

(2008) 02 GUJ CK 0025

Gujarat High Court

Case No: Special Civil Application No"s. 6352, 19896, 21788, 23471, 23616, 28336, 29164
of 2007

Nitaben Nareshbhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision: Feb. 21, 2008

Acts Referred:

- Birth and Deaths Registration Rules, 1973 - Rule 12
- Births, Deaths and Marriages Registration Act, 1886 - Section 28, 31, 36, 37
- Constitution of India, 1950 - Article 226
- General Clauses Act, 1897 - Section 21
- Gujarat Registration of Births and Deaths Rules, 2004 - Rule 11, 11
- Gujarat Secondary Education Act, 1972 - Section 54
- Gujarat Secondary Education Regulations, 1974 - Regulation 12, 12(5)(1), 12(A), 12A(1), 12A(2)
- Registration of Births and Deaths Act, 1969 - Section 13, 13(1), 13(2), 13(3), 14

Citation: (2008) 1 GLH 556 : (2008) 1 GLR 884

Hon'ble Judges: Anant S. Dave, J

Bench: Single Bench

Advocate: Chetan K. Pandya, Special Civil application No. 23471 of 2007, Bhunesh C. Rupera, Special Civil application No. 23616 of 2007, Kirit Patel, Special Civil application No. 21788 of 2007, Pankaj Soni, Special Civil application No. 29164 of 2007, Niraj Mehta, Special Civil application No. 6352 of 2007, H.T.H. Hakim, Special Civil application No. 28336 of 2007, for the Appellant; Satyam Chhaya, A.G.P. for Respondent No. 1 Jirga D. Jhaveri, Rule not Recd. Back for Respondent No. 3 Dhaval Nanavati, for Respondent No. 2 Hemant Munsha, H.S. Munshaw, for the Respondent

Final Decision: Allowed

Judgement

Anant S. Dave, J.
Rule.

2. Learned Advocates appearing for the Respondents waive service of Rule in all these writ petitions.

3. All these writ petitions involve common question of law and submissions made by the learned Advocates appearing for the petitioners as well as respondents are almost similar in the context of the subject-matter of the petition, all the writ petitions are decided finally by common order as agreed by all concern.

4. Before dealing with factual aspects, considering the nature of controversies about powers of competent authority under the Act to correct or cancel entry recorded in the register of Births and Deaths and to what extent correction and cancellation can be made in the said register, it is necessary to refer to statutory provisions of the Act, Rules and also guidelines framed by the respective Government in this regard.

All the writ petitions under Article 226 of the Constitution of India involves mainly three different statutes namely Registration of Births and Deaths Act, 1969 (Act of XVIII of 1969), Regulation 12(A) of Gujarat Secondary Education Regulation, 1974 framed in exercise of power conferred by Section 54 of the Gujarat Secondary Education Act, 1972, and Passport Act, 1967 (Act of XV of 1967) and Rules, 1980 made thereunder.

Along with the statutory provisions contained in above Acts, various decisions of this Court on the subject with regard to the interpretation of the provisions of the statute are also necessary to be referred to.

5. It is to be noted that, as early as in 1886, Registration of Births, Deaths and Marriages Registration Act, 1886 governed by the Act named as the Births, Deaths and Marriages Registration Act, 1886 (for short "the repealed Act) having six chapters consisting of 37 Sections and particularly Section 28 was pertaining to correction of entry with regard to date of Birth and Death which empowered Registrar of Births and Deaths to correct any entry into the register, when error was erroneous in form or substance and subject to Rules framed in this regard. Section 36 of the above Act of 1886 empowered State Government to frame rules to carry out the purposes of the Act.

Later on, the Registration of Births and Deaths Act, 1969, an Act No. 18 of 1969 (for short "Act of 1969") was enacted to provide for registration of Births and Deaths and for matters connected there-with which came into force w.e.f. 1-4-1970. The above Act, is divided into 5 Chapters containing Section 32 and Sections 29 and 31 are pertaining to repeal and sufferings. Section 29 clearly mentions that nothing in this Act shall be construed to be in derogation of the provisions of Births, Deaths and Marriages Act, 1886, and Section 31 states that subject to the provisions of Section 29, as from the coming into force of this Act in any State or part thereof, so much of

any law in force therein as relates to the matters covered by this Act shall stand repealed in such State or part, as the case may be.

6. Thus, this Act of 1969 is not in derogation of Act No. 6 of 1986. Thus, whatever is not inconsistent of Act of 1886 clearly remain operative as on date.

The Chapter II provides for Registration Establishment at Central, State, District and Local authority level.

7. That new Act of 1969 in Chapter 3 which provides for registration of Births and Deaths and Section 13 is pertaining to delayed registration of births and deaths and Sub-section (3) of above Section 13 empowers a Magistrate of the First Class to pass an order in case if birth or death is not registered within one year by its occurrence. Otherwise, initial registration of births and deaths within a period of one year remain with the authority as provided under Sub-section (1) and Sub-section (2) of Section 13 of the Act. Section 14 deals with registration of name of child and Section 15 is pertaining to correction or cancellation of entries in the register of Births and Deaths. We are concerned with Section 15 of the Act of 1969 which provide for correction or cancellation of entry in the registration of Births and Deaths.

8. Section 30 of the Act, 1969 empowers State Governments to frame Rules to carry out the purpose of the Act and initially model Rules were framed by the Central Government and so far as State of Gujarat is concerned in exercise of power u/s 30 of the Act, registration of Births and Deaths Rules, 1973 were framed which came into force w.e.f. 18-4-1973 and under the above Rules, certain guidelines were issued by the State of Gujarat. However, later on, in view of powers conferred by Section 30 of the Act, 1969, the State of Gujarat framed new rules pertaining to registration of Births and Deaths to be called as the Gujarat Registration of Births and Deaths Rules, 2004 vide notification dated 9th January, 2004 and came to be published in Official Gazette on 22nd January, 2004 and as on date the above Rules framed by the State of Gujarat are in force. The above Rules, framed by the State of Gujarat in 2004, provided Rule 11 for correction or cancellation of entry in the register of Births and Deaths and Chief Registrar, Births and Deaths, State of Gujarat, Gandhinagar in September, 2005 published certain guidelines which had basis on the Handbook of Civil Registration published by the Registrar General of India, Ministry of Home Affairs, Government of India. The above guidelines in Chapter 5, Clause 5.8 provide for correction or cancellation of error in the register of Births and Deaths.

9. Therefore, Section 15 of the Act of 1969 read with Rule 11 of Gujarat Registration of Births and Deaths Rules, 2004 (for short "Rules of 2004") which has come into force w.e.f. 22-1-2004 based on the model rules published in the Handbook of Civil Registration by the Registrar General of India the Ministry of Home Affairs and guidelines contained in the booklet published by the Chief Registrar, Births and Deaths, State of Gujarat, Gandhinagar in September, 2005 govern the field.

10. So far as statutory provisions and rules are concerned Section 15 of the Act reads as under:

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 or cancel the entry by suitable entry in original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation....

Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 reads as under:

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 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....

11. That Registrar General, Ministry of Home Affairs has published the Handbook on Civil Registration in December, 1997 which contains the Model Rules which incorporate the amendments which have taken place after 1993. It also contains various guidelines under different heads about actual procedure to be followed in case of correction of entries in the register as envisaged u/s 15 of the Act. Likewise, the guidelines contained in the booklet published by the Chief Registrar, Births and Deaths of State of Gujarat, Gandhinagar in September, 2005 also contained procedure to be followed with regard to registration of Births and Deaths.

12. In a booklet published in a vernacular Gujarati by the Registrar General of India, Ministry of Home Affairs, Govt, of India in Chapter 2, Clause 2.3 mentions about administrative structure for registration of the authority and the officers empowered under the Act of 1969 and Rules framed under Gazetted Rules, 2004.

2.3. The administrative set-up for registration of Birth and Death in the State is as under : the above set-up is in consonance with Chapter II of the Act of 1969.

Chief Registrar, Birth and Death	Commissioner (Health)
Dy. Chief Registrar, Birth and Death	Additional Director (Statistics)
Additional Dy. Chief Registrar, Birth and Death	Dy. Director (Statistics)
District Registrar, Birth and Death	Chief District Health Officer/ District Health Officer
Taluka Registrar, Birth and Death	Taluka Development Officer
Registrar (Rural)	Talati-cum-Mantri
Forest Area	Ranger, Forester
Independent Area	Authorised Officer
Corporation	Health Officer
Municipality	Chief Officer Health Officer

Thus, complete administrative machinery is provided for Registration of and Deaths under the Act.

13. Chapter 9 of the "Handbook" of Registrar General, Ministry of Home Affairs, Government of India, refer to registration procedures & practices and Clauses 9.6 and 9.7 are about corrections and cancellations of name of the child entered into register. Particularly, Clause 9.7. is about errors of different types that may be

clerical or formal, error in substance, fraudulently or improper entry and the procedure to be followed therein are also in conformity with Section 15 of the Act. Clauses 9.6 and 9.7 reads as under:

Corrections and cancellations:

9.6. Registration can be done without the name of the child. A provision has been made in the State rules enabling the Registrar to enter the name of the child in the register in respect of the birth already registered by him after getting the information from the parent or guardian of such child within a period of one year from the date of registration. The name of the child can also be entered even after one year on payment of prescribed late fee.

9.7. Rules have also been framed for correction or cancellation of an entry in the register of Births and Deaths. The Registrar can correct or cancel any entry in the register which is erroneous in form, or substance, subject to the provisions of these rules. The errors may be of different types : (i) clerical or formal error, (ii) error in substance, and (iii) fraudulent or improper entry. The procedures to be followed in each case are as follows:

(i) Clerical or formal error : In this case, the Registrar must inquire into the matter and satisfy himself that such an error has been made. He should correct the entry and send an extract of the entry showing the error and how it has been corrected to the State Government or the officer specified in this behalf. If however, the register is not in his possession, then he must make report to the State Government or the officer specified in this behalf and call for the register for enquiring into the matter and making necessary correction in the register. In this case, the corrections would require countersigning by the specified authority.

(ii) Error in substance : In this case, the Registrar can correct the entry upon production of declaration setting forth the nature of the error and the true facts of the case made by two credible persons having knowledge of the facts of the case. All corrections should be reported along with necessary details to the State Government or the officer specified in this behalf.

(iii) Fraudulent or improper entry : This is an offence punishable under the Act. Therefore, the Registrar must report to the Chief Registrar or the officer specified u/s 25 of the Act and take necessary action on hearing from him.

That Rules of 2004 take into consideration above aspects and provide an elaborate procedure for correction of an error recorded in the register.

14. So far as High Court of Gujarat is concerned there are two decisions of Division Bench, one is in the case of [Mulla Faizal @ Fazilabanu Suleman Ibrahim Vs. State of Gujarat and Others](#), as reported in Letters Patent Appeal No. 195 of 1999 is the authority with regard to exercise of power by the Court in writ jurisdiction to grant proper relief to a citizen with regard to similar relief.

15. That, in the above decision, the Court has considered Section 15 of the Act of 1969 and the then existing Rule 12 of Births and Deaths Rules, 1973 framed by the State of Gujarat, which came to be superseded by Rules of 2004. It is to be noted that erstwhile Rules of 1973 of State Rules were based on the model Rules and particularly Rule 12 of the above model Rules as framed by the Registrar General of India, Ministry of Home Affairs, Government of India.

Thus, the Division Bench of this Court considered Section 15 of the Act of 1969 and Rule 12 of the State Rules of 1973 prevalent at that point of time and based on the model Rules framed by the Government of India, and thereafter, in Para 10 the Court has directed as under:

10. Since, the respondent-authorities, who are in charge of maintenance of Register of Births, have been enjoined with a duty to entertain applications for correction of entries in the Register and can for that purpose make necessary enquiries, the learned single Judge was not right in relegating the appellant to a remedy of civil suit for seeking a declaration regarding his sex. In our considered opinion, the authorities, under the provisions of Section 15 read with Rule 12 of the Rules framed thereunder, are duty-bound in law to make necessary enquiries and if necessary to obtain medical opinion to grant change of entry in the birth register regarding the sex of the appellant and to issue to him a corrected birth certificate. We find absolutely no legal impediment in the same and the reliance on the letter quoted above is totally misplaced. The said letter does not at all apply to the case like the present one. Here, the change in the entries in the Register is sought not on the basis of change of sex, but on the basis that the appellant was born as a natural male although with some deformity in his sexual organ. It would not be proper for the Court to relegate the appellant to an onerous remedy of civil suit even if that be held to be available to him.

16. It is to be noted that in the above decision, this Court was concerned with Section 15 of the Act, 1969 and Rule 12 as framed under Births and Deaths Rules, 1973 framed by the State of Gujarat, now new Rule 11 which is already reproduced in the earlier Paragraph, deal with correction of entry in the Birth and Death register.

17. So far as another decision is concerned, it is also in the case of "Registrar, Birth and Death, Rajkot Municipal Corporation v. Vimal M. Patel Advocate, in Letters Patent Appeal No. 231 of 2001 dated 30-3-2001 and after relying on Section 15 of the Act of 1969 in Para 4.1, the Court has held as under:

4.1 It will be seen from the above provision that the Registrar is empowered to correct the entries or cancel them by suitable entry in the margin without any alteration of the original entry and he shall sign the original entry and add thereto the date of the correction or cancellation. Such correction can be made when the Registrar is satisfied that any entry of a birth or death in any register kept by him

under the Act is erroneous in form or substance or has been fraudulently or improperly made. Such power has to be exercised subject to the rules that may be made by the State Government with respect to conditions on which and the circumstances in which the entries may be corrected or cancelled. The expression "erroneous in form or substance" is an expression of wide amplitude. It cannot be confined only to simple typing errors or clerical mistakes. It is the duty of every Registrar to keep in the prescribed form, a Register of Births and Deaths for the registration area or any part thereof in relation to which he exercises jurisdiction. As regards births, Section 8 of the said Act provides that it shall be the duty of the persons mentioned in Classes (a) to (e) to give or cause to give the information to the Registrar of the particulars required to be entered in the forms prescribed by the State Government, u/s 16(1) for register of births. The provisions of the said Act are aimed at ensuring sanctity of the births and deaths registers. It is the duty of the Registrar to see that the births and deaths registers are correctly maintained. An error may creep in an entry either at its inception or at a later point of time the entry may become erroneous. It can be that the entry when it is read would be erroneous in form or substance. When the Registrar is satisfied that the entries at any given point of time, when read, would be erroneous in form or substance, he can effect a correction. He is not to obliterate the original entry, but is required, with a view to ensure that the entry whenever referred is not erroneous in form or substance, to make a suitable entry in the margin without any alteration in the original entry showing the correction that according to him would prevent any error being reflected in form or substance of the entry as it stood. Since, the powers of the Registrar are wide enough to ensure that the entry made in the Register does not mislead or give an incorrect impression, it is his duty to ensure that suitable correction is made in the entry to ensure the authenticity of the Register by reflecting the correct state of affairs in the marginal entry that he is required to make. No direction can be issued by any authority to take away the powers of the Registrar of making correction in entries which are erroneous in form or substance in the Register. The Registrar, therefore, was not justified in referring to some guidelines and reading them so as to curtail his own powers u/s 15 of the Act. No guidelines can be issued against the statutory provisions empowering the Registrar to make corrections except by way of rules made by the Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled as provided in Section 15 itself. In our opinion, therefore, the learned single Judge was justified in setting aside the impugned order and directing the appellant Registrar to entertain the application of the respondent and effect necessary correction in the register in accordance with the provisions of Section 15 of the Act. The appeal is, therefore, summarily dismissed.

18. The other decision reported in the case of [Dr. Sukumar Mehta Vs. District Registrar, Births and Deaths](#), where also learned single Judge relied on Section 15 of the Act, and after considering other provisions of the Act and circumstances

concerning the particular statute are silent namely "casus omissi" the Court felt that by issuing necessary command such gap can be filled in and directed the authority to correct the name of the petitioner. On similar lines there are other decisions reported in the case of [Vimal M. Patel Vs. State of Gujarat and Another](#), and other unreported decisions.

19. So far as, earlier decision by this Court in the case of Dr. Sukumar Mehta (supra) later on the Apex Court in the case of [Union of India \(UOI\) and Another Vs. Shardindu](#), held that when language of the provision is plain and unambiguous, the question of supplying "casus omissus" does not arise and the Court can interpret a law but cannot legislate. Therefore, recent trend for supplying gape in legislation is concerned, the Court will be loath in exercise of power under Article 226 of the Constitution of India.

20. In the case of State of Jharkhand and Anr. v. Govind Singh reported in 2805 (10) SCC 437, the Apex Court has held in Paras 21 and 22 as under:

21. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle, a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or Section must be construed together and every Clause of a Section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the while statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. In Artemiou v. Procopiou All ER 544 I, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. I.R.C. where at AC 577 All ER 664 I he also observed. "This is not a new problem, though our standard of drafting in such that it rarely emerges.")

22. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt". "But", on the other hand, sit is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom". See Fenton v. Hampton. A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature,

or on the principle *quod semel aut bis existit praeterunt* legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute-caws *omissus et oblivioni datus dispositioni communis juris relinquitur*; "a casus omissus", observed Buller, J. in *Jones v. Smart* TR at 52 : ER at 967, "can in no case be supplied by a Court of Law, for that would be to make laws".

21. In the present case, when Section 15 of the Act of 1969 and Rule 11 of the State Rules, 2004 are very clear with regard to correction of entries in the register of Births and Deaths, and question of supplying "casus omissus" does not arise as such, however, this Court will not hesitate to hold that writ petition is maintainable under Article 226 of the Constitution of India, in case when the authority concerned has failed to exercise its statutory power envisaged in the above Section 15 of the Act of 1969 and Rule 11 of the State Rules, 2004.

22. In view of the above, it is clear that Section 29 of the Act of 1969 protects provisions of earlier Act of 1886 and unambiguous language of this Section that nothing in the new Act is to be construed in derogation of Act 6 of 1886 and Section 31 again makes it clear that subject to provisions of Section 29, the earlier Act shall stand repealed. Thus, in the new Act earlier provisions with regard to correction or cancellation of entry are very much in existence and remain unaffected to the extent provided as above.

23. Therefore, Section 28 of the Births, Deaths and Marriages Registration Act, 1886, Section 15 of the Registration of Births and Deaths Act, 1969, Rule 12 of the erstwhile Registration of Birth and Deaths Registration Rules, 1973 as framed by the State Government on the basis of model Rules and Rule 11 of the Gujarat Registration of Births and Deaths Rules, 2004 now in force, along with the guidelines of the Central Government and the State Government issued by the Registrar General of India and Registry of Births and Deaths, it is clear that none of the above Sections and rules and guidelines restrict the authority to correct any erroneous entry in form or substance made in the register of Births and Deaths. That, Act of 1969 clearly envisages that an Act is enacted to provide regulations of Births and Deaths and for matters connected therewith, while the Births, Deaths and Marriages Registration Act, 1886 (now repealed) was enacted to provide the voluntary registration of certain Births, Deaths and Marriages. Now in view of the decision of the Apex Court for compulsory registration of Births, Deaths and Marriages in the country and when there is clear jurisdiction vested with the authority concerned as envisaged u/s 15 coupled with Rule 11 of the State Rules and procedure explained in the guidelines, there is no room for doubt that authority has power to correct or cancel the entries in the register of Births and Deaths.

24. When concerned authority fails to exercise the power conferred by the statute and the person has legal right under the statute, on demand denied by the authority illegally, for removing such illegality, writ of mandamus can certainly be

issued to such authority to act in accordance with the provisions of the statute. Section 15 of the Act of 1969, read with Rule 11 of Rules of 2004 provide for the detailed procedure as held by the two Division Bench of this High Court, where proof to the satisfaction of the Registrar that any entry of birth and 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 on 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. The above procedure envisages that competent authority namely Registrar or designated authority can hold reasonable inquiry to ascertain the correctness or otherwise of the entry sought for and if it is proved to his satisfaction about entry being erroneous in form or substance or has been fraudulently or improperly made subject to the provisions of rules and regulations the powers can be exercised.

25. In all the above cases when the authority concerned has either refused to exercise the power to correct the entries in the register on the basis of non-availability of the jurisdiction or though the jurisdiction is available, not to exercise such on erroneous presumption that such authority has no such power under the Act, this Court has no option but to issue proper direction to the authority to exercise power under the statute.

26. So far as the decisions relied on by learned Advocate appearing for the Corporation etc. about correction of date of birth, name or place of birth under Gujarat Secondary Education Act, Rules and Regulations made thereunder in the school leaving certificate, the same field is being governed by different set of rules namely Gujarat Secondary Regulation Act, 1972 and Regulation 12 framed in exercise of power u/s 54 of the Act of the said regulations envisaged to the provisions as contained in Regulation 12A(1) to (7).

27. As per Regulation 12(5)(1) provided for making a change in the name in a prescribed proforma application with certain documents as narrated in Regulation 5(1)(A) to (D) and Regulation 12(6) is pertaining correction of date of birth can be permitted by the school authority only when the student is studying in the school, and thereafter, by the concerned Magistrate of First Class by furnishing necessary proof of correct birth date. That so far as Regulations 12(A) of Gujarat Secondary Education Regulation, 1974 is concerned there is an oral order dated 11-8-2003 passed in Letters Patent Appeal No. 699 of 2003 in Special Civil Application No. 8122 of 2003 in a case of Minor Jagdishbhai Prabhatbhai Gohil v. State of Gujarat and Ors. the Division Bench while confirming the order of learned single Judge held that "only remedy to the appellant with regard to correction of date of birth is to approach learned Magistrate, First Class, having jurisdiction in the matter for

redressal of his grievance as provided u/s 13(3) of the Act. Therefore, the learned single Judge was justified in concluding that the appellant has alternative remedy and that it was not necessary to entertain the petition filed under Article 226 of the Constitution". Thus, the Division Bench in the above case also specifically and authoritatively did not pronounce about maintainability of the petition in such type of case under Article 226 of the Constitution of India but expressed desirability not to entertain the petition in view of the availability of the alternative remedy.

As earlier mentioned in this judgment, Section 13(3) of the Act of 1969 empowers Magistrate to exercise power in cases of delayed registration of Births and Deaths, which have not been registered within one year of its occurrence. So far as, correction or cancellation of entry in the register of Births and Deaths is concerned, it is governed by Section 15 of the Act of 1969 and Rule 11 of the state Rules, 2004.

28. In this type of cases again another decision dated 27-2-2007 of learned single Judge (Coram : Mr. Justice D.A. Mehta) passed in Special Civil Application No. 25312 of 2006 in the case of Soorat Jessomal Khanchandani v. Gujarat Secondary & Higher Secondary Education Board and Ors. where prayer was made by the petitioner to issue a writ of mandamus or any other direction to correct name of the petitioner in the school record and in Paragraph 6, learned single Judge has observed as under, and thereafter, allowed the petition directing the concerned authority to pass appropriate order to exercise power under the Act.

6. In principle, the stand of the respondent-Board appears to be correct. However, one has also to bear in mind the requirement of enacting Regulation 12A(6) of the Regulations. Once, the said provision is meant for curbing malpractice and preventing unscrupulous persons from obtaining an advantage which such persons do not deserve, the respondent-Board has also to take into consideration genuine cases wherein errors have occurred. One cannot lose sight of the fact that when human beings are involved in preparation and maintenance of records there is every likelihood that an error may occur by a slip of pen. Not only that, it is also not possible for a person to locate the error at a given point of time and such a lapse may occur for various reasons. However, for such a lapse a genuine bona fide case where an error has crept in the records cannot be thrown out only on the ground of technicalities. The respondent-Board must bear in mind that rules are meant to be of assistance and for the persons. The rules cannot override in all circumstances and in all fact situations. There has to be a distinguishing line, distinguishing between genuine and bona fide case and cases involving unscrupulous persons.

29. Another decision dated 27-4-2007 in the case of Thakore Nilesh Shishirbhai v. Gujarat Secondary Education Board and Ors. passed in Special Civil Application No. 21036 of 2006 (Coram : Mr. Justice Akshay H. Mehta) while considering the same provision of Regulation 12(6) which are framed in exercise of power conferred by Section 54 of the Gujarat Secondary Education Act, 1972 and after producing various Clauses Paras 4 to 5.1 of the above judgment reads as under:

4. I have carefully considered the submissions of the learned Advocates appearing for the parties. I have also closely perused the record of the petition and the necessary provisions of the Gujarat Secondary Education Regulations, 1974 (hereinafter referred to as the "Regulations") as also the provisions of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as the "Registration Act"). The Regulations have been framed by respondent No. 1 in exercise of powers conferred by Section 54 of the Gujarat Secondary Education Act, 1972 (the "Act" for short). They have come into force with effect from 16th March, 1974. The Regulations have been framed for the administration and Governance of secondary schools in the State. Chapter V of the Regulations contains provisions with regard to Admissions, Test, Examinations, Health and Discipline of Students. It includes Regulation 12(A). It pertains to change of the birth date, name, etc., in the school register.

* Clause 1 of Regulation 12(A) states that without obtaining prior permission in writing, no change in relation to the entries made in the school register can be effected.

* Clause 2 states that except applications pertaining to the student actually attending the school, no application for change in the register shall be accepted.

* Clause 3 requires the guardian or the parent of the student to sign the application which should be certified as such by the Principal of the school.

* Clause 4 prescribes that for effecting the change in the birth date, certain documents such as (a) Extract of the birth register; (b) Certificate of the vaccination, (c) Certified copy of the certificate of Baptism, if the student was Christian, (d) Affidavit of the parents or the guardian, sworn before the learned Magistrate or any other authentic document can be accepted as corroborating proof.

* Clause 5 relates to change in the name. It also relates to the change in the surname, name of the father, and place of birth and lastly religion and caste. So far as the changes other than the name are concerned, they can be effected upon production of necessary documents such as certificate of the competent officer of Social Welfare, Certificate of Mamlatdar, affidavit sworn before the Magistrate or proof of its publication in the Government Gazette.

* Clause 6 of Regulation 12(A) is relevant for the purpose of this petition. It states that if the student has actually left the school, no change can be effected in the record of the school. However, if the change is to be made with regard to the birth date, it can only be done by producing before the learned concerned Magistrate, all the necessary evidence, who upon scrutiny of the same can issue certificate with regard to the real birth date and only upon production of such certificate, before the concerned authority, the correct birth date could be mentioned in the school record.

4.1. Thus, these Regulations appear to be dealing with two situations namely, when the student is actually studying in the school and secondly the student has left the school. Sub-section (d) of Clause 5(1) of Regulation 12(A) states that in case the student has passed public examination and he is permitted to change the name, he shall have to get it published in the Government Gazette. However, if the change was because of the marriage, it may not be published in the Gazette. The change with regard to religion or caste can be effected by production of the certificates of the authorities stated above. This provisions takes care of the student who are still studying in the school after passing the public examination of Standard X. But once the pupil leaves the school, no change can be made in the record of the school as per Clause 6 of this Regulation. The exception is only with regard to the birth date which can be changed on the basis of the certificate issued by the learned Judicial Magistrate of First Class.

4.2. It appears from the aforesaid provisions that the learned Magistrate is empowered to enquire into the details with regard to the birth of the students and ascertain correct birth date and then issue certificate accordingly. On the basis of the same, the change can be made in the record of the school. It further appears that there is no provision in the Regulation which can enable the pupil who has left the school to get the record changed in respect of any other matter except the birth date. A former student of school, will therefore, find it very difficult to get the correction made in the school leaving certificate and that may cause such student unnecessary harassment. This may create serious impediments for the student in the matters of obtaining job, passport or furnishing true personal information to statutory authorities or to make accurate entries in official documents. The consequence can be serious and may cause deprivation of fundamental right or non-fundamental or ordinary legal right. This Court under Article 226 of the Constitution of India can remedy such injustice since power has been conferred upon it not only for enforcement of fundamental right but even for other purpose.

5. It may also be noted here that so far as the Registration of the Birth and Death Act is concerned, the Judicial Magistrate, First Class, is empowered to verify the correctness of the date of birth or death, on payment of prescribed fee under Sub-section (3) of Section 13 of the Registration Act. When the pupil is still studying in the school, for correction of the birth date or name, it is sufficient for him to produce the affidavit sworn before the learned Judicial Magistrate. Even Clause 6 of Regulation 12(A) permits correction in school record in respect of birth date even after the pupil had left the school on the basis of certificate issued by the Judicial Magistrate, First Class. The certificate can be issued by the Magistrate, only after making due scrutiny of the corroborative evidence and upon being convinced about the correctness of the birth date. Thus, it can be seen that certain powers have been conferred upon Judicial Magistrate, First Class by which he can make detailed scrutiny of the necessary evidence and issue certificate. In the instant case, the petitioner has prayed that his religion is wrongly mentioned in the school leaving

certificate and though he is Christian, his caste is shown as Hindu Thakore. The petitioner initially approached the school authorities, but the school authorities failed to effect any change. He has, therefore, approached this Court. The entire issue is based on facts. Whether the petitioner is Christian or Hindu Thakore can be determined or decided or ascertained only upon detailed inquiry being made by some authority on the basis of various documents, and if necessary, even by recording oral statement or the affidavit. This Court under Article 226 of the Constitution of India cannot make such inquiry. As already stated above, there is no provision in the Regulation to effect any change in the school leaving certificate except change relating to the birth date, after the pupil has left the school, but that should not make the genuine person suffer unnecessarily. Considering the provisions referred to above, this Court can always direct the subordinate Court in the State to make necessary inquiry and issue proper certificate in accordance with the findings arrived at after the inquiry. In the background of the provisions stated above, it also appears that the learned Judicial Magistrate of the area can be the proper authority to make such inquiry and issue certificate to the concerned student. The procedure which is being followed for correction of the birth date in the school record after the pupil has left the school can be also be applied or followed in other matters such as change in the name, caste/religion, place of birth etc.

5.1. This Court can certainly exercise its power under writ jurisdiction, and direct the Magistrate to make inquiry, but it is desirable that the Government at its level, can suitably bring amendment to the Regulations and along with the birth date in Clause 6 of Regulation 12(A) include other incidental matters also.

30. Therefore, each and every case can be scrutinized on the facts and circumstances of each case and in a given case facts are highly disputed, in exercise of power under Article 226 of the Constitution of India, as held in the above decision of Thakore Nilesh Shishirbhai (supra), the Court can direct even the Judicial Magistrate to hold limited inquiry of factual aspects with regard to documentary evidence produced before him and appropriate order can be passed in a given case. Even otherwise also, the Magistrate is empowered to hold inquiry and register entry in case of delayed registration as provided u/s 13(3) of the Act.

31. That reliance placed by the learned Judge of Section 13(3) of the Act of 1969 is pertaining to delayed registration and powers with regard to correction/cancellation of any erroneous entry remained with the authority u/s 15 of the Act and Rules of 2004. However, the view taken by the learned single Judge in the above cases is in a larger interest as reflected in Para 5 of the above decision, where a disputed question of fact arise, in a given case such disputed facts can be scrutinized by the learned Magistrate and in exercise of power under Article 226 of the Constitution of India appropriate directions can be given for remedial measures.

Therefore, so far as Regulation 12(A) is concerned, the above decisions govern the field for correction of date of birth and name in the school record.

32. It is to be noted that to what extent power under Article 226 of the Constitution can be exercised in issuing writ of mandamus depend on facts and circumstances and provision of statute with regard to correction or cancellation of entries into register of births and deaths under Act of 1969 and Regulation 12(A) of Gujarat Secondary Education Regulations, 1974 framed in exercise of powers conferred by Section 54 of the Gujarat Secondary Education Act, 1972.

33. Learned Advocate appearing for the respondent authorities drawn the attention of this Court to various other orders passed by this Court where necessary entries were refused to be corrected by the passport authority and reliance was placed on the order passed by the learned single Judge dated 24-2-2006 in Special Civil Application No. 2716 of 2006 reported in [Kokilaben Panchal Vs. Regional Passport Officer](#), Kokilaben J. Panchal v. Regional Passport Officer where the passport authority was directed to correct the entries recorded in the passport and not to straightaway refuse to entertain such correction whenever there is a dispute regarding date of birth or place of birth, as recorded in the Municipal Corporation/Panchayat records and the school leaving certificate. The above decision when challenged in Letters Patent Appeal No. 1673 of 2006 and allied matters, the Division Bench has passed following order on 30-7-2007 in the case of Regional Passport Officer v. Kokilaben W/o. Jaswantlal Panchal.

The case of the appellant is that by the impugned judgment dated 24-2-2006, the learned single Judge, while allowing a group of petitions has given direction to the appellant Passport Authority that when there is a dispute regarding date of birth or place of birth that is recorded in the Municipal Corporation/Panchayat's records and the school leaving certificate, the Passport Authority should not straightaway refuse to entertain correction without holding any enquiry, and shall not straightaway without holding necessary enquiry call upon the applicant to obtain appropriate order from the Court for correction in the Passport regarding the date of birth/place of birth.

The Passport Authority has no right to declare the date of birth or the place of birth of an applicant. It is only the competent Court.

Admit.

Meanwhile, operation of the impugned judgment dated 24-2-2006 shall remain stayed.

34. That, so far as similar directions issued by the learned single Judge in the case of [Gunvantiben Dayarambhai Patel and Others Vs. Union of India \(UOI\)](#), , where reliance is placed by the learned Judge on the Passport Act (Act No. 15 of 1967) and Section 24 of the above Act and Rule 5 and held that passport authority is under

statutory obligation to entertain an application of passport-holder to make necessary correction with regard to entries in the passport.

The another decision of the Division Bench of the Bombay High Court as reported in [Jigar Harish Shah Vs. Union of India and Others](#), where the Bombay High Court has again after examining various provisions of the Passport Act, 1967 and Passport Rules of 1980 held that the matter with regard to correction regarding date of birth etc. need not be referred to Judicial Magistrate and relying on Section 21 of the General Clauses Act and held that passport authority is authorised to hold inquiry and effect necessary change.

Thus, the above decisions contained correction about entries recorded in the passport and whether directions can be issued by the Court in exercise of power under Article 226 of the Constitution of India, at this stage are not relevant and as noted above, the Division Bench of this Court vide order dated 30-7-2007 passed in Letters Patent Appeal No. 1673 of 2006 has stayed the order of learned single Judge holding that writ petition under Article 226 of the Constitution of India is not maintainable where correction of date of birth and place of birth in passport is sought to be made in the Passport Act.

35. It is to be noted that Shri Chetan Pandya, learned Advocate appearing on behalf of the petitioner has ably assisted this Court while referring to different provisions of statute and decisions rendered by this Court in different Special Civil Applications along with relevant materials in the form of booklets containing guidelines framed by the Registrar General, Ministry of Home Affairs, Government of India and the authorities of the State of Gujarat. Shri Satyam Chhaya, learned A.G.P. appearing for the respondent-State and Shri Dhaval Nanavati, learned Advocate appearing for the Ahmedabad Municipal Corporation and Ms. Jirga D. Jhaveri, learned Advocate appearing for the Bardoli Nagar Palika have also contributed in arriving at aforesaid conclusions as contained in the judgment.

36. However, Shri Satyam Chhaya, learned A.G.P. has expressed an apprehension that if an absolute power is conferred upon the authority and so held by this Court, there is a likelihood of misuse of such powers and for which appropriate direction are to be given to curtail or minimize such infuse.

37. 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, Clauses 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 of 1999 and 231 of 2001 in the case of Mulla Faizal @ Fazilabanu 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 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 u/s 15 of Act of 1969 and Rule 11(1) to (7) of the State Rules, 2004.

(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.

(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 of 2006 by an order dated 30-7-2007 by which the judgment of the learned single Judge in Special Civil Application No. 2716 of 2006 is stayed.

In view of the above and also considering the prayers made in each of the Special Civil Applications following is the order and direction issued to the authority concerned.

(i) In Special Civil Application No. 23471 of 2007 the petitioner has prayed to correct the name entered into the Birth and Death Register, which the Chief Officer, Municipality of Bardoli has refused to correct the name entered into the birth and death register on the ground that Clause 7.1 of the guideline of Birth and Death Registration Act, 1969 does not empower the authority, the order impugned deserves to be quashed and set aside and order accordingly.

(ii) In Special Civil Application Nos. 23616 and 21788 of 2007, the petitioners have prayed to correct the date of birth of the petitioners and to issue the fresh birth certificate to the petitioners;

(iii) In Special Civil Application No. 29164 of 2007 the petitioner has prayed to correct the name and date of birth of the son of the petitioner in the birth record;

(iv) In Special Civil Application No. 19896 of 2007 the petitioner has prayed to correct the name of the petitioner's son;

(v) In Special Civil Application No. 6352 of 2007 the prayer is with regard to correcting date of birth of the petitioner and also name of the father of the petitioner; and

(vi) In Special Civil Application No. 28336 of 2007, the prayer of the petitioner is with regard to quash and set aside the order dated 16-4-2007 passed by respondent No. 1 on application dated 12-4-2007 and direct the respondents to effect the correction as sought in the application.

(vii) That so far as Special Civil Application No. 28336 of 2007 is concerned, the deponent of affidavit-in-reply has relied on Clause 7.1 and Clause 7.4 of the guidelines issued by the Commissioner of Health, Medical Services and Medical Education, Govt. of Gujarat and has opposed grant of any relief. The above reliance

on the guidelines is misplaced, inasmuch as, Section 15 of the Act of 1969, Rule 11 of Rules, 2004 and even the above Clause 5.8 clearly empower the authority to correct/cancel any erroneous entry in the form and substance. As laid down in the L.P.A. No. 231 of 2001 in the case Registrar, Birth and Death, Rajkot Municipal Corporation (supra) no guidelines de hors the statutory scheme can be framed by the authority divesting or depriving such authority of the statutory duties prescribed under the Act. Thus, a case is made out by the petitioner to quash and set aside the impugned order and issuance of further direction for correction as sought for in the application submitted by the petitioner.

38. In view of what is discussed and held in Paragraphs 14 to 18 and particularly in Paragraph 26, the impugned order in Special Civil Applications where prayer is made to quash and set aside is hereby quashed and set aside in each of the petitions and respondents are directed to exercise power vested with them.

39. In light of the discussions and observations made in the judgment, respondents are directed to exercise power vested into u/s 15 of the Act of 1969 and Rule 11 of 2004 pursuant to the application preferred by the petitioners for correction as prayed for by each of the applicant and as per application submitted before the concerned authority preferably within six weeks from the date of receipt of the order.

40. These petitions are allowed. Rule made absolute in each of the petitions with no order as to costs.