

(2022) 09 GUJ CK 0147

In the Gujarat High Court

Case No : R/Special Civil Application No. 20140 Of 2021

Chandrikaben Bharatkumar Patel

APPELLANT

Vs

State Of Gujarat & 2 Other(S)

RESPONDENT

Date of Decision : 26-09-2022

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 8, 9, 15, 25

Citation : (2022) 09 GUJ CK 0147

Hon'ble Judges : Nirzar S. Desai. J

Bench : Single Bench

Advocate : Tejas P Satta, Hardik Mehta

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order dated 18.06.2021 passed by the Respondent No.3 and has further prayed for changing the name of petitioner in her birth record as "Chandrikaben" from "Chandraben" and the date of birth of the petitioner from "03.12.1967" to "01.06.1967".

2. Considering the short issue on hand by consent of the parties, matter is taken up for final hearing. Hence, Rule. Learned Assistant Government Pleader waives service on behalf of Respondent Nos.1 and 2 – State Authorities. As far as Respondent No.3 is concerned, despite the service of notice Respondent No.3 has not appeared. The Respondent Nos.1 and 2 are competent to direct Respondent No.3 to pass necessary orders pursuant to the order passed by this Court and, therefore, even in absence of Respondent No.3 matter was heard finally.

3.1 It is the case of the petitioner that actual date of birth of the petitioner is '01.06.1967' whereas in the column no.3 of birth certificate of the petitioner, it is

wrongly stated as 03.12.1967. Similarly, the actual name of the petitioner viz. Chandrikaben whereas in the birth certificate her name is stated as 'Chandraben'.

3.2 In support of her claim for making necessary correction, the petitioner has placed on record the documents like School Leaving Certificate, Pan Card, Driving License, Aadhar Card, Election Card as well as her Passport.

3.3 When the petitioner made an application dated 14.06.2021 with the aforesaid documents to the respondent no.3 authorities, the respondent no.3 authority, vide order dated 18.06.2021, rejected the application of the petitioner by stating that in view of Government Resolution dated 12.08.2009 it is not permissible to make necessary change in the birth record and, therefore, rejected the application of the petitioner.

4.1 However, upon instructions, learned Assistant Government Pleader Mr.Hardik Mehta states that vide office order dated 21.02.2021 subsequently the aforesaid Government Resolution dated 12.08.2009 has been cancelled.

4.2 In view of above, considering the fact that present applicant is having all necessary documents in support of her change of date of birth as i.e.01.06.1967 and her name in her birth record as "Chandrikaben" from "Chandraben" learned Assistant Government Pleader states that appropriate order be passed.

5. At this stage, it would be apposite to refer to the observations made by the Coordinate Bench in the order dated 05.12.2012 passed in Special Civil Application No.8556 of 2012:

"7. Section 15 of the Act, the Registrar has power for correction or cancellation of entry in the Register of Births and Deaths Act, 1969. Section 15 of the Act reads as under:

"15. Correction or cancellation of entry in the register 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. Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 relates to correction or cancellation of entry in the Register of Births and Deaths, reads as under:

"(1) If it is reported to the Register 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 inquire 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 Section 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 sub rule (1) if the register is not in the possession of 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 section 15 of the Act upon production by that person a declaration setting forth the nature of the error and the facts of the case made by two credible persons having knowledge of the facts of the case.

(5) Notwithstanding anything contained in subrule (1) and subrule (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 authorised by the Chief Registrar by general or special order in this behalf under section 25 of the Act and on hearing from him take necessary action in the matter.

(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 section 8 of section 9 of the Act."

9. In view of the aforesaid provisions, it is clear that the respondent authorities have power to make corrections in the register of Births and Deaths. It is evident from the record that the petitioner has produced all the necessary evidence on record to show how change in the names in Birth Certificate. If respondent authority comes to conclusion, on the basis of evidence before it, that deed of adoption is true, correct, legal and valid then there is no reason for the concern authority, to deny the correction, in Birth Certificate.

10. The law on the subject is already settled. In the case of Mulla Faizal @ Fazillabanu Suleman Ibrahim V/ s. State of Gujarat and others, reported in 2000(2) GLR 1553 it has been held that the Registrar, Births and Deaths has power to correct the entries made in the Register. Further, in the case of Sukumar Mehta V/s. District Registrar, Births and Deaths, reported in 1993(1) GLR 93 and in the case of Vimal M. Patel V/s. State of Gujarat and Another, reported in 2001(3) GLR 2484 the Court has directed the applicant authority for making necessary correction in the records of birth of the person on production

of sufficient documents. This Court while disposing of the petition being Special Civil Application No.6962 of 2002, directed the Authority to make necessary correction in the register concerned. Same direction for making correction in birth certificate was given by this Court also, while deciding Special Civil Application No.6227 of 2007. I have perused the decision in the case of Manoj Omprakash Goes Vs. State of Gujarat through Secretary & Anr. reported in GLR 2011(2) 1734 and same is applicable to the present case.”

6. The Coordinate Bench has specifically held that the respondent authority has all the powers to make correction under the provisions of Section 15 of the Registration of Births and Deaths Act, 1969 read with Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004.

7. Under the circumstances and in light of the aforesaid proposition of law, the impugned order dated 18.06.2021 passed by Respondent No.3 is quashed and set aside. Resultantly, the concerned respondent authority is directed to pass a fresh order on the application filed by the petitioner with regard to the change of date of birth. It is also directed that the concerned respondent authority shall accordingly process the application of the petitioner as per the provisions of Section 15 of the Act read with Rule 11 of the Gujarat Registration of Birth and Death Rules, 2004 after considering all the documentary evidence, which may be produced by the petitioner in support of her case and pass appropriate orders within a period of four weeks from the date of receipt of the writ of this order.

8. In case any adverse decision is taken by the respondent authority, it will be open for the petitioner to challenge the same before the appropriate forum.

9. The present petition is allowed. Rule is made absolute to the aforesaid extent. Direct service permitted.