

(2024) 07 GUJ CK 0088

In the Gujarat High Court

Case No : Special Civil Application No. 6947 of 2023

Utsav Bharatbhai Pedhadiya Versus

APPELLANT

Vs

State Of Gujarat & Anr.

RESPONDENT

Date of Decision : 25-07-2024

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 8, 9, 15, 25

Gujarat Registration of Births and Deaths Rules, 2004 — Rule 11, 11(1), 11(2), 11(3), 11(4), 11(5), 11(6), 11(7)

Citation : (2024) 07 GUJ CK 0088

Hon'ble Judges : Sangeeta K. Vishen, J

Bench : Single Bench

Advocate : Shyam M Shah, Rituraj M Meena, Meet Thakkar

Final Decision : Allowed

Judgement

Sangeeta K. Vishen, J

1. With the consent of learned advocates appearing for the respective parties, the matter is taken up for final disposal.

2. Issue rule, returnable forthwith. Ms Meet Thakkar, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondent no.1 and Mr Rituraj M. Meena, learned advocate waives service of notice of rule on behalf of the respondent no.2.

3. The petitioner, in the captioned writ petition, has prayed for direction to the respondent no.2 – Registrar, Birth, Death & Marriage, Ahmedabad Municipal Corporation to correct birth name of the petitioner from "Bankim" to "Utsav". The petitioner, is aggrieved by the order dated 15.03.2023 passed by the respondent no.2, rejecting the request of the petitioner for correction of the name in the birth certificate. Hence, the captioned writ petition.

4. Mr Shyam M. Shah, learned advocate for the petitioner submitted that the birth of the petitioner was registered with the office of the respondent no.2 with

the date of birth mentioned as 11.09.2001. It is submitted that the name of the petitioner, i.e. "Bankim", recorded in the birth certificate, is likely to create impediment in the visa process as, all the documents, namely, Aadhar Card, Election Card, Passport, School Leaving Certificate, carry the name of the petitioner as "Utsav" and not "Bankim". It is submitted that the application was filed, requesting the respondent no.2 to carry out the correction; however, the respondent no.2, without properly considering the provisions of Section 15 of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as "the Act of 1969") read with Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 (hereinafter referred to as "the Rules of 2004"), has rejected the application. It is submitted that when the documents produced contain the name of the petitioner as "Utsav", there was no reason available to the respondent no.2 to have rejected the application. It is therefore, urged that considering the public documents on record, the respondent no.2, be directed to carry out the correction in the birth certificate of the petitioner.

5. On the other hand, Mr Rituraj M. Meena, learned advocate for respondent no.2 submitted that no error has been committed by the respondent no.2 while recording the entry in the birth certificate. The information as provided, has rightly been considered and it cannot be said that any error has been committed in passing the order dated 15.03.2023. However, it is fairly stated that the powers are available with the authorities to correct and rectify the error. It is therefore, urged that appropriate order be passed.

6. Mr Meet Thakkar, learned Assistant Government Pleader supports the stand of the respondent no.2.

7. Heard learned advocates for the respective parties and perused the record.

8. The petitioner, was born on 11.09.2001 and the factum of his birth, was registered on 13.09.2001 at Ahmedabad Municipal Corporation under the provisions of the Act of 1969. Accordingly, the respondent no.2, issued a certificate of birth containing the name of the petitioner as "Bankim".

9. Notably, the petitioner has placed on record numerous public documents, namely, School Leaving Certificate, Aadhar Card, Passport, Election Card etc. The petitioner on 08.02.2023 applied for correction in his birth name, which was mentioned as "Bankim", as the correct name of the petitioner is "Utsav". The petitioner, was required to remain present for hearing and has produced the above-referred documents; however, the respondent no.2 has passed an order dated 15.03.2023, rejecting the request of the petitioner.

10. Since the issue is as regards correction of the birth name, apt would be to consider the provisions of Section 15 of the Act of 1969, which empowers the authorities to carry out the correction or cancellation of entry in the register of births and deaths. Section 15 reads thus:-

"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.”

11. Furthermore, Rule 11 of the Rules of 2004 provides the correction or cancellation of entry in the register of births and deaths, which reads thus:-

“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 inquire 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 under section 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 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 canceled under this rule, intimation thereof should be sent to the permanent address of the person who

has given information under section 8 or section 9 of the Act.”

12. Bare perusal of the provisions of Section 15 of the Act of 1969 read with the provisions of the Rules of 2004, suggest that the authority have the powers to carry out the correction in the register of births and deaths. The Registrar has been empowered to inquire into the matter and if he is satisfied that any error has been made, he has an authority to correct the error, as provided under Section 15 of the Act of 1969.

13. In this connection, apt would be the judgment of the co-ordinate Bench of this Court in the case of Sejalben Mukundbhai Patel W/o Khodabhai Joitaram Patel vs. State of Gujarat reported in 2019 (0) AIJEL-HC-240227. This Court, has considered the aspect and powers of the authorities to rectify the birth certificate. While considering the Circular dated 18.02.2016 issued by the Chief Registrar, Births and Deaths & Commissioner (Health), State of Gujarat, it has held that executive instructions cannot override the statutory provisions. If the authority concerned, exercises the powers under Section 15 of the Act of 1969 read with Rule 11 of the Rules of 2004, it has to undertake the necessary inquiry. Paragraphs 8, 21 and 24 of the judgment, read thus:

“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-

21. 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 competent 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.

24. 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.”

14. In view of the provisions contained in Section 15 read with the provisions of the Rules of 2004, in juxtaposition with the principles laid down by this Court, there is no denial to the fact that the respondent authorities have the powers to carry out the correction.

15. Undisputedly, the public documents produced on record also suggest the name of the petitioner as “Utsav”. Had the authority concerned, conducted the requisite inquiry, it would have appreciated that in all the documents, namely, Aadhar Card, School Leaving Certificate, Passport, Election Card etc., the name of the petitioner is “Utsav”. Therefore, this Court, is of the opinion that the inquiry as envisaged under Section 15 of the Act of 1969 read with Rule 11 of the Rules of 2004, has not been properly conducted requiring interference by this Court.

16. In the result, on the basis of the documents available on record of the captioned petition and in absence of any doubt raised about its authenticity and genuineness, the communication/order dated 15.03.2023 of the respondent no.2 – Registrar, Birth, Death & Marriage, Ahmedabad Municipal Corporation, is quashed and set aside. The respondent no.2, is directed to carry out the necessary correction in the birth certificate of the petitioner, showing the name as “Bankim” instead of “Utsav”. Such exercise, shall be carried out within a period of four weeks from the date of receipt of copy of this order.

17. The petition succeeds and is accordingly, allowed. Rule is made absolute. No order as to costs.

18. Direct service is permitted.