

(2011) 07 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 7994 of 2011

Patel Chandrakantbhai Shankarbhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Constitution of India, 1950 — Article 26

Gujarat Registration of Births and Deaths Rules, 2004 — Rule 11

Registration of Births and Deaths Act, 1969 — Section 15, 25, 8, 9

Citation : (2011) 07 GUJ CK 0021

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Joitabhai N. Patel, for the Appellant; J.K. Shah, learned Asst. Government Pleader for Respondents 1 and Deepak P. Sanchela, for Respondents 2, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari J.

1. Rule. Mr. J.K. Shah, learned Assistant Government Pleader waives service of notice of Rule for Respondent No. 1 and Mr. Deepak P. Sanchela, learned advocate waives service of notice of Rule for Respondent No. 2. On the facts and in the circumstances of the case and with the consent of the learned advocates for the respective parties, the petition is being heard and finally decided today.

2. This petition under Article 26 of the Constitution of India has been filed with the following prayers.

(A) YOUR LORDSHIPS may be pleased to admit and allow the Special Civil Application.

(B) YOUR LORDSHIPS may be pleased to issue a writ of mandamus and/or certiorari or any other appropriate writ, order or direction quashing and setting aside the order / letter No. 132 of 11-12 dated 06-05-2011 issued by the

Respondent No. 2 - Chief Officer, Nagar Seva Sadan, Kapadwanj.

(C) YOUR LORDSHIPS may further be pleased to direct the Respondent No. 2 - Chief Officer, Nagar Seva Sadan, Kapadwanj to correct or change the name of the Petitioner from Mangar to Chandrakantbhai and Sir Name from Patidar to Patel and to issue Birth Certificate with corrected name as Chandrakant and Sir name as Patel to the Petitioner in the interest of justice.

(D) YOUR LORDSHIPS may be pleased to pass any other order in the interest of justice in the facts and circumstances of the case.

3. Briefly stated, the case of the Petitioner is that he was born on 09-08-1960 at village Sonipura, Taluka Kapadwanj, District Kheda and the factum of his birth was registered with the competent authority in the Register of Births and Deaths, Kapadwanj. It is the case of the Petitioner that his name is actually "Chandrakantbhai" but has been wrongly entered in the Register as "Mangar". It is also stated that the Surname of the Petitioner is actually "Patel" but has been entered as "Patidar" in the said Register. According to the Petitioner, his correct name and Surname, that is, Chandrakantbhai Patel is reflected in several documents, such as the School Leaving Certificate, Ration Card, Election Card, Mark-sheets of the SSC and HSC Examinations, Mark sheets of the 3rd Year BA Examination and Passport and PAN Card. Accordingly, the Petitioner made an application on 18-10-2010 to Respondent No. 2 for change of his name and Surname in the Register of Births and Deaths maintained by the said Respondent. By impugned order dated 06-05-2011, Respondent No. 2 has declined to entertain the application made by the Petitioner by stating that it is not possible to effect the change in the name and Surname of the Petitioner. Aggrieved thereby, the Petitioner has approached this Court, by filing the present petition.

4. Mr. J.N. Patel, learned advocate for the Petitioner has submitted that at the time of the registration of the birth of the Petitioner his name and Surname have been incorrectly recorded in the Register of Births and Deaths. In view of the fact that all other important documents of the Petitioner such as School Leaving Certificate, Ration Card, Election Card, Mark-sheets of the SSC and HSC Examinations, Mark sheets of the 3rd Year BA Examination and Passport and PAN Card etc. reflect the correct name of the Petitioner, that is, "Chandrakant Patel", the application made by the Petitioner for change of his name and Surname in the Register ought to have been entertained by Respondent No. 2. It is further submitted that the Petitioner has changed his name from "Mangar" to "Chandrakant" and his Surname from "Patidar" to "Patel" and the necessary changes have been effected, as declared and published in the Government Gazette Vol.LI. No. 39, dated 30-9-2010/ASHVINA 8, 1932 at Sr. No. 380. It is further submitted that the refusal of Respondent No. 2 to exercise jurisdiction vested in him is unsustainable in law, therefore, the prayers made in the petition may be granted.

5. I have heard Mr. J.N. Patel, learned advocate for the Petitioner, Mr. J.K. Shah, learned Assistant Government Pleader for Respondent No. 1 and Mr. Deepak P. Sanchela, learned advocate for Respondent No. 2.

6. The position of law, regarding correction or cancellation of an entry in the Register of Births and Deaths is no longer *res integra*. In *Nitaben Nareshbhai Patel Vs. State of Gujarat and Others*, this Court has decided the issue whether, the competent authority has the power to make a correction in the date of birth, as recorded in the Register of Births and Deaths, or not.

7. At this stage, it would be fruitful to advert to the relevant provisions of law, namely, Section 15 of the Registration of Births and Deaths Act, 1969 ("The Act" for short) and Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 ("The Rules" for short). Section 15 of the Act, reads as under:

15. Correction or cancellation of entry in the registrar 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.

8. Rule 11 of the Rules is reproduced hereinbelow:

11. Correction or cancellation of entry in the register of births and deaths: (1) If it is reported to the registrar that a clerical or formal error has been made in the register, or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in Section 15 of the Act and shall send an extract of the entry showing the error and how it has been corrected to the District Registrar of Births and Deaths.

(2) In the case referred to in Sub-rule (1) if the register is not in the possession of the Registrar, he/she shall make a report to the District Registrar of Births and Deaths and call for the relevant register and after inquiring into the matter, if he is satisfied that any such error has been made, make the necessary correction.

(3) Any such correction as mentioned in sub rule (2) shall be countersigned by the District Registrar of Births and Deaths when the register is received from the Registrar.

(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 u/s 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.

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been made fraudulently or improperly, he shall make a report giving necessary details to the officer authorized by the chief Registrar by general or special order in this behalf u/s 25 of the Act and on hearing from him take necessary action in the matter.

(7) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information u/s 8 or Section 9 of the Act.

9. From a combined reading of Section 15 of the Act and Rule 11 of the Rules, there can be no manner of doubt that the competent authority, in this case Respondent No. 2, is vested with the power to cancel or make a correction of an entry in the Register of Births and Deaths maintained by him, subject to it being proved to his satisfaction that the same is required to be corrected or cancelled, as the case may be. Necessary procedure to be followed in this regard has been laid down in Rule 11.

10. Apart from the above provisions of law, the legal position in this regard has been propounded in the judgment in Nitaben N. Patel v. State of Gujarat (Supra), where, after examining several relevant judgments, this Court has exhaustively dealt with various contentions and contingencies arising in cases, such as the present one. The relevant extract of the judgment is reproduced hereinbelow:

26.***

(A)***

(B) Section 15 of the Act of 1969 read with Rule 11 of the State Rules, 2004 along with Chapter 9, Clause 9.6 and 9.7 of the Handbook of Registrar General, Ministry of Home Affairs, Govt. of India and Clause 5.8 of Chapter 5 of guidelines contained in vernacular Gujarati adequately conferred power upon the authority to correct/cancel erroneous entries and provide for complete mechanism for types of errors to be corrected.

(C) Section 15 of the Act of 1969 empowers Registrar of Birth and Death to correct any erroneous entry in form or substance or any entry which has been fraudulently or improperly made. Rule 11 of Rules, 2004 and particularly Sub-rule (1) provide for any entry, any error which may be clerical or formal and Sub-Rule 4 of the above Rule 11 mention about any entry which may be erroneous in substance and Sub-Rule 6 of Rule 11 refer to any entry which is fraudulently or improper is to be corrected by the Registrar and an elaborate procedure is provided which prescribe method and manner in which such entry to be

corrected or cancelled and report to be made to the higher authority, which may rule out in misuse of power by registering authorities.

Thus, Clause 9.6 and 9.7 of Chapter 9 of the Handbook of Registrar General, Ministry of Home Affairs, Govt. of India provide for corrections and cancellations of entries and contain clerical or formal error, error in substance or fraudulent or improper entry and once any error in substance is to be corrected, it covers error of such nature which is an error of substance or form. That similar types of errors are mentioned in Clause 5.8 of Chapter 5 of vernacular guidelines published by the State Authorities under the Act.

(D)***

(E) When the authority empowered to exercise power u/s 15 of the Act and Rule 11 of the State Rules, 2004, refuse to do so, writ petition is maintainable under Article 226 of the Constitution of India for issuing appropriate directions to the authority.

(F) The kind and types of directions to be issued to the authority depend on facts and circumstances of the each case and nature of denial of legal right to the aggrieved persons by the authority.

(emphasis supplied)

11. Examined in light of the statutory provisions reproduced hereinabove and the principles of law culled out in the above-quoted judgment, it is clear that Respondent No. 2 has been vested with power to entertain the application made by the Petitioner for change of the entry made in the Register of Births and Deaths, regarding correction of his name and Surname. The refusal of Respondent No. 2 to exercise the powers vested in him under the Act and Rules, certainly calls for interference of this Court in exercise of jurisdiction under Article 226 of the Constitution of India, especially when, in this case, no cogent reason is reflected in the impugned order.

12. In view of the afore-stated legal position, the impugned order dated 06-05-2011 passed by Respondent No. 2, is hereby quashed and set aside. Respondent No. 2 is directed to consider the application dated 18-10-2010 made by the Petitioner for correction of his name and Surname, as recorded in the Register of Births and Deaths. The said application may be considered in light of the provisions of Section 15 of the Registration of Births and Deaths Act, 1969 and Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004. The decision thereupon, shall be taken by Respondent No. 2, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

13. The petition is allowed, in the above terms. Rule is made absolute, accordingly. There shall be no orders as to costs.

Direct service of this order is permitted.