

(2014) 11 GUJ CK 0034
In the Gujarat High Court

Case No : Special Civil Application Nos. 5782 and 5784 of 2014

Kiritkumar Bhogilal Shah

APPELLANT

Vs

Deesa Municipality

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 GUJ CK 0034

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Premal R. Joshi, Advocate for the Appellant; Mehul H. Rathod, Advocate for the Respondent

Judgement

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Abhilasha Kumari, J.—These petitions under Article- 226 of the Constitution of India have been preferred, praying for the issuance of a writ of mandamus or any other appropriate writ, order or direction to the respondent-Deesa Municipality, directing it to enter the date of birth of the petitioners in the Register of Births and Deaths and, thereafter, to issue Birth Certificates to the petitioners. Further, the petitioners have, in the alternative, prayed that the orders dated 15.03.2014, passed by the learned Judicial Magistrate, First Class, Deesa, in Criminal Misc. Applications Nos. 16/2014 and 17/2014, be quashed.

2. As similar issues of fact and law arise in both these petitions, with the consent of learned counsel for the respective parties, they are being heard and decided finally, by a common order. For the sake of convenience, the facts as obtaining in Special Civil Application No. 5782/2014 shall be referred to, which are as follows.

3. The brief facts of the case are that the petitioner was born on 24.02.1945 at Deesa. However, at the relevant point of time, the date of birth of the petitioner was not registered with the respondent-Municipality/its predecessor. The petitioner has passed the Secondary School Certificate Examination in the month

of March, 1962. The Gujarat Secondary School Certificate Examination Board had issued a School Leaving Certificate to the petitioner on 30.11.1962 in which his date of birth is shown as 24.02.1945. This document is annexed as Annexure-A to the petition. It is further the case of the petitioner that he has studied in Sir Charles Watson High School, Deesa. The Head Master of the said school issued a School Leaving Certificate dated 04.06.1962 to the petitioner, in which his date of birth is mentioned as 24.02.1945. In addition to this, the Head Master of the said school also issued a separate Certificate, evidencing the date of birth of the petitioner as per the School Records, as 24.02.1945. As per this Certificate as well, the date of birth of the petitioner is stated to be 24.02.1945. The petitioner has also produced a Certificate of Nationality Domicile wherein his date of birth is shown as 24.02.1945. The passport of the petitioner as well as his Driving Licence, also reflect the same date. All these documents were produced along with an application dated 06.01.2014, made by the elder brother of the petitioner, in the Court of the learned Judicial Magistrate, First Class, Deesa. The learned Magistrate examined an employee of the Deesa Municipality who has stated that the record pertaining to the year 1945 was not available with the Municipality. On the basis of this statement, the learned Magistrate held in the impugned order that as the record of the year 1945 was not available with the respondent-Municipality, no directions can be issued to enter the date of birth of the petitioner in the Register of Births and Deaths. Aggrieved thereby, the petitioner has approached this Court by way of the present petition.

4. Mr. Premal R. Joshi, learned advocate for the petitioner has submitted that the present cases are not such where no material is available on record regarding the date of birth of the petitioners. The petitioners are in possession of the Certificate issued by the Gujarat Secondary School Examination Board, School Leaving Certificate, Birth Certificate issued by the School, as well as documents such as Nationality Domicile, Passport and Driving Licence, all of which indicate that the date of birth of the petitioner in Special Civil Application No. 5782/2014 is 24.02.1945 and the date of birth of the petitioner in Special Civil Application No. 5784/2014 is 09.02.1943. There is no discrepancy in the dates of birth in any of these documents. That, it is not the fault of the petitioners if the respondent-Municipality is unable to locate the record pertaining to the years 1943 and 1945. The petitioner in Special Civil Application No. 5782/2014 is ready and willing to furnish the affidavit of his elder brother, aged 71 years, who is the only person older to him in the family, who is also the petitioner in Special Civil Application No. 5784/2014, in addition to all other records before the respondent-Municipality, which may be directed to consider the same and pass appropriate order entering the date of birth of the petitioners in the Register of Births and Deaths.

5. That, while passing the impugned orders, the learned Magistrate has relied upon a judgment in the case of Yogeshbhai Nandlal Pandya Vs. State of Gujarat and others, reported in 2008 (3) GLH (U.J.) 7, but has misread and misapplied the same by arriving at a conclusion that when the record is not available, the

Magistrate has no power to inquire into the matter regarding registration of birth of the petitioners. It is submitted that in the case of Yogeshbhai Nandlal Pandya Vs. State of Gujarat and others (Supra.), this Court issued directions to the Competent Authority to reconstruct the papers and prepare a Register of Births and Deaths and thereafter, register the death of the mother of the petitioner therein. This judgment nowhere states that the learned Magistrate has no authority to exercise the power vested in him, if the record is not available.

6. It is further contended on behalf of the petitioners that the provisions of Section-13(3) of the Act would come into play when the birth of the concerned person is not registered at all. Therefore, the non-availability of the Register of Births and Deaths would hardly make any difference insofar as the powers to be exercised by the learned Magistrate are concerned.

7. Mr. Mehul H. Rathod, learned advocate for the respondent submits that the judgment in the case of Yogeshbhai Nandlal Pandya Vs. State of Gujarat and others (Supra.), is not applicable to the present cases, as the birth of the petitioners has not been registered at all, as is clear from the applications of the petitioners. However, the learned Magistrate ought to have decided the applications on the basis of the available material on record.

8. In support of the above submissions, a reliance has been placed upon the following judgments:

(i) Bhavin Natvarlal Patel Vs. Regional Passport Officer and Others, .

(ii) Karimabibi and Others Vs. Ankleshwar Municipality and Others, .

9. This Court has heard learned counsel for the respective parties, perused the averments made in the petitions, contents of the impugned orders and other documents on record.

10. It is not disputed that the respective births of the petitioners has not been registered in the relevant record. Hence, as per the provisions of Section-13(3) of the Act, the petitioners have approached the learned Magistrate by filing applications. The provisions of Section-13(3) are reproduced hereinbelow:

"13(1) *****

13(2) *****

13(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth and death and on payment of the prescribed fee.

13(4) *****"

11. A perusal of the said provisions of law indicates that in a case where the birth or death, as the case may be, has not been registered within one year of its occurrence, it can only be registered only after a Magistrate of the First Class, or

a Presidency Magistrate, passes an order, after verifying the correctness of the birth or death and on payment of the prescribed fee. The procedure or method to be followed by the learned Magistrate, while carrying out the necessary verification, has not been prescribed in the Act.

12. The term "verification", is a very wide one. It is open to the learned Magistrate to verify the occurrence of birth or death, as the case may be, in any manner that he considers appropriate, and in accordance with law.

13. Sub-section (3) of Section-13 of the Act, nowhere indicates that if the Register of Births and Deaths pertaining to the year in which the petitioner, or applicant, was born, is not available with the authority, the Magistrate has no power to make an order.

14. In the impugned orders, the learned Magistrate has referred to a judgment of this Court in *Yogeshbhai Nandlal Pandya Vs. State of Gujarat and others* (Supra.) and arrived at a conclusion that as per the dicta of this Court in the above-referred judgment, the learned Magistrate cannot make an order entering the birth of the petitioners, if the record is not available. After perusing the contents of the said judgment, this Court is inclined to agree with the submissions of Mr. Premal R. Joshi, learned advocate for the petitioners, that the learned Magistrate has misread and misapplied the above judgment. On the contrary, the said judgment directs that the record be reconstructed. It nowhere states that in the absence of the record, the Magistrate cannot exercise the power vested in him by Section-13(3) of the Act, after verifying the correctness of the birth or death, as the case may be.

15. In any case, if it is the case of the petitioners that their births have not been registered at all, the non-availability of the Register cannot be an impediment in the way of the learned Magistrate in passing an order, as the register would not contain any record of birth pertaining to the petitioners.

16. The petitioners have produced several documents, such as the Certificates issued by the Gujarat Secondary School Certificate Examination Board, School Leaving Certificate, Birth Certificate issued by the School, and documents related to Nationality Domicile, Passport and Driving Licence, all of which indicate the date of birth of the petitioners, that is, 24.02.1945 and 09.02.1943, respectively. The petitioner in Special Civil Application No. 5782/2014, is also ready and willing to furnish an affidavit of his elder brother aged 71 years, who is the only person older to him in the family. It was incumbent upon the learned Magistrate to consider all other documents. However, it does not appear from a perusal of the impugned orders that this has been done.

17. In *Karimabibi Wd/o. Gulam Mohammad Mustufa Karodiawad and others Vs. Ankleshwar Municipality and others* (Supra.), this Court has examined the provisions of Section-13(3) of the Act, and held as below:

"10. When all the above stated details are given in the application, it is also

incumbent on the Magistrate to issue notice to those persons who are likely to be affected by his order. He should also insist on issuing a proclamation as is required while issuing a succession certificate. Without following the above stated procedure the Magistrate should not proceed to dispose of such an application because the granting of such relief is going to create a right in favour of the applicant and obligation against certain persons. When the obligations are created against such persons, they must have a reasonable opportunity to challenge the said act of the petitioner."

18. As held by this Court in the above-quoted judgment, the averments made by the petitioners in their applications are to be verified by the learned Magistrate by issuing notices to those who are likely to be affected by any order made by him. The learned Magistrate can also issue a proclamation, and if there is no objection within a stipulated period of time, he can proceed to pass appropriate orders, in accordance with the provisions of Section-13(3) of the Act.

19. A perusal of the impugned orders further indicates that none of the above considerations have prevailed upon the learned Magistrate, who has passed the said orders in a mechanical manner, by rejecting the applications of the petitioners on the short ground that the record is not available with the respondents. It may be kept in mind that the petitioners are aged 69 and 71 years, respectively and are senior citizens. The record pertains to the years 1945 and year 1943, as per the dates of birth of the petitioners, as stated in the petition. The petitioner of Special Civil Application No. 5782/2014 is ready and willing to file an affidavit of his elder brother aged 71 years, who is also a senior citizen, and of an advanced age.

20. The petitioners cannot be blamed for the non-availability of the record with the competent authority. It, therefore, cannot be stated that the learned Magistrate is unable to exercise the power vested in him under Section-13(3) of the Act, just because the respondents cannot locate the relevant record.

21. For the aforesaid reasons, this Court is inclined to pass the following order:

The impugned orders dated 15.03.2014 passed by the learned Judicial Magistrate, First Class, Deesa, in Criminal Misc. Applications Nos. 16/2014 and 17/2014, are quashed and set aside. The matters are remanded to the said Court for fresh hearing and decision upon the applications of the petitioners, after taking into consideration the available material on record and carrying out a proper verification, in accordance with law. The decision shall be rendered within a period of three months from the date of the receipt of a copy of this order.

The petitions are partly-allowed, in the above terms. Rule is made absolute, to the above extent, in each petition.