in the passport from the date of issuance of the passport, the proposition laid down by the Division Bench in *Sunil Kumar* (supra) has no relevance at all. It is an admitted fact that the Division Bench in *Sunil Kumar* has rendered the judgment on the basis of the Passport Manual, 2010, wherein there was no prescription of any time limit for submitting an application for correction. In this regard, the Office Memorandums dated 26.11.2015 and 22.09.2016 are relevant and they read thus:

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**No. VI/401/2/5/2001**  
**Ministry of External Affairs**  
**CPV Division**  
**PV-I Section**  
**\*\*\*\*\***

Patiala House Annexe, New Delhi  
the 26<sup>th</sup> November, 2015

**OFFICE MEMORANDUM**

**Subject:-** Guidelines with regard to change/correction of dates of birth entries in the passport of an applicant already held by him/her - reg.

It may be mentioned that the necessary provisions with regard to change/correction of dates of birth in the passports are contained in the Passports Manual, 2010 and from time to time number of circulars have been issued by the Ministry on this issue.

2. It is pertinent to mention that recently, the High Court of Kerala while hearing the WP No. 9073 of 2015 (Jayakumar Vs UOI & others) has delivered a land-mark judgment on the issue of correction/change of entries regarding date/place of birth in the passport. During the course of arguments, the Court has elaborated upon the fact that the details entered in the Passport cannot be lightly interfered with, that too after many years without any sustainable cause and without any explanation as to why initially such a wrong declaration was made and why now a change is sought that too based on a document which was available with the applicant when the original declaration was made.

The High Court has further observed that the difference in dates of birth whether two years or twenty years, the power should be one to correct bonafide mistake and that too within a reasonable time. Even a Civil Court declaration after many number of years would lead to the applicant having possibly perpetrated a fraud on many other who acted upon the authenticated declaration of sovereign state as to the age status of its Citizen.

3. The Court, therefore, while dismissing the petition of the applicant petitioner has directed that the authorities would do well to introspect on the observation made herein to make suitable amendments to the circular. It has also been directed that there would be no scope for leaving any liberty on the petitioners to approach a Civil Court too on the reasoning adopted by this Court and the delay occasioned in seeking the correction.

4. Hence, the core principle of the judgment of the High Court of Kerala is that only the bonafide claims of the applicants for the change/correction of the date of birth in the passport should be accepted and that too if the same are submitted by them within a reasonable time limit after the issuance of passport. In pursuance of the directions of the High Court, it has been decided that henceforth, all the PIA shall follow the following instructions/guidelines in order to consider the claims/request the applicant for the change/correction of entries regarding of date of birth in their passports:

- (i) **Where an applicant claims clerical/technical mistake in the entry relating to birth/place of birth in the passport and asks for rectification/correction:**

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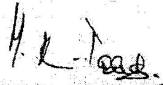
In all such cases, the documents produced earlier as proof of date of birth/place of birth at the time of issue of passport may be perused (if not already destroyed) by PIA. In case, it is a clerical mistake either by the applicant or the PIA, date/place of birth correction may be allowed by issue of fresh booklet; in the former case by charging fee for fresh passport and in the latter 'gratis' (same as mentioned in Ministry's Circular No. VI/401/2/5/2001, dated 29/10/2007).

- (ii) If an applicant applies for the change of date of birth in the passport within a reasonable period of time i.e. **within a span of five (5) years from the date of issue of passport having the alleged wrong date of birth**, with the birth certificate issued by the Registrar of Births & Deaths stating that the date of birth recorded in the passport was based on the entries mentioned documents other than the Birth Certificate, the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority. However, before the issuance of passport with changed date of birth, the Passport Authority shall also levy appropriate penalty on the applicant for obtaining passport on previous occasion by providing wrong information regarding his/her date of birth.
- (iii) The cases where the applicant comes to PIA for change/correction with regard to date of birth in the Passport after a period of five years from the date of issue of passport with alleged wrong date of birth, **no such request shall be entertained/accepted by the PIA and be rejected out rightly.**

However, an exemption in this regard may be given to an applicant who was minor at the time when passport with alleged wrong date of birth was issued to him. As and when such an applicant after attaining the age of majority applies for the passport with the request to change the date of birth in the passport issued to him when he was minor, the PIA irrespective of the duration of the issuance of passport may accept his case for consideration and if is satisfied with the claim and document(s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty.

- (iv) In no way, the Passport Authority will relegate the applicant to obtain the declaratory court order to carry out changes with regard to date of birth in the passport, as the Passport Authority subject to the condition that the case has been submitted by the applicant within the stipulated limit of 5 years from the date of issuance of passport (except the cases of minor passport holder as detailed in para 5(ii) above) would now be eligible to accept the genuine cases irrespective of the difference of dates of birth.

5. In view of the above, all the Passport Issuing Authorities are hereby requested to follow the above guidelines scrupulously to consider the requests of applicants for change/correction of dates of birth entries in the passports. Provisions contained in Chapter '4 and 8' of the Passport Manual, 2010 stand revised to the extent as stipulated above.

  
(Muktesh K. Pardeshi)  
Joint Secretary (PSP & CPO) &  
the Chief Passport Officer

All PIAs in India/Abroad.



No. VI/401/2/5/2001  
 Government of India  
 Ministry of External Affairs  
 CPV Division  
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Patiala House Annexe, New Delhi,  
 Dated the 22 September, 2016

OFFICE MEMORANDUM

Guidelines with regard to change/correction of entries of date of birth in the existing passport of an applicant

Ministry has issued O.M. of even number dated 26.11.2015 and 13.01.2016, on the above subject. The instructions contained therein are reiterated below:


- i. Only bonafide claims of the applicants for a change/correction of the date of birth in the passport should be accepted. All the PIAs shall follow the instructions/guidelines given below in order to consider the claim/request of the applicant for change/correction of entries regarding date of birth in their passports.
- ii. Where an applicant claims that a clerical mistake has been made in the entry relating to the Date of Birth (DOB)/Place of Birth(POB) in the passport and asks for rectification/correction, the documents produced earlier having proof of DOB/POB at the time of issue of passport may be perused (if not already destroyed) by the PIA. In case it is a clerical mistake either by the applicant or by the PIA, the DOB/POB correction may be rectified by the issuance of a new passport booklet by levying fees in case of the former and on 'gratis' basis in case of the latter.
- iii. If an applicant applies for the change of DOB within five years of the date of issue of passport having the alleged DOB, the request of such an applicant irrespective of the difference in the DOB may be considered by the PIA if the applicant is able to provide the Birth Certificate issued by the Registrar of Births and Deaths and further states that the DOB recorded in the passport was based on entries mentioned in documents other than the Birth Certificate. However, before the issue of passport with changed DOB, the PIA shall also levy appropriate penalty on the applicant for obtaining the earlier passport by providing wrong information regarding his/her DOB.
- iv. The cases where the applicant comes to PIA for change/correction with regard to DOB in the passport after a period of five years from the date of issue of passport with alleged wrong DOB shall not be entertained/accepted by the PIA. However, an exception in this regard may be given to an applicant who was a minor at the time when the passport with the alleged wrong DOB was issued to him/her, as and when such applicant after attaining the age of major, applies for the passport with the request of change of DOB in the passport issued to him/her when he or she was a minor, the PIA irrespective of the period of issuance of passport may accept his/her case for consideration, and if the PIA is satisfied with the claim and with the document (submitted by the applicant), the PIA may accept his/her request for change of DOB without imposition of any penalty.



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- v. Under no circumstances, the PIA will relegate the applicant to obtain the declaratory court order to carry out changes with regard to DOB in the passport and take necessary action as per the above instructions.
2. Following judicial pronouncements made after the issue of the OM dated 26.11.2015 and 13.01.2016, the following are the additional guidelines for PIA on the above subject:
- i. The PIA shall consider the explanation of each applicant seeking change in the DOB to find the genuineness of the claim even though more than five years have elapsed after the issue of the passport.
  - ii. The PIA need not entertain any application in a routine manner for correction of DOB unless such application is filed alongwith a genuine explanation explaining the delay in approaching the PIA. If such an application is filed, the PIA shall consider the same and take appropriate decision as per the instructions contained in the circulars dated 26.11.2015 and 13.01.2016.
  - iii. The PIA shall entertain all applicants for correction of DOB, if such holder of the passport produces a court decree filed in a suit initiated prior to issuance of O.M. dated 26.11.2015 wherein a direction is given to the PIA to correct the DOB notwithstanding the direction in the O.M.
  - iv. If any application for change in DOB is filed for correction prior to issuance of the O.M. dated 26.11.2015, the same shall be considered in accordance with the relevant regulations prevailing prior to the date of the O.M.
3. All PIAs are requested to take note of the above instructions and ensure that these guidelines are followed scrupulously to consider the request of change/correction of entries of Date of Birth in the passports. The provisions contained in Passport Manual 2010 stands revised accordingly.

  
(Arun Kumar Chatterjee),  
Joint Secretary (PSP) &  
Chief Passport Officer.

All the Passport Issuing Authorities in India/Abroad

8. On a reading of the provisions of the memorandums above, it is clear that no application for correction of date of birth can be entertained after 5 years from the date of issuance of the passport, which were issued revising the 2010 manual, and the sole exception is to a minor at the time of issuance of passport, for which separate procedure is prescribed. Anyhow the appellant has no case that he was a minor at the time of issuance of the passport. Evidently, the appellant has not challenged the office memorandums above issued by the Government of India, Ministry of External Affairs in that regard also.

9. Therefore, the sole question now comes up for consideration is whether the learned Single Judge was right in dismissing the writ petition upholding the act of the Passport Officer in returning the application for correction. In fact, the issue in question was considered by a learned Single Judge of this Court in *Jayakumar and others v. Regional Passport Officer, Tvm* (2015 (3) KHC 763), wherein it was held that the passport is a solemn document and the details entered therein cannot be lightly interfered with, that too after many years without any sustainable cause and without any explanation as to why initially such a wrong declaration was made and why now a change is sought for. Taking into account the provisions of the manual existing then, in the matter of correction of date of birth ranging from 5 years to 7 years and the submission of application

after a long lapse, it was held that no writ can be issued for correction of date of birth in passports, having unexplained and undue delay. The case at hand is not different, since the delay of a long number of years is not explained at all. Even Though the passport in question is seen issued for a period of ten years from 2014, it is evident that previously the writ petitioner was holding passport No. E8532073 dated 25.03.2004 issued at Dubai. This also means that the writ petitioner was holding a passport prior to the one specified above, may be for an earlier period of 10 years which was renewed at Dubai. Therefore, it is explicit that there is an unexplained delay of several years, and the writ petitioner himself knew that it cannot be explained, which may be the reason for not specifying the date of original issue of passport, a mandatory requirement to consider an application as per the office memorandums supra.

10. In fact, the Government of India has issued the office memorandums subsequent to the judgment of the learned single Judge in *Jayakumar* (supra) and it was taken note of in the office memorandum that unless and until the delay is properly explained and that too within the period prescribed, applications cannot be considered by the Passport Issuing Authority.

11. Anyhow, the learned counsel for the appellant has invited our attention to the compendium of instructions/guidelines said to be issued

during the year 2018, especially clause 6.2 dealing with the correction of date of birth or place of birth in the passport to contend that irrespective of any time line, the authority has to consider an application for correction of date of birth, which reads thus:

**“6.2 Where an applicant claims clerical/technical mistake in the entry relating to birth/place of birth in the passport and seeks rectification**

In all such cases, the documents produced earlier as proof of date of birth/place of birth at the time of issue of passport may be perused (if not already destroyed) by the issuing PIA. In case, it is a mistake either by the applicant or a clerical mistake by the issuing PIA, date/place of birth correction may be allowed by issue of fresh booklet without any limitation of time. In case of mistake by the applicant, fee for fresh passport to be charged and in case of mistake by the PIA staff, fresh passport to be issued on ‘gratis’ basis [as mentioned in Ministry’s circular No. VI/401/2/5/2001 dated 29/10/2007].

6.3 If an applicant applies for correction of date of birth in the passport on the basis of a fresh or corrected birth certificate (the original BC was submitted earlier for issue of the first passport), the following procedure be followed:

- a) In case of furnishing of a new amended BC with the same date of issue and registration number of the old BC by the same authority, application for change in DOB be processed subject to physical verification of the new BC;
- b) In case of furnishing of a new BC by a different authority in replacement of old BC by another authority, the PIA shall insist on

cancellation of the old BC and after physical verification of the cancellation certificate and the fresh BC from issuing authorities, application for change in DOB be processed;

c) In case of furnishing of a new BC where the first passport was obtained using other documents like educational school certificates etc., application for change in DOB be processed subject to physical verification of the new BC and other supplementary documents (if required);

6.4 The PIA shall however reject cases where the old birth certificate or other DOB documents used to obtain the first passport, were issued even before the new date of birth claimed by the applicant. (Obviously, the old certificates were in existence before the new DOB of the applicant)

6.5 In case of DOB change applications based on fraudulent documents or /and suppression of material information or/and furnishing of wrong information, the Passport Authorities shall take appropriate steps for imposition of monetary penalty OR filing of criminal case against the offender applicant, as the case may be, in terms of the statutory provision of Section 12 of the Passports Act, 1967.

6.6 In no way, the PIA shall relegate the applicants to obtain a declaratory court order to carry out change in date of birth, as per earlier procedure.”

12. On an appreciation of the said provisions also, we are of the view that the procedure as above is prescribed on specific instances and going by the case projected by the appellant, we do not think that the

appellant is entitled to get any benefit out of the same, since the appellant is not having a case that the application was submitted by the appellant based on any new or corrected birth certificate issued by the Authority under the Births and Deaths Act. On the other hand, clause 6.4 above makes it clear that the Passport Issuing Authority shall reject the case where the old birth certificate or the other date of birth documents which were used to obtain the first passport, were issued even before the new date of birth claimed by the applicant. As discussed above, the original entry in the birth certificate issued by the statutory authority shows the date of birth of the appellant as 20.12.1965 and therefore, even going by the procedure so prescribed, the appellant is not entitled to get any relief out of the same, since there is no correction of date of birth. Moreover the birth certificate issued by the statutory authority is the conclusive proof of the age and no manner of prejudice is caused to the appellant in that regard especially when the appellant had the advantage of securing any employment from an anterior date abroad by virtue of the date of birth in the passport.

13. So much so, as we have pointed out earlier, there is no challenge to the office memorandums extracted above, wherein peremptory stipulations are prescribed in the matter of entertainment of the application for correction of date of birth. Therefore, in our view, the stand

taken by the Passport Issuing Authority, Kollam returning the application to the appellant cannot be said to be illegal or arbitrary, justifying interference by the writ court. A writ court need only endeavour to identify whether there was any gross illegality or arbitrariness on the part of the statutory authority in discharging his function by exercising his power and authority. Taking into account the points raised by the appellant/writ petitioner in the appeal, the office memorandums, and the judgments rendered by this Court discussed above, we are of the opinion that the appellant has not made out any case justifying interference in the judgment of the learned single Judge.

Resultantly, writ appeal fails and it is accordingly dismissed.

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**S. MANIKUMAR,**  
**CHIEF JUSTICE.**

sd/-  
**SHAJI P. CHALY,**  
**JUDGE.**

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