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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19th April, 2023
+ **W.P.(C) 1408/2023 & CM APPL. 5246/2023**
SMITA MAAN AND ANR. Petitioner
Through: Ms. Smita Maan, present in person.

versus

REGIONAL PASSPORT OFFICER Respondent
Through: Mr Rakesh Kumar, CGSC with Mr.
Sunil, Mr. Giriraj Shrama and Mr.
Prince Roshan, Advocates.
Ms Mehak Nakra, ASC (GNCTD)
with Mr. Abhishek Khari, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by Petitioner No. 1/Ms. Smita Maan and her minor son - Vedant Singh Maan/Petitioner No. 2 seeking the deletion of the name of the father of the minor child/Petitioner No. 2 from his existing passport or in the alternative, the Petitioner seeks re-issuance of a fresh passport to the minor child/Petitioner No. 2 without mentioning the name of the father therein.
3. The Petitioner No.1 was married on 9th December, 2012 and conceived a child/Petitioner no. 2 from the said wedlock. However, the case of the Petitioner No. 1 is that the husband had deserted her during the pregnancy itself i.e., with effect from 19th August, 2013. The Petitioner No.2/minor son was thereafter born on 19th March, 2014 and since then has

been raised by Petitioner No. 1 as a single parent. In terms of the extant Passport Manual and Regulations, in 2015, Petitioner No. 1 had applied for a passport for Petitioner no. 2/minor son which was issued to him on 23rd September 2015 bearing no. N3138881. In the said passport, the names of both the biological father and mother of the minor child were mentioned. The said passport expired on 22nd September, 2020.

4. In the meantime, the Petitioner No.1 and her then husband had entered into a settlement dated 6th February, 2019, in which the following terms and conditions were agreed upon-

“4. It is agreed between the parties that the petitioner (Husband) shall pay lump sum consideration of Rs. Nil (Nil) to the respondent(wife) as full and final settlement (against the child maintenance towards past present and future, and petitioner’s past present and future maintenance, permanent alimony, stridhan etc.) under the following manner in (NIL) installment

a. That petitioner/respondent (husband/wife) will pay a sum of Rs. Nil (nil). In form of demand draft to the petitioner/respondent (husband/wife) at the time of recording of statement of both the parties before the Hon’ble family courts under the first motion proceedings.

b. That the petitioner/respondent(Husband/wife) shall pay Rs. Nil (Nil) to the petitioner/respondent(Husband/wife) at the time of recording of statements of both the parties before the Hon’ble family court on under the second motion proceedings as full and final settlement amount in the form of Demand Draft. Second Motion Petition shall be filed by both the Parties within 15 days of expiry of mandatory cooling period of Six months after completion of First Motion or both. The Parties shall file an Application for waiving of mandatory cooling

period after First Motion.

c. It is further agreed between the parties that the petitioner/respondent(Husband/wife) shall pay Rs. Nil (Nil) to the petitioner/respondent(Husband/wife) at the time of quashing of FIR No. 462/18 U/S 498A, 406, 34 IPC, P.S. Vasant Kunj North in Hon'ble Delhi High Court within 30 days after second motion and petitioner/respondent (Husband/Wife) shall cooperate and sign all the necessary affidavits and do the needful in quashing of said FIR.

5. It is agreed between the parties that the petitioner/respondent (Husband/wife) will not have any right, title, interest, claim etc. whatsoever over in the properties of petitioner/respondent (Husband/wife) after the completion of the present compromise agreement.

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10. It is agreed between the parties that the minor child namely Vedant Singh age 5 years will be under the absolute and exclusive legal custody of the Respondent (Wife) and the Petitioner (Husband) shall have no visitation rights or any access to the child or any rights to the child or any kind of claim or right in any form/ manner over the child in all the times to come present or future. It is further agreed between the Parties that the child namely Vedant Singh will carry the identity and surname of his Mother /maternal grandparents. It is understood between the Parties that the Respondent (Wife) has given up all her claims, including Stridhan in the larger interest of the child.

11. It is also agreed by the petitioner / husband that he and his parents shall have no right / title / claim or Interest in any manner in movable /immovable Assets / Properties which are held or may be held by the respondent / wife and /or child in present or in future. It is further agreed that the respondent /wife

alone shall have all rights to sign all documents, Government or private in relation to the child as a single parent.

12. The Respondent (Wife) agrees that if at the time of attaining the age of majority or at any stage thereafter, the minor son Master Vedant Singh, makes any claim over the immovable/movable assets and properties of the Petitioner (Husband), then the Respondent (Wife) undertakes unequivocally that she shall be fully liable and responsible for satisfying the entire claim of Vedant Singh and shall fully indemnify the Petitioner (Husband).”

5. As per the above settlement, neither the Petitioner No.1 nor the minor son were given any payment including alimony, maintenance, etc. The exclusive custody of the child was to be with the mother. The father of the child had agreed to have no visitation rights or access to the child or any claim over the child, in the present or in the near future. The minor child was also to carry the identity and surname of his mother and maternal grandparents. The mother also indemnified the father in respect of any future claims which the minor child may raise against his biological father. Thus, in effect the father severed all ties with the child.

6. This settlement agreement was also approved by the Guardianship Court in **GP No. 75/18** titled '**Arjun Singh Tokas v. Smita Maan**' passed by the Principal Judge, Family Court, Patiala House Court on 6th February, 2019. The guardianship petition itself was disposed of as compromised. Further, it is submitted that there is no challenge to the said order. Thereafter, the decree of divorce by mutual consent has also been granted by the Principal Judge, Family Court, Patiala House Court in **HMA Petition No. 470/19** with effect from 31st May, 2019 between the Petitioner No.1

and her then husband.

7. Post the grant of the divorce decree and the execution of the settlement agreement, various identity cards such as Aadhaar card and other documents have been issued to the minor child/Petitioner No. 2 with only the name of the mother.

8. Since the passport of Petitioner No. 2 had expired on 22nd September, 2020, the Petitioners had applied for the re-issuance of the passport. The name of the father of Petitioner No.2 was reflected again in the re-issued passport bearing no. W8576410 and it is this action of the Passport Authorities which is under challenge in the present petition.

9. The matter has been heard from time to time. The stand of the Petitioner No.1 who appears in person is that since she is a single parent and the father has completely abandoned the child, this is a case where the name of the father ought not to be insisted upon by the Passport Authorities, for being mentioned in the child's passport. Ms. Maan relies upon the mutual settlement and the fact that the desertion took place even prior to the birth of the child.

10. In terms of the Passport Manual which was applicable in 2015, the name of the father was mentioned in the previously issued passport. However, she currently relies upon Chapter 8, Clause 4.5.1 and Chapter 9, Clause 4.1 and 4.3 of the Passport Manual, 2020 to argue that all these clauses make it clear that in the case of a single parent who is divorced or who has been deserted by the husband, the name of the father need not be mentioned. The same is also recognized by the Passport Manual itself.

11. Reliance is also placed upon the following judgments:

- *Shalu Nigam & Anr. v. The Regional Passport Officer & Anr, [2016 SCC OnLine Del 3023]*
- *Prerna Katia v. Regional Passport Office Chandigarh and Anr., [2016 SCC OnLine P&H 14187]*
- *Nancy Nithya v. Government of India [Writ Petition No. 22378/2022, decided on 15th December, 2022]*

12. On behalf of the Respondent, initially, there was some confusion as to the clauses of the Passport Manual which would be applicable. Thus, vide order dated 28th March, 2023, the scanned copies of the Manuals were directed to be filed/placed on record by the Passport Authorities.

13. Today, Mr. Rakesh Kumar, Id. Counsel has placed the relevant extracts of the Manual on record. According to Mr. Kumar, the clauses that would be applicable would be clauses 4.1 and 4.3 of Chapter 9. Ld. Counsel submits that it is only in the case of *single unwed parents* that the name of the father need not be mentioned. In the case of *married parents*, clause 4.3 would be applicable and thus the name of the father would have to be mentioned in the passport. He also relies upon the OM dated 28th February, 2023 which according to him clarifies that it is only in the case of an *unwed parent* that the name of the father need not be mentioned.

14. The Court has perused the relevant clauses of the Passport Manual, 2020 which are set out hereinbelow:

“8.CHANGE OF PERSONAL PARTICULARS ON
REISSUE OF PASSPORTS

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4. CHANGE IN THE NAME OF PARENT(S)

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4.5. Name of parent can be deleted from the passport of the children consequent to divorce

4.5.1. The online passport application form now requires the applicant to provide the name of father or mother or legal guardian, i.e., only one parent and not both. This would enable single parents to apply for passports for their children and to also issue passports where the name of either the father or the mother is not required to be printed at the request of the applicant.

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9. ISSUE OF PASSPORTS TO MINORS

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4. SPECIAL CASES OF MINORS REQUIRING PASSPORTS

Exclusion of father/mother name from passport of minor in single parent custody

4.1. The online passport application form now permits that an applicant may provide the name of father or mother or legal guardian, i.e., only one parent and not both. This would enable single parents to apply for passports for their children and get passport(s) issued where the name of either the father or the mother is not required to be printed at the request of the applicant.

4.2. In case of minor children of unwed single parent, the name of father or mother is not to be mentioned in the passport application and in the passport. In case of unwed parents submitting Appendix-12, name of both the parents is to be mentioned in the application form and in the passport.

4.3. *In case of minor children of married parents, the name of father/ mother shall be furnished by the other single parent having the custody of the child, irrespective of the status of their marriage, such as, divorced, divorce pending, separated or deserted, with or without visitation rights to the estranged parent.*

Children of divorced parents

4.4. *Application from divorced parents for issue of passports to their minor children has to be processed with care and diligence. Whereas the divorce of parents does not result in severance of the relation between the child and the parent, unless the parent has legally disowned the child, the child's right to have a passport and travel abroad cannot be denied on such grounds. Children also have a fundamental right to travel and the other parent cannot wilfully prevent them from travelling abroad. These realities have been taken into account while processing applications for passports from children in the custody of single parents.*

4.5. *A court decree granting divorce would normally award custody of the minor child/ children to either parent. The PIA must ensure that the application for the minor's passport is entertained only from such parent who has been granted custody by the court. While doing so, the PIA must also satisfy himself that the period of limitation for appeal against such decree has expired before issuing the passport. PIA must also ensure that if the other parent has visitation or other rights on the child as per court order, the consent of the other parent is also furnished. However, in rare cases where one of the parents wilfully refuses to give consent or inordinately delays consent or objects in writing to the PIA against issue of passports to his/her children residing with other parent without any cogent reason, and thus denying the fundamental right of the children to travel, passports may be issued to the*

child/children, after receipt of an affidavit in the form of Annexure 'C' obtained from the parent having the custody of the children, stating that the other parent is wilfully denying or not granting permission for issue of passports to the children. The other parent should be informed in writing in advance by the PIA of the proposed issue of passport to children at the request of the parent who is having the custody of the children. It will then be the responsibility of the other parent to approach the courts for suitable redressal.”

15. A perusal of the above clauses would show that Chapter 8, clause 4.5.1 relates to the situation which would squarely be applicable in the present case i.e. where the name of the parent can be deleted consequent to divorce.

16. According to Mr. Rakesh Kumar, Id. Counsel, this clause ought not to have been retained in the manual when the new manual was published and only clause 4 of Chapter 9 ought to have been applicable. Either way, even whether the clauses in Chapter 8 or Chapter 9 are applied, the same would reveal that the Passport Manual 2020 clearly recognizes several situations/conditions where the exclusion of the name of the father from the minor's passport is permissible. Clause 4.1 itself clearly enables a **single parent** to apply for a passport without mentioning the name of the other parent. Clause 4.2 carves out a specific category relating to **unwed single parents**. The language used in Clause 4.1 is merely **single parent**. Clause 4.3, clearly mentions that in the case of **married parents** the name of the father shall be furnished by the other single parent having the custody of the child, irrespective of the status of the marriage i.e divorce, divorce pending, separated etc., However, the mere furnishing of the name does not result in the conclusion that the name of the father has to be compulsorily mentioned.

It would depend on the circumstances of each case.

17. The OM dated 28th February 2022 relied upon by the Respondent reads:

***“No. VI/401/01/17/2015(pt)
Government of India
Ministry of External Affairs
(PSP Division)***

***Patiala House Annexe, Tilak Marg,
New Delhi, 28th February, 2023***

***To,
The Regional Passport Officer
Regional Passport Office, Delhi***

Sub: Clarification regarding issuance of passport with exclusion of father/mother name from passport of minor in single parent custody.

Sir.

Please refer to your letter dated 17.1.2023 seeking clarification regarding issuance of passport with exclusion of father/mother name from passport of minor in single parent custody, due to ambiguity in provision of para 4.1 & 4.3 of chapter 9 of the Passport Manual 2020.

2. The matter has been examined in the Ministry in consultation with Department of Legal Affairs, Ministry of Law & Justice and the Department has opined that "No exhaustive definition of the term single parent may be given". It is further informed that an Inter-ministerial Committee was formed in 2016 to look into the passport related issues. The committee had also examined the captioned subject and had concluded that in the following cases, it may be said that the child has a single parent (mother).

(i) When the mother who is an Indian citizen, claims that the biological father had no contact with the mother or the child after the child's birth

(ii) Where the child's father is either unknown, for example a child born after a rape, etc:

(iii) Where the biological father has terminated the relationship with the mother after conception/ birth of the child.

3. In view of the above, the following may please be noted for compliance:

(a) Para 4.1 which enables single parents to apply for passports for their children where the name of either the father or the mother is not required to be printed, may be applied in the cases given below:

(i) When the mother who is an Indian citizen, claims that the biological father had no contact with the mother or the child after the child's birth.

(ii) Where the child's father is either unknown, for example a child born after a rape, etc;

(iii) Where the biological father has terminated the relationship with the mother after conception/ birth of the child.

(iv) Cases where a biological married/unmarried father who is an Indian citizen claims that the biological mother has abandoned the child, the procedure as applicable for single mother would apply mutatis mutandis.

(b) Provision of para 4.1 is an enabling provision only and it has to be read in conjunction with provision of para 4.3 which mandates furnishing of name of both the parents if the minor is born out of wedlock/marriage even in the cases where divorce has taken place with or without visitation rights to the estranged parent. Requests of issuance of passport with exclusion of father/mother name from passport of minor in single parent custody may be dealt with in accordance with para 4.1, 4.2 & 4.3 of chapter 9 of the Passport Manual 2020, as the case may be

4. This issues with the approval of Joint Secretary (PSP) & CPO.

Yours Faithfully,
Sd.-
(Vishwa Nath Goel)
Deputy Secretary (PSP-I)”

18. Even a perusal of the OM would show that in peculiar cases, where there is no contact of the father with the mother or the child that the name of the father need not be included in the passport. Mr. Kumar’s submission that this OM would only apply to *single unwed parents* may not be correct inasmuch as the language used in the OM and in the Passport Manual are clear. Wherever the term ‘*single unwed parent*’ is to be mentioned, the same has specifically been mentioned by the Passport Authorities. In other clauses the term ‘*single parent*’ is used.

19. The fact that the name of the single parent can be mentioned without the name of the other parent is also recognized in the judgments cited above. The relevant portions of the same are set out below.

20. In *Shalu Nigam & Anr. v. The Regional Passport Officer & Anr (supra)* the Petitioner was divorced and had raised her daughter as a single parent since birth. She had contended that the biological father had abdicated all his responsibilities towards the daughter since her birth. Further, the entire record of the daughter including her educational certificates and aadhaar card etc. did not bear the name of the father. The Petitioner sought the reissuance of her daughter’s passport without the name of the biological father. In this background the Court held -

“3. Petitioner No.1 stated that the respondents insistence upon petitioner No.2 mentioning her father's name in the application violated the rights of petitioner

No.2 to determine her name and identity. She pointed out that the entire record of petitioner No.2-daughter which included her educational certificates and Aadhar Card etc. did not bear the name of her father. She submitted that if the directions sought for in the present petition are not issued, the petitioner No.2-daughter would be compelled to alter her identity that she had been using since her birth as daughter of petitioner No.1 rather than of her biological father. According to her, through the malafide, arbitrary and discriminatory decision of respondents, petitioner No.2 was being compelled to mention the name of her biological father who had refused to accept her because she is a female child. She emphasised that respondents had originally in the year 2005 and subsequently in 2011 issued a Passport without insisting upon petitioner No.2's father.

4. Mr. Rajeev Kumar, learned counsel for respondent No.1 stated that the computerised Passport application form has a column with regard to father's name under the heading 'Family Details'. He stated that the said form must be filled by the petitioner No. 2. In support of his contention, he relied upon Chapter 8, Clause IV (4.5) of the Passport Manual which reads as under:-

"IV. Parent name not to be deleted from passport consequent to Divorce

4.5 Request for deletion of parent name from passport due to parents' divorce should not be accepted. By virtue of the divorce decree, only the relation as wife and husband severs. The divorce decree does not result in severance of the relation between the child and the parent, unless the parent has legally disowned the child."

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7. Mr. Amit Bansal, learned Amicus Curiae, pointed out that in *Kavneet Kaur vs. Regional Passport Office*, W.P.(c) 3582/2014 decided on 31st July, 2014 a

Coordinate Bench of this Court had set aside the order of Ministry of External Affairs, by which the petitioner's request for including the name of her step father as her father in the Passport had been denied. He stated that the Court allowed the said writ petition principally on the ground that the said request was not in violation of any provision of the Passport Manual and further on account of the fact that all relevant documents mentioned the name of her step father and any variance in the Passport would create confusion.

8. Mr. Amit Bansal submitted that in Ms. Teesta Chatteraj vs. Union of India, LPA 357/2012 decided on 11th May, 2012, a Division Bench of this Court had held that no rights of a biological father can be recognized by any Court of law who had failed to discharge any responsibility towards his child.

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11. This Court is of the opinion that the respondents can insist upon the name of the biological father in the Passport only if it is a requirement in law, like standing instructions, manuals etc. In the absence of any provision making it mandatory to mention the name of one's biological father in the Passport, the respondents cannot insist upon the same.

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13. In fact, a Coordinate Bench of this Court in Ishmaan Vs. Regional Passport Office, W.P.(C) 5100/2010 decided on 21st February, 2011 directed issuance of a passport to an applicant without mentioning her father's name on the ground that the instructions issued by the respondent itself permitted mentioning of only mother's name in the passport. The relevant portion of the said order is reproduced hereinbelow:-

"4. The Respondents have themselves enclosed another set of instructions in a reference letter (Annexure R-2) issued on 21st April 1999. Clause 3.2(a) thereof reads as under:-

"3.2 Child born out of wedlock or child having single parent (Reference letter No. V.I/402/2/1/97 dated 21.4.1999).

a) Cases where: (i) the mother who is an Indian citizen, claims that the biological father had no contact with the mother or the child after the child's birth; or where (ii) the child's father is either unknown (for example a child born after a rape etc.) or (iii) has terminated the relationship with the mother after conception. In these cases, the PIA should obtain an affidavit from the mother to that effect sworn before a magistrate (Appendix 23). In these cases, the name of the father should be left blank and should not be entered in the passport without his written consent. As admission by a woman of the birth of a child out of wedlock invites social stigma, it may be presumed that rarely would she utter a lie in this regard. However, to safeguard against cases of abduction/kidnapping, the PIA should insist on the affidavit of the mother being supported by a birth certificate from a hospital or the Registrar of Births and Deaths or a municipality."

5. It is plain that as far as the present case is concerned, with the decree of mutual divorce having been passed by the competent civil court in 2007 itself, the case of the Petitioner would be covered under Clause 3.2(a) of the above instructions dated 21st April 1999.

6. The Petitioner's mother should now produce before the Regional Passport Officer ('RPO') an affidavit sworn by her before the Magistrate in terms of Clause 3.2(a) within a period of two weeks. The said affidavit will also incorporate the necessary assertion that the Petitioner's mother will inform the RPO in the event she proposes to remarry. If such an affidavit is

furnished, then the RPO will ensure that the name of the father in the passport of the Petitioner is left blank. The necessary correction in the passport be made within a further period of two weeks after the said affidavit is furnished."

14. The present respondents on 20th February, 2015 in W.P.(C) 845/2015, Priyanshi Chandra Vs. Regional Passport Office had, on instructions, stated before a Coordinate Bench of this Court that the request of the applicant, to issue her a fresh passport, without mentioning her father's name would be granted if she produces an affidavit in terms of Clause 3.2(a) of the Instructions contained in letter dated 21st April, 1999.

15. In the opinion of this Court, the judgment of Madras High Court in Mrs. B.S. Deepa (supra) offers no assistance to the respondents. Firstly, the issue involved in the aforesaid Madras High Court judgment was the validity of the adoption deed on the basis of which the petitioner had sought a direction to respondents to mention the name of her adoptive father as father's name in the passport. In the present case, the petitioner no. 2 does not want to mention her father's name at all in her passport. Secondly, the Madras High Court keeping in view the evolving societal norms relating to divorce, remarriage, single parents etc. directed the respondents to mention the name of the step father of the applicant on her passport instead of her biological father's name. Thirdly, Madras High Court after detailed discussion on the requirement and insistence upon by the respondents on mentioning father's name in a person's passport had directed the Ministry of External Affairs to incorporate suitable provision in the passport manual making it optional for the parties to indicate the names of one or more biological parent in the said form. Consequently, the respondents were in essence directed by the Madras High Court to reconsider their requirement of making it mandatory for the applicants to mention the

name of their biological father in their application form for issuance of passports. ”

21. Similarly in ***Prerna Katia v. Regional Passport Office Chandigarh and Anr.*** (*supra*) the P&H High Court held:

“3. After notice, the respondents have filed reply in which it is averred that request of the petitioner was referred to the Ministry of External Affairs, New Delhi and were advised vide its letter dated 30.09.2015 to process her case in terms of the provisions of Paragraph 4.5 of Chapter 8 of the Passport Manual, 2010 (hereinafter referred to as the “Paragraph 4.5”), which is reproduced as under:-

“IV. Parent name not to be deleted from passport consequent to Divorce:

Paragraph 4.5- Request for deletion of parent name from passport due to parents' divorce should not be accepted. By virtue of the divorce decree, only the relation as wife and husband severs. The divorce decree does not result in severance of the relation between the child and the parent, unless the parent has legally disowned the child.”

4. Counsel for the petitioner has submitted that after the divorce on the basis of a settlement between the parties, in which they have also agreed that the daughter of the petitioner shall retain sur-name of her mother instead of the sur-name of her father, the provisions of Paragraph 4.5 is not at all applicable and in this regard, reliance has been placed upon a decision of the Supreme Court in the case of ABC vs. The State (NCT of Delhi), 2015(3) R.C.R. (Civil) 766 and a judgment of the Delhi High Court in the case of Shalu Nigam and another vs. The Regional Passport Officer and another, W.P.(C) No.155 of 2016, decided on 17.05.2016.

7. In this case, husband of the petitioner has virtually

disowned his daughter as in the settlement, he did not ask for her custody or even visiting rights and agreed that the petitioner would continue to have custody of her minor daughter without any kind of his interference or his family members in future. He also paid full and final amount towards maintenance of his daughter in one go while paying the maintenance/alimony to his wife/petitioner and agreed that after the settlement, his daughter shall not be known as Addvita Garg but as Addvita Katia.

8. From these facts and circumstances, it is very much clear that husband of the petitioner has disowned his daughter legally by way of a settlement before the Court of law which has become part of the order passed in the appeal filed by the petitioner. Besides this, the decision of the Delhi High Court in Shalu Nigam's case (supra) deals with the provisions of Paragraph 4.5, in which it has been held that the respondents can insist upon the name of the biological father in the passport only if it is a requirement in law but in the absence of any provisions making it mandatory to mention the name of one's biological father in the passport, the respondents cannot insist upon the same. It is further held that the mother's name is sufficient in the passport in case of single woman who can be a natural guardian and also a parent. In this regard, the Court had taken judicial notice of the fact that families of single parents are on the increase due to various reasons like unwed mothers, sex workers, surrogate mothers, rape survivors, children abandoned by father and also children born through IVF technology.

9. Thus, keeping in view the aforesaid facts and circumstances especially the fact that the provision of Paragraph 4.5, referred to above, rather helps the petitioner because it provides that name of the parent can be deleted if the parent has legally disowned the child, which has been proved on record on the basis of

the terms and conditions of the settlement and the observations made in Shalu Nigam's case (supra).

10. Consequently, the present petition is hereby allowed and the respondents are directed to make necessary correction in sur-name of the daughter of the petitioner from Addvita Garg to Addvita Katia and also to delete the name of her biological father i.e. Dhruv Garg from her passport as Addvita Katia is now the daughter of a single parent i.e. her mother Prerna Katia. The necessary correction shall be carried out within a period of one month from the date of presentation of certified copy of this order.

22. In ***Nancy Nithya v. Government of India (supra)*** are extracted herein below:

“12. The Rules are framed by the Central Government in terms of Section 24 of the Act. Therefore, they are part of the statute and are statutory. The Passport Manual are guidelines to issue a passport are a solution to answer circumstances that would emerge, but, cannot run counter to the statute, as they are not statutes. Therefore, the 2nd respondent will have to consider the application of the petitioner in terms of the Rules and seek any document or clarification from the parent in terms of the Rules and not in terms of the Passport Manual.

13. Therefore, it is necessary for the Central Government to bring in such amendment to the Rules, if it wants the situation emerged in the Manual to be tackled with, failing which, rejecting passports relying on the Manual particularly, in the case of passport of minors, would be rendered unsustainable as they would suffer from want of tenability. Since the Rules themselves envisage situation of the kind that has emerged in the case at hand, the reliance being placed on the Manual which runs counter to the Rules sans countenance.”

23. In all the three decisions quoted above, the biological father had in effect disowned the child and had severed all ties with the child. Irrespective of the fact that the applicable clauses in the Manual may be different, the spirit behind the said decisions is clear, i.e., that under certain circumstances the name of the biological father can be deleted and the surname can also be changed. Both the Passport Manual and the OM relied upon by the Respondents recognise that passports can be issued under varying circumstances without the name of the father. Such a relief ought to be considered, depending upon the factual position emerging in each case. No hard and fast rule can be applied. There are myriad situations in the case of matrimonial discord between parents, where the child's passport application may have to be considered by the authorities. Such situations include –

- divorce with sole custody and mere visitation;
- divorce with joint custody and visitation;
- divorce with sole custody and no visitation;
- divorce with complete disowning of the child;
- divorce with some rights being given to the child;
- divorce between the couple but rights vesting in either side's grandparents;
- Separation with divorce pending and visitation issues pending in Court;
- Desertion by either parent;
- Divorce or Separation with conditions relating to subsequent marriages which may alter the relationship with the child;
- Legal disowning of the child by either parent;

- Situations where the couple are in different countries and an attempt is made to remove the child from a jurisdiction;

The situations set out above are not exhaustive but are illustrative to show how the passport applications of minors may have to be considered and examined under varying circumstances. The Manual merely contemplates some of the situations and provides for certain mechanisms. However, the need for flexibility exists depending upon the fact situation. A thorough examination and understanding of court orders may also be required.

24. In this backdrop, the Court notes that the facts of the present case are quite peculiar. As per the settlement which has been entered into by the biological father and the mother/Petitioner No. 1, the father has given up all rights, if any, towards the child. There is no visitation. The child has also not been brought up by the father. Moreover, the fact that the minor son is also using the surname of the mother and the maternal grandparents, itself shows that the father does not wish to have any concern or relationship with the child. No maintenance or alimony has also been paid to the Petitioners in this case. In fact, this would be a case where the father has completely deserted the child. Under such circumstances, this Court is of the opinion that Clause 4.5.1 of Chapter 8 and Clause 4.1 of Chapter 9 would clearly be applicable.

25. In the unique and peculiar circumstances of this case, it is accordingly directed that the name of the father of Petitioner No.2 be deleted from the passport and the passport be re-issued in favour of the minor child without the name of the father. Needless to add that this order shall not be treated as a precedent.

26. The Petitioner No. 1 along with her son may appear before the

Regional Passport Office, Delhi and surrender the passport which has already been issued along with the certified copy of this order. Let the new passport be issued without the name of the father within one week thereafter.

27. The petition is accordingly disposed of in these terms. All pending applications are also disposed of.

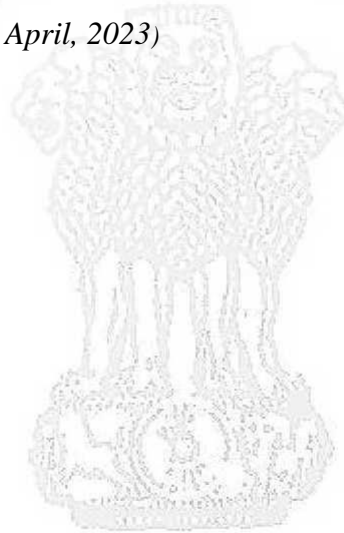
PRATHIBA M. SINGH
JUDGE

APRIL 19, 2023

Rahul/RP

(corrected & released on 25th April, 2023)

HIGH COURT OF DELHI



सत्यमेव जयते