

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2710 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
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Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR CHINTAN S POPAT(5004) for the Petitioner(s) No. 1

MR NIKUNJ KANARA AGP for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 12/03/2026

JUDGMENT

- RULE* returnable forthwith. Mr.Nikunj Kanara, learned Assistant Government Pleader waives services of notice of rule on behalf of the respondent - State Authorities.
- With the consent of learned counsel appearing for the respective parties, the present petition is taken up for final hearing.
- Present petition is filed by the petitioner under Article 226 of

the Constitution of India and under the provisions of the Births and Deaths Registrations Act, 1969 with the following reliefs:-

(A) *Be pleased to allow this petition.*

(B) *Your Lordships be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction by quashing and setting aside the written communication / impugned order dated 15/21.12.2023 by directing the respondent no.2 authority for to amend and / or correct or mention the name of petitioner in the column of 'father name' as [REDACTED] in place of [REDACTED] in the birth certificate of Daughter of petitioner and to issue fresh birth certificates accordingly, in the interest of justice.*

(B1) *Your Lordships be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction by quashing and setting aside the written communication / impugned order dated 15/21.12.2023 by directing the respondent no.2 authority for to amend and / or correct or mention the name of petitioner in the column of 'mother's name' as [REDACTED] in place of [REDACTED] in the birth certificate of Daughter of petitioner and to issue fresh birth certificates accordingly, in the interest of justice.*

(C) *To pass such other and further orders necessary in the interest of justice.*

4. Short facts of the present petition are that wife of petitioner namely [REDACTED] earlier had married with one [REDACTED] and out of said wedlock, a daughter namely [REDACTED] was born on 30.09.2015. That divorce took place between [REDACTED] and [REDACTED] on 02.03.2022 and both were separated through divorce deed by mutual consent and all

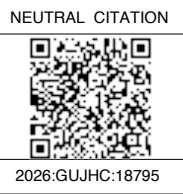


responsibilities and custody of minor [REDACTED] had taken by [REDACTED] and since then [REDACTED] was residing with the wife of the present petitioner.

4.1 It is contended that wife of the petitioner and mother of minor daughter got married with petitioner - [REDACTED] and both husband and wife had adopted minor girl [REDACTED] and Adoption Deed was executed between the parties, which came to be registered before the office of Sub Registrar at Manavadar. It is also contended that the variation in the name of father of minor child of the petitioner in different documents which creates difficulties in their future and, hence, the petitioner has to got correction / replace the name of petitioner as father of minor girl instead of name of their biological father into the Birth Certificate by entering the name of petitioner in column of father's name as "[REDACTED]" in place of "[REDACTED]".

4.2 It is contended that the petitioner applied before respondent No.2 for correction of name of petitioner in column of father name in birth certificate, but the respondent No.2 has refused to accept his request on the ground that the order of the Competent Court is required for change or correction in the birth certificate and there is no any provision except the order of the Court and passed the order dated 15/21.12.2023.

5. Being aggrieved and dissatisfied with inaction on the part of the respondents - authority, the present petition is filed.



6. Mr.Chintan Popat, learned advocate for the petitioner, has submitted that the impugned order passed by respondent No.2, deserves to be quashed and set aside as the said respondent has not exercised the jurisdiction vested upon him to correct the the name of father and name of mother in the Birth Certificate. As such, the said respondent has failed to discharge his statutory duties and to exercise the power conferred upon him by way of the statute, which has resulted in serious miscarriage of justice.

6.1 It is submitted that this issue is no longer res integra and this Court has, in the case of **Nitaben Nareshbhai Patel Vs. (The) State of Gujarat and Others**, reported in **2008 (1) GLH 556**, held that when the Competent Authority fails to exercise the powers conferred by the statute, a writ of mandamus can certainly be issued to such authority to act in accordance with the provisions of the statute. It is, therefore, submitted that the prayers made in the petition be granted.

7. Mr.Nikunj Kanara, learned Assistant Government Pleader, submits that in view of the principles of law enunciated in the judgment of *Nitaben Nareshbhai Patel v. (The) State of Gujarat and Ors.* (supra), the Court may pass an appropriate order.

8. This Court has heard learned counsel for the respective parties, perused the averments made in the petition and documents annexed thereto, including the impugned order. In this context, it would be pertinent to refer to the provisions of Section 15 of the Act, which

confers the power of correction or cancellation of an entry in the Register of Births and Deaths. The said provision 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 correct 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. In addition thereto, reference may be made to Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004, which lays down the procedure for correction or cancellation of an entry in the Register of Births and Deaths. This rule is reproduced as below:

"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 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."

10. A combined perusal of Section 15 and Rule 11, as reproduced above, leaves no manner of doubt that respondent No.2 is vested with the power to make a correction in an entry in the Register of Births and Deaths and, therefore, in the Birth Certificate.

11. In *Nitaben Nareshbhai Patel v. (The) State of Gujarat and Ors.* (supra), this Court has exhaustively dealt with the refusal of the Competent Authority to exercise power in cases similar to the present one and has held as below:



“26. Thus in the nutshell, what emerges from the factual and legal submissions made and conclusions arrived in earlier paragraph is as under:

(A) In view of the provisions of Section 28 of the Repealed Act of 1886 and provisions contained in Sections 29 and 31 of the Act of 1969, by which erstwhile provision of correction/cancellation of entries in the register of birth and death, which is not in derogation, remained alive in Section 15 of the new Act and, therefore, the authority is empowered to correct erroneous entries in the register of birth and death, even in a case where registration was made prior to 1.4.1970 i.e. the date on which new Act of 1969 came into force and correction of error is sought for later on.

(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) The above proposition of law stand fortified by the decisions of this Court in two Letters Patent Appeal Nos. 195/1999 and 231/2001 in the case of Mulla Faizal & Faxilabanu Suleman Ibrahim and Registrar, Birth and Death Rajkot Municipal Corporation (Supra), there is no doubt that the expression “erroneous in form or substance” in Section 15 of Act of 1969 is an expression of vide amplitude and does not confine to simple typing errors or clerical mistakes and no guidelines or circulars can take away powers of the Register of making correction in entries which are erroneous in form or substance in register as envisaged under Section 15 of Act of 1969 and Rule 11 (1) to (7) of the State Rules, 2004.

(E) When the authority empowered to exercise power under Section 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.

(G) That even Section 27 of the Act of 1969 is pertaining to delegation of powers and Section 32 empowers to concerned Government to remove the difficulties and, therefore, the appropriate Government or any authority upon whom the powers are delegated can act in accordance with scheme of the Act and appropriate directions can be given accordingly.

(H) So far as matters arising out of the Regulation 12(A) of the Gujarat Secondary Education Regulation, 1974 is concerned, law as on date is governed as in the case of Soorat Jessomal Khanchandani (supra) and Thakore Nilesh Shishirbhai (supra).

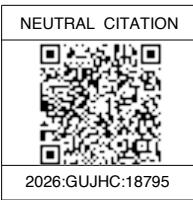
(I) So far as the matters arising out of the Passport Act, 1967 and Rules, 2000, is concerned, law as on date is

governed as in the case of REGIONAL PASSPORT OFFICER (supra) in view of admission of L.P.A. No.1673/2006 by an order dated 30.7.2007 by which the judgment of the learned Single Judge in Special Civil Application No.2716/2006 is stayed."

(emphasis supplied)

12. The principles of law enunciated in the above quoted judgment would squarely apply in the present case. It is disheartening to note that even though this Court has, on various occasions, rendered a plethora of judgments setting aside the orders whereby the Competent Authority has refused to exercise the jurisdiction vested in him by the statute, the same kind of stereotyped orders are being passed time and again, refusing to exercise the power vested by law. It would, therefore, be appropriate to direct the State Government to take appropriate steps, so that the judgments rendered by this Court in this regard are brought to the notice of the competent authorities under the Act so as to put an end to continuous multifarious litigation on an issue that has already been decided. Respondent No.1 is, therefore, directed accordingly.

13. Insofar as the impugned order in the present petition is concerned, it is clear from a perusal thereof that respondent No.2 has simply refused to exercise the jurisdiction vested in him by the statute, by conveniently putting the onus on the Court. When the statute has conferred power upon the said respondent, it is incumbent upon him to exercise it judiciously and in accordance with law. There is no justifiable reason why respondent No.2 has refused to act in accordance with law and decide the application of the petitioner. Hence, the impugned order deserves to be quashed and set aside.



14. In view of the aforesaid facts and circumstances of the case, the petition is partly allowed. The impugned order / communication dated 15/21.12.2023 is quashed and set aside. The petitioner shall prefer an application before the respondent - authority within a week and the respondent - authority is directed to decide an application as early as possible preferably within a period of four weeks and in accordance with law. Rule is made absolute to the aforesaid extent. *Direct service is permitted.*

(HEMANT M. PRACHCHHAK,J)

V.R. PANCHAL