
(2012) 11 KL CK 0074
In the High Court Of Kerala
Case No : Writ Petition (C) No. 24203 of 2012

Francis

APPELLANT

Vs

Aluva Municipality

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Registration of Births and Deaths Act, 1969 — Section 14, 15

Citation : (2013) 1 KLT 91

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : G.P. Shinod, Ram Mohan G. and V. Manu, for the Appellant; V.M. Kurian, for the Respondent

Final Decision : Allowed

Judgement

K. Surendra Mohan, J.—This Writ Petition is filed challenging the refusal of the third respondent to correct the name of the second petitioner in the Birth Register maintained by the first respondent. The name of the second petitioner is entered in the Birth Register as "Shaan Francis". According to the petitioners the name has subsequently been changed to "Shaan Francis", by publication in the Government Gazette, as per Ext. P1. The Gazette notification specifically refers to the Birth Certificate of the petitioner also. However, the petitioner's Birth Certificate Ext. P2 continues to show the second petitioner's name as "Shanal Francies". Therefore, the first petitioner submitted Ext. P4 application for correction of the name of the second petitioner supported by Ext. P5 affidavit. It is complained that no orders have been passed thereon till date. According to the petitioners, the refusal of the third respondent to make the correction that is sought for by the petitioners is uncalled for and is liable to be corrected in exercise of the jurisdiction of this Court under Art. 226 of the Constitution.

2. A counter affidavit has been filed on behalf of the respondents. It is contended that the correction that is sought for by the petitioners does not fall within the

ambit of the power available to the third respondent under S. 15 of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as the "Act" for short). S. 15 only contemplates the correction of an erroneous entry. In the present case the name of the second petitioner was entered correctly. The correction has been sought for only because there has been a subsequent change of name, which was consciously made by the petitioners. It is contended that there is no provision for incorporating such changes voluntarily effected. Reliance is also placed on Ext. R3(a) circular dated 8.12.2010 issued by the Registrar of Births and Deaths, Thiruvananthapuram. It is pointed out that as per paragraph 7.10 of the said circular, in cases like that of the second petitioner where a change of name has been voluntarily effected, a Birth Certificate can be issued only showing the original name as entered in the Birth Register as well as the subsequently changed name, in this case as Shanal Francies @ Shaan Francis.

3. I have heard Adv. Shinod G.P. who appear for the petitioners as well as Adv. V.M. Kurian who appears for the respondents. I have been taken through the relevant provisions of the Act and Rules. S. 15 of the Act reads as follows:-

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 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.

(emphasis supplied)

With reference to the above provision, it is pointed out that only an entry that is

i) erroneous in form or substance or

ii) has been fraudulently or improperly made subject to such rules as may be made by the State Government with respect to the conditions on which and circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin.

4. Rule 12 of the Registration of Births and Deaths Rules, 1970 ("Rules" for short) also provides that where it has been proved to the satisfaction of the Registrar that any entry in the register has been fraudulently or improperly made he may correct the same.

5. The above provisions have been considered by a single Bench of the Gujarat High Court in the decision reported in Soham Sanatbhai Shukla Vs. State of Gujarat and Others, . In the said decision, a child was adopted from a Women Protection Centre, where she had been earlier named as "Surbhi". After she was adopted her adoptive parents wanted to change her name to "Rene". The said

correction was not allowed stating that there was no erroneous or fraudulent entry with respect to the name of the child. The court held that the circumstances of the case justified the making of the correction that was sought. On the same lines is the view taken by the Punjab and Haryana High Court where a single Bench in the decision reported in Shweta Sharma Vs. State of Haryana and Others, had to consider a similar issue as in the present case. In the said case, the name of the child had to be changed from Anitika in the Birth Register to Shweta Sharma. The Court has considered the issue as follows:-

One does not understand any reason to refuse change of name which was entered at the time of birth, if subsequently the name has been changed for any reason and continues to be so till date. There is no prohibition for change of name either under the provisions of the Act or the rules framed thereunder. To the contrary, S. 14 of the Act provides that where there is registration regarding birth of a child without any name, subsequently, the name of the child can be incorporated within prescribed time. Under R. 10 where initially, the name of the child is not incorporated in the register, name of the child can be entered within 12 months from the date of registration of birth and under proviso to R. 10(1), if information is not given within 12 months, it can still be given within a period of 15 years in the manner prescribed in subsequent part of this rule. Thus, the law permits incorporation of name where originally, no name is incorporated. On this analogy, there should not be any prohibition or impediment for incorporation of the subsequent name which might have been adopted by the child after the birth. Change of name in society is not a new phenomena. S. 15 of the Act provides that where it is proved to the satisfaction of the Registrar that any entry of birth or death in any register is erroneous in form or substance, or has been fraudulently or improperly made, the same can be corrected. Similarly sub-rule (4) of R.11 deals with the correction of an entry which is erroneous in substance. Assuming that at the time of birth, it was a conscious entry, but in view of the change of the name of the child thereafter for which there is no prohibition, the entry has become erroneous in substance to the extent of name of the child. There is abundance of evidence on record produced by the petitioner to substantiate that her known and prevalent name is Shweta Sharma, same having been entered in the service record of her father, ration card, her Secondary School certificate and health card. There is no reason that correction be not made in the register even if it is assumed that the original name of the child at the time of birth has been changed. The interpretation sought to be placed by the respondents does not in any manner serve the ends of justice, rather defeat the same. As a matter of fact, S. 15 read with R. 11 permit respondent No: 3 to alter the entry not only where the entry is fraudulent or improper but also where it is erroneous in form and substance, if proved to his satisfaction. S. 15 and R. 11 thus empower respondent No: 3 to hold an enquiry if any entry is disputed as erroneous in form and substance or is sought to be corrected, including the entry regarding subsequent change of name.

On the above reasoning, the Court directed the change of name to be effected.

6. The counsel for the respondents places reliance on Ext. R3 (a) circular which has provided that correction is to be effected in the manner provided in the said circular by showing the original and new name of the person. A Division Bench of this Court has considered the scope of the said circular in the decision reported in *The Chalakkudy Municipality and Another Vs. Malavika and Another*, = *The Chalakkudy Municipality and Another Vs. Malavika and Another*, . After holding that the law is meant to serve the needs of the human being and not to place hurdles in the lives of the people, Kurian Joseph, J. has summed up his reasoning in the following passage in paragraph 4 of the judgment:-

The law does not contemplate a person to have a wrong name in the register or a mistaken identity in the register or to have wrong particulars regarding the date, place etc., in the register of birth or death. It is also to be noted that the Registration of Births and Deaths Act, 1969 does not create or extinguish any right; the Act is intended only to regulate the process and procedures of registration of births and deaths and the correction of any such entry. Once the Act permits such correction either in form or substance, the Rules are intended only to regulate the procedure and not to prohibit such correction. The subordinate legislation by way of rules, notifications, circulars etc., cannot restrict the scope of the plenary legislation. Conversely they cannot expand the scope either, as far as the correction of the entries in the register of birth or death is concerned. S. 15 only contemplates that the Registrar should be satisfied as to the mistake in the entry. The section clearly states that the correction can either be in the form or substance also. R. 11 would also indicate that once the Registrar is moved for correction of any entry in the register of birth or death, it is mandatory on his part to enquire into the matter and once he is satisfied that the entry is erroneous, the rule mandates that the correction should be made as required under S. 15 of the Act.

7. In the present case, the name of the petitioner has been changed by publication in the Official Gazette as evident from Ext. P1. The change has been effected by following the procedure prescribed by law. Therefore, in law the petitioner's identity has undergone a change consequent to the new name adopted by him. As a result of adoption of the new name the present entry in the birth register has become erroneous. Therefore, the same is liable to be corrected under S. 15 of the Act. The delay in making the said correction is without any justification. For the above reasons this Writ Petition is allowed. The third respondent is directed to issue a Birth Certificate to the Second Petitioner showing his name as Shaan Francis.