



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 19<sup>TH</sup> DAY OF FEBRUARY 2025 / 30TH MAGHA, 1946

WP(C) NO. 22274 OF 2023

PETITIONER/S:

- 1 UMMU KULSOOM,  
AGED 2 YEARS  
D/O. SHAMNAS SHAMSUDEEN, SHAMNAS (MINOR) MANZIL, MUSLIM  
STREET, KOTTARAKARA, KOLLAM-691506 REPRESENTED BY  
NATURAL GUARDIAN FATHER 2 ND PETITIONER, SHAMNAS  
SHAMSUDEEN, S/O SHAMSUDEEN, AGED 40 YEARS, SHAMNAS  
MANZIL, MUSLIM STREET, KOTTARAKARA, KOLLAM,  
PIN - 691506
- 2 SHAMNAS SHAMSUDEEN,  
AGED 40 YEARS  
S/O SHAMSUDEEN, SHAMNAS MANZIL, MUSLIM STREET,  
KOTTARAKARA, KOLLAM, PIN - 691506
- 3 SHAMSIYA.N,  
AGED 32 YEARS  
W/O. SHAMNAS SHAMSUDEEN, SHAMNAS MANZIL, MUSLIM STREET,  
KOTTARAKARA, KOLLAM, PIN - 691506

BY ADVS.  
S.K.ADHITHYAN  
ALTHAF NABEEL

RESPONDENT/S:

- 1 MAYYANAD GRAMA PANCHAYATH,  
REPRESENTED BY ITS SECRETARY, MAYYANAD P.O, PIN -  
691303
- 2 THE SECRETARY,  
MAYYANAD GRAMA PANCHAYAT, MAYYANAD P.O, KOLLAM, PIN -  
691303
- 3 KOTTARAKKARA MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY, MUNICIPAL OFFICE,  
KOTTARAKKARA P.O, KOLLAM DISTRICT, PIN - 691531

BY ADV Sasith M R

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
19.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## **J U D G M E N T**

The 1<sup>st</sup> petitioner is the daughter of the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners. The petitioners are the residents of Kottarakara at Kollam District. The case of the petitioners is that, when the 3<sup>rd</sup> petitioner, visited the residence of one of her relatives, who was residing in Ward No.7 of 1<sup>st</sup> respondent Grama Panchayath, she gave birth to a child, the 1<sup>st</sup> petitioner herein, before the 3<sup>rd</sup> respondent could be taken to the hospital and without any medical assistance. Therefore, the 2<sup>nd</sup> petitioner intimated the fact of birth of the 1<sup>st</sup> petitioner to the 2<sup>nd</sup> respondent, the Secretary to the 1<sup>st</sup> respondent Panchayath as evidenced by the Ext.P2, and requested for issuance of a birth certificate. However, the said application was rejected by the 2<sup>nd</sup> respondent as per Ext.P3 order on the reason that, after an inquiry conducted by the Superintendent, CHC Mayyanad, it was reported that, there is no evidence that the 1<sup>st</sup> petitioner was born in the House No.169 within the jurisdiction of Ward No.7 of the 1<sup>st</sup> respondent Panchayath as claimed by the petitioners and the petitioners are also not residing within the residence referred above. This writ petition is submitted by the petitioners in such circumstances seeking the following reliefs:-



*i) to issue a Writ of certiorari quashing Ext.P3 communication issued by the 2nd respondent as letter No. A5.4552/2021 as it is violative of Article 14, 19 and 21 of the Constitution of India,*

*ii)to issue an order or direction declaring that denial of registration of birth by the 2nd respondent is violative of Article 21 of the fundamental rights of the 1<sup>st</sup> petitioner,*

*iii) to issue Mandamus or order or direction to the 2nd respondent to register the birth of the 1st petitioner and issue birth certificate as per Kerala Registrar of Births and Deaths Rules, 1999.*

*iv) to issue an order or direction to the 3rd respondent to take a decision on Ext P4 expeditiously as possible within a time frame as may be fixed by this Hon'ble Court*

*v) to issue and order or direction to dispense with translation of documents in vernacular language produced as Exhibits in the writ petition,*

*vi) to issue such other appropriate Writ, Order or direction as is deemed just and necessary in the circumstances of the case.*

2. A counter affidavit was filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents wherein they have reiterated the contents of Ext.P4. The respondents also produced a report of the Superintendent CHC Mayyanad wherein it is reported that, in his inquiry, he could not collect any evidence regarding the birth of 1<sup>st</sup> petitioner in the residence No. 169 in Ward No.7 of Mayannad Grama Panchayath. The 3<sup>rd</sup> respondent Municipality



also filed a statement stating that no document are available with them regarding the registration of birth of the 1<sup>st</sup> petitioner.

3. I have heard Smt. S.K.Adhithyan, the learned counsel for the petitioner, Sri M.R Sasith the learned standing counsel appearing for the 1<sup>st</sup> and 2<sup>nd</sup> respondents and Sri.M.K. Chandramohan Das the learned standing counsel appearing for the 3<sup>rd</sup> respondent.

4. The challenge raised in this writ petition is against Ext.P3 order passed by the 2<sup>nd</sup> respondent rejecting the request made by the 2<sup>nd</sup> petitioner to register the birth of the 1<sup>st</sup> petitioner. The specific case of the petitioners is that, the birth of the 1<sup>st</sup> petitioners took place in House No.169 in Ward No.7 of Mayyannad Panchayath where the relatives of the petitioners are residing. According to them, the delivery of the child was while the 3<sup>rd</sup> respondent made a visit in the said residence and as delivery took place before she could be taken to the hospital, there are no medical records to indicate the same. However, the learned counsel for the petitioner produced affidavits of two persons including the residence of the house referred to above, situated within the jurisdiction of Mayyannad Panchayath where the birth took place. The copies of the said



affidavits are produced along with IA 2/204 as Exts. P5 and P6.

5. As per Section 8(1) of the Registration of Births and Deaths Act, 1969, in respect of birth and death in a house, the information has to be submitted to the Registrar by the head of the house or, in case more than one household live in the house, the head of the household, the person, who is so recognized by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult person present therein during the said period;

6. In this case, it is true that the information was furnished by the 2<sup>nd</sup> petitioner herein, who was admittedly not the head of the household where the birth took place. However, it is seen from Ext.P3 order that, that was not the reason on which the application was rejected, but it was solely on the ground that on their enquiry, no evidence could be collected to establish that a birth occurred in the said place on that day. The respondents also rely on report of Superintendent CHC Mayyanad. However, the crucial aspect to be noticed is that, it is the specific case of the petitioners that, the birth of the 1<sup>st</sup>



petitioner occurred in the residence before any medical assistance could be secured. Therefore, there is no medical evidence to substantiate the said birth. Therefore, it is natural that, in the report, Superintendent CHC Mayyanad, could not include the evidence of the birth occurred in the residence referred to above. However, merely because Superintendent CHC could not collect any evidence regarding the birth, that by itself cannot be a reason for the Panchayath to reject the application submitted by the 2<sup>nd</sup> petitioner in this regard. The proper course ought to have adopted by the Panchayath is to find out other sources to verify whether the birth, as claimed by the petitioner, indeed had taken place within their jurisdiction. It is evident from Ext.P3 that no such exercise has been done before issuing the said order.

7. Here in this case, the petitioners produced Ext.P5 and P6 which are the affidavits sworn by relatives of the petitioners including the members of the house where the birth took place and therefore the same are crucial documents which ought to have been taken into account. Since, this is relating to the question of registration of a birth, a lenient approach ought to have been made and strict evidence should not have been insisted upon. Under normal circumstances, no one needs to



make up a false story with respect to the place of birth of a child, and the same is also not likely to cause any prejudice to any person or affect the rights of any other person. Therefore, an interference is required at the instance of this Court since Ext.P3 does not contain a proper inquiry to find out whether the birth has taken place within the jurisdiction of the 1<sup>st</sup> respondent Panchayath.

In such circumstances, this writ petition is disposed of quashing Ext.P3 with a direction to 2<sup>nd</sup> respondent to the reconsider the request made by the 2<sup>nd</sup> petitioner as evidenced by Ext.P2 and to grant the same, by taking note of the affidavits which are produced as Ext.P5 and P6. The petitioner shall produce the affidavits of the said persons in original before the 2<sup>nd</sup> respondent and thereupon the 2<sup>nd</sup> respondent shall register the birth of the 1<sup>st</sup> petitioner and issue a certificate to that effect. This shall be done within a period of one month from the date of receipt of the affidavits.

Sd/-

**ZIYAD RAHMAN A.A.  
JUDGE**

SM



**APPENDIX OF WP(C) 22274/2023**

**PETITIONER EXHIBITS**

- Exhibit P1** A TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED TO THE 2 ND AND 3 RD PETITIONERS AS CERTIFICATE NO. VMJ-9/2011 ISSUED BY THE VENJARAMOOD MUSLIM JAMA-ATH DATED 2/2/2011
- Exhibit P2** A TRUE COPY OF THE REQUEST FILED BY THE 2 ND PETITIONER BEFORE THE 2 ND RESPONDENT DATED 23/5/2021
- Exhibit P3** A TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2 ND RESPONDENT TO THE 2 ND PETITIONER AS LETTER NO. A5. 4552/2021 DATED 1/10/2021
- Exhibit p4** A TRUE COPY OF THE REQUEST FILED BY THE 2 ND PETITIONER BEFORE THE 3 RD RESPONDENT DATED 27/6/2022

**RESPONDENT EXHIBITS**

- Exhibit-R1(a)** The true copy of the report submitted by the CHC Superintendent of Mayyanad dated 31/05/2021

**PETITIONER EXHIBITS**

- Exhibit P-5** TRUE COPY OF THE AFFIDAVIT DATED 19.04.2024 SWORN BY THE AUNT OF THE 2ND PETITIONER, WHICH WAS DIRECTED BY THE HON'BLE COURT TO BE PRODUCED AS DOCUMENT IN THE WRIT PETITION WHICH IS PRODUCED HERewith AND MARKED AS EXHIBIT P5.
- Exhibit P-6** TRUE COPY OF THE AFFIDAVIT DATED 19.04.2024 SWORN BY THE BROTHER OF THE 2ND PETITIONER, WHICH WAS DIRECTED BY THE HON'BLE COURT TO BE PRODUCED AS DOCUMENT IN THE WRIT PETITION WHICH IS PRODUCED HERewith AND MARKED AS EXHIBIT P6.