

(2011) 07 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 8802 of 2011

Patel Varshaben Khodabhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

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 0057

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Raxit J. Dholakia, for the Appellant; Rashesh Rindani, Asst. Government Pleader for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Rashesh Rindani, learned Assistant Government Pleader waives service of notice of Rule on behalf of Respondent No. 1. As the issue involved in the petition is a concluded one, there is no requirement of issuing notice of Rule to Respondent No. 2.

2. This petition under Article 226 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 or any other appropriate writ, order or direction directing Respondent authority to effect the change of date of birth from 02/11/1978 to 19/10/1978 of the Petitioner in the records and be further pleased to direct the Respondent authority to issue fresh certificate of birth showing his real date of birth as 19/10/1978 instead of 02/11/1978.

C. Pending admission and final hearing of the present petition, Your Lordships

may be pleased to direct Respondent authority to effect the change of date of birth of the Petitioner in the records and be further pleased to direct the Respondent authority to issue fresh certificate of birth showing his real date of birth as 19/10/1978 instead of 02/11/1978.

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. The brief facts of the present case are that, according to the Petitioner, her date of birth is 19.10.1978. The factum of birth of the Petitioner was registered with the Competent Authority by a relative, however, the date of birth was mistakenly mentioned as 02.11.1978, instead of 19.10.1978. According to the Petitioner, the School Leaving Certificate of the Petitioner as well as the Passport mentions the correct date of birth, that is, 19.10.1978. The father of the Petitioner made an application to Respondent No. 2 (Talati-cum-Mantri) to effect change in the date of birth of the Petitioner. By order dated 13.06.2011, Respondent No. 2 has stated that no change can be effected in the Birth Certificate of the Petitioner, as the said Respondent does not have the power to do so.

3.1 Mr. Raxit J. Dholakia, learned Counsel for the Petitioner has submitted that the correct date of birth of the Petitioner has been mentioned in all other documents such as PAN Card, Passport and School Leaving Certificate and the refusal of Respondent No. 2 to exercise powers vested in him to make the necessary correction is not warranted by the Statute.

4. I have heard Mr. Raxit J. Dholakia, learned Counsel for the Petitioner and Mr. Rashesh Rindani, learned Assistant Government Pleader for Respondent No. 1 and have perused the averments made in the petition as well as contents of the documents annexed thereto.

5. The position of law in respect of effecting change in date of birth in the Register maintained by the Competent Authority in this regard is no longer res-integra. After examining several relevant judgments, this Court dealt exhaustively with various issues and contingencies arising in case such as the present one in Nitaben N. Patel v. State of Gujarat (Supra). The relevant extract of the judgment is as follows:

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. Those 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)

6. A reference can be fruitfully to be made to the contents of Section 15 of the Registration of Births and Deaths Act, 1969 ("the Act", for short), which reads as under:

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.

7. Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 ("the Rules", for short) is relevant and is also reproduced herein below:

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 canceling 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 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.

8. From a cumulative reading of Section 15 of the Act and Rule 11 of the Rules, it is clear that power is vested in Respondent No. 2 to make necessary changes in the Register with regard to the date of birth. Refusal of the said Respondent to exercise powers vested in him is not only against the provisions of the Act but also unreasonable and arbitrary. The order dated 13.06.2011 passed by Respondent No. 2 is, therefore, quashed and set aside. The only direction that can be given by this Court to Respondent No. 2 is to exercise powers vested in him, as per 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. It is so directed.

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

10. Direct service is permitted.