

Calcutta High Court

Anirban @ Anirvan Basu vs The Kolkata Municipal Corporation ... on 1 December, 2022

OD-5

ORDER SHEET

WPO/3056/2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ANIRBAN @ ANIRVAN BASU

-VS-

THE KOLKATA MUNICIPAL CORPORATION AND ANR.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date : December 1, 2022.

Appearance:

Mr. R. L. Mitra, Adv.

...for the petitioner Mr. Achintya Kr. Banerjee, Adv.

Mr. Anand Farmania, Adv.

...for the KMC The Court: The petitioner is facing a strange problem. He has two birth certificates issued in his favour. The first birth certificate issued by the Kolkata Municipal Corporation records the date of birth of the petitioner as 1st September, 1984 and the second records the date of his birth as 1st September, 1985. The first birth certificate was issued on 12th August, 1987 and the second on 20th April, 1990. The names of the parents of the petitioner remain the same in both the certificates. The informant in both the certificates is mentioned as the father of the child.

Relying on the basis of the second birth certificate, the petitioner was admitted in school and all along in all documents of the petitioner his date of birth is recorded as 1st September, 1985.

Two passports were issued in favour of the petitioner, one in the year 2000 and the other in the year 2002. In the first passport, the date of birth of the petitioner was recorded as 1st September, 1984 and in the second passport the date of birth of the petitioner was recorded as 1st September, 1985. The second passport was submitted for renewal in the year 2008 when it transpired that there was an earlier birth certificate in the name of the petitioner. The passport has not been renewed as there is discrepancy in the date of birth of the petitioner. Both the passports have been impounded.

The petitioner submits that information was wrongly given by his father at the time of issuance of the birth certificate for the first time. The petitioner prays for a direction upon the Corporation to

cancel his first birth certificate.

The petitioner relies upon an unreported order passed by this Court on 28th January, 2020 in WP/442/2019 in the matter of Supratim Banick Vs. The Kolkata Municipal Corporation & Ors. wherein the Court directed the authority of the Kolkata Municipal Corporation to correct/cancel the entry relating to birth relying upon the birth certificate issued by the authority where the child was born.

Learned counsel representing the Kolkata Municipal Corporation submits that in both the birth certificates the father was the informant relying upon whose information the birth certificates were issued. The father obtained both the certificates after putting his signature. Thereafter, his father used the second birth certificate in all the documents of the petitioner. It has been submitted that the authority will not be in a position to cancel any of the birth certificates.

Learned advocate for the petitioner submits that the petitioner was a minor when the birth certificates were issued in his name and when the passport was applied for. Only after detection of the anomaly, the petitioner himself got both the passports impounded. It has been contended that the petitioner ought not to be penalized for any error on the part of his father.

It has been submitted that as all the educational certificates, personal records of the petitioner etc. records the date of birth of the petitioner as 1st September, 1985, accordingly, necessary direction be passed not to give any effect to the birth certificate wherein his date of birth is recorded as 1st September, 1984.

Having heard the submissions made on behalf of both the parties and upon perusal of the materials on record, it appears that the petitioner has not annexed any document issued by the authority where he was actually born in support of the exact date of his birth. Both the certificates by the Corporation appear to have been issued on the information supplied by the father of the petitioner.

The decision relied upon by the petitioner, in my opinion, will not be applicable in the present case, as in the matter of Supratim Banick (Supra), the original birth certificate issued by the authority where the child was born was available on record. In the present case the same is not available.

The Court fails to understand as to why despite recording the date of birth of the petitioner in the educational certificate as 1st September, 1985, the father of the petitioner obtained the passport in the name of the petitioner by mentioning his date of birth as 1st September, 1984 and thereafter obtained the second passport mentioning his date of birth as 1st September, 1985.

The very fact that two passports were issued in the name of the same person mentioning two different dates of birth implies that there was a mala fide intention to obtain two passports. The father of the petitioner ought to have reported the correct date of birth before the passport issuing authority at the time of issuance of passport and not obtained two passports in respect of the self same person mentioning two different dates of birth.

It appears from the stand of the father of the petitioner that he took the benefit of two dates of birth to obtain two separate documents, for the reason best known to him.

Keeping in mind that the petitioner did not have any direct role to play in the matter of providing information at the time of issuance of birth certificate but was the beneficiary of the illegal activity of his father, and as all the educational certificates and personal documents of the petitioner record the date of his birth as 1st September, 1985, for the ends of justice, the first birth certificate issued in favour of the petitioner in the year 1987 recording his date of birth as 1st September, 1984 be treated as cancelled and no effect be given to the same.

For all purposes the date of birth of the petitioner be treated as 1st September, 1985.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.) sp3