

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

**CRIMINAL PUBLIC INTEREST LITIGATION NO. 4/2013**

(Freedom firm Th: Mincy Mohan Baby Vargase) vs. Chief Welfare Committee of  
Nagpur : Through Its Chairman and others )

Notes, Office Memoranda of  
Coram, appearances, Court's orders  
of directions and Registrar's orders

Court's or Judge's order

**CORAM : B.P.DHARMADHIKARI &**  
**A.S.CHANDURKAR JJ.**

**DATED : 17<sup>th</sup> December, 2013.**

**COURT'S ORDER:**

Heard for some time today Advocate Shri N.B.Rahod for the petitioner; learned Government Pleader on behalf of respondents 1 to 6; Advocate J.B. Kasat on behalf of respondent no.7A-Nagpur Municipal Corporation and learned ASGI Shri S.K.Mishra for respondent no.7.

2. Affidavit filed on behalf of respondent no.7-A is taken on record. Counter tendered by Shri Rathod is also taken on record.

3. Shri Rathod has stated that all dates of births and deaths are now available on-line and search engines being employed are not

adequate. He has invited attention to two instances where the search failed and the blank print outs to substantiate. These are also annexed by him along with the affidavit.

4. Shri Kasat, learned Advocate, however, upon instructions submits that the entire data is maintained in Excel form and random search is also possible. According to him, therefore, if name of father or mother or child or any single detail is fed into the search engine, the entries can be retrieved. We note a statement in affidavit filed by Advocate Rathod which shows the case where the multiple birth certificates came to be issued in relation to two girl children and police have taken its cognizance.

5. However, Shri Kasat submits that Shri Rathod along with him and his Officers (Corporation-employee) can again attempt a search and thereafter this Court should pass appropriate further orders in the matter. We accept the request made by Shri Kasat and accordingly permit the petitioner through its Advocate, Advocate Kasat and a statistician of the concerned Department to find out the adequacy of the search engine.

6. The other arguments advanced by Advocate Rathod and left open by this Court in its order dated 29<sup>th</sup> November, 2013 is about competency of an Executive Magistrate to pass an order under Section 13 (3) of the Registration of Births and Deaths Act, 1969 (henceforth abbreviated to "Act of 1969"). The said Section 13 (3) reads as under :-

**13(3)** : Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee."

7. Inviting attention to provisos to section 30 of Act of 1969, Shri Rathod submits that the power to make rules conferred by said Section, is limited and it does not empower the State Government to clothe the Executive Magistrate with powers under Section 13(3). He is seeking support from the judgment of the learned single Judge of Karnataka High Court in the matter of **B.G. Gangadharappa vs. Tahsildar ( 1995 Cri.LJ. 2820)**.

8. He also points out that in earlier order, this Court had asked the State Government to challenge the order of Judicial Magistrate First Class releasing the girl child in custody of her father before appropriate forum and that order has not been complied with.

9. Learned Government Pleader states that appropriate steps to challenge the said order have also already been initiated and compliance will be reported to this Court within forty eight hours.

10. He also reads out Section 30 of the Act of 1969 to urge that it empowers the State Government to frame rules to carry out purposes of Act of 1969. He contends that the heads given in sub-section (2) are only illustrative and not exhaustive. Without prejudice to these submissions, he further contends that Section 13 (3) cannot be read to bar an Executive Magistrate from passing an order under it.

Learned G.P. submits that Executive Magistrate is generally a Tahsildar and, therefore, responsible officer who also regularly discharges quasi-judicial functions

11. Advocate Kasat supports the arguments of learned GP. He submits that though registers in prescribed proforma as such have been discontinued, all relevant details are available and print-out

produced before this Court along with the affidavit of Respondent no.7-A contains those details. He further states that numbers and dates given in remark column are the numbers of orders and date of orders passed by the Executive Magistrate. He argues that thus the respondent no.7-A has conducted its affairs in accordance with the rules framed by the State Government

12. We accept the statement made by learned G.P. that compliance with directions to challenge the order of Judicial Magistrate First Class, shall be made within 48 hours. Similarly we also permit the petitioner to again attempt search by using any detail at random in the presence of statistician and also Advocate Kasat.

13. Insofar as the provisions to Section 13(3) of the Act of 1969 are concerned, the said provisions need to be construed in background of sub-section (2). Sub-section (2) contemplates entry of delayed death or delayed birth provided the information is furnished within one year of event. It stipulates that the entry can be registered only with written permission of prescribed authority and on payment of prescribed fees and production of an affidavit made

before a Notary Public or any other office authorised in this behalf by the State Government. The word “prescribed” has been defined 2 (e) to mean prescribed by Rules under Act of 1969. In contradistinction, sub-section (3) specifically mentions the Magistrate of First Class or Presidency Magistrate who are competent to pass the orders to enter the information relating to death or birth if it is more than one year after the event. Thus, it does not empower the rule-making authority and hence the discretion to specify the authority which is stipulated sub-section (2) is deliberately not provided for in sub-section (3). The authorities empowered for such delay beyond one year are Magistrates of First Class or a Presidency Magistrate. The said phrases are explained in Section 3 of the Code of Criminal Procedure, 1973. Sub-section (3) stipulates that unless the context otherwise requires any reference in any enactment passed before commencement of 1973 Code to a Magistrate of First Class needs to be construed as a reference as Judicial Magistrate First Class. Similarly, reference to Presidency Magistrate needs to be construed as reference to Metropolitan Magistrate. Sub-section (4) of Section 3 again states that when such functions exercisable by Magistrate under any other law involves appreciation or sifting of evidence or formulation of any decision which exposed any person to any

punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before in any Court, such power needs to be exercised by a judicial Magistrate If power is administrative or executive in nature such as granting of licence, suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, the said powers can be exercised by the Magistrate.

14. Here, the Judicial Magistrate or Presidency Magistrate under section 13 (3) is obliged to pass an order after due verification of correctness of birth or death. The said verification necessarily will involve appreciation or sifting of evidence but then we do not find it necessary to go to Sub-section (3) of Section 13 for the present.

15 Section 13 sub-section (3) permits the State Government or Central Government to prescribe fees only. Thus, the rule to be made under said provision at the most can prescribe fees. In this background, when sub-section (2) of Section 30 entry (f) is looked into, it speaks of an authority which may grant permission for registration of birth or death under section 13 (2). This is in

consonance with stipulation in that sub-section. Absence of any mention of Section 13 sub-section (3) therefore clearly shows absence of power with rule-making authority to specify an authority other than Judicial Magistrate or Presidency Magistrate to exercise powers under Section 13 (3).

16 The provisions of Rule 10(3) of the Registration of Births and Death Rules, 1976 to that extent must yield to section 13 (3) and also therefore need to be read down accordingly. Hence, authority like Executive Magistrate mentioned in Rule 10(3) does not possess jurisdiction to pass any order authorizing delayed registration of birth or death.

17. We, therefore, restrain the respondents from taking any cognizance of an order passed by the Executive Magistrate or any other authority except Judicial Magistrate, First Class or Presidency Magistrate under section 13 (3) while taking entry of a birth or death which has taken place more than one year before the date on which its information is being furnished

18. We direct the respondent nos. 6 and 7 to circulate these



directions in paras 13 to 18 (*supra*) to all authorities functioning in the State under the Act of 1969.

With these, we place the matter for further consideration on **21<sup>st</sup> December, 2013.**

Steno copy to the parties is allowed.

**JUDGE**

**JUDGE**

*Sahate*

Bombay High Court