

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 1432 of 2022

In the matter of:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Alif Azwad Malik

..... Petitioner

Vs.

Bangladesh represented by the
Secretary, Ministry of Home Affairs,
Bangladesh Secretariate, Dhaka-1000
and others.

.....Respondents.

Mr. Md. Maksud Alam, Advocate

.....for the petitioner

Mr. Md. Sayed Alom (Tipu), Adv.

..... for the respondent No. 3

Mr. Noor Us Sadik Chowdhury, D.A.G

... for the respondents

Heard on: 01.08.2022 and

judgment on: 02.08.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show
cause as to why the Rules for correction of father's name in the
passport (Annexure-D) as attached with the application form of
correction (Annexure-D-1) so far as relates to the petitioner should not

be declared to have been passed without lawful authority and is of no legal effect and why the respondents should not to be directed to allow the petitioner to correct his father's name in the passport bearing No. BR 0842782 (Annexure-C) and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner's name Alif Azwad Malik in this writ petition and he is a citizen of Bangladesh son of late Arshad Malik and Fatema Tuz Zohora, of 132, Sugandhah, H/E, Post Office- Chawk Bazar, Police Station- Panchlaish, District- Chattagram. The petitioner a Minor is represented by his mother Fatema Tuz Zohora, daughter of late Md. Alamgir Chowdhury and Shahnaz Banu, of 132, Sugandhah, H/E, Post Office-Chawk Bazar, Police Station, Panchlaish, District-Chattagram.

The respondent No. 1 is Bangladesh, represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka-1000, respondent No. 2 is The secretary, Ministry of Law Justice and parliamentary affairs, Bangladesh Secretariat, Dhaka-1000, respondent No. 3 is the director General, Department of Immigration and Passports, E-7, Agargaon, Shere-E-Bangla Nagar, Dhaka, respondent No. 4 is the Director, Department of Immigration and Passports, Uttara, Dhaka.

The petitioner's case as stated in the writ petition inter alia is that the petitioner Alif Azwad Malik was born on 15.11.2005 and he is a minor and the name of his parents is late Arshad Malik and Fatema Tuz Zohora. That the petitioner's father died on 21.09.2006

and thereafter on 25.06.2013, the mother of the petitioner got married with one Khondaker Misbahul Alam. That on 24.02.2018, the petitioner obtained a passport bearing no. Br 0842782 issued by the department of Immigration and Passport, Uttara, Dhaka but due to bonafide mistake as well as the love and affection of his step-father Khondaker Misbahul Alam, in the passport the father's name of the petitioner has been given as Khondaker Misbahul Alam instead of his biological father's name late Arshad Malik. That for avoiding all kinds of legal complexity of the petitioner, in the passport, the father's name of the petitioner needs to be corrected and name of his biological father needs to be inserted but due to rules for correction of father's name in the passport as attached with the application form of correction, no application for correction of father's name is allowed. That on behalf of the petitioner a notice demanding justice dated 14.11.2021 was issued upon the respondents requesting them to amend the rules, if necessary and allow the petitioner to correct his father's name in his passport bearing no. BR 0842782 and they are also requested to convey the decision positively on or before 17.11.2021, 10.30 AM but there is no response till date.

That the petitioner is a minor and the petitioner has no fault for the bonafide mistake committed in the passport regarding the name of his father but the petitioner is the real sufferer for the mistake and the fathers' name of the petitioner needs to be corrected but due to the rules for correction of father's name in the passport as attached with the application form of correction, the petitioner could not make any

application for correction of his father's name and the rule is harsh, unreasonable and is an arbitrary exercise of power. Hence the petitioner minor filed the instant writ petition.

Learned Advocate Mr. Md. Maksud Alam appeared on behalf of the petitioner while learned advocate Mr. Syed Alaom Tipu appeared for the respondent No. 3.

Learned Advocate Mr. Md. Maksud Alam for the petitioner submits that although it is a fact that the petitioner's father died on 21.09.2006 a few months after the petitioner's birth but however the respondents are arbitrarily refusing to acknowledge and correct the name of the petitioner's father and such refusal is an arbitrary exercise of power. He agitates that although in the birth certificate of the petitioner Annexure-A dated 20.12.2021 the petitioner's father's name appears as Arshad Malik but however the respondents are refusing to correct his father's name in his passport. He draws attention to Annexure-D which is the impugned “পাসপোর্ট (এমআরপি) রি-ইস্যু/তথ্য পরিবর্তন/সংশোধন এর নিয়মাবলী ও আবেদন ফর্ম”. He submits that the respondents most arbitrarily stated in Annexure-D that the name of the parents of any person including the petitioner is not changeable. He submits that such mistake in name may happen inadvertently which can always be rectified. Upon a query from this bench regarding the stepfather's name in the passport of the petitioner the learned advocate for the petitioner submits that since the petitioner was going abroad with his stepfather and mother, while issuance of the passport of the stepfather's name was inserted. He persuades that mistakenly without

intending by genuine mistake the stepfather's name was inserted in the passport. He concludes his submission upon assertion that it is a fundamental right of the petitioner to have his father's name corrected and rectified and the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned advocate Syed Alaom Tipu appearing for the opposite parties. He submits that since from the annexures it appears that there are disputed matter of facts involved regarding the name of the petitioner's father therefore the name of the petitioner's father ought to be investigated upon enquiry in accordance with the relevant laws and Rules by the concerned authority. He draws attention to the several annexures and submits that since from the annexures it appears that the issue of the father's name are disputed matter of facts, therefore the actual name of the father of the petitioner can only be determined and ascertained upon proper investigation following the relevant law by the concerned authority. He concludes his submissions upon assertion that these are disputed question of facts subject to proper investigation.

We have heard the learned Advocates from both sides, perusal the application and particularly examined the documents placed before us which are marked as annexures. Upon examination of the documents it appears that the actual name of the petitioner's father and identity are disputed matter of facts which need proper enquiry pursuant to investigation by the concerned authority. Therefore we are in agreement with the learned advocate for the respondents that the

father's name may only be determined and ascertained upon proper enquiry by the concerned authorities. We are also of the considered view that it is a disputed matter of fact therefore the name of the petitioner's father ought to be investigated upon pursuant to enquiry in accordance with the relevant laws by the concerned authorities.

At this point we are inclined to express our opinion on the propriety of the application marked as annexure 'D' and which has also been impugned by the petitioner.

Our considered view is that the position taken by the respondents as revealed from annexure-'D' is rather rigid and stringent. We are particularly referring to the column of annexure 'D' serial 1 and Serial 2 which contemplate part or full change of name of any person's parents. Under both the serials it states পরিবর্তন যোগ্য নহে (implying that names of parents can neither be partly nor wholly changed) by way of rectification amendment whatsoever.

Our considered view is "that such a rigid and harsh policy in most cases may adversely affect the life of any person from several aspects. Our opinion is also that without proper investigation by the relevant authorities, such stringency and rigidity belies the principles of fairness.

Be that as it may, based on the discussions and observation made above, inter alia the submissions of the learned counsels we are inclined to dispose of the Rule.

In the result, the Rule is disposed of with directions and observations. The respondents Nos. 1, 3 and 4 are hereby directed to

conduct an enquiry and investigation regarding the petitioner's father's identity and name of the petitioner's father within a period of 2(two) months from receiving this judgment and order.

Communicate this judgment at once.

.....

(Kashefa Hussain, J)

I agree.

.....

(Kazi Zinat Hoque, j)

Shokat (B.O)