

(2008) 12 GUJ CK 0005

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1673 of 2006 in Special Civil Application No. 2716 of 2006 to Letters Patent Appeal No. 1683 of 2006 with Letters Patent Appeal No. 100 of 2008 to Letters Patent Appeal No. 108 of 2008 with Civil Application No's. 1114/08 to 112

Regional Passport Officer

APPELLANT

Vs

Kokilaben Panchal and Others

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Constitution of India, 1950 — Article 21
Gujarat Registration of Births and Deaths Rules, 2004 — Rule 11
Gujarat Secondary Education Regulations, 1974 — Regulation 12(5)(1), 12(6), 12(A), 5(1A), 5(1B)
Passports Act, 1967 — Section 10, 13, 13(1), 13(2), 13(3)
Passports Rules, 1980 — Rule 5

Citation : AIR 2009 Guj 59 : (2009) 2 GLR 1246

Hon'ble Judges : K.S. Radhakrishnan, C.J.;Akil Kureshi, J

Bench : Division Bench

Advocate : Harin Raval and Y.N. Ravani, for the Appellant; Murali N. Devnani and Chetan K. Pandya, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, C.J.—The Regional Passport Officer, Ahmedabad, aggrieved by certain directions and observations made by the learned Single Judge in Special Civil Application No. 2716 of 2006 and connected matters, reported in Kokilaben Panchal Vs. Regional Passport Officer, has come up with these appeals "Letters Patent Appeal Nos. 1673 of 2006 and connected matters. Letters Patent Appeal No. 100 of 2008 and connected matters have also been filed by the same Officer, aggrieved by the directions issued by another learned Single Judge in Special Civil Application No. 3907 of 2006 and connected matters (reported in Gunvantiben Dayarambhai Patel and Others Vs. Union of India (UOI), seeking some modifications.

2. The issue involved in all these cases is either with regard to the correction of date of birth, place of birth or name entered in various Passports issued to the parties. Learned Single Judges, after referring to the instructions issued by the Ministry of External Affairs vide No. VI/401/2/5/2001 dated 18.4.2001, Division Bench judgment of the Bombay High Court in Jigar Harish Shah Vs. Union of India and Others, and also another decision of this Court in Prashant Vinodbhai Acharya Vs. Regional Passport Officer, disposed of all the petitions, permitting petitioners to move appropriate application for correction/amendment and change of date of birth, place of birth or name, as the case may be, and the competent Passport Authority was directed to consider the same after holding necessary enquiry and to pass appropriate orders in accordance with law, and on merits in the light of the observations made by the learned Single Judge. It was also ordered that the Passport Authority, henceforth in future case, shall not straightaway refuse to entertain application, or decline to accept the application for correction without holding any enquiry, and shall not, without holding necessary enquiry call upon the applicant to obtain appropriate orders from the Court.

3. Passport Authority is seriously aggrieved by the above directions issued by the learned Single Judge. It was stated that learned Single Judge has completely misinterpreted instructions issued by the Ministry of External Affairs, Government of India, and has also committed an error in directing the Passport Authority to effect changes and enter details in the Passport after holding enquiry, without referring it to the Competent Authority or to the Civil Court. Further, it was also pointed out that learned Single Judge has committed serious error in not noticing that there is no mechanism available under the Passport Act to decide the correctness or otherwise of the date of birth, place of birth and name already entered in the Passport, on the basis of the documents initially produced by the parties. Further, it was also stated that when there is difference in date of birth entered in the birth certificate issued by the Authority under the Births and Deaths Registration Act, 1961 and the School Leaving Certificate issued by the competent school authority, such a discrepancy cannot be resolved by the Passport Authority, but it can be decided only by the competent Civil Court. It was also pointed out that the certificate issued by the Competent Authority under the Births and Deaths Registration Act is having over-riding effect over the entry made in the school leaving certificate and when there is difference in date of birth and name in two certificates issued by two Competent Authorities, the Passport Authority should not have been directed to make an enquiry and decide which certificate has to be accepted. It was also submitted that Passport Rule provides only amendment to the extent of correction of genuine error or mistake and it does not prescribe change of details, if the applicant himself has chosen to fill in the form with incorrect particulars in respect of place of birth, date of birth etc. on the basis of school leaving certificate or any other documents issued by the local authority, and when it is correctly entered into the Passport, it cannot be said to be an error which can be corrected by the Passport Authority. It was

also pointed out that learned Single Judge has committed an error in not appreciating that Births and Deaths Act provides that Magistrate is a competent authority to effect change of date of birth in the certificate. Passport Officer has already indicated that he is aggrieved by certain directions given by the learned Single Judge in special Civil Application No. 4696 of 2006 and group. Learned Single Judge disposed of Special Civil Application No. 4696 of 2006 and connected matters by giving certain directions, placing reliance on judgment of the Bombay High Court in Jigar Harish Shah v. Union of India and Anr. (supra), judgment of the learned Single Judge in Special Civil Application No. 2716 of 2006 and connected matters reported in Kokilaben Panchal Vs. Regional Passport Officer, instructions issued by the Ministry of External Affairs dated 18.4.2001, and also interpreting certain provisions under the Passport Act and the Rules. The learned Single Judge disposed of all those petitions by giving following directions.

(1) The petitioners herein and such other applicants may make appropriate application in Form No. 1 or Form No. 2, as the case may be, for change or correction in the passport;

(2) Such application shall be accepted and entertained by the respondent and, after enquiry and following the procedure prescribed in the Passports Act, 1967 and the Rules made thereunder, decision thereon shall be taken in accordance with the provisions of Section 5 of the Passports Act, 1967;

(3) In case the authority decides not to issue the passport pursuant to the application, it shall record its reasons and, on demand, furnish a copy thereof to the applicant except in exceptional circumstances contemplated in Sub-section (2) of Section 5 of the Passports Act, 1967;

(4) Then it will be open for the applicant concerned to take appropriate remedy in accordance with law.

(5) The above process in each such application should be completed by the Passport Issuing Authority within a reasonable time. The Authority should ideally also arrange to officially provide reasonable assistance and guidance to the applicant concerned so as to obviate any unauthorised and improper advice being sought by or given to the unwary or confused applicants.

4. Passport Authorities have challenged the above mentioned directions on the grounds which we have already stated herein before and also on the ground that learned Single Judge has erred in interpreting Section 10 of the Indian Passport Act, and also various other provisions. It was stated that the learned Single Judge has committed error in directing the Passport Authorities to effect change in the Passport after holding enquiry, as if it is a quasi-judicial authority to determine which is the correct date of birth or place of birth or name to be entered into the Passport. Further it was stated that it was for the Competent Authority functioning under the Births and Deaths Registration Act, namely - Judicial Magistrate First Class, Civil Court etc. to decide those issues, and when

the applicant produces relevant statutory orders passed by the Civil Court, then only necessary changes in the date of birth, place of birth or name could be made in the Passport, and the Passport Act and the Rules framed thereunder do not provide for any inbuilt mechanism to resolve those disputes.

5. The Supreme Court in *Satwant Singh Sawhney Vs. D. Ramarathnam*, Assistant Passport Officer, Government of India, New Delhi and Others, held that the right to travel abroad is a part of personal liberty of which he could not be deprived of except according to the procedure established in law in terms of Article 21. The Passport Act, 1967 was enacted to provide for issue of Passport and travel documents to regulate the departure from India of citizens and other persons. Section 5 of the Passports Act deals with application for Passport, travel documents etc. Sub-section (1B) of Section 5 states that every application under this Section shall be in such form and contain such particulars as may be prescribed. Rule 5 of Passport Rules, 1980 deals with form of application, which says that an application for the issue of a passport or travel document or for the renewal thereof or for any miscellaneous service shall be made in the appropriate form set out therefore in Part I of Schedule III and in accordance with the procedure and instructions set out in such form. It is also stated that in the case of any enquiry under Sub-section (2) of Section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application. Passport information booklet referred to in the Passports Rules, 1980 also deals with "birth documents", which says that applicant born on or after 26th January, 1989, should produce an attested copy of the birth certificate, from Municipal authorities if born within territorial jurisdiction of a Municipal authority or otherwise from the office of the Registrar of Births and Deaths. Further it is also stated that applicant born before 26th January, 1989 should produce attested copy of birth certificate issued by Municipal Authority or District Office of the Registrar of Births and Deaths; or date of birth certificate of nationality certificate from the school last attended by the applicant or any other recognized educational institution; or a certified copy of extract from the concerned District Magistrate/SDM/SDO, or date of birth certificate issued by the Educational Boards or Certificate from the Chief Medical Officer on the basis of the entries in register of the Registrar of Births and Deaths. A caution has been given under instruction 4 that date of birth/place of birth one included in the Passport will not be changed under any circumstances. In case of error applicant will have to make a fresh application enclosing relevant evidence for obtaining fresh passport with correct date and place of birth.

6. It is evident from proviso to Rule 5 of the Passports Rules that during the course of enquiry under Sub-section (2) of Section 5, Passport Authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application.

7. Government of India, Ministry of External Affairs (Consular, Passport & VISA Division), New Delhi has issued Passport Manual 2001. With regard to request for change of name, Instruction Manual states that this service can be rendered by any PIA without reference to the original PIA, on submission of necessary documentary proof. It is warned that change of name affects the most important factor in identifying a person and hence, great caution needed in rendering this service on a passport. Detailed procedure while processing a request for change of name is also provided in the said manual. Change in date of birth and place of birth is referred to in paragraphs 8.1 to 8.3 of the said Manual, which read as follows:

CHANGE IN DATE & PLACE OF BIRTH:

8.1 Requests are frequently received by PIAs for a change in the date of birth. Under the Passports Act, 1967, a PIA functions in quasi-judicial capacity either in issuing grant orders or in denying passport facilities. Thus once a PIA has issued grant orders with a particular date of birth, the PIA cannot review or revise his own order. The Kerala High Court in a judgment dated 9th September, 1994 in the case of Elizabeth Mathews v. Union of India and Ors., gave directions that the petitioner may file an affidavit along with relevant documents before a First Class Judicial Magistrate, praying for an order to correct the date of birth. The magistrate may conduct such inquiries as he deems fit and pass relevant orders regarding correction of date of birth in the passport. Hence in all cases where the applicant seeks a change in the date of his birth as entered in a passport, he should be advised to produce the original copy of a declaratory order issued a First Class Judicial Magistrate in India, instructing that a correction in the date of birth may be made. This decision has been reached in consultation with the Legal & Treaties Division of MEA and the Ministry of Law & Justice (Reference letter No. V.I/405/4/28/91 dated 22.12.1994).

(NOTE:-- Only an order issued by a Judicial Magistrate of First Class and above is acceptable for effecting changes in date of birth. Order issued by Sub-Divisional Magistrate, who is only an executive magistrate is not valid) (Reference letter No. V.I/405/4/28/91 dated 13.3.1998).

8.2 Change in place of birth is also a factual change and should be entertained on the basis of a declaratory order issued by a court as in sub-paragraph 8.1 above.

8.3 In the case of both changes, of date and place of birth, the applicant should be asked to explain the reasons for giving incorrect information for the original passport and a prior check should be made with the original Passport Authority as to the proof that the applicant submitted on the last occasion regarding his date and place of birth. Since the date and place of birth find mention in the laminated inner cover (front cover) of the passport, any change would involve issue of a fresh passport and the fee for such service should be charged accordingly as for a fresh passport.

8. Bombay High Court in Jigar Harish Shah Vs. Union of India and Others, , after referring to the judgment of the Kerala High Court in Sosomma Lypo v. Union of India (1994) O.P No. 2012 of 1994-M), expressed the view that it was not proper to refer the matter to Judicial Magistrate, whose Courts are already over-burdened and further in particular when Judicial Magistrate have not been conferred with any such jurisdiction under the law, as such it would not be advisable to refer it to the Judicial Magistrate. The Court felt that instead of issuing a direction to the Judicial Magistrate, it would be appropriate to direct the Passport Authority to initiate enquiry in relation to the petitioner's claim about correct date of birth, and in case Passport Authority is satisfied with regard to the claim put forth by the petitioner, the Authority can effect necessary changes in the Passport issued. The Bombay High Court felt that it is unnecessary to refer the matter to the Judicial Magistrate, after noticing that there was no provision for carrying out correction of date of birth by the Judicial Magistrate.

9. We may indicate that Registration of Births and Deaths Act, 1969 was enacted to provide for births and deaths and matters connected therewith, which came into force with effect from 1.4.1970. Chapter 3 of the Act provides for registration of births and deaths and Section 13 is pertaining to delayed registration of births and deaths. Sub-section (3) of Section 13 empowers a Magistrate of the First Class to pass an order in case if birth or death is not registered within one year by its occurrence. Initial registration of births and deaths within a period of one year remain with the authority as provided under Sub-section (1) and Sub-section (2) of Section 13 of the Act. Section 15 of the Act deals with correction or cancellation of entries in the register of Births and Deaths. Section 15 of the Act, read with Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 provides for detailed procedure to be followed. It says where 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 or cancel the entry by suitable entry in original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation. Thus, it is clear that if it is proved to the satisfaction of the Registrar that entry being erroneous in the register of births and deaths, and it has been fraudulently or improperly made, he can make a report giving necessary details to the officer authorised 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. Learned Single Judge of this Court in Nitaben Nareshbhai Patel Vs. State of Gujarat and Others, elaborately considered the scope of above mentioned provisions, and the learned Single Judge also examined at length the provisions of Gujarat Secondary Education Act, 1972 and Gujarat Secondary Education Regulation, 1974. With regard to the change of date of birth entered in the school record, referring to Regulation 12(A), it was stated that if the student has actually left the school, no change can be effected

in the record of the school. For making a change in the name, as provided under Regulation 12(5)(1), an application in prescribed proforma with certain documents as narrated in Regulation 5(1)(A) to (D) are required to be submitted. Regulation 12(6) deals with correction of date of birth, which is permissible only when student is studying in the school, and thereafter it can be corrected by the concerned Magistrate of First Class, upon proof of correct birth date.

10. Reference may also be made to the order passed by the Division Bench of this Court in Letters Patent Appeal No. 699 of 2003 in Special Civil Application No. 8122 of 2003, decided on 11.8.2003 (unreported). In *Minor Jagdishbhai Prabhatbhai Gohil v. State of Gujarat and Ors.*, referring to Gujarat Secondary Education Regulation, this Court took the view that the only remedy available to the party with regard to correction of date of birth/place of birth is to approach the authority for redressal of his grievance as provided u/s 13 of the Act.

11. The above discussion would amply show that for carrying out correction of date of birth or place of birth or name, powers have been conferred under the Act on the Registrar as well as the Judicial Magistrate, as the case may be, and also Magistrate First Class when the correction is sought to be made in school record, which is governed by Gujarat Secondary Education Act, 1972 and Regulation framed thereunder.

12. We are therefore, clearly of the view that Passport Authorities are not expected to make their own independent enquiry when there is a dispute or difference with regard to the date of birth, place of birth or name entered in the Passport, especially when entries were once made on the basis of records produced by the Passport holder. If there is any mistake on the records already produced, based on which entries were already made, then it is for the party who seeks correction to produce documents after carrying out necessary correction by the concerned statutory authorities, Judicial Magistrate or the Civil Court, as the case may be. Passport Authorities are always competent to direct the parties to produce relevant documents either from the authorities functioning under the Births and Deaths Register or from the Judicial Magistrate or from the Civil Court, as the case may be. On production of corrected documents, Passport Authorities will immediately carry out necessary correction in the Passport.

13. We may in this connection also refer to the Circular issued by the Ministry of External Affairs on 29th October, 2007, which refers to change of date of birth and place of birth in the Passports. Following directions have been issued in the said Circular.

(a) Where an applicant claims clerical/technical mistake in the entry relating to birth/place of birth in the passport and asks for rectification/correction, in all such cases the documents produced earlier as proof of date of birth/place of birth at the time of issue of passport may be perused (if not already destroyed) by PIA. In case, it is a clerical mistake either by the applicant or the PIA, date/place

of birth correction may be allowed by issue of fresh passport booklet; in the former case, by charging fee for fresh passport and in that latter, "gratis". There is no need for declaratory court order in such cases.

(b) Where a competent authority which issued a birth certificate or an educational certificate issues any correction or amendment in date/place of birth, PIA may effect the necessary amendment in the passport without insisting on a Court order provided the same document was produced earlier with the passport application. Fresh fees will be charged.

(c) Where files have already been destroyed, PIAs could use their discretion in correction of date of birth without a Court order, where such correction is only in months (not more than two years) and applicants provide satisfactory explanation that the same document(s) was provided at the time of initial passport application. Fresh fees will be charged.

(d) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e. School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e. Municipal authorities etc., resulting in conflicting documents for valid proof, the PIA should direct the applicant to procure an order from a First Class Judicial Magistrate, to effect the change as per Passport Manual 2001 (In some States, this function is discharged by Civil Magistrates).

(e) For those born on or after 26.1.1989, birth certificate is the only approved document, as already prescribed.

14. We have already indicated that Sub-section (2) of Section 5 of the Act enables the Passport authority to ask for furnishing such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application. Therefore, it is always open to the Passport authority to insist that, when application is submitted by any person for correction of date of birth, place of birth or name, to produce relevant certificates issued by the Competent statutory authority, Judicial Magistrate or Civil Court, based on which necessary correction could be made in the Passport already issued. Passport Authority is not competent or expected to make a roving enquiry by its own to decide as to whether date of birth, place of birth or name already entered in the Passport is correct or not, which in our view, is not the function of the Passport Authority functioning under the Passport Act and the Rules and Regulations. We therefore disagree with the reasoning of the ruling rendered by the learned Judge as well as the view expressed by the Division Bench of the Bombay High Court.

15. We therefore, allow all these appeals and set aside the directions given by the learned Single Judges to the Passport Authorities to conduct its own independent enquiry to decide as to whether the correction sought for was justified or not by recording reasons, which in our view are exclusively the

functions to be discharged by the statutory authorities like Registrar of Births and Deaths, Judicial Magistrate or the Civil Court, as the case may be, depending upon the facts of each case.

16. Consequently, Civil Applications also stand disposed of.