

**IN THE COURT OF THE XXVIII ADDL. CHIEF
METROPOLITAN MAGISTRATE, NRUPATHUNGA
ROAD, BENGALURU CITY**

Present:

**Soubhagya.B.Bhusher
B.A.,LL.B.,LL.M**

**XXVIII Addl. Chief Metropolitan
Magistrate, Bengaluru City.**

DATED; THIS THE 29th DAY OF AUGUST-2022

CRL.MISC.NO.4978/2022

Petitioner:

Suresh Kolar Srinivasa Shastry
S/o. Kolar Ramalinga Srinivasa Shastry
Age: 42 years,
R/by SPA Holder
Sathish .K.S S/o. Kolar Ramalinga
Srinivasa Shastry, Age: 47 years,
R/at No.47, 1st Main Road,
1st Cross, Canara Bank Colony,
Chikkallasandra, Bangalore.
South, Subramanyapura,
Bengaluru-560061.

(By Smt.Pankaja .B.C. Adv.,)

V/s.

Respondent:

The Commissioner,
Registrar of Births and Death,
B.B.M.P, Bengaluru.

(Ex-Parte)

**ORDER ON PETITION FILED UNDER SECTION
13(3) OF BIRTHS AND DEATHS REGISTRATION
ACT 1969**

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Learned counsel for the petitioner has filed this petition under section 13(3) of births and deaths registration act 1969.

2. Background facts in a nut shell are as under:

The petitioner is the resident of Bengaluru, the petitioner by name Suresh Kolar Srinivasa Shastry S/o Kolar Ramalinga Srinivasa Shastry and Smt.Indramma, who was born on 21.07.1970 at his residence at house No.47, 1st Main Road, 1st Cross, Canara Bank Colony, Chikkallasandra, Bangalore North, Subramanyapura, Bengaluru-560061, said birth of the petitioner is not registered with the respondent authority. The petitioner has approached to the respondent with request to issue birth certificate of his brother Suresh Kolar Srinivasa Shastry, as the petitioner is in need of the same for the purpose of documentation purpose. The respondent in-turn got issued endorsement stating that date of birth of the Suresh Kolar Srinivasa Shastry is not entered in the registered in the office. Hence, this petition.

3. Respondent did not appear before the court.

Hence, it has been placed ex-parte.

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4. Trial consisted of examination of the petitioner, the SPA holder of the petitioner is examined as PW.1 and 5 documents got marked at Ex.P.1 to 5 and closed the side. None were examined on behalf of respondent.

5. Heard learned Counsel for the petitioner at length and perused the materials placed on record.

6. Upon hearing argument and on perusal of material placed on records, following points arises for consideration:

1. Whether the petitioner has made out sufficient grounds for allowing the petition?

2. What order?

7. My answer to the above points are as under:

Point No.1: In the Affirmative.

Point No.2: As per the final order,
for the following:

:REASONS:

8. **POINT NO.1:** In order to prove the case, the SPA holder of the petitioner is examined himself as P.W.1 and reiterated the petition contents in his examination-in-chief affidavit. He got marked non-availability certificate at Ex.P.1, SSLC Marks card of the petitioner at Ex.P.2,

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Aadhaar card of the petitioner at Ex.P3. Aadhaar card of PW.1 at Ex.P4. SPA marked at Ex.P.5. As respondent did not appear before the court, his testimony remained unchallenged and uncontroverted. Therefore, there is no reason to disbelieve the evidence given by petitioner mother.

9. It is also trite that in a proceeding Under Section 13 (3) of Registration of Births and Deaths Act, court is concerned with the factum of birth or death and date of birth or death is not relevant. This proposition finds support from the ratio laid down by Hon'ble High Court of Karnataka in **2000 (4) KCCR 2674 (State of Karnataka V/s Smt. Annakka)**, Which reads thus:

“REGISTRATION OF BIRTHS AND DEATHS ACT, 1969-Section 13 (3)-Direction to make an entry in the Birth Register by the Magistrate-Challenged on the ground, that except the statement of applicant on oath there is no other material.

Held: The Magistrate in a proceeding Under Section 13(3) only ascertains the birth of the child and date is not the material consideration, as such directions bind only the Registration Office Under the Act to make

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an entry and does not carry higher probative value.”

10. Reverting to the factual matrix of the present case the the petitioner has stated in the petition as well as in his examination-in-chief of P.W.1 that, the petitioner by name Suresh Kolar Srinivasa Shastry S/o Kolar Ramalinga Srinivasa Shastry and Smt.Indramma, who was born on 21.07.1970 at his residence at house No.47, 1st Main Road, 1st Cross, Canara Bank Colony, Chikkallasandra, Bangalore North, Subramanyapura, Bengaluru-560061, which remained unchallenged. Hence, in the light of principles emerges from the decision referred above, the petition is required to be allowed. Hence, I answered the point No.1 in the Affirmative.

11. **POINT NO.2:** For the foregoing reasons, I proceed to pass the following.

:ORDER:

Petition filed under Section 13(3) of Registration of Births and Deaths Act 1969, is hereby allowed.

Respondent is directed to enter the date of birth of Suresh Kolar Srinivasa

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Shastry S/o Kolar Ramalinga Srinivasa Shastry and Smt.Indramma, who was born on 21.07.1970 at his residence at house No.47, 1st Main Road, 1st Cross, Canara Bank Colony, Chikkallasandra, Bangalore North, Subramanyapura, Bengaluru-560061 in the concerned records and issue Birth Certificate to the petitioner after collecting necessary fee and fine.

No order as to costs.

(Directly dictated on computer to typist, typed by her corrected and revised by me, signed and then order pronounced in the open court on 29th day of August-2022)

(Soubhagya.B.Bhusher)
XXVIII Addl. Chief Metropolitan
Magistrate, Bengaluru.

ANNEXURE**List of witness examined on behalf of the petitioner:**

PW.1 : Sathish.K.S

List of documents marked on behalf of the petitioner:

Ex.P.1 : Non-availability Certificate
Ex.P.2 : SSLC Marks of petitioner
Ex.P.3 : Adhaar card of petitioner
Ex.P.4 : Adhaar card of PW.1
Ex.P.5 : SPA

List of witness examined on behalf of respondent:

-Nil-

List of documents marked on behalf of respondent:

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-Nil-

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Magistrate, Bengaluru.**

29.08.2022

Orders

Orders pronounced in the open court
vide separate order.

ORDER

Petition filed under Section 13(3) of
Registration of Births and Deaths Act 1969,
is hereby allowed.

Respondent is directed to enter the
date of birth of Suresh Kolar Srinivasa
Shastri S/o Kolar Ramalinga Srinivasa
Shastri and Smt.Indramma, who was born
on 21.07.1970 at his residence at house
No.47, 1st Main Road, 1st Cross, Canara
Bank Colony, Chikkallasandra, Bangalore
North, Subramanyapura, Bengaluru-
560061 in the concerned records and issue
Birth Certificate to the petitioner after
collecting necessary fee and fine.

No order as to costs.

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Ex.P.2 to 4 are returned to the petitioner after collecting the certified copies of the same with proper identification by the counsel for the petitioner.

XXVIII ACMM, Belgaluru.