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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 26th DAY OF MAY 2025 / 5TH JYAISHTA, 1947

WP(C) NO. 17195 OF 2025

PETITIONER:

JOSNA RAPHAEL POOVATHINGAL,
AGED 51 YEARS
D/O. P.K. RAPPAL, RESIDING AT 'KAVYAM',
PANAMPILLY NAGAR, CHERUR, THRISSUR, PIN - 680008

BY ADVS.
K.R.GANESH
ELVIN PETER P.J. (SR.)
AHSANA E.
ADARSH BABU C.S.

RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF EXTERNAL
AFFAIRS, GOVERNMENT OF INDIA, NEW DELHI, PIN - 110001

2 THE REGIONAL PASSPORT OFFICER,
COCHIN, NEAR IDBI CORPORATE BANK, SHIHAB THANGAL
ROAD, PANAMPILL NAGAR, KOCHI, PIN - 682036

BY ADV SHRI.C.DINESH, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.05.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

The petitioner seeks a direction to the second respondent to consider Ext.P16 application preferred for re-issue of her passport with the date of birth corrected based on the Ext.P1 Birth Certificate. The petitioner's request was not considered, as the respondents insisted on correcting the date of birth in the service records before considering the application.

2. The learned Senior Counsel appearing for the petitioner submits that the petitioner cannot now seek a correction of the service records as the period stipulated for the same has long expired, and therefore, correcting the service record is impossible. The learned Senior Counsel also points out that, as per Ext.P15 Rules [The Passports (Amendment) Rules, 2025], all that is required for correction is an affidavit stating the reason for change in the date of birth, and therefore, the



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guidelines/manual that run counter to the statutory provisions cannot stand the scrutiny of law.

3. The learned counsel for the respondents brought to my notice a judgment of this Court in W.P.(C) No. 894/2025, dated 21.02.2025, in an identical situation wherein this Court directed the 2nd respondent to consider the application filed by the petitioner therein for correction of date of birth in the passport without insisting on the service records being corrected before the application for change of date of birth can be considered.

4. A correction of service records in the case of the petitioner is an impossibility at this distance of time as seen from Ext.P11 Government Order dated 30th December 1991 which fixed five years from entering the service for correction of date of birth and for those who had not made an application, one year from the date of issuance of Ext.P1, namely 30th December 1991.



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5. Under such circumstances, the service book of the petitioner cannot be corrected. As held by the Hon'ble Supreme Court in **State of Madhya Pradesh vs. Narmada Bachao Andolan and another** [(2011) 7 SCC 639] and by this Court in **Sulfikar vs. The Kerala State Election Commission** (MANU/KE/2350/2024), the doctrine of Impossibility is based on the doctrines “*lex non cogit ad impossibilia*” (the law does not compel a man to do what he cannot possibly perform), “*impossibilium nulla obligatio est*” (the law does not expect a party to do the impossible) and “*impotentia excusat legem*” in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law *Nemo Tenetur ad Impossibilia* (no one is bound to do an impossibility), which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons



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interested had no control, like an act of God, the circumstances will be taken as a valid excuse. The above maxims are founded upon justice and good sense and serve as a safe and certain guide for the administration of law. The law itself and its administration are understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt the general exception in consideration of a particular case. Even in the case of the performance of formalities prescribed by a statute, the impossibility due to circumstances over which the persons concerned have no control has to be taken as a valid excuse. Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will, in general, excuse him. It has to be treated at par with those circumstances over which the person had no control, like the act of God. As such, the insistence on a condition that is incapable of performance cannot be accepted.



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6. It is also to be seen that the compendium of Instructions/Guidelines relating to the issue of Passports in India/Abroad cannot go against the provisions of the Passports Act, 1967 or the Rules thereon or any other instrument having the force of law. In the absence of any statutory provision indicating that the correction of date of birth in the passport will have to be preceded by the correction of date of birth in the service records in case of Government Servants, the stand of the respondents has to be rejected.

7. Accordingly, the petitioner has to succeed, and there will be a direction to the 2nd respondent to consider Ext.P16 application without insisting on the correction of the service records by the petitioner and in terms of the affidavit preferred as per Ext.P15 Rules. This shall be done within two weeks from the date of receipt of a copy of this judgment.

The Writ Petition is allowed as above.

**Sd/-MOHAMMED NIAS C.P.
JUDGE**



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APPENDIX OF WP(C) 17195/2025

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE BIRTH CERTIFICATE NO.
BO130170-73061115223 DATED 06.05.2024 ISSUED
BY THE REGISTRAR OF BIRTHS AND DEATHS.

EXHIBIT P1(a) TRUE COPY OF THE AADHAAR CARD NO. 6658 0816
8295 OF THE PETITIONER.

EXHIBIT P2 TRUE COPY OF THE 3RD PAGE OF THE SSLC BOOK
OF THE PETITIONER.

EXHIBIT P3 TRUE COPY OF THE SERVICE DETAILS OF THE
PETITIONER INCLUDING HER DATE OF BIRTH
ENTERED IN THE SERVICE AND PAYROLL
ADMINISTRATION REPOSITORY FOR KERALA (SPARK)

EXHIBIT P4 TRUE COPY OF THE RELEVANT PAGES OF THE
PASSPORT ISSUED TO THE PETITIONER EVIDENCING
THE ENTRY OF HER DATE OF BIRTH

EXHIBIT P5 TRUE COPY OF THE JUDGMENT AND DECREE DATED
12.10.2022 IN O.P. NO. 729/2022 OF THE
FAMILY COURT, THRISSUR.

EXHIBIT P6 TRUE COPY OF THE CERTIFICATE OF MARRIAGE OF
THE PETITIONER ISSUED FROM THE ANNE ARUNDEL
COUNTY, STATE OF MARYLAND, U.S.A.

EXHIBIT P7 TRUE COPY OF THE RELEVANT PAGES OF THE
AMERICAN PASSPORT NO. 677101933 OF THE
PETITIONER'S HUSBAND ISSUED BY THE U.S.A.



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- EXHIBIT P8 TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER IN THE PRESCRIBED PROFORMA DATED 12.03.2024, ALONG WITH THE APPLICATION FOR RE-ISSUE OF HER PASSPORT WITH CORRECTED DATE OF BIRTH.
- EXHIBIT P9 TRUE COPY OF THE REQUEST LETTER DATED 06.12.2024 ISSUED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P10 TRUE COPY OF THE COMMUNICATION DATED 06.12.2024 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P11 TRUE COPY OF THE GOVERNMENT ORDER G.O. (P) 45/91/P&ARD DATED 30.12.1991.
- EXHIBIT P12 TRUE COPY OF THE GOVERNMENT ORDER G.O. (RT.) 853/2011/G.EDN. DATED 01.03.2011.
- EXHIBIT P13 TRUE COPY OF THE FORM EA(P)-13 OF INDIA PRESCRIBED THE FORM FOR PASSPORT APPLICATION IN SCHEDULE III.
- EXHIBIT P14 TRUE COPY OF THE INSTRUCTIONS FOR FILLING UP EXT.P13 FORM, FOR RE-ISSUE OF PASSPORT.
- EXHIBIT P15 TRUE COPY OF THE GAZETTE NOTIFICATION DATED 24.02.2025 PUBLISHED IN THE EXTRA ORDINARY GAZETTE.
- EXHIBIT P16 TRUE COPY OF THE APPLICATION DATED 13.04.2024 SUBMITTED BY THE PETITIONER WITHOUT THE DOCUMENTS.
- EXHIBIT P17 TRUE COPY OF THE VISA ISSUED FROM THE



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EMBASSY OF USA, KUALA LAMPUR.

EXHIBIT P18

TRUE COPY OF THE DECISION REPORTED IN 2007
(3) KLT 653.

EXHIBIT P19

TRUE COPY OF THE PRINT OUT FROM THE WEBSITE
OF THE PASSPORT SEVA OF THE 1ST RESPONDENT
SHOWING THE CURRENT STATUS OF THE
APPLICATION SUBMITTED BY THE PETITIONER.

RESPONDENT ANNEXURES

Annexure R2(a)

True copy of the communication from the O/o
Technical Education Directorate,
Thiruvananthapuram vide DTETVM/3539/2025-EAL
dated 23/04/2025