



2023/KER/58012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 5TH DAY OF SEPTEMBER 2023/14TH BHADRA, 1945

WP(C) NO. 24532 OF 2023

PETITIONER :

SANGEETHA R. ,

BY ADVS.
A.T.ANILKUMAR
V. SHYLAJA

RESPONDENTS :

- 1 THE SECRETARY, REPRESENTED BY ITS SECRETARY,
ALUVA, ERNAKULAM DISTRICT,
PIN - 683 101
- 2 THE SECRETARY, ALUVA MUNICIPALITY P.O,
ALUVA, ERNAKULAM DISTRICT, PIN - 683 101
- 3 THE REGISTRAR, BIRTH AND DEATH REGISTRATION
AUTHORITY, ALUVA MUNICIPALITY, ALUVA .P.O,
ERNAKULAM DISTRICT, PIN - 683 101
- 4 BALAGANGADHARAN NAIR,

BY ADVS.
K T THOMAS
VINAY VIJAY SHANKER
THOMAS C.ABRAHAM(K/517/2022)
NIKHIL BERNY (K/674/2014)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.09.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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BECHU KURIAN THOMAS, J.

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W.P.(C) No.24532 of 2023

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Dated this the 5th day of September, 2023**JUDGMENT**

An estranged couple are fighting over their daughter's name. Since the birth certificate issued to the petitioner's daughter has no name on it, the mother attempted to register a name for the child. However, the Registrar insisted on the presence of both parents before him to register the name. As the couple could not arrive at a consensus on the issues, the mother of the child has invoked the jurisdiction of this Court under Article 226 of the Constitution of India. Petitioner seeks a direction to accept her application and to issue a birth certificate for her minor child with the name 'Punya Nair' - it being her choice of name.

2. Petitioner is the mother and Sri. Balagangadharan Nair - the 4th respondent, is the father of a minor girl. The daughter was born on 12.02.2020. After the birth of the child, the relationship between the parents turned sour. The father allegedly did not bother to take care of the child and her mother. Complaints were filed by the petitioner before the authorities, and even claims for maintenance were raised. Sri.Balagangadharan, on the other hand, sought restitution of conjugal rights and even filed a petition for custody of the child as O.P(G&W) No.84 of 2022 before the Family Court, Muvattupuzha.



3. The offspring of the relationship is on the threshold of her educational life. However, the school authorities are insisting on a name for her. Since the birth certificate carries no name on it, the school authorities are refusing to accept such a certificate.

4. Petitioner sought the help of the Family Court to compel the husband to cooperate with the petitioner in obtaining a birth certificate for the child with the name 'Punya Nair'. By order dated 24.05.2023, the Family Court directed the husband to handover the attested copies of his Aadhaar Card, Passport and recent photograph to the petitioner and also directed both of them to appear before the Secretary of the Aluva Municipality for processing the birth certificate. However, for some reason or other, the order was not fully complied with, and the child's birth certificate remains without a name.

5. Indisputably, the child has to be given a name. Fortunately, the parties are not in discord on that. Thus, the issue boils down to what should be the name to be entered in the birth certificate. The name creates an identity, which remains with the person in all probabilities forever, until varied by choice. The mother claims that the child be given the name 'Punya Nair' while the father asserts that the child be known as 'Padma Nair'.

6. There is no dispute that the child was born in the wedlock between the hostile parents. The disagreement between the couple relates to the name of the child. Despite repeated attempts, a consensus



could not be arrived at between the parents, and resolution of the dispute is inevitable without further delay, considering the welfare of the child. Amidst the wrangling on the name, the Court had to grapple with a legal issue on the interpretation of the word 'the parent' used in the statute relating to the registration of births.

7. When the mother tried to get the name registered, the Registrar of Births and Deaths insisted that both parents must apply to register the name. The question that arises is whether the registration of a name in the birth certificate requires an application by both parents or only one of them.

8. Section 14 of the Registration of Births and Deaths Act, 1969 ('the Act' for short) deals with the inclusion of the name of a child in the birth register registered without a name. It reads as below:

'S.14. Registration of name of child

Where the birth of any child has been registered without a name, the parent or guardian of such child shall within the prescribed period give information regarding the name of the child to the Registrar either orally or in writing and there upon the Registrar shall enter such name in the register and initial and date the entry.'

9. Rule 10 of the Kerala Registration of Births and Deaths Rules, 1999 ('the Rules' for short) deals with the period for the purpose of section 14. It reads as below:

**R.10-Period for the purpose of Section 14**

“(1) Where the birth of any child had been registered without a name, the parent or guardian of such child shall, within 12 months from the date of registration of the birth of child, give information regarding the name of the child to the Registrar either orally or in writing:

Provided that if the information is given after the aforesaid period of twelve months, which shall be reckoned as under;

(i)(a) in case where the registration had been made prior to the date of commencement of the Kerala Registration of Births and Deaths Rules, 1999 further five years period from the date of commencement of the Kerala Registration of Births and Deaths (Amendment) Rules, 2021 shall be given; or

(b) in case where the registration had been made after the date of commencement of the Kerala Registration of Births and Deaths Rules, 1999 and fifteen years period from the date of registration has already been lapsed, they shall also be given five years time from the date of commencement of the Kerala Registration of Births and Deaths (Amendment) Rules, 2021. In respect of those cases, where fifteen years period from the date of registration has not yet lapsed, they shall be allowed to avail fifteen years time from the date of registration; or

(ii) in case where the registration is made after the date of commencement of the Kerala Registration of Births and Deaths (Amendment) Rules, 2021, the period of fifteen years from the date of such registration, subject to the provisions of sub-section (4) of section 23.

The Registrar shall,-

(a) if the register is in his possession forthwith enter the name in the relevant column of the concerned form in the birth register on payment of a late fee of rupees five.

(b) if the register is not in his possession and if the information is given orally, make a report giving necessary particulars, and if the information is given in writing, forward the same to the officer specified by the State Government in this behalf for making the necessary entry on payment of a late fee of rupees five"

10. A perusal of the above extracted statutory provisions reveals that the words used in the Act and the Rules are 'the parent'. The dictionary meaning of the word 'parent' means a father or mother. The



Black's Law Dictionary refers to the term 'parent' as 'a lawful father or mother of someone.' Thus, the term parent can mean either the father or the mother, and in rare contexts, both of them. The context in which the term is used will determine the nature of the meaning to be accorded.

11. The Statute uses the definite article 'the' before the word 'parent'. Further, the word 'parent' is not used in its plural terminology. Therefore, it has to be held that the Act and the Rules have used the term "the parent" in the singular meaning and not in the plural. Thus, either the father or the mother is entitled to get the name of the child registered. In cases where a dispute exists between the parents of the child, it is necessary that one of them be entitled to appear before the Registrar of Births and Deaths to provide a name. Insisting on the appearance of both parents is not contemplated as mandatory by the statute. This interpretation is essential in the context of increased instances of 'single parent' and considering the interests of the child.

12. The above interpretation can give rise to occasions where one parent may rush to the Registrar to incorporate the name of his or her choice for the child. True, such instances may occur. However, possibilities cannot be a reason to adopt an interpretation ignoring the terminology used by the Statute. Moreover, in case any parent subsequently wishes to correct the name, he or she can initiate proceedings under the law to do so.



13. In this context, the learned Government Pleader made available a Circular issued by the Government dated 12-01-2016 bearing No. 187609/RD.3/15/LSGD. The said circular is purportedly issued to assist the Registrars in registering the names of children born to parents who are in conflict with each other and in other instances. As per the Circular, in cases where the parents have dissolved their marriage or a child has been deserted by any parent, corrections were permitted to be carried out based on the application of the parent who has custody of the child. The Circular further states that the person who has custody of the child could be identified on the basis of court orders or by a certificate issued by the Circle Inspectors of the police station within the area of residence of either the father/mother and certified by two eminent persons and the Registrar is permitted to enter the name after an enquiry into the above matter.

14. Though the aforementioned Circular is well intended, the power to issue such a Circular cannot be traced to any provision either under the Act or the Rules. The only source that can be traced is the power to issue directions as per section 32 of the Act to overcome difficulty in the implementation of the Act. However, the orders so issued to overcome a difficulty while giving effect to the provisions of the Act could have been issued only for a period of two years from the date on which the Act came into force. Further, the directions so issued must also be not inconsistent



with the provisions of the Act. In view of the above mandate of section 32 of the Act, there is no power to the State Government to issue any circular under the Act. Hence, the Circular dated 12-01-2016 bearing No.187609/RD.3/15/LSGD is a non est.

15. In an unreported decision in **Gayatri Vadavat v. Palakkad Municipality** (W.P.(C) No.15050 of 2014), a learned Single Judge had, after noticing the statutory provision, observed that either the parent or the guardian is competent to give information regarding the name of the child to the Registrar. Noticing that the spouses are living separately, the Registrar was directed to act upon the affidavit of the mother to complete the formalities after observing that both or either of them can be regarded as a parent.

16. As mentioned earlier, there is no dispute regarding the paternity of the child, and the dispute is confined only to the name to be accorded. The absence of a name for the child is not conducive to the welfare or the best interests of the child. The welfare of the child demands it be given a name. Continued quarrels between the parents also do not augur well in the interests of the child. Therefore, this is a typical case where the *parens patrie* jurisdiction of this Court has to be exercised. In the exercise of such a jurisdiction, the paramount consideration being the welfare of the child and not the rights of the parents, the Court has to perform the task of selecting a name for the child. While choosing a name, factors like the welfare of the child, cultural



considerations, interests of parents and societal norms can be reckoned by the court. The ultimate objective being the well-being of the child, the court has to adopt a name, taking into consideration the overall circumstances. Thus, this Court is compelled to exercise its *parens patriae* jurisdiction to select a name for the child of the petitioner.

17. The name suggested by the mother, with whom the child is at present residing, has to be given due importance, while the name of the father is also to be incorporated due to the absence of any dispute on the paternity. In order to set at rest the disputes between the parties on the name, the child is directed to be given the name 'Punya', and the name of the father - 'Balangadharan' also be added along with the name 'Nair'. Thus, the daughter of the petitioner, born on 12-02-2020 in the wedlock with the fourth respondent, is hereby given the name 'Punya Balangadharan Nair' or 'Punya B. Nair'.

18. Since an application for registration of the name of the child as 'Punya B.Nair' being the short form of 'Punya Balangadharan Nair' has not been submitted, the petitioner is given the liberty to approach the 3rd respondent and submit a fresh application under the Act and its Rules showing the name of the child as 'Punya B.Nair'. On receipt of such an application, the Registrar shall register the name of the child as mentioned above without insisting on the presence or consent of both parents.

19. Appropriate orders shall be issued incorporating the name of



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the child as 'Punya B Nair' in the birth certificate, and the same shall be issued within an outer time limit of fifteen days thereafter.

The writ petition is disposed of as above.

Sd/-

RKM

**BECHU KURIAN THOMAS,
JUDGE**

APPENDIX OF WP(C) 24532/2023PETITIONER'S EXHIBITS :

- EXHIBIT P1 THE TRUE COPY OF RECEIPT OF SUBMISSION OF THE COMPLAINT DATED. 14-12-2021
- EXHIBIT P2 THE TRUE COPY OF RECEIPT OF SUBMISSION OF THE COMPLAINT DT.21-12-2021 .
- EXHIBIT P3 THE TRUE COPY OF THE M.C. NO. 16/2022 OF FAMILY COURT MUVATTUPUZHA
- EXHIBIT P4 THE TRUE COPY OF THE RELEVANT PAGE OF LKG ENTRY REGISTER FROM VIMALA CENTER SCHOOL
- EXHIBIT P5 THE TRUE COPY OF THE BIRTH CERTIFICATE OF THE CHILD WITHOUT NAME ISSUED ON 28/12/2021
- EXHIBIT P6 THE TRUE COPY OF THE PETITION IN O.P NO. 84/2022 FAMILY COURT MUVATTUPUZHA
- EXHIBIT P7 THE TRUE COPY OF THE APPLICATION DATED 26.05.2023. AFTER ADDING THE NAME OF THE CHILD IN THE BIRTH CERTIFICATE AND TO ISSUE A CERTIFICATE, SUBMITTED TO THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS

- EXHIBIT R4 (a) THE TRUE COPY OF O.P.NO 966/2021 THAT IS THE PETITION FOR RESTITUTION OF CONJUGAL RIGHTS FILED BEFORE THE FAMILY COURT MUVATTUPUZHA
- EXHIBIT R4 (b) THE TRUE COPY OF O.P.NO: 84/2022
- EXHIBIT R4 (c) THE TRUE COPY OF THE PROCEEDINGS FROM THE E-COURT SERVICES IN O.P NO: 966/2021 THAT IS EXHIBIT R4 (A)



EXHIBIT R4 (d) COPY OF THE PROCEEDINGS FROM THE ECOURT
SERVICES IN O.P.NO.84/2022

EXHIBIT R4 (e) TRUE COPY OF THE I.A.NO.2/2022 IN
O.P.NO.84/2022

Exhibit R4 (f) THE TRUE COPY OF THE ORDER DATED
24/05/2023

Exhibit R4 (g) TRUE COPY OF THE TREATMENT DATED
27/05/2019 CERTIFICATE ISSUED TO THE 4TH
RESPONDENT S MOTHER FROM ST.THOMAS
INSTITUTE OF RESEARCH ON VENOUS DISEASES