

(2021) 04 GUJ CK 0024

In the Gujarat High Court

Case No : R/Special Civil Application No. 16595 Of 2020

Patel Pinky Rajeshbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

State Rules, 2004 — Rule 11, 11(1), 11(2), 11(3), 11(4), 11(5), 11(6), 11(7)

Registration Of Births And Deaths Act, 1969 — Section 15

Citation : (2021) 04 GUJ CK 0024

Hon'ble Judges : A.J.Desai, J

Bench : Single Bench

Advocate : Shaival M Patel, Hemang S Trivedi, Krutik Parikh, Premal R Joshi

Final Decision : Allowed

Judgement

A.J.Desai, J

1. This petition is filed under Article 226 of the Constitution of India in which the petitioner has prayed for the following reliefs:

â??9(A) xxxx

(B) Be pleased to issue a writ of mandamus, or in the nature of, mandamus or any other appropriate writ, order or direction and order upon

Respondent Authority/ies by quashing and setting aside the impugned order dated 20/11/2020 passed by Respondent No.2 and further be pleased to

direct respondents to correct its Birth Register of by showing the petitioner's correct name as â??Pinkyâ? and thereby further be pleased to direct the

respondent no.2 to issue the fresh Birth Certificate.

(C) Pending admission, disposal and final hearing of the above numbered writ petition, this Hon'ble Court may be pleased to grant ad interim relief by

directing the respondent to reconsider the application dated 07/10/2020 given by petitioner as per the rules for correcting petitioner's name as

â??Pinkyâ?? and further be pleased to direct the respondent no.2 to issue the fresh Birth Certificate.

(D) xxxxxâ??

2. Heard learned advocate Mr.Patel for the petitioner and learned AGP Mr.Krutik Parikh for respondent no.1 and learned advocate Mr.Premal Joshi

for respondent no.2.

3. Learned advocate for the petitioner, after referring to the averments made in the memo of the petition, submitted that the petitioner was born on

09.09.1991 and her correct name is Patel Pinky Rajeshbhai. However, in the birth certificate issued by the respondent no.2, her name is wrongly

mentioned as Pinkalben. At this stage, it is submitted that the petitioner filed an application on 7.10.2020 before respondent no.2 for correction of her

name in the birth certificate issued by respondent no.2, copy of the same is placed on record at page 12. It is submitted that along with the said

application, the applicant has produced relevant documentary evidence in support of her contention. At this stage, it is further pointed out that by

impugned communication dated 20.11.2020, the respondent no.2 rejected the application relying upon the circulars of year 2014 and 2015. The

petitioner has, therefore, filed the present petition.

4. Learned advocate has referred to the various documentary evidence placed on record including Aadhar Card, School Leaving Certificate, Election

Card of the petitioner. It is submitted that in all the aforesaid documents, the correct name of the petitioner is mentioned as `Pinky'. It is, therefore,

urged that appropriate direction be issued to the respondent no.2. Learned advocate for the petitioner has placed reliance upon the decision rendered

by this Court in the case of Sejalben Mukundbhai Patel V/s State of Gujarat, reported in 2019(3) GLR 1866.

5. On the other hand, learned AGP appearing for the respondent no.1 and learned advocate Mr.Joshi appearing for respondent no.2 are not in a

position to dispute the fact that the issue involved in the present petition is covered by the decision rendered by this Court in the aforesaid case.

6. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, it appears that the request of

the petitioner has been rejected by the respondent no.2 by relying upon the circulars of the year 2014 and 2015. It is revealed from the record that the respondent no.2 has not made any inquiry as contemplated under Section 15 of the Registration of Births and Deaths Act, 1969 ('Act of 1969' for short) and Rule 11 of the Rules framed thereunder. It is further revealed that there is no reference with regard to the documentary evidence produced by the petitioner before respondent no.2.

7. At this stage, this Court would like to refer to the relevant observations made by this Court in the case of Sejalben Mukundbhai Patel (supra), in

paragraph 8,22 and 25 as under:

â??8. In the aforesaid facts, following issues are required to be decided in the present case:

(i) Can circular dated 18.02.2016 issued by the Chief Registrar, Births and Deaths and Commissioner (Health), State of Gujarat, override the statutory provisions?

(ii) Can the competent authority appointed under the provisions of the Act of 1969 and Rules framed thereunder, simply rely upon the aforesaid

Circular without making any inquiry as contemplated under the provisions of the Act of 1969 and Rules framed thereunder?â??

â??22. From the aforesaid statutory provisions and the decisions rendered by this Court, following aspects would emerge:

(a) the expression 'erroneous in form or substance' in Section 15 of the Act of 1969 is an expression of wide amplitude and does not confine to simple

typing errors or clerical mistakes and no guidelines or circulars can take away powers of the Registrar of making correction in entries which are

erroneous in form or substance in register as envisaged under Section 15 of the Act of 1969 and Rule 11(1) to (7) of the State Rules, 2004.

(b) The Registrar appointed under the provisions of the Act of 1969 has got powers for correction in relation to the entries and the name also in the

Register/Birth Certificate and such correction or cancellation also comes within the purview of powers under Section 15 of the Act of 1969.

(c) The contempt authority appointed under the provisions of the Act of 1969 has to consider whether the entry in the Birth Certificate/Register can

be corrected or not, after making inquiry and after going through the relevant material, which may be produced by the concerned applicant or which

may be called by competent authority for satisfying itself.â??

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.â??

8. It is required to be noted at this stage that the aforesaid decision rendered by this Court was challenged before the Hon'ble Division Bench of this

Court by filing Letters Patent Appeal and it is contended that the Hon'ble Division Bench has rejected the said Letters Patent Appeal and confirmed

the aforesaid decision.

9. From the facts discussed hereinabove, it can be said that the issue involved in the present petition is squarely covered by the aforesaid decision

rendered in the case of Sejalben Mukundbhai Patel (supra), Accordingly, this petition is allowed. The communication dated 20.11.2020 is quashed and

set aside. The respondent no.2 is hereby directed to reconsider the case of the petitioner in light of the observation made by this Court in the present

order as well as in the decision rendered in the case of Sejalben Mukundbhai Patel(supra), after making inquiry under Section 15 of the Act of 1969

and Rule 11 of the Rules framed thereunder and after considering the documentary evidence produced by the petitioner. The respondent no.2 shall

complete the said exercise within a period of eight weeks from the date of receipt of this order. Direct service is permitted.