

(2008) 08 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No. 10007 of 2008

Arpanaben Krunal Shah

APPELLANT

Vs

Regional Passport office

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 10, 10(1), 11, 12, 13

Citation : (2008) 3 GLH 214 : (2009) 1 GLR 237 : (2009) 5 RCR(Civil) 923

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Hemang R. Rawal, for the Appellant; V.D. Parghi and Harin P. Raval for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Parghi learned Standing Counsel waives service of notice of rule for the respondent. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard.

2. The short fact of the case appears to be that the petitioner had earlier applied for passport, which has been issued vide No. E8180475. In the said passport the birth date recorded is 1.8.1968. The aforesaid is an admitted position. It is a case of the petitioner that earlier application for passport was made based on the birth date recorded in the School Leaving Certificate issued by Maharshi Rang-Avdhoot Vidhyavihar, Higher Secondary, Paldi, Ahmedabad, copy whereof is produced at Annexure B. In the said School Leaving Certificate the birth date of the petitioner is shown as of 1.8.1968. It appears that thereafter, the entry is recorded in the birth and death register, maintained by Navsari, Nagar Palika, as per the provisions of Birth and Death Registration Act 1969 (hereinafter referred to as the "Act") and as per the record under the said Act, the birth date recorded of the petitioner is 1.12.1968, copy of the birth certificate issued by the authority under the Act is produced at Annexure-D. The petitioner applied to the passport authority for correction of the birth date from 1.8.1968 to 1.12.1968, however,

such correction was not made. Therefore, the petitioner preferred Special Civil Application No. 23893 of 2007, before this Court and this Court vide order dated 17.7.2008 directed the passport authority to consider the material and to take decision. It appears that thereafter, vide order dated 23.7.2008 the passport authority by quoting order of the Division Bench of this Court in Letters Patent Appeal No. 1673 of 2006 observed that passport office cannot declare date of birth and it is only the competent Court. It was also mentioned in the said letter that the instruction issued by Ministry of External Affairs, which inter alia provides that if the documents are conflicting, applicant should obtain order of Civil Court of a competent jurisdiction, certifying the valid date of birth/place of birth. Therefore, passport authority communicated to the petitioner to produce correct School Leaving Certificate showing the date of birth, or the order from the competent Civil Court of the jurisdiction certifying valid date of birth. It is under these circumstances, the petitioner has approached to this Court by the present petition.

3. Heard Mr. Rawal learned Counsel for the petitioner and Mr. Parghi learned Standing Counsel for the respondent.

4. It is true that when earlier passport was issued by the respondent-passport authority, the petitioner may have produced the School Leaving Certificate for showing the proof of birth as 1.8.1968 and based on the same the passport has been issued. However, it is also undisputed position that as per the entry made in the Birth and Death Registration Act, the birth date shown of the petitioner is 1.12.1968 and the correction is prayed by the petitioner in the passport based on the entry recorded under the Act.

5. As per the scheme of the Act which is passed by the Parliament, entry in the register for birth and death are to be considered as correct, unless any declaration is otherwise of a competent Civil Court. Section 10 provides for the duty of certain persons to notify births and deaths and to certify cause of death. As the registration of the death is not concerned in the present petition, it may not be relevant. However, such may apply for notifying the birth of any person through various authorities to the person holding the post as defined under the Provisions of Sub-section 1 of Section 10 of the Act. Section 11 of the Act provides such information to be signed by informant for the birth and death before registration thereof in the register. Section 12 provides that the extracts of registration entries to be given to the informant. Section 13 provides for the entries in the register in case they are not registered within thirty days from the occurrence or there is delay of one year in cases where the registration has not taken place within one year, the entries are to be registered only upon the order passed by the Magistrate of the first class or Presidency Magistrate. Section 14 provides for entry of the name of the child in the register.

6. After considering the circumstances, as are put forward cancellation, or correction in the register can also be made. The aforesaid scheme of Chapter III of the Act, shows that there is unbuilt mechanism provided under the Act for

entry of the birth and death. Once the entry is recorded in the register of the birth under the Act, unless it is corrected, it would remain as it. As against the entry recorded in the register under the Act, the weightage to the School Leaving Certificate cannot be given, so far as the authorities are concerned, including passport authority. They would first be guided by the certificate under the Act, for the proof of the birth. It is only in cases, where such evidence is not available, they may consider the other proof like School Leaving Certificate, or other documents showing the date of birth. However, when the entry is already available in the Birth and Death Registration Act, the same is to be given due weightage, and it cannot be ignored by the passport authorities, nor it is open to the passport authorities to say that since they have earlier acted upon the School Leaving Certificate for issuance of the passport, the correction cannot be made in the passport based on the entry in the register of birth under the Act.

7. It deserves to be recorded that it may be that in a given case at the time when the application was made before the passport authority, the person concerned must have produced the School Leaving Certificate for showing the birth date, and the same is acted upon by the passport authority. It is also true that the passport authority, while issuing the passport may treat such power as that of quasi judicial authority. Therefore, it may not alter record of the passport, unless authenticated and reliable material is produced, or there is order of the competent Court, but such order of the competent Court may be required to the extent of for the purpose of exercise of the power by the passport authority, and not for the correction in the passport. Once the Court has ordered the passport authority to consider and to take decision, such would be sufficient for the passport authority to exercise the power for correction in the passport already issued. It may be that in a given case the passport authority finds any doubt about the genuineness of the documents, which may insist for the other proof, or in a given case, if the passport authority finds that in view of the variance of the document showing the birth date or name or place of the birth on the basis of the documents produced earlier, and the documents which are produced at the later stage, it may insist for issuance of public notice for inviting objections of any person, but such would be required only in cases, where genuine and authenticated record is not available, or that the passport authority has reliable doubt about genuineness of the documents otherwise. In normal circumstances, if the certificate or the entries made in the Birth and Death Registration under the Act, are to be treated as valid for the purpose of issuance of the passport, and for the purpose of correction in the passport already issue.

8. It may incidentally be observed that this Court (Coram: R.M. Doshit, J.) had an occasion to consider the similar issue in Special Civil Application No. 2949 of 1997 decided on 16.5.1997. It was inter alia observed as under:

The petitioner has been issued a Passport wherein his date of birth has been entered as that of 29.5.1942 in accordance with the School Leaving Certificate issued in favour of the petitioner. The petitioner, however, produces a copy of the

Birth Certificate in which his date of birth has been registered as that of 1.7.1943 and the entry has been made on 5.7.1943. In view of the said Birth Certificate the petitioner seeks that his date of birth recorded in the Passport be rectified in consonance with the Birth Certificate produced by the petitioner at Annexure-B to the petition. The claim made by the petitioner appears to be just. There is no dispute regarding the veracity of the birth certificate produced by the petitioner.

In the circumstances the petitioner may make an application to the respondent for rectification of his date of birth entered in the Passport. The respondent is directed to rectify the entry of date of birth made in the Passport issued to the petitioner in consonance with the Birth Certificate produced by the petitioner at Annexure-B to the petition. The aforesaid exercise shall be completed by the respondent within a period of two weeks from the date of receipt of the application and on completion of all the necessary formalities. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. The parties shall bear their own costs.

9. Under these circumstances, following conclusion can be deduced:

A) The passport authority can make correction in the passport already issued, if genuine and proper circumstances are placed before it, however, while exercising the power for correction in the record of the passport, the passport authority may insist for the order of the Court for valid reason.

B) While exercising power by the passport authority for correction in the passport, either independently or under the orders of the Court, the passport authority would be guided by authenticated and reliable material for correction of birth date, name and the place of birth as the case may be. The weightage can be given for such correction first to the entry made in the register of birth or death, as the case may be, as per the Birth and Death Registration Act 1969. In absence of such entry in the Registration of Birth and Death Act, 1969, the passport authority may relegate the party to get entry for birth, name or place corrected in the concerned register under the Registration of Birth and Death Act 1969, and it is only thereafter, the correction may be made by the passport authority. In cases, where the birth is not registered under the Registration of Birth and Death Act 1969, the passport authority, at the time of issuance of the fresh passport, may consider other material like that of School Leaving Certificate.

C) In the event the School Leaving Certificate is not available then other evidence can be considered, in the event birth is prior to 1969, like affidavit etc. However, in cases, where the birth is after 1969, the first and foremost priority and the weightage shall be given by the passport authority, as per the entry recorded in the birth and death register under the said Act.

D) In the event passport authority finds that genuineness of the document are at doubt, it may insist for public advertisement, and if no objection is received, the passport authority may act upon the record produced before it. In the event of

any dispute raised by any person in response to such public advertisement, the passport authority shall relegate the person concerned holding, to get appropriate declaration of the competent Court.

10. If the facts of the present case are considered, in light of the aforesaid position, it appears that it is not a case, where the passport authority is called upon to make the declaration of the correct birth date, but is a case, where the passport authority is called upon to act upon the entry/certificate issued by the competent authority, under the Registration of Birth and Death Act, 1969.

11. As observed earlier the entry under the said Act, shows that the birth date of the petitioner is 1.12.1968, and no other objection is brought to the notice of this Court. Even by the passport authority except the School Leaving Certificate, is showing the birth date as 1.8.1968 there is no other objection. Therefore, as against the evidence of the School Leaving Certificate, the weightage deserves to be given to the entry made under the Act for the birth of the petitioner, which shows the date of birth as 1.12.1968. Consequently, the passport authority will be required to treat date of the birth of the petitioner as 1.12.2008.

12. In view of the aforesaid, it would be required for the respondent-passport authority to correct the date of birth in the passport of the petitioner bearing No. E8180475 as 1.12.1968. Either correction may be made in the same passport, or a fresh passport shall be issued by the passport authority upon the necessary charges paid by the petitioner.

13. The aforesaid procedure shall be completed within a period of three months from the receipt of the order of this Court.

14. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to cost. Direct service is permitted.