

(2022) 12 GUJ CK 0004

In the Gujarat High Court

Case No : R/Special Civil Application No. 18103 Of 2022

Nayak Himanshu Manubhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 12 GUJ CK 0004

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Divya P Bhatt, Mangal V Gadhavi, Dhvani Tripathi

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1 Rule returnable forthwith. Ms. Dhvani Tripathi, learned AGP, waives service of notice of rule on behalf of the respondent – State.

2 Heard learned counsel appearing for the petitioner. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for his change of name from Hemant to Himanshu and has also prayed for change of date of birth from 23.09.1992 to 23.07.1992.

3 Learned counsel for the petitioner, would rely on documents such as, Pan Card, School Leaving Certificate, Aadhar Card as well as Passport, which indicates that the petitioner's date of birth is 23.07.1992 and his name is shown as Himanshu. Reliance is placed on a decision rendered by Co-ordinate Bench of this Court in Special Civil Application No. 21302 of 2019 dated 02.12.2021. Relevant paragraph of the said decision read as under:

" 9. At this stage, the provisions of Section 15 of the Act of 1969, are also worth referring to. Section 15 reads thus:

"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.”

10. Similarly, the State Government, has framed the Rules of 2004, relevant would be sub-rule (4) and sub-rule (5) of the Rule 11. Sub-rule (4) and sub-rule (5) of Rule 11 read thus:

“(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 true facts of the case made by two credible persons having knowledge of the facts of the case.

(5) Notwithstanding anything contained in Sub-Rule (1) and Sub-Rule (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.” A bare reading of the provisions of Section 15 of the Act of 1969 in juxtaposition with sub-rule (4) of Rule 11, throws sufficient light that the Registrar, will be well within its power to carry out the correction; failing to undertake such exercise and rejecting the application only on the ground that it does not have powers; such action would be illegal and deserves to be deprecated.

11. Quiet apart the Circular dated 18.2.2016, had fallen for consideration before this Court in the case of Sejalben Mukundbhai Patel W/o. Khodabhai Joitaram Patel vs. State of Gujarat reported in AIR 2019 Gujarat 56 and this Court, has held and observed that the circular cannot override the provisions of the Act and it is incumbent upon the authority concerned to initiate the necessary inquiry as per the provisions of Section 15 of the Act of 1969 read with Rule 11 of the Rules of 2004. In the case of Sejalben Mukundbhai Patel (supra), this Court, in paragraph 8 has formulated the issue which has been replied in paragraph 25. Relevant paragraphs 25 and 26 read thus: “25. Thus, answer to issue No.(i) framed as above, is that Circular dated 18.02.2016 issued by the Registrar, Births and Deaths and Commissioner (Health), State of Gujarat, cannot override the statutory provisions and answer to Issue No.(ii) is that Competent Authority appointed under the provisions of the Act of 1969 and Rules framed thereunder cannot simply rely upon the circular and reject the request of the concerned applicant, without making necessary inquiry.

26. Keeping in view the aforesaid legal position, if the facts as discussed hereinabove are examined, it is revealed that respondent No.2 has rejected the request of the petitioner simply relying upon the Circular dated 18. 02.2016

issued by the Chief Registrar, Births and Deaths and Commissioner (Health), State of Gujarat. It is not in dispute that while rejecting the request of the petitioner, respondent No.2 has not carried out any inquiry nor examined the documentary evidence produced by the petitioner. Therefore, the said decision taken by respondent No.2 is required to be set aside."

12. Even otherwise, as noted hereinabove the Circular now has been withdrawn. In the present case, the petitioner has been struggling to see that the necessary correction is carry out in the Birth Certificate of his daughter by providing all the other documents which carry the date of birth as "22.04.1985".

It was incumbent upon the respondent No.2 to have undertaken the inquiry and carried out the necessary correction. It is also not in dispute that the request of the petitioner, is illegal or that sufficient documents have not been produced to substantiate such request. In view of the various documents produced on the record to substantiate the request so also the affidavit of the mother of the applicant, the respondent No.2, ought to have carried out the correction and not rejected the application citing the provisions of the Circular dated 18.02.2016.

13. Relegating the petitioner once again to the respondent authority would be an exercise in futility and subjecting the petitioner or his daughter to unnecessary harassment, therefore, this Court, is of the opinion that the direction may be issued to the respondent No.2 to carry out the required correction in the date of birth in tune with the date of birth indicated in various documents produced on the record so also the affidavit of the wife of the petitioner.

14. The respondent No2, is directed to make necessary correction in the register of birth on the basis of the documents available on the record including the affidavit of the wife of the petitioner and issue new birth certificate showing the date of birth as "22.04.1985". The respondent No.2 is directed to carry out the said exercise within a period of four weeks' from the date of the receipt of the copy of this order.

15. In view of the aforementioned discussion, the petition succeeds and is accordingly allowed. Rule is made absolute. No order as to costs.

16. Direct service is permitted."

4 Having considered the submissions made by the learned counsels appearing for respective parties and having considered the decision referred to as above, the petition is allowed. Accordingly, the respondent No.2 is directed to change the petitioner's date of birth from 23.09.1992 to 23.07.1992 and his name be changed from Hemant to Himanshu by making necessary corrections in the Register of Birth on the basis of the documents available on record and issue new birth certificate showing the date of birth as "23.07.1992" and his name as "Himanshu". The entire exercise shall be carried out within a period of six weeks from the date of receipt of copy of this order. Petition is allowed, accordingly. Rule is made absolute accordingly. Direct service is permitted.