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(2011) 12 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 17845 of 2011

Baldevbhai Atmaram Limbachiya — APPELLANT

Vs

State of Gujarat and Others — RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:
Constitution of India, 1950 — Article 226
Gujarat Registration of Births and Deaths Rules, 2004 — Rule 11
Registration of Births and Deaths Act, 1969 — Section 15, 25, 8, 9

Citation : (2012) 2 GLR 987

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Kamal M. Sojitra for Petitioners, for the Appellant; Hardik Soni, Learned Asst. Government Pleader for Respondent(s) : 1, Notice Served By DS for Respondent(s) : 2, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Smt. Justice Abhilasha Kumari

1. Rule. Mr. Hardik Soni, learned Assistant Government Pleader, waives service of notice of Rule for the respondents. On the facts and in the circumstances of the case and with the consent of the learned advocates for the respective parties, the petition is being heard and finally decided today.

2. This petition, under Article 226 of the Constitution of India, has been preferred, with the following prayers:

(A) quash and set aside the order dated 27.6.2011, Annexure-G, and order dated 21.10.2011, Annexure-I, to this petition, and

(B) direct the respondent authority to correct the date of birth of the petitioner to 1.3.1949 instead of 1.11.1949, and

(C) pending admission and final disposal of this petition the Honourable Court

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may be pleased to direct the respondent authority to correct the date of birth of the petitioner to 1.3.1949 instead of 1.11.1949, and

(D) award the cost of this petition, and

(E) grant any other relief or pass any other order which the Honourable Court may consider as just and proper in the facts and circumstances of the case."

3. Briefly stated, the facts of the case are that the petitioner was born on 01.03.1949. However, the date of birth of the petitioner was wrongly registered as 01.11.1949, instead of 01.03.1949. The correct date of birth of the petitioner i.e. 01.03.1949, has been reflected in the School Leaving Certificate, Pan-Card and Passport of the petitioner. The petitioner is a Government Servant and even in the Service Book of the petitioner, 01.03.1949 has been mentioned as his date of birth. The petitioner has already retired from service on attaining the age of superannuation, in the year 2007. It is stated in the petition that initially, the name of the petitioner was shown as Baldevbhai Atmaram Nayi. The petitioner made an application for change of his name to Baldevbhai Atmarambhai Limbachia, which was granted and his name was changed accordingly. The same was also notified in the Government Gazette. Being desirous of travelling to the United State of America, the petitioner collected necessary documents, and upon realizing that there was a discrepancy in the date of birth recorded in his birth certificate, he submitted an application to respondent No.2-Mamlatdar, Kadi for correction of the date of birth. Respondent No.2 rejected the application on the ground that no power vests in him to make a correction in the date of birth, as recorded in the Births and Deaths Register. Hence, the petition.

4. Mr.Kamal M. Sojitra, learned advocate for the petitioner, has submitted that the stand taken by respondent No.2 in the impugned order is neither legal nor correct, as the said respondent is vested with power u/s 15 of the Registration of Births and Deaths Act, 1969 ("the Act" for short) and Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 ("the Rules" for short) to make a change/correction in an entry in the Register of Births and Deaths. It is further submitted that this Court, in the case of Nitaben N. Patel v. State of Gujarat reported in 2008 (1) GLR 884, has held that the Competent Authority has the power to correct or cancel an entry in the Register of Births and Deaths, and when the said authority fails to exercise such power, a writ of Mandamus can be issued.

5. Mr.Hardik Soni, learned Assistant Government Pleader, submits that in view of the law laid down by this Court in Nitaben N. Patel v. State of Gujarat (Supra), respondent No.2 can be directed to decide the application of the petitioner, afresh.

6. I have heard the learned counsel for the respective parties and perused the averments made in the petition, contents of the impugned order and other documents on record.

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7. At this stage, it would be relevant to refer to the legal provisions in this regard. Section 15 of the Act is reads as below:

15. Correction or cancellation of entry in the registrar of births and deaths - If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.

8. It may also be fruitful to refer to Rule 11 of the Rules, which is reproduced hereinunder:

11. Correction or cancellation of entry in the register of berths and deaths : (1) If it is reported to the registrar that a clerical or formal error has been made in the register, or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in Sec. 15 of the Act and shall send an extract of the entry showing the error and how it has been corrected to the District Registrar of Births and Deaths.

(2) In the case referred to in sub-rule (1) if the register is not in the possession the Registrar, he/she shall make a report to the District Registrar of Births and Deaths and call for the relevant register and after inquiring into the matter, if he is satisfied that any such error has been made, make the necessary correction.

(3) Any such correction as mentioned in sub rule (2) shall be countersigned by the District Registrar of Births and Deaths when the register is received from the Registrar.

(4) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under Sec. 15 of the Act upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(5) Notwithstanding anything contained in sub rule (1) and sub rule (4), the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the District Registrar of Births and Deaths.

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been made fraudulently or improperly, he shall make a report giving necessary details to the officer authorized by the chief Registrar by general or special order in this behalf under Sec. 25 of the Act and on hearing from him take necessary action in the matter.

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(7) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under Sec. 8 or Sec. 9 of the Act.

9. A combined reading of Section 15 of the Act and Rule 11 of the Rules makes it clear that the Competent Authority is vested with power to cancel or correct an entry of birth or death, in any Register maintained by him, subject to it being proved to his satisfaction that such cancellation/correction is necessary. The procedure to be followed is laid down in detail in Rule 11 of the Rules.

10. Apart from the above provisions of law, certain principles of law have been enunciated by this Court in the case of Nitaben N. Patel v. State of Gujarat (Supra). The relevant extract of judgment is as follows:

26.****

(A)***

(B) Section 15 of the Act of 1969 read with Rule 11 of the State Rules, 2004 along with Chapter 9, Clause 9.6 and 9.7 of the Handbook of Registrar General, Ministry of Home Affairs, Govt. of India and Clause 5.8 of Chapter 5 of guidelines contained in vernacular Gujarati adequately conferred power upon the authority to correct/cancel erroneous entries and provide for complete mechanism for types of errors to be corrected.

(C) Section 15 of the Act of 1969 empowers Registrar of Birth and Death to correct any erroneous entry in form or substance or any entry which has been fraudulently or improperly made. Rule 11 of Rules, 2004 and particularly Sub-Rule (1) provide for any entry, any error which may be clerical or formal and Sub-Rule 4 of the above Rule 11 mention about any entry which may be erroneous in substance and Sub-Rule 6 of Rule 11 refer to any entry which is fraudulently or improper is to be corrected by the Registrar and an elaborate procedure is provided which prescribe method and manner in which such entry to be corrected or cancelled and report to be made to the higher authority, which may rule out in misuse of power by registering authorities.

Thus, clause 9.6 and 9.7 of Chapter 9 of the Handbook of Registrar General, Ministry of Home Affairs, Govt. of India provide for corrections and cancellations of entries and contain clerical or formal error, error in substance or fraudulent or improper entry and once any error in substance is to be corrected, it covers error of such nature which is an error of substance or form. That similar types of errors are mentioned in Clause 5.8 of Chapter 5 of vernacular guidelines published by the State Authorities under the Act.

(D)****

(E) When the authority empowered to exercise power under Sec. 15 of the Act and Rule 11 of the State Rules, 2004, refuse to do so, writ petition is maintainable under Article 226 of the Constitution of India for issuing appropriate

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directions to the authority.

(F) The kind and types of directions to be issued to the authority depend on facts and circumstances of the each case and nature of denial of legal right to the aggrieved persons by the authority.

(Emphasis supplied)

11. If the impugned order passed by respondent No.2 is examined in the light of the provisions of law reproduced hereinabove and the principles of law laid down in Nitaben N. Patel v. State of Gujarat (Supra), it is clear that respondent No.2 has not exercised jurisdiction that is vested in him. This action is clearly contrary to the settled legal position. The refusal of respondent No.2 to exercise power vested in him under the Act and Rules certainly calls for the interference of this Court, in exercise of jurisdiction under Article 226 of the Constitution of India.

12. For the reasons stated hereinabove, the impugned orders dated 27.06.2011 and 21.10.2011 (Annexure-G and Annexure-I) passed by respondent No.2 are quashed and set aside. Respondent No.2 is directed to consider the application dated 27.09.2011 (Annexure-H) made by the petitioner, in accordance with the provisions of Section 15 of the Act and Rule 11 of the Rules, and to decide the same in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

13. The petition is allowed, in the above terms. Rule is made absolute, accordingly. There shall be no orders as to costs.

Direct service is also permitted.

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