IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 18413 OF 2023 (LB-BMP)

BETWEEN:

FATHIMA RICHELLE MATHER
D/O SHAFI MATHER
AGED ABOUT 23 YEARS,
346, MATHER ESTATE,
THEVAKKAL, THRIKKAKARA NORTH(PART),
VADACODE KAILAS COLONY,
KANAYANNUR ENAKULAM,
KEARALA 682021

...PETITIONER

(BY SRI. RAKESH B BHATT.,ADVOCATE)

AND:

THE REGISTRAR OF BIRTHS AND DEALTHS
AND COMMISSIONER
BRUHAT BENGALURU MAHANAGARA PALIKE,
OFFICE OF THE JOINT DIRECTOR(STATISTICS)
BBMP SHOPPING COMPLEX,
BEHIND UPPARPETE POLICE STATION,
SUBHASH NAGAR, BENGALURU

...RESPONDENT

(BY SRI. PAWAN KUMAR., ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT OR ORDER AND QUASH THE ENDORSEMENT BEARING NO. JDS/PR/1581/2023-24 DTD 28.07.2023 ISSUED BY RESPONDENT (ANNX-E) AND ETC.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

   a. *Issue a writ of certiorari or any other writ or order and quash the endorsement bearing No. JDS/PR/1581/2023-24 dated 28.07.2023 issued by Respondent (Annexure-E)*

   b. *Issue a writ of mandamus or any other writ or order and direct the respondent to issue Birth Certificate of the petitioner by including her name.*

   c. *Pass such other order as this Hon'ble Court deems fit in the interest of justice and equity.*

2. The petitioner is a citizen of India at present pursuing her Master's in Management Program at IE University, Madrid, Spain. The petitioner was born on 28.4.2000 at Bhagwan Mahaveer Jain Hospital, Bangalore and in the birth certificate which had been issued the name of the father and mother of the petitioner was incorporated. However, the name of the petitioner was not mentioned in the said birth certificate.

3. Subsequently, the petitioner has carried on all her education in Cochin. She has studied until her 10th

standard of Vidyodaya School, Cochin. The petitioner had applied for and issued Aadhaar Card, Passport as also on completing her education she was issued the Grade sheet-cum-Certificate of performance by the Central Board of Secondary Education.

4. On a requirement having arisen for her to place her birth certificate on record for employment purpose, the petitioner made an application to the respondent for inserting her name in the birth certificate and issuing such a birth certificate containing her name.

5. The said request came to be rejected by the respondents vide Annexure-E dated 7.3.2022, on the ground that as per the instruction issued by the Ministry of Home Affairs, 15 year period had been provided for entering the name of the person born in the birth certificate, if not already entered into and the said 15 year period having expired in the year 2015 was extended for a period of 5 years thereafter, which also expired in the year 2020 and

subsequent thereto there is no provision to incorporate the name of the person born in the birth certificate, since the period has expired. The said period of 15 years to be calculated one year from the coming into force of Karnataka Registration of Births and Deaths Rules, 1999. It is aggrieved by the same, the petitioner is before this Court seeking for the aforesaid reliefs.

6. Sri.Rakesh B.Bhatt., learned counsel for the petitioner would submit that all and every record of the petitioner, apart from the birth certificate, indicate the name of her parents. There is no dispute as regards the petitioner being born to Mr.Shafi Mather and Mrs.Beena Mather. It is only that her name had not been incorporated in the birth certificate on 28.4.2000 when it was issued. The said fact being of no consequence, since all other documents have been issued to her, it is only when a requirement arose that an application was filed which ought not to have been refused since it is only

clerical work to be made of insertion of the name of the petitioner in the birth certificate. On these grounds, he submits that the above petition is required to be allowed and the reliefs sought to be granted.

7. Sri. Pawan Kumar., learned counsel appearing for the respondent-corporation would, however, submit that is only on account of the instruction issued by the Ministry of Home affairs that the insertion could not be made since the period has expired and on that ground he submits that the hands of the respondents are tied and no fault can be found with the respondents.

8. Heard Sri.Rakesh B.Bhatt., learned counsel appearing for the petitioner and Sri.Pawan Kumar., learned counsel appearing for respondent. Perused papers.

9. A short point that would arise for consideration is whether the Municipal Corporation who is incharge of issuing birth and death Certificates in terms of the

Karnataka Registration of Births and Deaths Rules, 1999 can refuse the insertion of the name of the person born in the birth certificate when such an application was made?

10. The only ground on which the application made by the petitioner has been refused is allegedly on account of delay and/or latches in as much as the said application has been made beyond the period of 20 years from the date when the Rules came into force i.e., in the year 1999. Apart therefrom there is no other reason made out by the respondent itself for such refusal.

11. It is not in dispute that a baby girl was born to Mr.Shafi Mather and Mrs.Beena Mather on 28.4.2000 at Bhagwan Mahaveer Jain Hospital and a birth certificate to that effect has been issued. It is further not in dispute that the petitioner is the daughter of Mr.Shafi Mather and Mrs.Beena Mather however, in the said birth certificate, the name of the baby i.e., petitioner has not been mentioned.

12. The petitioner has produced her Aadhaar Card which has been issued by the Unique Identification Authority of India where in the name of her father Mr.Shafi Mather has been mentioned alongwith the address. A passport issued by the passport office has also been produced which indicates the names of both the father and the mother with the address. A certificate issued by the Central Board of Secondary Education has been produced which indicates name of both the father and the mother. These documents accompanied the application filed by the petitioner for insertion of the name of the petitioner in the birth certificate.

13. In terms of Rule 10 of the Karnataka Registration of Births and Deaths Rules 1999, where a birth of any child has been registered without a name, the parent or guardian of such child shall within 12 months from the date of registration of birth of the child give information regarding the name of the child to the Registrar either orally or in writing. In terms of

proviso of Sub-rule (1) of Rule 10, the information given after the aforesaid period 12 months but within a period of 15 years could be taken into consideration for purposes of such entry. It is further stated that this period was further extended by a period of 5 years after the expiry of 15 years.

14. The birth certificate which has been issued and produced at Annexure-A does not indicate any requirement on part of the parents to comply with Rule 10 and/or proviso thereof, nor does it indicate any obligation on part of the person born to comply with Rule 10 on such person attaining majority.

15. It is therefore required that the requirement of Rule 10 be incorporated in the birth certificate so issued, if the name of the person born in is not incorporated in the said birth certificate. In the absence of such a obligation being incorporated in the birth certificate issued, I am of the considered opinion that it would not be permissible to now deny the petitioner, the insertion of her name in the birth certificate merely

because her parents had not furnished such details and/or that there is a delay in furnishing the said details by the Petitioner.

16. The communication of the Ministry of Home Affairs is an internal communication between the Ministry of Home Affairs and the Corporation authorities and not one which is made known to the petitioner.

17. Even in the said communication the Ministry of Home Affairs has also categorically indicated that it is the responsibility of the Corporation to make known the requirement of Rule 10 to everyone and give wide publicity thereof. One basic way of making known the same would have been to incorporate the said requirement in the birth certificate issued without a name which has not been done.

18. There are no details which have been made available as regards in what manner the corporation has made known the said requirement to the general public, be that as it may the Petitioner was residing outside the State of Karnataka in Cochin, State of Kerala as such

any information made known in Karnataka cannot be presumed to be to the knowledge of the Petitioner.

19. One other way of looking at this is that the petitioner was minor through out the period of 15 years time period, though she turned major during the extended period, can the petitioner be made to suffer on account of a default on part of her parents and deprive her of a birth certificate for eternity.

20. If at all it is the parents of the petitioner who have defaulted in not incorporating her name in the Birth Certificate. A mistake by the parents cannot put the child at a disadvantage since it is the child who is a petitioner now is in requirement of a Birth Certificate with her name on it for use in her employment. The period of 15 years prescribed under the Rules also do not make any sense for the reason that in that 15 years, the child would continue to be a minor. It is only after the child becomes a major, any action could be taken by the child to incorporate his or her name in the Birth Certificate. This aspect would also

have to be taken into consideration in these kind of matters. The respondent not having taken the same into consideration, the endorsement issued is bad in law on this ground also.

21. In that view of the matter, I am of the considered opinion that when the identity of the petitioner is not in dispute, the paternity is not in dispute, the petitioner cannot be denied a birth certificate with her name on it when several other documents issued to the petitioner bear the name of her parents.

22. In that view of the matter, I pass the following;

ORDER

i. The writ petition is ***allowed***.

ii. A certiorari is issued, the endorsement bearing No.JDS/PR/1581/2023-24 dated 28.7.2023 at Annexure-E is hereby quashed.

iii. A mandamus is issued, directing the respondent to issue a birth certificate with the name of the petitioner included in the same, all other details as contained under Annexure-A remaining

unchanged within a period of 30 days from the date of receipt of copy of this order.

iv. Respondent is also directed to incorporate the requirements of Rule 10 of the Karnataka Registration of Births and Deaths Rules 1999 in all birth certificates issued henceforth.

v. In view of dismissal of the main matter, all pending IA's does not survive for consideration.

Sd/-
JUDGE

SR
List No.: 1 Sl No.: 17