

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3914 OF 2019

DR. DEEPA D/o. MOHAN SHARMA
 VERSUS
 THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner: Mr. Amar D. Soman
 AGP for Respondents No. 1 & 2: Mr. P. K. Lakhotiya
 Advocate for Respondents No. 3 & 4: Mr. J. R. Shah
 Advocate for Applicants (CA/8558/2019):
 Mr. P. V. Barde

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CIVIL APPLICATION NO. 8558 OF 2019

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CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.

RESERVED FOR ORDERS ON:	07.08.2019
ORDER PRONOUNCED ON:	06.09.2019

ORDER (Per S. V. Gangapurwala, J.):

1. The present petition is filed seeking directions against respondents no. 3 and 4 to correct gender of the petitioner as female instead of male in the birth register at serial no. 440.

2. Mr. Soman, learned counsel for the petitioner submits that the petitioner is born at

Aurangabad, and in the birth record maintained by the Aurangabad Municipal Corporation the gender of the petitioner is recorded as male instead of female by mistake. The petitioner filed an application to correct the record. The medical board at Aurangabad and Pune upon examination of the petitioner gave a certificate that the correct gender of the petitioner is female. The corporation is not correcting the same. According to the learned counsel, the petitioner was born on 25.10.1984, and the entry of her birth is taken in the birth register by the authority at serial no. 440. The petitioner applied for the birth certificate to the Aurangabad Municipal Corporation. The petitioner was given the birth certificate on 07.04.1994. On or about 11.06.2018, the petitioner had filed an application to correct her gender in the original birth register. On the basis of the directions issued by the Deputy Secretary, Public Health Department the Aurangabad Municipal Corporation referred the petitioner to

the medical board of Government Medical College and Hospital, Aurangabad for gender test. Upon conducting the gender test, the Government Medical College and Hospital, Aurangabad has issued a medical certificate to the petitioner as female. The petitioner was also referred by the Corporation to Sassoon General Hospital and B. J. Medical College, Pune for gender test. The petitioner was examined by the panel of expert doctors and thereafter hospital has given certificate that the gender of the petitioner is female. After receiving the certificate, on or about 20.02.2019, the petitioner filed an application to correct the gender in the birth record maintained by the Aurangabad Municipal Corporation. The Corporation is not correcting the said record.

3. The learned counsel for the petitioner further submits that U/Sec. 15 of the Registration of Births and Deaths Act, 1969, the original birth record can be changed. The respondents have failed

to perform their obligation. According to the learned counsel, the dispute between the petitioner and her husband has nothing to do with the application for correction of the birth record. The learned counsel relies on the judgment of the Division Bench of the Gujarat High Court in case of ***Mulla Faizal @ Fazilabanu Suleman Ibrahim Vs. State of Gujarat and others*** reported in (2000) 41(2) GLR 1553.

4. Mr. Soman, learned counsel for the petitioner also relies on Rule 11 of the Maharashtra Registration of Births and Deaths Rules, 2000.

5. Mr. Shah, learned counsel for the Municipal Corporation submits that the dispute is pending between the petitioner and her husband. The Registrar has rightly directed the petitioner to approach the District Court, Aurangabad and seek necessary orders.

6. Mr. Barde, learned counsel for the

intervenors / husband of the petitioner submits that the petitioner has played fraud upon the applicants / intervenors. The petitioner is not born as female but born as male. The present applicant no. 1 has filed petition before the Family Court, Bangalore seeking decree of nullity of marriage in the month of September 2016, and thereafter the petitioner has moved for correction of gender in the birth record. The present applicant no. 2 has also lodged a complaint of extortion against the present non applicant no. 1 / original writ petitioner. In all these proceedings filed by the applicants, the gender of the original writ petitioner is questioned and subjudice. The original writ petitioner by suppressing all these facts has filed the present writ petition. In such circumstances, the birth record cannot be corrected. The learned counsel relies on the judgment of the Division Bench of this Court at its Principal Seat in **Writ Petition No. 723 of 2017 dated 13.03.2018**. Rule 11 of the

Maharashtra Registration of Births and Deaths Rules, 2000 and the Rules framed thereunder provides for the procedure. A very limited power is confirmed on the Registrar to correct the entry in the birth record. The learned counsel also relies on the judgment of the Divisional Bench of the Orissa High Court in case of **Sk. Rahimuddin Vs. Ojifa Bibi and others** reported in (1989) AIR (Orissa) 56 and another judgment of the Gujarat High Court in case of **Karimabibi and others Vs. Ankleshwar Municipality and others** reported in (1998) AIR (Gujarat) 42.

7. Mr. Barde, learned counsel for the intervenors refers to Section 370 of the Maharashtra Municipal Corporations Act, 1949 and submits that the original entry can never be erased but can only be corrected by an entry in the margin, without any alteration of the original entry, even if it is the case of clerical error.

8. Before we advert to the contentions of

the learned counsel for respective parties it would be appropriate to refer to Section 370 of the Maharashtra Municipal Corporations Act, 1949, Section 15 of the Registration of Births and Deaths Act, 1969 and Rule 11 of the Maharashtra Registration of Births and Deaths Rules, 2000.

"The Maharashtra Municipal Corporations Act, 1949

Section 370

(1) Any clerical error which may at any time be discovered in a register of births or in a register of deaths may be corrected by any person authorised in that behalf by the Commissioner.

(2) An error of fact or substance in any such register may be corrected by any person authorised as aforesaid by entry in the margin, without any alteration of the original entry, upon production to the Commissioner, by the person requiring such error to be corrected, of a declaration on oath setting forth the nature of the error and the true facts of the case, made before a Magistrate by two persons required by this Act to give information concerning the birth or death with reference to which the error has been made or, in default of such persons, by two credible persons having knowledge of the case, and certified by such Magistrate to have been made in his presence.

(3) Except as aforesaid no alteration shall be made in any such register."

"The Registration of Births and Deaths Act, 1969 -

Section 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."

"The Maharashtra Registration of Births and Deaths Rules, 2000 -

Rule 11. Correction or cancellation of entry in the register of births and deaths under Section 15 -

(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 and shall send an extract of the entry showing the error and how it has been corrected will be communicated to the Deputy Chief Registrar of Births and Deaths, Maharashtra State, Pune.

(2) In the case referred to in sub-rule (1), if the register is not in his possession, the Registrar shall make a report to Block Development Officer for rural area, Executive Health Officer / Health Officer / Chief Officer / Executive Officer for concerned

urban area, and call for the relevant register and after enquiring 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 Block Development Officer for rural area, 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 upon production by that person of 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 Deputy Chief Registrar of Births and Deaths, Maharashtra State, Pune.

(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 made, he shall make a report giving necessary details to Block Development Officer for rural area, the Chief Registrar by general or special order in this behalf under section 25 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, an intimation thereof shall be sent to the permanent address of the person who has given information under section 8 or section 9."

9. In the present writ petition, we would not be concerned with the litigation amongst the

petitioner and the intervenors. It is for the competent Court to decide the proceedings pending before it in accordance with the evidence led by the parties.

10. The only issue before us is whether respondent no. 4 needs to be directed to correct the entry in the birth record.

11. It appears from the documents filed on record that the petitioner was referred to the Government Medical College and Hospital, Aurangabad, so also the Sassoon General Hospital and B. J. Medical college, Pune. The committee constituted at Aurangabad Government Medical College and Hospital has certified the gender of the petitioner as female. It needs to be appreciated that the petitioner was referred to the said committee by the Registrar, Births and Deaths Registration cum Medical Health Officer, Municipal Corporation, Aurangabad. The same authority also referred the petitioner to the

Sassoon General Hospital and B. J. Medical College, Pune. The Sassoon General Hospital and B. J. Medical College, Pune submitted the report after examining the petitioner certifying that the petitioner is found to be Phenotypically and Genotypically female. Respondent no. 4 had directed the petitioner to be examined by Government Medical College and Hospital, Aurangabad and Sassoon General Hospital and B. J. Medical college, Pune.

12. In fact, after an application is received by respondent no. 4 for correction of entry in the register of births, respondent no. 4 is required to follow the procedure and the requirements as laid down U/Sec. 15 of the Registration of Births and Deaths Act, 1969. Rule 11 of the Maharashtra Registration of Births and Deaths Rules, 2000 and Section 370 of the Maharashtra Municipal Corporations Act, 1949. U/Sec.15 of the Registration of Births and Deaths

Act, 1969 if it is proved to the satisfaction of the Registrar that any entry of 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 correction or cancellation. Rule 11 of the Maharashtra Registration of Births and Deaths Rules, 2000 requires the Registrar to enquire into the matter, and if he is satisfied that any such error has been made, he shall correct the error as provided in Section 15 of the Registration of Births and Deaths Act, 1969 and shall send an extract of the entry showing the error and how it has been corrected communicating to the Deputy

Chief Registrar of Births and Deaths, Maharashtra State, Pune. Section 370 of the Maharashtra Municipal Corporations Act, 1949 is on the same lines.

13. Respondent no. 4 would be unconcerned with the dispute amongst the parties.

14. Upon an application received for correction of the entry in the birth register, respondent no. 4 has the power to correct the same subject to the limitations and clarifications as provided U/Sec. 15 of the Registration of Births and Deaths Act, 1969, Rule 11 of the Maharashtra Registration of Births and Deaths Rules, 2000 and Section 370 of the Maharashtra Municipal Corporations Act, 1949. As far as the dispute in the matters pending before the competent Court of law amongst the petitioner and the intervenors, the facts therein have to be proved on its own merits. The Registrar need not wait for any directions from the Court. Respondent no. 4 can

exercise his powers U/Sec. 15 of the Registration of Births and Deaths Act, 1969, of course, after following procedure as is laid down under Rule 11 of the Maharashtra Registration of Births and Deaths Rules, 2000 and as provided U/Sec. 370 of the Maharashtra Municipal Corporations Act, 1949. The change can be made upon the subjective satisfaction of the Registrar based on objective assessment and the facts before him.

15. In the light of above, respondent no. 4 shall take decision upon the application of the petitioner for correction of the entry in the birth register as claimed by the petitioner as provided in Section 15 of the Registration of Births and Deaths Act, 1969, Rule 11 of the Maharashtra Registration of Births and Deaths Rules, 2000 and Section 370 of the Maharashtra Municipal Corporations Act, 1949. The decision shall be taken by the Registrar upon the application of the petitioner within a period of three (03) months.

16. With the aforesaid observations, the writ petition stands disposed of. No costs.

17. In view of disposal of the writ petition, the civil application also stands disposed of.

[MANGESH S. PATIL, J.] [S. V. GANGAPURWALA, J.]

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