

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4503 OF 2017

Surekha Indramani Sharma & Anr. ... Petitioners
Vs.
Registrar of Births and Deaths & Ors. ... Respondents

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Ms. Purvi Shah for the Petitioners.
Mrs. Neha Bhide, 'B' Panel Counsel for the Respondent-State.
Mr. Santosh Parad a/w. Mr. Om Suryawanshi i/b. Aruna Savla for
Respondent No. 5-MCGM.

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**CORAM: UJJAL BHUYAN AND
MADHAV J. JAMDAR, JJ.**

**DATE : 8th SEPTEMBER, 2021.
(THROUGH VIDEO CONFERENCE)**

P. C:-

Heard Ms. Purvi Shah, learned counsel for the petitioners;
Mrs. Neha Bhide, learned 'B' Panel counsel for respondent No.2; and
Mr. Santosh Parad, learned counsel for respondent Nos. 1 and 5.
None has appeared for respondent Nos. 3 and 4.

2. Initially, Ms. Surekha Indramani Sharma and Mr. Vinodkumar Sharma as the two petitioners had filed this Writ Petition under Articles 226/227 of the Constitution of India seeking a direction to respondent Nos.1 and 5 for rectifying the name of their son "Ansh Shashikant Sharma" to "Ansh Vinodkumar Sharma", thereby correcting the name of the father from Shashikant Shivkumar Sharma to Vinodkumar Sharma.

3. The above prayer has been made in the backdrop of the following facts.

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3.1. Petitioner No.1 Surekha Indramani Sharma is a journalist by profession and a resident of Mumbai city.

3.2. Petitioner No.1 had married one Mr. Shashikant Shivkumar Pathak on 21st August, 2003 but in view of irretrievable break down of their marital relationship and also in view of the fact that they did not have any issue, they moved the Family Court at Bandra jointly for divorce by mutual consent under section 13B of the Hindu Marriage Act, 1955. By the judgment and order dated 23rd July, 2008 the marriage between petitioner No. 1 and Mr. Shashikant Shivkumar Pathak was dissolved by a decree of divorce through mutual consent.

3.3. Thereafter petitioner No.1 became acquainted with petitioner No.2-Mr. Vinodkumar Sharma who was subsequently transposed as respondent No.4 in the present Writ Petition. As time went by, an intimate relationship developed between the two of them out of which petitioner No.1 gave birth to a male child Master Ansh on 10th September, 2009 at Jaslok Hospital, Mumbai. As the relationship between petitioner No.1 and petitioner No.2/respondent No.4 was without any sanctity of law, to avoid stigma it was decided to name the former husband of petitioner No.1 as the father of the child, though the surname was declared as Sharma instead of Pathak. The birth certificate dated 23rd November, 2009 of the Health Department of Municipal Corporation of Greater Mumbai (MCGM) discloses the following relevant particulars:

Name of child	: Ansh
Date of birth	: 10.09.2009
Name of mother	: Mrs. Surekha Shashikant Sharma
Name of father	: Mr. Shashikant Shivkumar Sharma.

Thus, the son came to be known as Ansh Shashikant Sharma.

3.4. As pointed out above, the surname “Sharma” of the son was given after the surname of petitioner No.1. This was also because of the fact that petitioner No.2/respondent No.4 did not come forward to assert his paternity.

3.5. However, after about 5-6 years a realization dawned upon him i.e., petitioner No.2/respondent No.4 that the son may face complications in future if the name of the biological father is not entered in the official records and name of the son changed accordingly. In this connection the two of them i.e., petitioner No.1 and petitioner No.2/respondent No.4 swore an affidavit on 30th July, 2015 and petitioner No.2/respondent No.4 also carried out paternity test. As per the paternity test report of Metropolis Healthcare Limited dated 11th September, 2015 it was remarked that in terms of the combined paternity index probability of paternity of petitioner No.2/respondent No.4 of the child was 99.99%. As a matter of fact, in the school identity card of Holy Cross Convent School as well as in the Aadhar Card, the son is identified as Ansh Vinodkumar Sharma.

3.6. In the circumstances, petitioner No.1 represented before respondent No.1 who is the Registrar of Births and Deaths under the Municipal Corporation of Greater Mumbai (MCGM) vide representation dated 7th September, 2016 for change of father's name of the son from Shashikant Shivkumar Sharma to petitioner No.2/respondent No.4 -Vinodkumar Sharma in the birth certificate. However, no decision was taken on the said representation of petitioner No.1 compelling her to approach this Court by way of the

present Writ Petition with Vinodkumar Sharma as the co-petitioner. Subsequently he has been transposed as respondent No.4.

4. Respondent No.5 in its reply affidavit has referred to section 15 of the Registration of Births and Deaths Act, 1969 and submits that correction can be made in the register of births and deaths if the Registrar is satisfied that the initial entry was made erroneously or fraudulently or improperly. It is further stated that though petitioner No. 1 had sought for change in the name of the son's father with relevant documents which looked satisfactory, however, authenticity of the documents could not be confirmed, further stating that name of the child's father in the birth certificate issued by Municipal Corporation of Greater Mumbai (MCGM) can be changed only after verification of authenticity of documents and after this Court passes order for such change.

5. In the course of hearing Mr. Parad, learned counsel for respondent No.5 submits that the paternity test report is from a private laboratory and not from a Government institution. Therefore, respondent No.5 has difficulty in accepting the same.

6. We have heard learned counsel for the parties and perused the materials on record.

7. From the facts narrated above we find that the initial entry in the municipal records of the son including the birth certificate bore the name of Shashikant Shivkumar Sharma as the father of the son Ansh. By way of the representation dated 7th September, 2016 the

prayer made is that this should be changed to Vinodkumar Sharma i.e. petitioner No.2/respondent No.4 as he is the biological father of the son Ansh. In this connection necessary documents have been placed before respondent Nos. 1 and 5. We also find that in the Aadhar Card of the son issued by the Unique Identification Authority of India, the son has been referred to as Ansh Vinodkumar Sharma, meaning thereby that Vinodkumar Sharma is father of the son Ansh.

8. At this stage we may advert to section 15 of the Registration of Births and Deaths Act, 1969 (briefly “the Act” hereinafter) which 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 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.”

9. From a perusal of the above, we find that if the Registrar is satisfied that any entry of birth or death in any register maintained by him under the 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, correct such entry.

10. The procedure for correction or cancellation of entry in the register of births and deaths maintained under section 15 of the Act

is laid down in Rule 11 of the Maharashtra Registration of Births and Deaths Rules, 2000 framed in exercise of the powers conferred by section 30 of the Act and in supersession of the Maharashtra Registration of Births and Deaths Rules, 1976. Rule 11 is extracted hereunder:-

“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 canceling 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.”

11. Sub Rule (4) of Rule 11 says that if any person asserts that any entry in the register of births and deaths is erroneous in substance, then 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.

12. Respondent No.5 in paragraph No. 3 of the reply affidavit has as a matter of fact admitted that the request for change of the name of the child's father looks satisfactory. However, it has been stated by the authority that paternity test report is from a private institution and therefore, they are hesitant in accepting it at its face value.

13. Having regard to the requirements of section 15 of the Act and Rule 11(4) of the Maharashtra Registration of Births and Deaths Rules, 2000, the stand taken by respondent No.5 does not appear to be justified. Registrar has the power and authority to correct any error in entry or cancel any entry of birth in any record if he is satisfied that such entry is erroneous or fraudulently made or improperly made. Under Rule 11(4), such correction may be made upon production 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.

14. Thus after hearing learned counsel for the parties and on perusal of the materials on record we are of the view that if the authorities are not sure about the authenticity of the paternity test report they can very well ascertain the same from the concerned institution and correlate the same with the documents relied upon by petitioner No.1.

15. Matter relates to identity of a child which has long term implication. It is therefore important that the name of the father is correctly reflected in the official record.

16. In the circumstances, we direct that petitioner No.1 shall now appear before respondent Nos.1 and 5 within three weeks from today whereafter respondent Nos. 1 and 5 shall process the application for correction in the name of the father of the son Ansh from Shashikant Shivkumar Sharma to Vinodkumar Sharma in accordance with law within a period of six weeks from the date of her appearance and complete the necessary formalities.

17. Writ Petition is accordingly disposed of.

(MADHAV J. JAMDAR, J.)

(UJJAL BHUYAN, J.)