

राज्य आरोग्य माहिती व जीवनविषयक आकडेवारी, कार्यालय, पुणे

डॉ. पी. एस. पवार

एम.एस.

उपसंचालक

तथा

उपमुख्य निबंधक जन्म व मृत्यु

महाराष्ट्र राज्य



दूरध्वनी क्रमांक : ०२०-२६०५८७४७ (वै.)
०२०-२६०५५५३० (का.)
फॅक्स क्रमांक : ०२०-२६०५८२९२
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डॉ.नायडू रुग्णालय आवार, केनेडी रोड, पुणे-१

जा.क्र.आमाजीआ/कक्ष-८३/उशिरा नोंद सुधारीत आदेश/ ५०५-३८ /१४, दिनांक:- २० जानेवारी २०१४

महत्वाचे परिपत्रक

प्रति,

जिल्हा आरोग्य अधिकारी तथा
जिल्हा निबंधक जन्म व मृत्यु,
जिल्हा परिषद(सर्व)

विषय :- जन्म-मृत्यु घटनांच्या उशिरा नोंदणी संदर्भात सुधारीत आदेश.

संदर्भ - १) मुंबई न्यायालयाच्या नागपूर खंडपीठाने याचिका क्र. cri.P.I.L.No.4/2013

च्या संदर्भात देण्यात आलेले दि.१७/१२/२०१३ रोजीचे आदेश

२) विधी व न्याय विभाग, महाराष्ट्र शासन, मंत्रालय मुंबई यांचे इंग्रजी

परिपत्रक क्रं.५९-१२/एमआयएससी/२०१३/अ-ब्रॅच, दिनांक ३१/१२/२०१३

मा.मुंबई उच्च न्यायालयाच्या नागपूर खंडपीठाने दि.१७/१२/२०१३ व दि.२१/१२/२०१३ रोजी याचिका क्र.cri.P.I.L.No.4/2013 च्या संदर्भात निर्देश निर्गमित केले आहे. सदर निर्देश हे जन्म-मृत्यु नोंदणी अधिनियम १९६९ मधील कलम १३(३) व महाराष्ट्र जन्म-मृत्यु नोंदणी नियम २००० मधील नियम ९(३) म्हणजेच जन्म-मृत्यु घटनांच्या उशिरा नोंदणी संदर्भात आहेत. न्यायालयाच्या या आदेशाची प्रत आपल्या सुलभ संदर्भासाठी सोबत जोडली आहे.

या आदेशाच्या अधीन राहून विधी व न्याय विभाग, महाराष्ट्र शासन, मंत्रालय, मुंबई यांनी दि.३१/१२/२०१३ रोजी परिपत्रक निर्गमित केलेले आहे. सदर परिपत्रकाची प्रत सुध्दा सोबत जोडली आहे.

सद्यःस्थितीत जन्म-मृत्यु नोंदणी अधिनियम १९६९ मधील कलम १३(३) व त्या अनुषंगाने तयार करण्यात आलेल्या महाराष्ट्र जन्म-मृत्यु नोंदणी नियम २००० मधील नियम ९(३) अनुसार जर एखादी जन्म अथवा मृत्युची घटना घडल्यापासून एक वर्षाच्या आत नोंदणी झाली नसेल, तर त्या कार्यक्षेत्रातील कार्यकारी दंडाधिकारी यांच्या आदेशाने नोंदणी करण्यात येते.

परंतु यापुढे न्यायालयाचे आदेश व तसेच विधी व न्याय विभागाच्या परिपत्रकानुसार ज्या जन्म-मृत्यु घटनांची नोंदणी घटना घडल्यापासून एक वर्षाच्या आत झाली नसेल, अशा घटनांच्या नोंदणीसाठी

फक्त प्रथम वर्ग न्यायिक दंडाधिकारी किंवा महानगर दंडाधिकारी यांचेच आदेश ग्राह्य धरण्यात यावेत. यासाठी हे आदेश प्राप्त करुन घेण्यासाठी नागरिकांना अशा न्यायालयात अर्ज करावे लागतील.

त्यापूर्वी निबंधकांनी त्यांचे कार्यक्षेत्रात घडलेल्या घटनेची नोंद नसल्याबाबत (खात्री करुन) अनुपलब्धता दाखला नमुना क्र.१०(अ/ब) मध्ये पूर्वीप्रमाणेच द्यावा व सदरील दाखला न्यायालयात अर्ज करतेवेळी अर्जासोबत पुरावा म्हणून जोडण्याच्या सूचना नागरिकांना द्याव्यात.

तरी आपण आपल्या अधिपत्याखालील सर्व निबंधक व उपनिबंधक यांना या महत्वाच्या परिपत्रकाबाबत अवगत करुन ही बाब निदर्शनास आणावी.

आपण केलेली कार्यवाही या कार्यालयास अवगत करावी.



उपसंचालक आरोग्य सेवा
तथा उपमुख्य निबंधक जन्म व मृत्यु
महाराष्ट्र राज्य, पुणे-१

प्रत माहितीस्तव सविनय सादर :-

- १) मा. प्रधान सचिव, विधी व न्याय विभाग, मंत्रालय, महाराष्ट्र शासन, मुंबई-३२.
- २) मा. संचालक आरोग्य सेवा तथा मुख्य निबंधक जन्म व मृत्यु, महाराष्ट्र राज्य, मुंबई-४०० ००१

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL PUBLIC INTEREST LITIGATION NO. 4 OF 2013
(Freedom Firm vs. Child Welfare Committee of Nagpur thr. Its Chairman & Ors.)

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

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.
DECEMBER 21, 2013.**

Heard Shri Rathod, learned counsel for
the petitioner and Mrs. Dangre, learned Additional
GP for respondents No. 1 to 7.

The order dated 17.12.2013 stands
corrected as mentioned below :

1. In the title replace "Chief Welfare Committee"
with "Child Welfare Committee".
2. In para 13, the last line on page 7, replace
"Magistrate" with "Executive Magistrate".
3. In para 14, replace "Judicial Magistrate
or" with "Magistrate of First Class or".
4. In para 15, replace "or Presidency
Magistrate.." with "or Metropolitan Magistrate..".
5. In para 16, replace "... Rule 10(3)..." with
"...Rule 9(3)...".
6. In para 16, replace "... and Death Rules,
1976.." with "...and Death Rules, 2000...".
7. In para 17, replace "... Judicial Magistrate,
First Class or Presidency Magistrate..." with "...
Judicial Magistrate, First Class or Metropolitan

Magistrate..”.

The order be corrected and read accordingly.

Mrs. Dangre, learned Additional GP, upon instructions, states that the order releasing minor in custody of father has been questioned before appropriate forum and orders of this Court to that extent are complied with.

Shri Rathod, learned counsel makes a grievance that the other girl released in the custody of her brother Mohan in 2012 is back in Red Light area in Nagpur. After getting information since last one week, efforts were being made to rescue her. According to him, the information leaked out and hence the entire operation has been sabotaged.

The Police Commissioner, Nagpur, to obtain instructions forthwith from Gwalior Police in respect of whereabouts of Mohan and said minor girl. The information be communicated to the office of the Government Pleader at Nagpur.

List the matter for further consideration on 24th December 2013.

An ordinary of this order be furnished to the learned Additional GP.

JUDGE

JUDGE

*G.S.

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 : 17th 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 29th 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 21st December, 2013.

Steno copy to the parties is allowed.

JUDGE

JUDGE

Saheba

LECTURATE, WASHING
PLATION NO.

GOVERNMENT OF MAHARASHTRA

LAW AND JUDICIARY DEPARTMENT

Mantralaya, Mumbai -400 032.

Circular No.59-12/Misc./2013/A'Branch Dt. 31st December, 2013.

CIRCULAR

The Criminal Public Interest Litigation No. 4/2013 has been filed by Freedom Firm through Nincy Mohan Baby V/s. Child Welfare Committee Nagpur & others for relief relating to the provisions of Immoral Traffic (Prevention) Act, 1956 and Juvenile Justice (Care & Protection of Children) Act, 2000 and the Rules framed there under, before the High Court of Judicature at Bombay, Bench at Nagpur. The Hon'ble High Court in its judgment and order dated 17-12-2013, Cr.P.I.L.No.4/2013, made observation in para 13 to 18 and directed to circulate the said observation to all authorities functioning in the State under The Registration of Birth & Deaths Act, 1969.

The Hon'ble High Court observed and directed in para 13 to 18 in its judgment as below:-

13. In so far as the provisions to Section 13(3) of the act of 1969 are concerned, the said provisions need to be constructed 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 authorized 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 contradiction, 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).

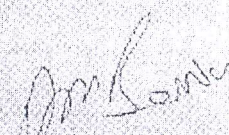
16. The provisions of Rule 10(3) of the Registration of Births and Death Rules, 1976 to that extent must yield to section 13(3) and also therefore need to be read down accordingly. Hence, authority like Executive Magistrate mentioned in Rule 10(3) does not possess jurisdiction to pass any order authorizing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

All the concerned Secretaries of Administrative Departments in Mantralaya and authorities under their control as well as authorities under the Registration of Births and Deaths Act, 1969 are requested to take note of the observation and directions dated 17-12-2013 in para 13 to 18 in Cr.P.L.No.4/2013 (Freedom Firm through Nincy Mohan Baby V/s. Child

Welfare Committee Nagpur & others and also to bring these directions to the notice of all the authorities and officers working under their control and ensure its compliance.


(A.M. Badar)

Principal Secretary & R.L.A.

Copy to :

1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai-32
2. The Additional Chief Secretary, Home Department, Government of Maharashtra, Mantralaya, Mumbai-32.
3. The Additional Chief Secretary, Revenue and Forest Department, Government of Maharashtra, Mantralaya, Mumbai-32.
4. The Additional Chief Secretary, Public Health Department, Government of Maharashtra, Mantralaya, Mumbai-32.
5. The Additional Chief Secretary, Woman and Child Development Department, Government of Maharashtra, Mantralaya, Mumbai-32.
6. The Additional Chief Secretary, Rural Development Department, Government of Maharashtra, Mantralaya, Mumbai-32.
7. The Additional Chief Secretary, Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai-32.
8. The Registrar General of High Court at Mumbai.
9. The Registrar (Judicial), High Court Bench at Nagpur.
10. All Principal District Judges,
11. The Government Pleader High Court Bench at Nagpur.
12. The Director of Health Services, St. George Hospital Campus, C.S.T., Mumbai.
13. All District Magistrates,
14. The Director General of Police M.S., Mumbai.
15. The Chief Registrar under Registration of Birth & Death Act, 1969.
16. All District Registrars under Registration of Birth & Death Act, 1969, District