$~10

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 06.02.2018

\+ **W.P.(C) 3926/2017**

AKHILESH VERMA ..... Petitioner

Through : Mr. Yogesh Dass Sharma, Ms. Shivani Sharma, Ms. Kshma Sharma and Mr. Bhairav Dass, Advs.

versus

UNION OF INDIA AND ANR ..... Respondents

Through : Mr. Rajesh Gogna and Ms. Vipra Bhardwaj, Advs. for R-1 and 2.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SHAKDHER
%

RAJIV SHAKDHER, J. (ORAL)

1. This is a writ petition which seeks to assail the order dated 14.05.2015, passed by the respondent no.2. Not only is the petitioner seeking quashing of the impugned order, as indicated above, he is also seeking writ of *mandamus* for issuance of a fresh passport after correcting his name and date of birth.

2. According to the petitioner, his date of birth as per the Class-X certificate is 06.06.1989, whereas in the passport which he presently holds, respondent no.2 has entered his date of birth as

12.05.1985.

3. Upon notice being issued in the writ petition, counter affidavit has been filed on behalf of the respondents. The respondents along with their counter affidavit have appended documents which, *inter alia*, includes the application form as well as the character certificate dated 18.08.2003, filed on behalf of the petitioner for issuance of passport. The character certificate appears to have been attested by, one, Mr. S.R. Suri, Principal of Rukmani Devi, Jaipur Public School. The character certificate pertains to Government Boys Senior Secondary School (GBSSS), C-Block, Yamuna Vihar, New Delhi.

4. Learned counsel for the petitioner says that he has filed a rejoinder, which though, is not on record. I am informed that the rejoinder was filed on 21.11.2017, vide Diary no.501092.

4.1 A copy of the rejoinder has been shown to me. A perusal of the copy of the rejoinder placed before me, would show that the petitioner has taken a stand that he was never admitted to GBSS School and that he completed his schooling from Board of Secondary Education, Madhya Bharat, Gwalior, M.P.

4.2 The petitioner goes on to say that he passed out from the said school in 2009. In support of his contention that his date of birth is, in fact 06.06.1989, the petitioner relies upon the birth certificate, Class X certificate issued by the concerned school and the Aadhar Card.

5. Mr. Yogesh Dass Sharma says that the petitioner was unaware of the character certificate, which was, according to him,

filed by the agent for securing a passport without the petitioner's consent.

6. Mr. Sharma, thus, concedes that the character certificate is a fraudulent document and does not pertain to the petitioner as the petitioner never studied in GBSS School.

7. On the other hand, Ms. Vipra Bhardwaj, learned counsel appearing for the respondents says that insofar as the respondents are concerned, they acted on the documents filed with them on behalf of the petitioner and, accordingly, entered the date of birth of the petitioner as given in the documents presented before the concerned officer.

8. Furthermore, learned counsel for the respondents says that in terms of the office memorandum dated 22.09.2016, the explanation, if any, the petitioner has to offer with respect to the relief sought in the instant writ petition, which is correction of his name and date of birth can be placed before the passport issuing authority and if he finds that the explanation is in order and, as contended by the petitioner that he was not complicit in placing the earlier bunch of documents before the concerned authority, then, necessary orders correcting the name and date of birth of the petitioner can be issued notwithstanding the fact that more than five years have passed, since, the issuance of the passport.

9. Having heard learned counsel for the parties and perused the records, there is no doubt that the documents placed before the respondents were a set of documents which did not correctly reflect the petitioner’s date of birth. The sense that I get is that the

petitioner if not complicit in placing incorrect set of documents before the passport issuing authority was certainly callous in his approach. The petitioner's counsel says that he intends to take requisite action as may be permissible in law against the agent who was instrumental in placing on record fabricated documents before the passport issuing authority, albeit, without his consent.

8. Be that as it may, one thing is clear that passport issued to a citizen cannot bear information which is incorrect because this document is used for several official and private purposes. Therefore, correct name and date of birth is required to be inserted in the passport.

8.1 A perusal of the impugned order would show that the passport issuing authority has made an endorsement on the application filed by the petitioner for correction of his name and date of birth the effect that a declaratory order should be obtained with regard to the change in date of birth.

9. In my opinion, it is the statutory function of the passport issuing authority to ascertain the correct facts based on the documents that an applicant may place before it with regard to his name and date of birth. Unless a passport issuing authority suspects the genuineness of the birth certificate, the Class X certificate and the Aadhar card issued in favour of the petitioner, such an endorsement on the application filed by the petitioner, in law, cannot be countenanced. In any event, it is contention of Ms. Vipra Bhardwaj, learned counsel for the respondents that an office memorandum dated 22.09.2016 is in operation which requires the

passport issuing authority to ascertain the genuineness of a claim made by the applicant seeking such like changes in his/ her passport.

9. Therefore, for the foregoing reasons, I am inclined to set aside the impugned order with a direction to respondent no.2 to re-examine the petitioner's application in the light of the documents placed before this court. The respondent no.2 in this behalf will hear the petitioner and thereafter pass a reasoned order. Insofar as the action against the agent is concerned, in case the petitioner does not take the requisite action, as was contended before me, the passport issuing authority will be free to trigger appropriate proceedings against the agent and all these involved, including, if necessary, criminal action.

10. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 06, 2018
aj