

(2011) 07 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No. 8913 of 2011

Yagnika Kiritbhai Patel

APPELLANT

Vs

Talati cum Mantri

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Registration of Births and Deaths Rules, 2004 — Rule 11, 11(1), 11(4)

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

Citation : (2011) 07 GUJ CK 0059

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Niral R. Mehta, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Leave to impale the State of Gujarat through the concerned Secretary, as party-Respondent No. 2, is granted. The necessary amendment may be carried out, forthwith.

2. Rule. Mr. J.K. Shah, learned Assistant Government Pleader waives service of notice of Rule on behalf of Respondent No. 2. Considering the settled legal position, it is not necessary to issue notice of Rule to Respondent No. 1. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

3. This petition, under Article 226 of the Constitution of India, has been filed challenging order dated 01.07.2011, passed by Respondent No. 1, Talati-cum-Mantri, Untava Gram Panchayat, Taluka Kadi, District Mehsana. In the said order, Respondent No. 1 has stated that he has no power to effect a change in the date of birth of the Petitioner, as recorded in the Birth Register maintained by him.

4. It is the case of the Petitioner that she was born on 05.01.1989 at village

Untava, Taluka Kadi, District Mehsana, but at the relevant point of time a wrong date of birth has been entered in the Birth Register, by a relative. According to the Petitioner, her correct date of birth is 05.01.1989, and not 01.02.1990, as entered in the Birth Register. The Petitioner made an application dated 27.06.2011 u/s 15 of the Registration of Births and Deaths Act, 1969 ("The Act" for short) to Respondent No. 1. The impugned order dated 01.07.2011 has been passed upon the said application of the Petitioner, rejecting the same on the ground of lack of power vested in Respondent No. 1. Aggrieved thereby, the Petitioner has approached this Court by filing the present petition.

5. Mr. Niral R. Mehta, learned Counsel for the Petitioner has submitted that the stand taken by Respondent No. 1 in the impugned order is not correct, as the said Respondent is vested with power u/s 15 of the Act, to correct or cancel an entry in the Register of Births and Deaths. It is further submitted that by passing the impugned order, Respondent No. 1 has refused to exercise the power vested in him by the Act, in spite of the fact that the Petitioner has produced necessary documents such as School Leaving Certificate and Passport before the said authority, which bear the correct date of birth of the Petitioner, that is, 05.01.1989. The learned Counsel for the Petitioner has further contended that the refusal of the competent authority to exercise the power vested in him, as per the provisions of the Act and Rules is against the settled position of law as enunciated in the case of in the case of Nitaben Nareshbhai Patel Vs. State of Gujarat and Others, wherein it has been held that the Competent Authority has the power to correct or cancel an entry in the Register and when the said authority fails to exercise such powers, a writ of Mandamus can be issued.

6. Mr. J.K. Shah, learned Assistant Government Pleader has fairly stated that in view of the law laid down by this Court in Nitaben N. Patel v. State of Gujarat (Supra), there can be no doubt that Respondent No. 1 is vested with the power to change the date of birth of the Petitioner in the Birth Register, in accordance with law.

7. I have heard the learned Counsel for the respective parties and perused the averments made in the petition, contents of the impugned order and other documents on record.

8. The issue involved in the petition is whether Respondent No. 1 is vested with the power to make a correction in the date of birth, as recorded in the Birth Register, or not. The clear stand taken by Respondent No. 1 is that no such power is vested in him. This stand is belied by the provisions of Section 15 of the Act and Rule-11 of the Gujarat Registration of Births and Deaths Rules, 2004 ("the Rules", for short). Section 15 of the Act reads as below:

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.

9. It may now be fruitful to refer to the provisions of Rule-11 of the Rules, which are as follows:

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 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 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.

10. A combined reading of Section 15 of the Act and Rule-11 of the Rules leaves no manner of doubt that the Competent Authority is vested with the power to

make a correction or to cancel an entry of birth or death, in any Register maintained by him, subject to it being proved to his satisfaction that such correction or cancellation is required to be done. The detailed procedure to be followed has also been laid down in Rule-11.

11. Apart from the above provisions of law, the legal position in this regard is no longer rest integral. After examining several judgments, this Court has 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. That 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)

12. Examining the case of the Petitioner and the impugned order made by Respondent No. 1 in light of the statutory provisions reproduced hereinabove and the principles of law culled out in the above-mentioned judgment, it is evident that the order dated 01.07.2011, passed by Respondent No. 1 is clearly erroneous, being contrary to the above provisions of law and the settled legal position. The refusal of Respondent No. 1 to exercise power vested in him under the Act and Rules certainly calls for the interference of this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

13. In view of the above position, the impugned order dated 01.07.2011, passed by Respondent No. 1, is hereby quashed and set aside. Respondent No. 1 is directed to consider the case of the Petitioner and to exercise power vested in him u/s 15 of the Act and Rule-11 of the Rules, by deciding the application of the Petitioner dated 27.06.2011, for correction of his date of birth in the Birth Register, afresh, and in accordance with law. The necessary action shall be taken within a period of four weeks from the date of receipt of a copy of this order.

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

Direct service is permitted.