

(2022) 11 GUJ CK 0022

In the Gujarat High Court

Case No : R/Special Civil Application No. 14052 Of 2022

Patel Jinalben Anilkumar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Gujarat Registration Of Births And Deaths Rules, 2004 — Rule 11(4), 11(5)
Registration Of Births And Deaths Act, 1969 — Section 15

Citation : (2022) 11 GUJ CK 0022

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Rohankumar M Amin, R.P.Patel, Rohan Shah

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. RULE returnable forthwith. Mr.Rohan Shah learned AGP waives service of notice of Rule on behalf of the respondent State and Mr.R.P.Patel learned advocate for Mr.B.A.Patel waives service of notice of Rule on behalf of the respondent No.2.

2. With the consent of learned advocates for the respective parties, the petition is taken up for final hearing.

3. The prayer in the petition is to change the date of birth of the petitioner from 05.11.1994 to 31.05.1994. The challenge is to the communication dated 21.06.2022 issued by the Nandol Gram Panchayat rejecting the request of the petitioner for change of date of birth.

4. Facts indicate that the petitioner's date of birth is 31.05.1994 which was registered in the Registrar of Births and Deaths at Nandol Gram Panchayat. However, it was wrongly mentioned as 05.11.1994. Extensive reliance is placed on documents viz. Aadhar Card, copy of the passport, election card and the

school leaving certificate, which all indicate that the birth date of the petitioner is 31.05.1994.

5. Even the prayer is also made that the name be changed to 'Jinalben' from 'Sonu'. The documents attached to the petition too indicate that the name appears to be 'Jinalben' rather than 'Sonu'.

6. Mr.Rohan Amin learned advocate would rely on an order dated 20.02.2018 passed by this Court in case of Natubhai Dharamdas Patel v. State of Gujarat rendered in Special Civil Application No.11841 of 2017. This Court while placing reliance on the provisions of Section 15 of the Registration of Births and Deaths Act and the decision of the coordinate bench of this Court in case of Nitaben Nareshbhai Patel v. State of Gujarat and ors. reported in 2008 (1) GLH 556 held as under:

"6. As could be seen from the background of the facts, the petitioner has produced the documentary evidence along with the evidence. The documentary evidence in the form of School Leaving Certificate and passport etc. record the date of birth of the petitioner as 01.05.1954 and therefore the prayer made for correction of date of birth as 01.05.1954 instead of 10.04.1954 as recorded in the birth certificate deserve consideration by the authority.

7. The provisions of Section 15 of Registration of Birth and Death Act provide for such correction. The Judgment of the High Court in case of Nitaben Nareshbhai Patel (supra) clearly suggest about such correction could be made if the Registrar is satisfied on the basis of material and document produced on record. Therefore, a close look at the provisions of the Act read with the Rules require to be considered.

Rule 11(5) of the Birth and Registration Rules provide:

"(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."

Similarly, Section 11(4) of the Rules provide;

"If any person asserts that any any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the same 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."

8. Therefore the provisions of Section 15 of the Act read with the Rules as stated above makes the position clear that it is for the Registrar to reach such satisfaction and make necessary correction on verification of the document produced before him. In other words, it is for the Registrar to arrive at the satisfaction based on the documentary evidence and thereafter he can make the correction. Thus, the Registrar is vested with such powers which he can exercise

and therefore there is no lack of jurisdiction or the power. Thus, when the statute cast an obligation upon the Registrar to make such changes depending upon the facts and circumstances of each case and in the background of the material and evidence that may be produced, it cannot be said that there is no provision, and the Registrar cannot correct the date of birth once it is recorded in the birth register. In fact the provisions of Section 15 of the Act read with Rule 11(4) and 11(5) of the Rules give power to the Registrar to make such correction or modification after having been satisfied on the basis of the documentary evidence that may be produced before him. In other words this is a power coupled with the obligation that he has to reach such satisfaction on the basis of material that may be produced. Moreover as stated by learned AGP, there is also a Circular issued by the Government.

9. Therefore, the interest of justice would be served if the petitioner is directed to make fresh representation with necessary supporting documents or the petition itself may be treated as a representation which shall be made to the Respondent No.3 within a period of one week. The Respondent No.3 shall consider the same within a period of eight weeks as per the provisions of the Registration of Births and Deaths Act and the Rules as stated above as well as in light of the decision of this Court in the case of Nitaben Nareshbhai Patel (supra) as well as the decision of the Division Bench in Letters Patent Appeal No. 497 of 2012 dated 10.05.2012, after being satisfied and shall take the decision within a period of four weeks thereafter regarding correction of date of birth.

10. The petition is allowed. The impugned communication at Annexure-A is hereby quashed and set aside. It is also made clear that the observation that the decision of this High Court would not have any application, cannot be accepted in light of the discussion herein above and Respondent No.3 as stated above is under statutory obligation by the statute to make necessary verification and correct the date of birth if he is satisfied on the basis of the documentary evidence.

11. The present petition stands disposed of to the aforesaid extent. Rule is made absolute. Direct serviced permitted."

7. In light of the aforesaid, the petition is allowed. The communication dated 21.06.2022 of the Nandol Gram Panchayat-respondent no.2 rejecting the request for change of date of birth is quashed and set aside in light of the documents viz. Aadhar Card, a copy of the passport and the school leaving certificate. The respondent-Nandol Gram Panchayat is directed to make necessary corrections in the date of birth after verification in light of the documents referred to herein above.

8. A direction is also issued to change the name of the petitioner in light of the documents referred to herein above to 'Jinalben' instead of 'Sonu'.

9. The entire exercise shall be carried out within a period of six weeks from the date of receipt of copy of this order.

10. Rule is made absolute. Direct service is permitted.