



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 20055/2019

Simran Raj @ Salma Nat

-----Petitioner

Versus

1. Union Of India, Through Secretary Ministry Of External  
Affairs, Government Of India, New Delhi.

2. The Regional Passport Officer, (Jaipur), J-14, Jhalana  
Institutional Area, Jhalana Doongri, Jaipur-(Raj.), 302051

-----Respondents



For Petitioner(s) : Mr. Kamlakar Sharma, Senior  
Advocate assisted by Mr. Madhusudan  
Rajpurohit, Adv. & Ms. Prabuddha  
Sharma, Adv.

For Respondent(s) : Ms. Manjeet Kaur, Adv.

**HON'BLE MR. JUSTICE ASHOK KUMAR GAUR**

**Order**

**Reportable:-**

**06/09/2022**

The present petitioner filed this writ petition initially with a prayer of seeking a direction against the respondents to issue passport to her on the basis of Birth Certificate showing her date of birth as 26.08.1992.

The writ petition was amended by the petitioner and therein following prayers have been made:-

"A) By an appropriate writ, order or direction quash and set aside the impugned communication dated 26/05/2020 and impugned orders dated 18/06/2020 and 15/06/2020 and or;



B) By an appropriate writ order or direction direct the respondents to issue passport to the petitioner on the basis of the Birth Certificate bearing No. dated 26/08/1992 forthwith, without any further delay.”

The brief facts pleaded in the writ petition are that the petitioner hails from a rural background and erroneously her date of birth was recorded as 26.08.1989 instead of 26.08.1992 in her birth certificate which was issued on 18.12.2009 by Gram Panchayat Sawai Jaisinghpura, Tehsil-Phagi, District-Jaipur (Raj.).

The petitioner has pleaded that she was married on 02.07.2014 and in her marriage certificate issued on 11.08.2016, her correct date of birth was mentioned as 26.08.1992.

The petitioner has pleaded that she obtained a birth certificate issued under the Registration of Birth and Death Act, 1969 (hereinafter referred to as 'the Act of 1969') read with the Registration of Births and Deaths Rules, 2000 (hereinafter referred to as 'the Rules of 2000'), wherein her correct date of birth was mentioned as 26.08.1992 and said certificate was issued on 05.02.2018.

The petitioner has pleaded that she was issued passport No. on 03.05.2010 and same was valid upto 02.05.2020 and said passport showed date of birth of the petitioner as 26.08.1989.

The petitioner has pleaded that her passport was cancelled by the respondents on account of discrepancies in the age mentioned between the birth certificate and the marriage



certificate. The petitioner got her passport renewed in the year 2017 w.e.f. 31.08.2017 and same was valid upto 30.08.2027.

The petitioner has pleaded that she addressed her grievance to the respondents via email and she was informed to get one of the birth certificate cancelled and as such, her issue of correction of date of birth in passport, was to be examined accordingly.

The petitioner has pleaded that in pursuance of email sent by respondents, she filed S.B. Civil Writ Petition No.23266/2018 before this Court, raising a grievance of non-adjudication of her representation, seeking cancellation of one of the birth certificate out of two.

The petitioner has pleaded that this Court on 15.03.2019, disposed of the writ petition with a direction to the Gram Panchayat to consider and decide the representation of the petitioner in accordance with law within a period of three months.

The petitioner has pleaded that in pursuance of the order dated 15.03.2019, passed by this Court, the earlier birth certificate of the petitioner dated 18.12.2009, was cancelled and 26.08.1992 was found to be correct date of birth.

The petitioner has pleaded that after cancellation of earlier birth certificate, she approached the respondents, however, no action was taken by the respondents.

The petitioner has pleaded that she also obtained information under Right to Information Act about status of her application and she was informed that no action was taken on it.

The petitioner has pleaded that during pendency of the writ petition, the respondent No.2, issued impugned communication dated 26.05.2020 through email, wherein it was informed that



application for issuance of fresh passport has been stopped for the reason "refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement."

The petitioner was further directed to submit a fresh application with correct details and also submit an explanation regarding alleged suppression of facts in the passport application for initiation action under Section 5(2)(c) and Section 12(1)(b) of the Passport Act, 1967 (hereinafter referred to as 'the Act of 1967').

The petitioner has pleaded that the petitioner after receipt of impugned communication dated 26.05.2020, submitted a detailed reply on 16.06.2020 before expiry of 21 days, as was mentioned in the communication dated 26.05.2020.

The petitioner has pleaded that she received impugned orders dated 15.06.2020 & 18.06.2020 on 24.06.2020, wherein she was communicated that it was not possible to process her application further and reasons for rejection of the application were mentioned in order dated 15.06.2020.

The respondents have filed reply to the amended writ petition.

The respondents have pleaded that the petitioner at first instance obtained passport in the year 2010 on the basis of birth certificate showing her date of birth as 26.08.1989 and subsequently she renewed her passport in the year 2017 which was valid upto 30.07.2017 and even while applying for renewal of the passport, the petitioner disclosed her date of birth as was entered in her earlier passport.



The respondents have pleaded that if there was any discrepancy which crept initially in the year 2010, the petitioner could have got the error rectified by submitting proper application for correction in her date of birth and despite the fact that her renewed passport was valid upto 30.08.2027, she submitted another application for grant of passport in the year 2018 supported with a new birth certificate issued on 05.02.2018.

The respondents have pleaded that the petitioner at first instance, submitted a birth certificate dated 15.12.2009, issued by Registrar (Birth and Death), Directorate of Economics and Statistics, Gram Panchayat Sawaijaipura, Panchayat Samiti Phagi, District Jaipur while the second birth certificate dated 05.02.2018 was issued by Directorate of Economics and Statistics, Government of Rajasthan, Jaipur and the said certificate was issued on the basis of record available with the Local Body i.e. Gram Panchayat Sawaijaisinghpura, Phagi, District Jaipur and as such, the petitioner has procured the subsequent certificate without following due process of law and further record of Gram Panchayat was never compared before issuing subsequent date of birth certificate and as such, the document i.e. the date of birth certificate issued subsequently, is a fraudulent document.

The respondents have pleaded that the second birth certificate issued on 05.02.2018 is subsequent to the date of registration of marriage and as such, either same was issued on the basis of some other fraudulent document or the marriage certificate was also fraudulently obtained.

The respondents have pleaded that application for passport and travel document are dealt with as per provisions of Section 5



of the Act of 1967 and Section 6 of the Act of 1967 provides for refusal of passport and travel document.

The respondents have also pleaded that Section 10 of the Act of 1967, empowers the Passport Authority to vary, impound and cancel a passport.

The respondents have pleaded that provisions of Section 11 of the Act of 1967 provides for filing appeal against impugned order challenged by the petitioner and as such, she has not availed statutory remedy.

The respondents have also placed reliance on Instructions/Guidelines issued by Ministry of External Affairs and as such, Guideline 6 of the Chapter 3 deals specifically with the change in date of birth and petitioner is not held entitled for change of date of birth.

The respondents have pleaded that they received a report from Principal of Government School, Sawaijaisinghpura and as such, application of the petitioner for issuing passport was rejected after giving suitable opportunity to explain by issuing a show cause notice.

The respondents have pleaded that they had communicated a show cause notice vide email dated 28.05.2020 and communication clearly shows that the petitioner was required to contact the respondent-Authorities within 21 days and no such stipulation of filing of reply within 21 days of the notice was there and in fact petitioner was required to file reply to the show cause notice within 7 days.



The respondents have pleaded that second birth certificate dated 05.02.2018 is a fraudulent document and as such, no indulgence may be granted by this Court.

Learned Senior Counsel-Mr. Kamalakar Sharma appearing for the petitioner has made following submissions:-

(1) The impugned communication dated 26.05.2020, rejected the passport application of the petitioner and the order was pre-determined as the petitioner was asked to file a fresh application and such communication is contrary to principle of natural justice.

(2) The impugned decisions dated 15.06.2020 & 18.06.2020, incorrectly records that the petitioner did not submit any reply, while petitioner had filed reply before expiry of 21 days.

(3) The petitioner had submitted the reply within 21 days in pursuance of communication dated 25.06.2020 and decision to reject application of the petitioner was taken on 15.06.2020 even before expiry of notice period. Accordingly, these orders are illegal and contrary to the principle of natural justice. The impugned orders dated 15.06.2020 and 18.06.2020 are passed without application of mind and the only reason assigned in the impugned order that the respondents have gone through the record and in the facts and circumstances, considered the application to be rejected, such reasoning is *prima facie* arbitrary and issued without application of mind.

(4) The application of the passport of the petitioner could only be rejected only on the ground mentioned in Section 6 of the Act of 1967 and not on other grounds. Learned Senior Counsel submitted that the respondents have not found any of the grounds



mentioned in Section 6 to be violated by the petitioner and as such, the impugned orders are contrary to the mandatory provisions contained in Sections 5 and 6 of the Act of 1967.

(5) The birth certificate showing the correct date of birth of the petitioner since was issued by the Competent Authority in accordance with law as per provisions contained in the Act of 1969 and the Rules of 2000, the Passport Authorities had no jurisdiction and power to question the validity of such certificate and the presumption has to be drawn that the certificate is a valid certificate for the purpose of date of birth of the petitioner.

(6) The petitioner has not been found guilty of violation of any condition of passport or visa and as such, on assumptions and presumptions, the respondents cannot doubt that the petitioner has furnished false information or she has committed any illegality in obtaining her correct date of birth certificate and as such, in absence of any violation of any provision of the Act of 1967, the impugned action of the respondents is not legally sustainable.

Learned counsel-Ms. Manjeet Kaur appearing for the respondents has made following submissions:-

(1) The petitioner has filed fraudulent document before the Passport Authorities and as such, the Authorities have rightly passed the orders, rejecting the application of the petitioner for issuance of passport.

(2) The Authorities were within their domain to collect information from different sources about correct date of birth of the petitioner and if after getting information from the relevant sources i.e. School, etc. the date of birth of the petitioner is not





correctly shown, then the Authorities have right to reject the application of the petitioner for issuance of passport.

(3) The petitioner after issuance of initial passport and later on at the time of renewal also, nowhere, produced any document to show that her date of birth was not 26.08.1989 but same was 26.08.1992 and as such, by procuring false birth certificate, no right is created in favour of the petitioner to get a passport showing date of birth as on 26.08.1992.

(4) The Authorities had sent show cause notice to the petitioner by speed post and her reply was sought within 7 days and since she failed to file reply to the show cause notice issued to her, no violation of principle of natural justice has taken place.

(5) If the petitioner has requisite document in her favour showing her correct date of birth, she is always at liberty to apply afresh for issuance of passport and the Authorities will proceed to consider such application in accordance with law and further instructions issued by the Ministry of External Affairs from time to time.

Learned Senior Counsel-Mr. Kamlakar Sharma has placed reliance on the following judgments:-

1. **CIDCO Vs. Vasudha Gorakhnath Mandevlekar (Civil Appeal No.3615/2006)**, decided by the Apex Court on 15.05.2009.
2. **Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Ltd. & Ors., (2014) 6 SCC 434.**
3. **Sunita Sawhney & UOI & Ors. [W.P. (C) 10839/2015]**, decided by the Delhi High Court on 03.12.2015.
4. **Haji Manu Vs. UOI & Ors., 2014 (2) RLW 929 (Raj.)**



5. **Haran Chandra Halder Vs. The UOI & Ors. (2014) 4 CHN (CAL) 62.**

6. **Ms. Shilpi Vs. UOI & Ors. (S.B. Civil Writ Petition No.6598/2014)**, decided by this Court on 10.08.2016.

7. **Regional Passport Officer Vs. Kokilaben & Ors. (S.B. Cr. Misc. Petition No.1761/2006**, decided by the Gujrat High Court on 05.12.2008.

I have heard the submissions made by learned counsel for the parties and perused the material available on record.

This Court is firstly required to see the legality of communication dated 26.05.2020, by which the respondents refused to issue passport or travel document to the petitioner.

This Court finds that in the email dated 26.05.2020 sent by the Passport Officer, to the husband of the petitioner, it was informed that the processing of the application was stopped and she was to give a suitable explanation and required to furnish a fresh application with correct details. The said email was also communicated regarding circumstances under which the petitioner is said to have suppressed material information in passport application and why action was not to be taken to reject the application dated 19.06.2018 under Section 5(2)(c) of the Act of 1967 and why penal action under Section 12(1)(b) of the Act of 1967 was not to be initiated. The said email also specifically asked the petitioner to contact within 21 days at the Regional Passport Office, Jaipur.

This Court finds that the respondents have filed a show cause notice with additional affidavit under Section 5(2)(c) of the



Act of 1967 dated 26.05.2020, wherein the petitioner was called upon to provide suitable explanation within 7 days.

This Court finds that the respondents while sending the mail on 26.05.2020, are asking the petitioner to contact the respondents within 21 days and on the same day, show cause notice is also said to be issued, whereby explanation is called within 7 days from her.

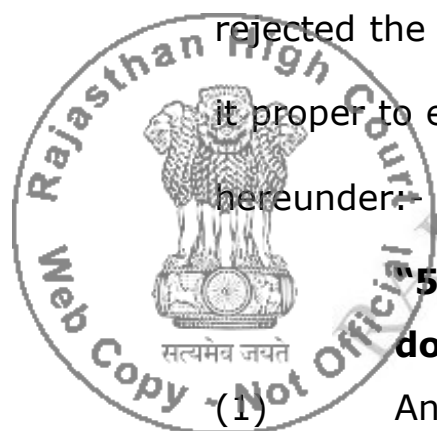
This Court finds that the petitioner had filed her reply on 16.06.2020 i.e. within 21 days from the receipt of email dated 26.05.2020. This Court is at a loss to comprehend as on one hand, the email sent to the petitioner is asking her to contact within 21 days and on the other hand, the show cause notice dated 26.05.2020, is seeking explanation of the petitioner within 7 days.

This Court further finds that the petitioner has specifically pleaded that the alleged show cause notice dated 26.05.2020, filed by the respondents with additional affidavit, was never supplied to her and even otherwise the document does not bear any signature or seal of the Regional Passport Officer, who is said to have issued the said notice to the petitioner. The petitioner also alleges that the respondent cannot issue two documents i.e. 26.05.2020 with the same Reference No.SCN/316024218/20 having variance in contents. This Court finds that the notice dated 26.05.2020 if was asking the petitioner to give the explanation within 7 days, then the respondents have acted in arbitrary manner and as such, it shows their pre-determination to reject the application of the petitioner of passport and accordingly the communication dated 26.05.2020 is not found in accordance with



law. The respondents on one hand communicated in email that they have refused to issue passport and in show cause notice they seek reply in 7 days. This Act is self contradictory.

This Court is now required to consider validity of the order dated 15.06.2020 and as such, the Authorities in exercise of power conferred under Section 5(2)(c) of the Act of 1967, have rejected the passport facilities to the petitioner. This Court, deems it proper to extract the relevant Sections 5 & 6 of the Act of 1967, hereunder:-



**5. Applications for passports, travel documents, etc., and orders thereon.-**

An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents.

*Explanation.-* In this section, "named foreign country" means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1A) An application for the issue of-

- (i) a passport under this Act for visiting a named foreign country; or
- (ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or



travel document referred to in this section,

may be made to the passport authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed. (1B) Every application under this section shall be in such form and contain such particulars as may be prescribed.



(2) On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

- (a) issue the passport or travel documents with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or
  - (b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or
  - (c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.
- (3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief



statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.



**6. Refusal of passports, travel documents. etc.**

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

- (a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;
- (b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;
- (c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country,
- (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for



visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

- (a) that the applicant is not a citizen of India.,
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;





- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
- (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

This Court on a bare perusal of sub-Section (2)(c) of Section 5 finds that the Passport Authority has power to refuse to issue passport or a travel document then it has to record in writing and brief statement or reasons for making a such order.

The bare perusal of the impugned order only makes a reference that the school certificate which was submitted by the petitioner at the time of issuance of first passport was sent to the concerned Authority to confirm its genuineness and correct date of birth, as per school record but the School Transfer Certificate Issuing Authority, confirmed the date of birth of the applicant-petitioner as 26.08.1989, as per school record.

This Court finds that the Passport Authority can refuse to issue a passport under Clause (c) of sub-section (2) of Section 5 on various grounds as enumerated in sub-section (2) of Section 6 from grounds (a) to (i).

The perusal of the said Section does not bring the case of the petitioner in any of the contingencies, where passport of the petitioner can be refused.

This Court finds that the Passport Authority has erroneously usurped power of the Authority, who is competent to issue the





birth certificate under the provisions contained under the Act of 1969 and the Rules of 2000.

This Court finds that the Passport Authorities are not expected to make their own independent enquiry, if there is a dispute or differences with regard to the date of birth, place of birth or name entered in the passport, especially when such entries are made on the basis of records, produced by the passport holder.

This Court further finds that if there is any mistake on the record already produced, based on which, entries were already made, then it is for the party, who seeks correction to produce the documents after carrying out necessary correction by the concerned Statutory Authorities, Judicial Magistrate or the Civil Court, as the case may be. The Passport Authorities are always within their competence to direct the parties to produce relevant documents either from the Authorities functioning under the Births & Deaths Registration Act or from the Judicial Magistrate or from the Civil Court, as the case may be. On production of corrected documents, the Passport Authorities are required immediately to carry out necessary correction in the passport.

This Court, considering the above scope of power of Passport Authorities, finds in the present facts of the case, that if petitioner has been issued a birth certificate by the Authorities, showing her date of birth as 26.08.1992 and her previous birth certificate has been cancelled by the Competent Authority, then in such circumstances, the Passport Authorities could not have assumed the power of treating the birth certificate of the petitioner as having obtained by any fraudulent means.



This Court finds that the petitioner, who was having two birth certificates at one point of time, had approached this Court for directing the Authorities to cancel the earlier certificate of date of birth of the petitioner, and finally same remains no more in existence and only the subsequent certificate of date of birth can be said to be a valid document, existing in favour of the petitioner and as such, she is required to be considered for showing her corrected date of birth in different documents including the passport document.

The submissions of learned counsel for the respondents that the petitioner was given show cause notice and she failed to file reply is liable to be rejected in view of earlier findings recorded by this Court.

The submission of learned counsel for the respondents that the petitioner has obtained second birth certificate in fraudulent manner and she never informed the Authorities even at the time of renewal of the passport in the year 2017, suffice it to say by this Court that if date of birth of the petitioner has correctly been shown by issuing a subsequent certificate of date of birth, she was within her right to reflect correct date of birth in her passport and accordingly she had made applications for issuance of passport before the Authorities as the earlier passport was cancelled by the respondents.

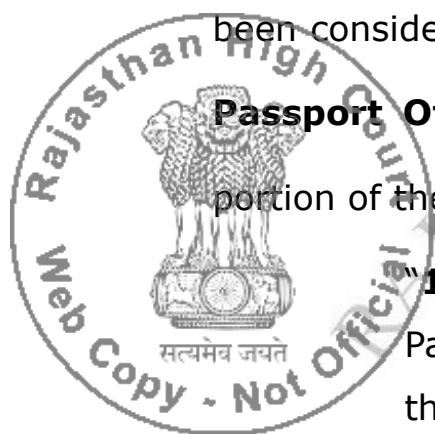
The submission of learned counsel for the respondents that the Passport Issuing Authority has adequate information from the School Authorities about correct date of birth of the petitioner to be 26.08.1989 and petitioner having supplied and suppressed material information, could not have been issued the passport,



suffice it to say by this Court that the information so gathered from the School Authorities about date of birth of the petitioner, was not to have much relevance after the first certificate of date of birth of the petitioner was cancelled by the Competent Authority under the provisions of the Act of 1969 and the Rules of 2000.

The scope of enquiry by the Passport Authorities has also been considered by the Gujrat High Court in the case of **Regional Passport Officer Vs. Kokilaben & Ors.** (supra). The relevant portion of the judgment is quoted as hereunder:-

“12. We are therefore, clearly of the view that Passport Authorities are not expected to make their own independent enquiry when there is a dispute or difference with regard to the date of birth, place of birth or name entered in the Passport, especially when entries were once made on the basis of records produced by the Passport holder. If there is any mistake on the record already produced, based on which entries were already made, then it is for the party who seeks correction to produce documents after carrying out necessary correction by the concerned statutory authorities, Judicial Magistrate or the Civil Court, as the case may be. Passport Authorities are always competent to direct the parties to produce relevant documents either from the authorities functioning under the Births and Deaths Register or from the Judicial Magistrate or from the Civil Court, as the case may be. On production of corrected documents, Passport Authorities will immediately carry out necessary correction in the Passport.”





Accordingly, this Court finds that the impugned communication dated 26.05.2020 and orders dated 15.06.2020 & 18.06.2020 are not legally sustainable and same are hereby quashed and set-aside.

This Court further directs the petitioner to make fresh application to the Regional Passport Officer, Jaipur along with all supportive documents, including the certificate of date of birth of the petitioner, showing her to be born on 26.08.1992 and the respondent Authorities shall consider the documents so submitted by the petitioner and will decide the application of the petitioner, preferably within a period of six weeks from the date of its receipt.

With the aforesaid observations and directions, the writ petition stands disposed of.

**(ASHOK KUMAR GAUR),J**

Ramesh Vaishnav/86

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