

(2008) 02 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 12386 of 2007

Misrikhan Dilavarkhan Pathan

APPELLANT

Vs

(The) State of Gujarat and Others

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Registration of Births and Deaths Act, 1969 — Section 13, 13(3), 13(3), 14, 15

Citation : (2008) 1 GLH 683

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : R.J. Goswami for Petitioners, for the Appellant; Satyam Chhaya, LD. Asst. Government Pleader for Respondent(s): 1-3 and Rule Served by DS for Respondent(s): 4, for the Respondent

Judgement

Mr. C.K. Buch, J.—Leave to amend the relief clause, more particularly, the date of birth from 29/03/ 1983 to 29/02/1993, reflected in prayer clause 12 (A). Necessary amendment shall be carried out forthwith. The petitioner-Misrikhan Dilavarkhan Pathan has prayed for appropriate writ, order or direction to direct the respondents and more particularly to direct the respondent No. 4 to issue school leaving certificate stating correct date of birth as 18/08/1982 instead of 29/02/1993.

2. It is submitted by the petitioner that when he was admitted in the primary school for the first time, somebody who had been to the school, mentioned the incorrect date of birth and the place of birth. The petitioner was born on 18/08/1982 at Bhartiya Arogyanidhi Hospital, Gorsheri, Patan, but as per the school leaving certificate, the date of birth is shown to be 29/02/1983 and the birth place is shown as village Dasaj of Tal. Siddhpur.

3. The birth date certificate of the petitioner is produced at Annexure - A and as such there is no controversy qua the contents mentioned in the birth date certificate issued by the Sub-Registrar, Birth and Death Registration, Patan

Nagarpalika. It is relevant to note that the birth date certificate of the petitioner was issued on 20/08/1982, the date on which the birth of the petitioner was registered. So, it is possible to observe that there is no dispute as to the genuineness of the certificate and contents thereof.

3.1 The petitioner has attempted to see that his birth date in the school leaving register get corrected by the competent authority, but the date on which the petitioner approached the competent authority, he was not student. Not only that but the competent authority had entered the date of birth on the strength of the school leaving certificate issued by the school in which the petitioner was lastly studying. It is the say of the petitioner that difference as to the date of birth in the original birth certificate and school leaving certificate may result into serious prejudice and inconvenience to him and therefore he had approached the competent authority with the original birth certificate to see that competent authority gets correct mainly the date of birth in the school register.

3.2 As the petitioner could not succeed, the petitioner has approached this Court by filing a writ petition being Special Civil Application No. 6381 of 2004 invoking writ jurisdiction of this Court under Article 226 of the Constitution of India. The Court after hearing the learned Advocate for the petitioner and learned Asst. Government Pleader for the respondent-State of Gujarat relegated the petitioner to approach the learned Judicial Magistrate First Class in view of the observations made by this Court while deciding Letters Patent Appeal No. 699 of 2003 filed by Minor Jagdishbhai Prabhatbhai Gohil through Father and Guardian on 11/08/2003.

4. This Court (Coram: K.S. Jhaveri, J.) while rejecting the earlier petition filed by the present petitioner being Special Civil Application No. 6381 of 2004 decided on 08/10/2004 ordered that in view of the above facts and circumstances, the appropriate remedy for the petitioner is to approach the Judicial Magistrate, First Class, for redressal of his grievance and this direction was given in the background of paragraph 4 of the decision delivered by the Letters Patent Bench. The said paragraph No. 4 is reproduced as under:

4. We have considered the submissions advanced at the Bar and the documents forming part of the petition. We have also heard Mr. M.R. Mengde, learned Assistant Government Pleader appearing for the respondents. From the record of the case, it is evident that the son of appellant has left Secondary School after passing examination of Standard 10. Therefore, in view of Regulation 12-A Gujarat Secondary Education Regulations, 1974, school record could not have been corrected after the son of appellant had left the school. The only remedy of the appellant was to approach learned Magistrate, First Class, having jurisdiction in the matter for redressal of his grievance as provided u/s 13(3) of the Act. Therefore, the learned Single Judge was justified in concluding that the appellant has alternative remedy and that it was not necessary to entertain the petition filed under Article 226 of the Constitution. In our view, the learned counsel of the appellant has failed to point out any error in the orders which are impugned in the appeal and, therefore, the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails, and is dismissed.

As the appeal is dismissed. Civil Application No. 5096 of 2003 for interim relief does not survive. Hence, it is also rejected. "

5. Thereafter, the petitioner approached the learned Judicial Magistrate, First Class by way of preferring Criminal Misc. Application No. 375 of 2005 and the learned Judicial Magistrate First Class and 4th Additional Senior Judge, Patan by a detailed order dismissed the said application. It would be beneficial to mention herein paragraph 11 of the said order passed by the learned Judicial Magistrate First Class and 4th Additional Senior Judge, Patan, while dismissing the said application preferred by the present petitioner, which is as under:

"11. As discussed above and in such the circumstances, when the court of Magistrate, First Class is lacking of jurisdiction in Section 13 (3) of the Registration of Birth and Deaths Act, 1969 to pass an order for correction in entry of date of birth and place of birth recorded in school leaving certificate then this Court has no option to reject / dismiss the present application. Hence, issue No. 1 is answered in negative. Moreover the present application is not entitled for his claim/ relief of directing the D.E. Officer Patan and the Principal of B.D. Sarvajanic Vidhyalaya Patan for correction in entry of date of birth and place of birth recorded in School Leaving Certificate. It is pertinent to note that the present applicant has impleaded in the present application, the Registrar, Birth and Death of Nagar Palika, Patan as the opponent No. 3. But it is not the case of the applicant that the date of Birth and place of birth is not corrected as it is recorded in Municipality Register. On the contrary the applicant came before the Court on the strength of entry of date of birth and place of birth recorded in Municipal Register. It is the case of the applicant that the date of birth being 18.8.1982 recorded in Municipal Register is correct date of birth. In such the circumstances, no direction can be given to the Registrar of Birth and Death. Nagar Palika, Patan for entering or correcting birth date in Municipality Register, thus the applicant is not entitled for relief as prayed by him. Therefore issue No. 2 is answered in negative and following final order is passed. "

6. The learned Judicial Magistrate, First Class and 4th Additional Senior Civil Judge, Patan has considered the relevant scheme of Section 13 (3) of the Registration of Birth and Death Act, 1969. It is not necessary to quote the entire Section 13 of the Act but the title of Section 13, if referred to alongwith relevant sub-section 3 would help in dealing with the case placed before this Court.

"Section 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 or death and on payment of the prescribed fee. "

7. There is enough force in the say of Mr. Satyam Chhaya, learned Asst. Government Pleader appearing for the respondents that competent authority has no power to correct the date of birth of a student in the school register who

leaves the school forever. For that purpose the guidelines are provided in Regulation 12[A][6] of the Gujarat Secondary Education Regulations, 1974 to make change in the date of birth in the school leaving certificate. It is also rightly submitted that if the petitioner intends to change his date of birth in the school leaving certificate after leaving the school, then he is required to comply with the requirements provided in the Regulation 12(A)(6) of the aforesaid Regulations.

8. There is no reference of Section 13 (3) in the proviso but it is observed that the competent authority may change the date of birth of a student who leaves the school, on the strength of the certificate issued by the learned J.M.F.C. and learned J.M.F.C. satisfy himself about the correctness of the date of birth and recording his satisfaction would only help the competent authority to make correction in date of birth.

9. A plain reading of the proviso is nothing but the guidelines to a student or parent who intends to change the date of birth in the school leaving certificate. As such there is no scheme or modalities which confers the jurisdiction on J.M.F.C. to decide such application, if preferred, by the student.

10. It is clear from the discussion made by the learned Judicial Magistrate, First Class and 4th Additional Senior Judge, Patan in paragraph 11 while deciding the application of the present petitioner that J.M.F.C. can at the most direct the Local Self Government to enter the date of birth in the birth register at the end of inquiry recording satisfaction.

10.1 In the present case, there was no dispute as to the genuineness of the date of birth and the say of the petitioner is that the date of birth mentioned in the school leaving certificate is incorrect. Therefore, on production of the original birth certificate, the learned J.M.F.C. ought to have complied with the directions given by this Court or at least ought to have observed that there is no need to issue a formal direction, as there is no dispute as to the genuineness of the date of birth mentioned in the birth register and birth certificate itself. However, the learned Judicial Magistrate, First Class and 4th Additional Senior Judge, Patan took a technical view keeping in mind the scheme of Section 13 (3) and other Sections 14 and 15 of the Registration of Birth and Death Act, 1969.

10.2 When the Letters Patent Bench has referred the scheme of Section 13 (3), it will be difficult for this Court to observe that learned learned Judicial Magistrate, First Class and 4th Additional Senior Judge, Patan was totally wrong in dealing with the application as an application filed before him in reference to the Registration of Birth and Death Act, 1969.

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11. It appears that perhaps the competent authority is of the view that there cannot be change in the entry of the school register, after a student leaves a school forever and only course for the parents to get the correct date of birth in the school register, is to obtain a certificate from the learned Judicial Magistrate,

First Class and that certificate would prevail over the school leaving certificate issued by the school authorities. When the original birth certificate is available with an individual and there is no controversy as to the genuineness of the birth date reflected in that birth certificate issued by the Local Self Government, the reference of birth date in any other documents including the school leaving certificate would not be a matter of any significance. So in that regard the birth date certificate issued by the Local Self Government is the first preliminary evidence and normally when the school authority is shown the original birth certificate issued by the Local Self Government, then the School authority may consider the date of birth mentioned therein and necessary register of the school should be corrected accordingly. The difficulty with the school administration as well as the competent authority is that what should be done in the cases where the student leaves the school forever and therefore it appears that an embargo has been introduced in the Gujarat Secondary Education Regulations, 1974.

12. Section 14 of Registration of Births and Deaths Act, 1969 deals with the registration of name of child and Section 15 deals with the procedure as to correction or cancellation of entry in the register of births and deaths. The State of Gujarat has framed relevant rules in the year 2004 exercising powers u/s 30 of the said Act and these Rules specifically take care of the scheme of Section 15 of the Act.

13. In the present case, as such there is no controversy before the learned Judicial Magistrate, First Class and 4th Additional Senior Judge, Patan qua the details mentioned in the birth certificate issued to the present petitioner. Therefore, the learned Judicial Magistrate, First Class and 4th Additional Senior Judge, Patan is not inclined to exercise its jurisdiction and on the strength of the observations made by the Letters Patent Bench, the Magistrate has lightly not exercised its jurisdiction in the present matter in absence of modalities and procedure provided under a statute or rules framed thereunder.

14. The Gujarat Secondary Education Regulations, 1974 is in the form of guidelines framed under the Gujarat Secondary Education Act, 1972 exercising powers u/s 54 of the said Act. It appears that learned Advocates appearing in the Letters Patent Appeal had not assisted the Division Bench properly while putting the entire legal situation before the Letters Patent Bench, otherwise it was possible to make a detailed submission that in absence of any legal resolution in the relevant Regulations an aggrieved person can be sent to Civil Court for proper declaration and the High Court also can in exercise of powers vested with the Court under Article 226 of the Constitution of India which helps the petitioner.

15. It is settled legal position that in all cases merely because Civil Suit also would lie, the party should not be relegated to the Civil Court in the interest of justice and to see that inconvenience or serious prejudice or any apprehension of such prejudice to be removed expeditiously so that the Court can grant equitable relief under the jurisdiction vested with the Court.

16. As such there is no alternative remedy in the Births and Deaths Registration Act, 1969 to get the birth date changed in a school register. In that situation, two recourses are left with the petitioner. First is to approach the Civil Court seeking declaration to the effect that birth date mentioned in the school register wherever he has studied is incorrect and mandatory injunction against all such authorities including the competent authority is sought for to the effect that the date of birth in the relevant school registers be corrected in accordance with the birth certificate issued by the Local Self Government. Of course, the duty of the plaintiff would be that he is supposed to satisfy the Court that birth date mentioned in the birth certificate issued by the Local Self Government is otherwise genuine and is not a result of any fraud or misrepresentation.

16.1 The second recourse is to file a petition under Article 226 of the Constitution of India praying for appropriate writ, order or direction. If the petitioner is able to satisfy the Court that his grievance is genuine and the date of birth is to be corrected in the relevant school registers, then the High Court upon verifying the original birth certificate issued by the Local Self Government, issues direction to the competent authority to correct the date of birth in the school register where the student has studied lastly.

16.2 To avoid such inconsistency and conflict inter se, it would be in the fitness of thing that register of the primary school where the student was admitted for the first time is also to be corrected and it is not impossible for the State Government to decide the modalities and to resolve such inconsistency because it is the experience of the society that various authorities on different occasions demands both the certificates viz., the original birth certificate, as well as, one of the school leaving certificate where the student has studied, because such certificates contain relevant details of an individual.

Having considered the submissions advanced at the Bar and the documents forming part of the present petition and the affidavit tendered by the petitioner, the present petition is hereby allowed. It is ordered that the competent authority now shall correct the date of birth of the petitioner in the school register from 29/02/1983 to 18/08/1982, as well as, the place of birth as Bhartiya Arogyanidhi, Gorsheri, Patan instead of Village Dasaj, Tal. Siddhpur. The respondents Nos. 2 and 3 now shall issue necessary directions to the concerned school that the register of the school having date of birth be corrected by making necessary changes in the date of birth and place of birth; and on demand shall issue a fresh school leaving certificate with the correct date of birth and place of birth. Rule is made absolute in above terms. Direct Service is permitted.