

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7678 of 2021

PATEL GHANSHYAMBHAI GANDABHAI

Versus

STATE OF GUJARAT

Appearance:

MR KEYUR A VYAS(3247) for the Petitioner(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 1,2

CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 12/04/2022

ORAL ORDER

1. With the consent of the learned advocates appearing for the respective parties, the captioned petition is taken up for final hearing.

2. Issue **Rule**, returnable forthwith. Mr. Ishan Joshi, the learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondent No.1 – State.

3. By way of this petition, which is filed under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :-

“(A) This Honorable Court may be pleased to admit writ petition.

(B) The Honorable Court may be pleased to issue a writ of mandamus or any writs or order or direction, directing the respondent no.2 authority to issued fresh Birth Certificate in the name of son of the petitioner after making necessary correction in the Birth Registration book as per the provision of the Birth and

Registration Act.

(C) Pending, hearing and final disposal of this writ petition, the Honorable Court may be pleased to direct the respondent no.2 authority to issued a fresh Birth Certificate in the name of son of the petitioner after making necessary correction in the Birth Registration book as per the provision of the Birth and Registration Act.

(D) Such other and further reliefs as and deemed fit in the facts and circumstances of this case may kindly be granted."

4. By way of present petition the petitioner seeks to challenge the legality and validity of the impugned order dated 06.04.2021 passed by the respondent No.2 – Registrar / Talati cum Mantri, Registrar (Birth-Death), Vadu Gram Panchayat, Taluka - Kadi, District - Mehsana, whereby the respondent No.2 refused to correct the date of birth of petitioner's son from dated '13.09.2003 to 13.08.2003' in the birth certificate.

5. Mr. Keyur Vyas, the learned advocate appearing for the petitioner submitted that the correct birth date of petitioner's son is '13.08.2003' instead of '13.09.2003'. He submitted that there is discrepancy in the birth date of the petitioner's son in the birth certificate. It is further submitted that the petitioner made a representation/application dated 25.03.2021 to the respondent No.2 alongwith necessary documents including copy of School Leaving Certificate, Aadhar Card, Passport along with

affidavit filed by the petitioner pointing out the error and to make necessary correction in the birth certificate of the petitioner's son. He further submitted that the respondent No.2 be directed to consider in accordance with AIR 2018 GUJARAT 92 and Special Civil Application No.4596 of 2016 empowered under Section 15 Rule 11(4) of the Registration of Births and Deaths Rules (2004). It cannot be said that there is any error committed on the part of the respondent authority however, even if, it is the registrar is authorised to correct the date of birth of petitioner's son in the birth register.

6. The respondent No.2 declined to make aforesaid changes as sought for by the petitioner on the ground that the competent authority does not have the jurisdiction to decide the said application.

7. Heard Mr. Keyur Vyas, the learned advocate appearing for the petitioner, Mr. Ishan Joshi, the learned AGP appearing for the respondent No.1 – State. Though served, none appears for the respondent No.2.

8. In view of this Court, the case of the petitioner is required to be considered in view of the fact that all the documents as referred to in the said petition came to be accepted by the Registrar of Birth and Death, however the same are declined to be considered by the competent authority while deciding the application which is filed by the present petitioner.

9. In the case of Natubhai Dharamdas Patel v. State of Gujarat and others, this Court has considered the provisions contained in Section 15 of the Act of 1969 and Rule 11 of the Rules of 2004 and after considering the decision in the case of Nitaben Nareshbhai Patel v. State of Gujarat, this Court issued necessary direction to the respondent authority for reconsideration of the request of the concerned petitioner.

10. This Court has, after considering the decision in the case of Nitaben Nareshbhai Patel v. State of Gujarat (supra), observed in Paragraphs 6.6 and 6.7 as under:

"6.6 In view of above position of law, it cannot be said that when the petitioner has made an application for correction of entry in the date of birth etc. which was recorded at the relevant time, merely because the date of birth sought to be corrected is later in point of time by three months than the originally recorded, the authority cannot exercise powers under Section 15 of the Act read with Rule 11 as above. It has to consider whether the entry in the birth date is correct or can be cancelled and denied after making inquiry and after going through relevant material which may be produced by the petitioner or which the competent authority may call for satisfying itself. It is entirely not germane to say that

there was a gap of three months between old birth date and new birth date so as to refuse to exercise power on that count.

6.7 In view of above, the competent authority respondent No.2 herein has to exercise his powers so as to consider the merits of the request of the petitioner for correction of date of birth as well as corrections in the name of mother and the name of grandfather. The respondent No.2 has got powers for correction in relation to the entries and the name also and such correction or cancellation also comes within the purview of the powers under Section 15 of the Act. In the facts and circumstances of the case, necessary directions are required to be issued to respondent No.2 authority to consider and decide the case of the petitioner again by giving due regard to the material which may be produced by the petitioner."

11. This Court once again has considered the relevant documents for undertaking the requisite changes and the said documents in view of this Court are required to be considered by the respondent no.2 in line with Section 15 of the Registration of Birth and Death Act read with Rule 11(4) of the Registration of Birth and Death Rules, 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.”

Rule 11 of the Rules of 2004 reads thus :-

"Rule 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 subrule (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 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 cancelled 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. By communication dated 06.04.2021 the respondent No.2 rejected the application of the petitioner seeking change of date of birth of petitioner's son - from dated '13.09.2003 to 13.08.2003' in the birth certificate.

13. In view of this Court, the impugned communication dated 06.04.2021 addressed by the respondent No.2 - Registrar / Talati cum Mantri, Registrar (Birth-

Death), Vadu Gram Panchayat, Taluka - Kadi, District - Mehsana, is hereby quashed and set aside. The matter is remitted back to the respondent No.2 - Registrar / Talati cum Mantri, Registrar (Birth-Death), Vadu Gram Panchayat, Taluka - Kadi, District - Mehsana, for deciding the application dated 06.04.2021 afresh. The respondent No.2 is directed to decide the application/representation dated 06.04.2021 (Annexure-C to the petition) preferred by the petitioner after taking into consideration the documents produced by the petitioner. The respondent No.2 is further directed to carry out the changes after verification in accordance with law preferably within a period of eight weeks from the date of receipt of copy of this order.

14. With the aforesaid observation and direction, the present petition succeeds and is accordingly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent. No order as to costs.

Direct service is permitted.

(VAIBHAVI D. NANAVATI, J)

Pallavi