

# 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, Cri.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:-

महानिवासी कार्यालय, नगपुर	13
मावक	3714
पत्र	229
दिनांक	5 JAN 2014
सरकारकडून	प्राप्त/२२
अपर जिल्हाधिकारी	जिल्हाधिकारी

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.

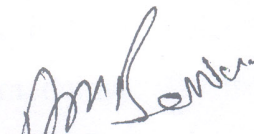
14. Here, the Judicial Magistrate or Presidency Magistrate under section 13(3) is obliged to pass an order after due verification of correctness of birth or death. The said verification necessarily will involve appreciation or sifting of evidence but then we do not find it necessary to go to Sub-section (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 Cri.P.I.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. Geroge 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 .....