

Sachin Natwarlal Patel vs Registrar Of Births And Deaths Cum ... on 7 January, 2019

Equivalent citations: AIR 2019 (NOC) 354 (GUJ.), AIRONLINE 2019 GUJ 352

Author: Vipul M. Pancholi

Bench: Vipul M. Pancholi

C/SCA/9564/2018

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.

9564 of 2018

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SACHIN NATWARLAL PATEL

Versus

REGISTRAR OF BIRTHS AND DEATHS CUM TALATI CUM MANTRI

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Appearance:

ABHIMANYU RATHOD(7347) for the PETITIONER(s) No. 1

NOTICE SERVED(4) for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 07/01/2019

ORAL ORDER

1. In this petition, the petitioner has prayed that the order dated 09.05.2018 passed by the respondent be quashed and set aside.
2. Heard learned advocate Mr. Rathod for the petitioner. Though served, nobody appears on behalf of respondent.
3. It is submitted by learned advocate for the petitioner that in the birth certificate issued by the respondent authority, name of the petitioner is recorded as Satishkumar instead of Sachin and name of mother of the petitioner is recorded as Bhikhiben instead of Bhagwatiben. It is contended that petitioner, therefore, requested the respondent authority by filing an application dated 07.05.2018 to correct the name of the petitioner as well as name of the mother of the petitioner in the birth certificate. Along with the said application, petitioner has also annexed relevant documentary evidence in which the correct names of the petitioner as well as his mother are reflected. However,

the respondent has rejected the application of the petitioner by the impugned order dated 09.05.2018 without considering the said documentary evidence and only relying upon the circular dated 18.02.2016 issued by the Chief Registrar of Births and Deaths and Commissioner of Health, State of Gujarat. He, therefore, urged that impugned order be set aside.

4. This Court has perused the material placed on record and considered the submissions canvassed by learned advocate for the petitioner. It is revealed from the record that the request of the petitioner to change his name and name of his mother in the birth certificate issued by the respondent is rejected by the respondent without considering the documentary evidence produced by the petitioner. While rejecting the request, the respondent has placed reliance upon the circular dated 18.02.2016 and not even considered the provisions of Section 15 of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as 'the Act' for short) and Gujarat Registration of Births and Deaths Rules, 2004 (hereinafter referred to as 'the Rules' for short) framed thereunder. So far as the circular dated 18.02.2016 is concerned, this Court has considered the said circular in number of matters and this Court has observed that the said circular is having guiding factor at the time of considering the request of the concerned applicant for change of date of birth or the name in the birth certificate. However, the said circular cannot override the statutory provision.

5. This Court has passed an order dated 13.03.2018 in Special Civil Application No.2966 of 2018 wherein the circular dated 18.02.2016 is considered by this Court and thereafter directed the authority to decide the application of the concerned petitioner for change of date of birth after considering various documentary evidence.

6. This Court, in Special Civil Application No.11281 of 2015, has passed an order on 26.02.2016, wherein this Court, after considering the decision rendered by this Court in the case of Nitaben N. Patel v. State of Gujarat, reported in 2008 (1) GLR 884 and after considering the provisions contained in Section 15 of the Act and Rule 11 of the Rules, has observed in para 6.7 and 7 as under:

"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.

7. In the circumstances, this petition is disposed of by directing respondent No.2 authority to consider the case of the petitioner notwithstanding communication dated 28.07.2015 above. It stands set aside in view of directions given above. Respondent No.2 authority is free, and the petitioner is at liberty, to produce such and further documents and evidence which may be considered in respect of the claim of the petitioner."

7. Keeping in view the aforesaid decision, if the facts of the present case are examined, it is revealed that the respondent has rejected the application of the petitioner only relying upon circular dated 18.02.2016 and not at all considered the documentary evidence. In that view of the matter, impugned order dated 09.05.2018 is quashed and set aside. Respondent is directed to decide the application of the petitioner afresh after considering the documentary evidence produced by him and keeping in view the aforesaid decisions rendered by this Court as well as the provisions contained in Section 15 of the Act and Rule 11 of the Rules, in accordance with law, within a period of six weeks from the date of receipt of this order. It is clarified that this Court has not examined the merits of the case.

8. With the aforesaid observations and directions, petition is disposed of. Direct service is permitted.

(VIPUL M. PANCHOLI, J) Jani