

(2022) 08 GUJ CK 0049

In the Gujarat High Court

Case No : R/Special Civil Application No. 12767 Of 2022

Ushaben Bhogilal Vora

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Gujarat Registration Of Births And Deaths Rules, 2004 — Rule 11
Register Of Births And Deaths Act, 1969 — Section 8, 9, 15

Citation : (2022) 08 GUJ CK 0049

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Harshadkumar D Panchal, Hardik Mehta

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Leave to amend.

2. Learned advocate Ms.Bhoomi Thakore is permitted to file her Vakalatnama on behalf of respondent no.4. Registry shall accept the same.

3. Rule. Learned AGP Mr.Hardik Mehta waives service of notice of Rule for and on behalf of respondent no.1-State and learned advocate Ms.Bhoomi Thakore waives service of notice of Rule for and on behalf of respondent no.4.

4. Pursuant to the order dated 05.08.2022, respondent no.4 - Mr.Kalpesh Goswami, Registrar, Birth and Death Registration Department, Gandhinagar is present before this Court. Learned advocate Ms.Bhoomi Thakore for respondent no.4 has tendered an affidavit on behalf of respondent no.4.

The same is ordered to be taken on record.

5. Learned advocate Ms.Thakore submitted that due to misunderstanding and inadvertence, in understanding the orders passed by this Court, neither

respondent no.4 was able to file an affidavit nor he could remain present before this Court. Today, he is present before this Court and he has tendered the unconditional apology. The same is accepted.

6. In the writ petition, the petitioner is seeking a direction on respondent no.4 to consider his application for issuance of fresh birth date with corrected date and name.

7. The petitioner had filed an application seeking correction in his date of birth and also the name. The same has been rejected vide communication dated 17.08.2021 and also 10.11.2021 for the reason that he does not have any power under the provisions of Registration of Births and Deaths Act, 1969 (for short "the said Act").

8. Learned advocate for the petitioner has placed reliance on the order dated 08.07.2022 passed in Special Civil Application No.474 of 2022.

9. Learned advocate Ms.Thakore has submitted that respondent no.4 will file fresh orders on the application filed by the petitioner after necessary exercise, as envisaged under the provisions of Section 15 of the said Act read with Rule 11 of the Gujarat Birth and Death Rules, 2004 (for short "the said Rules").

10. Heard learned advocates for the respective parties and also perused the documents as pointed out by them.

11. At this stage, it would be apposite to refer to the observations made by the Coordinate Bench in the order dated 05.12.2012 passed in Special Civil Application No.8556 of 2012:

"7. Section 15 of the Act, the Registrar has power for correction or cancellation of entry in the Register of Births and Deaths Act, 1969. Section 15 of the Act 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."

8. Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 relates to correction or cancellation of entry in the Register of Births and Deaths, reads as under:

"(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 inquire into the matter and if he is satisfied

that any such error has been made, he shall correct the error (by correcting or cancelling 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 sub rule (1) if the register is not in the possession of 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 under section 15 of the Act upon production by that person a declaration setting forth the nature of the error and the facts of the case made by two credible persons having knowledge of the facts of the case.

(5) Notwithstanding anything contained in subrule (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 authorised by the Chief Registrar by general or special order in this behalf under section 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 under section 8 of section 9 of the Act."

9. In view of the aforesaid provisions, it is clear that the respondent authorities have power to make corrections in the register of Births and Deaths. It is evident from the record that the petitioner has produced all the necessary evidence on record to shown how change in the names in Birth Certificate. If respondent authority comes to conclusion, on the basis of evidence before it, that deed of adoption is true, correct, legal and valid then there is no reason for the concern authority, to deny the correction, in Birth Certificate.

10. The law on the subject is already settled. In the case of Mulla Faizal @ Fazillabanu Suleman Ibrahim V/ s. State of Gujarat and others, reported in 2000(2) GLR 1553 it has been held that the Registrar, Births and Deaths has power to correct the entries made in the Register. Further, in the case of Sukumar Mehta V/s. District Registrar, Births and Deaths, reported in 1993(1) GLR 93 and in the case of Vimal M. Patel V/ s. State of Gujarat and Another, reported in 2001(3) GLR 2484 the Court has directed the applicant authority for

making necessary correction in the records of birth of the person on production of sufficient documents. This Court while disposing of the petition being Special Civil Application No.6962 of 2002, directed the Authority to make necessary correction in the register concerned. Same direction for making correction in birth certificate was given by this Court also, while deciding Special Civil Application No.6227 of 2007. I have perused the decision in the case of Manoj Omprakash Goes Vs. State of Gujarat through Secretary & Anr. reported in GLR 2011(2) 1734 and same is applicable to the present case.”

8. The Coordinate Bench has specifically held that the respondent authority has all the powers to make correction under the provisions of Section 15 of the Registration of Births and Deaths Act, 1969 read with Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004.”

12. Under the circumstances and in light of the settled proposition of law, respondent no.4 is directed to pass an order on the application filed by the petitioner with regard to change in date of birth and the name. Respondent no.4 shall take necessary exercise, as envisaged under the provisions of Section 15 of the said Act read with Rule 11 of the said Rules and after recording necessary evidence, by a reasoned order, the application of the petitioner shall be decided, within a period of eight weeks from the date of receipt of the order of this Court.

13. In case of any adverse decision is taken by the respondent-authorities, it will be open for the petitioner to challenge the same before the appropriate forum.

14. The present writ petition is allowed. Rule is made absolute.