

(2010) 01 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 12327 of 2009

Ketanbhai Rameshbhai Shah

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Births, Deaths and Marriages Registration Act, 1886 — Section 28
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, 29, 31
Registration of Births and Deaths Rules, 1973 — Rule 12

Citation : (2010) 01 GUJ CK 0040

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : S.P. Majmudar, for the Appellant; C.B. Upadhyay, Ld. Asst. Government Pleader and K.I. Shah, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of present petition under Article 226 of the Constitution of India, the petitioner has inter alia prayed for quashing and setting aside the communication/decision dated 13th November 2009 at Annexure-C as well as for directing the respondent authority to correct the name of the petitioner's son in his Birth Certificate as "Faniel" instead of "Bhavya" as per the representation dated 09th October 2009 at Annexure-B.

2. The facts of the case, if put in nutshell, are as under:

2.1 Due to some inadvertence, the name of petitioner's son, who was born on 13th August 2008, is mentioned as "Bhavya" in his Birth Certificate issued by the respondent-authority. However, in reality, the name of the petitioner's son is "Faniel", which is being mentioned in all the records.

2.2 In pursuance of the same, the petitioner made a representation dated 09th October 2009 to the respondent No. 2-Corporation, which ultimately came to be

rejected vide order dated 13th November 2009. Hence, this petition.

3. Mr. S.P. Majmudar, learned Counsel appearing for the petitioner, has submitted that the impugned order passed by the respondent-authority is an unjust and improper. The order passed by the respondent-authority is a non-speaking order. It is submitted that though the respondent-authority has statutory powers to correct the name of the petitioner's son as "Faniel" in his Birth Certificate, till date the grievance of the petitioner has not been redressed.

3.1 The learned Counsel appearing for the petitioner has strongly relied upon the ratio of the decision rendered in the case of Nitaben Nareshbhai Patel Vs. State of Gujarat and Others, whereby this Court has held that the competent authority has powers to correct or cancel an entry in the register of Births and Deaths.

4. Mr. C.B. Upadhyay, learned Assistant Government Pleader, has submitted that the order passed by the respondent-authority is just, proper and correct. It is submitted that the petitioner filled in the form which is signed by the petitioner himself. It is submitted that there is no infirmity in the order passed by the respondent-authority. In support of his submissions, he has relied upon the decision of the Division Bench of this Court rendered in the case of Regional Passport Officer v. Kokilaben w/o. Jaswantlal Panchal and Ors. reported in 2009 (2) GLH 1246 and has submitted that the order impugned in this petition is just and proper and the petitioner is not entitled to any relief as prayed for in the petition and the same is required to be dismissed.

5. Having considered the facts and circumstances of the case and the documents produced on record, it transpires that the name of the petitioner's son is reflected as "Bhavya" in the Birth Certificate instead of "Faniel". The petitioner had also made a representation dated 09th October 2009 to the respondent-authority for correction of the name of his son stating all the facts, including the fact that the petitioner's son was named as "Faniel" and till date it is continued. However, the respondent-authority has not appreciated the said aspect and has failed to exercise his powers conferred upon him under the provisions of the Births and Deaths Registration Act, 1969. At this stage, it would be beneficial to reproduce the relevant paragraph Nos. 15, 16 and 17 of the decision in the case of Nitaben Nareshbhai Patel (*supra*) as under:

15. In view of the above, it is clear that Section 29 of the Act of 1969 protects provisions of earlier Act of 1886 and unambiguous language of this section that nothing in the new Act is to be construed in derogation of Act 6 of 1886 and Section 31 again makes it clear that subject to provisions of Section 29, the earlier Act shall stand repealed. Thus, in the new Act earlier provisions with regard to correction or cancellation of entry are very much in existence and remain unaffected to the extent provided as above.

16. Therefore, Section 28 of the Births, Deaths and Marriages Registration Act, 1886, Section 15 of the Registration of Births and Deaths Act, 1969, Rule 12 of the erstwhile Registration of Birth and Deaths Registration Rules, 1973 as framed

by the State Government on the basis of model Rules and Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 now in force, along with the guidelines of the Central Government and the State Government issued by the Registrar General of India and Registry of Births and Deaths, it is clear that none of the above sections and rules and guidelines restrict the authority to correct any erroneous entry in form or substance made in the register of births and deaths. That, Act of 1969 clearly envisages that an Act is enacted to provide regulations of births and deaths and for matters connected there with, while the Births, Deaths and Marriages Register Act, 1886 (now repealed) was enacted to provide the voluntary registration of certain Births, Deaths and Marriages. Now in view of the decision of the Apex Court for compulsory registration of Births, Deaths and Marriages in the country and when there is clear jurisdiction vested with the authority concerned as envisaged u/s 15 coupled with Rule 11 of the State Rules and procedure explained in the guidelines, there is no room for doubt that authority has power to correct or cancel the entries in the register of Births and Deaths.

17. When concerned authority fails to exercise the power conferred by the statute and the person has legal right under the statute, on demand denied by the authority illegally, for removing such illegality, writ of mandamus can certainly be issued to such authority to act in accordance with the provisions of the statute. Section 15 of the Act of 1969, read with Rule 11 of Rules of 2004 provide for the detailed procedure as held by the two Division Bench of this High Court, where proof to the satisfaction of the Registrar that any entry of birth and 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 on 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. The above procedure envisages that competent authority namely Registrar or designated authority can hold reasonable inquiry to ascertain the correctness or otherwise of the entry sought for and if it is proved to his satisfaction about entry being erroneous in form or substance or has been fraudulently or improperly made subject to the provisions of rules and regulations the powers can be exercised.

6. In view of the above facts and circumstances of the case as well as in light of the aforesaid decision of this Court in the case of Nitaben Nareshbhai Patel (supra), the decision of the Division Bench in the case of Regional Passport Officer (supra) cited by the learned Assistant Government Pleader, the decision of the Division Bench in the case of Regional Passport Officer (supra) cited by the learned Assistant Government Pleader, will not be applicable to the facts of the present case since in the present case the petitioner had earlier approached the competent authority vide his representation dated 09th October 2009. Therefore, I am of the opinion that when the petitioner had already approached the

respondent-authority by way of filing application/ representation dated 09th October 2009, the respondent-authority ought to have exercised its powers conferred upon it. However, the respondent-authority has not exercised the powers vested in it and therefore, the order impugned in the present petition is required to be quashed and set aside and the respondent-authority is required to be directed to correct the name of the petitioner's son as "Faniel" instead of "Bhavya".

7. For the foregoing reasons, the present petition succeeds and is, accordingly, allowed. The impugned order dated 13th November 2009 passed by the respondent No. 2 is hereby quashed and set aside. The respondent-authority is directed to carry out amendment in the register of Births and Deaths maintained by the respondent-authority by correcting the name of the petitioner's son as "Faniel" instead of "Bhavya" within a period of four weeks from the date of receipt of writ of this Court and the petitioner's son be provided with the amended Birth Certificate as aforesaid on his making application in the prescribed form and on his payment of necessary fees, if any. Rule is made absolute accordingly. Direct Service is permitted.