

(2013) 05 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 2184 of 2013

Patel Vipulkumar Kanubhai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Registration of Births and Deaths Act, 1969 — Section 15

Citation : (2013) 05 GUJ CK 0043

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : Raxit J Dholakia, for the Petitioners No. 1, for the Appellant; Rohan Yagnik, AGP for the Respondent(s) No. 1, for the Respondent

Judgement

Rajesh H. Shukla, J.—Rule. Learned AG Shri Rohan Yagnik appears and waives service of Rule for the Respondent State. The present petition has been filed by the petitioner under Articles 14 and 226 of the Constitution of India as well as under the Registration of Birth and Death Act, 1969 read with Gujarat Registration of Birth and Death Rules, 2004 for the prayer inter alia that the real date of birth may be corrected as 6.2.1983 instead of 30.1.1983 on the grounds stated in the petition.

2. Heard learned Advocate Shri Raxit J. Dholakia for the petitioner and learned AGP Shri Rohan Yagnik for the Respondent State.

3. Learned Advocate Shri Raxit J. Dholakia has referred to the papers and submitted that the birth certificate produced at Annexure-A records the date of birth of the petitioner as 30.1.1983 for which he made an application for necessary correction that it may be corrected as 6.2.1983 based on other documentary evidence like school leaving certificate produced at Annexure-B as well as the passport and also the driving license. Learned Advocate Shri Dholakia has also submitted that Section 15 of the Registration of Birth and Death Act, 1969 read with Rule 11 of the Gujarat Registration of Birth and Death Rules,

2004 provide for such discretion and the impugned communication by the Respondent No. 2 dated 20.1.2012 is erroneous that the Respondent No. 2 who is also an authority under the Act for maintaining such a register has no discretion. He pointedly referred to the provisions of Section 15 of the Registration of Birth and Death Act, 1969 read with Gujarat Registration of Birth and Death Rules, 2004 and submitted that therefore the present petition may be allowed or appropriate direction may be issued.

4. Learned Advocate Shri Dholakia has referred to and relied upon the judgment of this Court reported in 2011 (2) G.L.H. 455 -Manoj Omprakash Goel v. State of Gujarat through Secretary and Anr., - and also the judgment of the High Court reported in Soham Sanatbhai Shukla Vs. State of Gujarat and Others,

5. Learned AGP Shri Rohan Yagnik has resisted the petition contending that the entry in the birth and death register has been made, on the basis of which, normally the entry would be made. However, he has stated that it will be the Respondent No. 2 who would be the authority and he has fairly stated that there are provisions which empowers the Respondent No. 2 authority to make the necessary correction.

6. None remained present for Respondent No. 2 though served.

7. Therefore, having regard to the provisions of Section 15 of the Registration of Birth and Death Act, 1969 read with Rule 11 of the Gujarat Registration of Birth and Death Rules, 2004, it is evident that the discretion is with the Respondent No. 2 authority who is obliged to maintain such register. The provisions of Section 15 of the Registration of the Birth and Death Act, 1969 suggest that if it is proved to the satisfaction of the Registrar that if any entry of birth or death in the register made by him under this Act is erroneous, then he may correct the error. In other words, the discretion is there with the authority to make necessary correction after having proper satisfaction. Rule 11(4) and Rule 11(5) of the Gujarat Registration of Birth and Death Rules, 2004 give such power to the Registrar, and in fact it casts an obligation upon the Registrar to make such correction after having been satisfied on the basis of documentary evidence for the necessary correction. Therefore, it cannot be said that there is no such provision. It is in this background and having regard to the detailed observations made by this court in a judgment in case of Manoj Omprakash Goel v. State of Gujarat through Secretary and Anr. (supra), - and the judgment of the High Court in case of Soham Sanatbhai Shukla v. State of Gujarat & Ors. (supra) and also the judgment of this High Court in case of Nitaben Nareshbhai Patel v. (The) State of Gujarat and Ors. (supra), the present petition deserves to be allowed. The prayer in terms of paragraph 10(B) deserves to be granted. The impugned communication dated 20.1.2012 by the Respondent No. 2 authority is hereby quashed and set aside. The Respondent No. 2 authority is directed to issue a fresh certificate on verification and scrutiny of the other documentary evidence with regard to the change of date of birth from 30.1.1983 to 6.2.1983. The Respondent No. 2 authority shall carry out the exercise after providing an

opportunity to the petitioner to produce all the other evidence within a period of 4 weeks.

Rule is made absolute. Direct service permitted.