

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.12592 of 2024

PRANAB CHATTERJEE

-VERSUS-

KOLKATA MUNICIPAL CORPORATION AND OTHERS

For petitioner no.1 : Mr. Palash Mukherjee, Adv.

For petitioner no.2 : Ms. Sucheta Mitra, Adv.

For K.M.C. : Mr. Faizul Haque, Adv.,
Mr. Gopal Chandra Das, Adv.,
Ms. Debangana Dey Nayak, Adv.

For respondent no.6 : Ms. Upansana Roy, Adv.

Hearing concluded on : 01.05.2025

Judgment on : 16.05.2025

Kausik Chanda, J.:-

The child, Akash Sarkar, was born on December 8, 2010, to petitioner no. 2 and respondent no. 6 during the subsistence of their marriage. However, the marriage between petitioner no. 2 and respondent no. 6 was dissolved by a decree of divorce passed by a competent civil court on September 8, 2016. Subsequently, petitioner no. 2 entered into a second marriage with petitioner no. 1 on March 11, 2020.

2. It has been submitted that petitioner no. 2 and respondent no. 6 have been living separately since 2010, and that the child has been raised solely by petitioner no. 2 and after her remarriage, the child has been jointly cared for by petitioners no. 1 and 2.

3. It is further submitted that respondent no. 6 currently resides abroad and has no contact whatsoever with the minor child.

4. By filing the present writ petition, petitioners no. 1 and 2 jointly seek a direction upon the Kolkata Municipal Corporation to:

- a. Change the surname of the minor child from "Sarkar" to "Chatterjee";
- b. Replace the father's name in the birth certificate from "Saumik Sarkar" to "Pranab Chatterjee";
- c. Amend the mother's surname from "Sarkar (Chandra)" to "Chatterjee".

5. In support of their prayer, the petitioners rely on a judgment of a coordinate bench delivered on February 29, 2024, in WPA 88 of 2023 (*Arpita Chowdhury vs. Nabadwip Municipality & Anr.*).

6. Significantly, respondent no. 6 is represented in the proceedings, and his learned counsel has submitted that he has no objection to the changes sought in the writ petition.

7. The Kolkata Municipal Corporation, however, opposes the requested alterations. Referring to Section 15 of the Registration of Births and Deaths Act, 1969, and Sections 454 and 455 of the Kolkata Municipal Corporation Act, 1980, Mr. Ghosh, learned counsel for the Corporation, contends that the registering authority lacks the competence to alter the names in the birth record.

8. Mr. Ghosh argues that these statutory provisions only authorise the Corporation to correct clerical or factual errors in the register of births or deaths. He further submits that, in cases involving adoption, the Corporation maintains a separate register linked to the original birth record upon submission of a valid adoption order from a competent court. In the absence of such an order, the Corporation does not have the authority to incorporate the changes sought through the present petition.

9. To properly consider the issue, it is necessary to examine the relevant statutory provisions of Section 15 of the Registration of Births and Deaths

Act, 1969 and Sections 454 and 455 of the Kolkata Municipal Corporation Act, 1980.

“15. Correction or cancellation of entry in the register of births or 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.”

“454. Registration of name of child or of alteration of name. – (1) When the birth of any child has been registered and the name, if any, by which it was registered, is altered or, if it was registered without a name, when a name is given to it, the parent or guardian of such child or other person procuring such name to be altered or given may, within sixty months next after the registration of the birth, deliver to the Registrar specified in sub-section (2) of section 451 of the area in which the birth was registered, such certificate as hereinafter mentioned, and the Registrar specified in sub-section (2) of section 451 upon the receipt of the certificate shall, without any erasure of the original entry, forthwith enter in the register book the name mentioned in the certificate as having been given to the child.

(2) The certificate shall be in such form as the Municipal Commissioner may, from time to time, specify and shall be signed by the father, mother or guardian of the child or other person procuring the name of the child to be given or altered.

455. Correction of errors in registers of births or deaths. –(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 this behalf by the Municipal 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 Municipal Commissioner, by the person requiring such error to be corrected, of a declaration on oath setting forth the nature of the error and the fact 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 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.”

10. Section 454 of the Kolkata Municipal Corporation Act, 1980 empowers the registering authority to record an alteration or assignment of a child's name. Section 455 authorizes the Corporation to correct clerical or factual errors in the birth or death register.

11. A plain reading of Section 454 makes it evident that the Corporation has the authority to alter a child's name. I am unable to accept the contention of Mr. Ghosh that this power is limited only to changes in the child's given name. In my considered view, the term "name" under Section 454 includes both the given name and the surname. Therefore, the provision enables the Corporation to amend the child's full name, including the surname, provided that the application is submitted within 60 months from the date of registration.

12. However, I am also of the view that the 60-month period, while statutorily prescribed, should not be treated as an absolute bar. Courts

may, in appropriate cases, interpret this time frame flexibly, particularly where delays occur due to circumstances beyond the control of the applicant. If, for instance, a parent or guardian provides a valid explanation for the delay, the court may permit the change even after the 60-month period has lapsed.

13. In the present case, it is clear that petitioner no. 2, being the biological mother of the child, has the right to seek an alteration of the child's name under Section 454 of the Kolkata Municipal Corporation Act, 1980. This is particularly so when respondent no. 6, the biological father, has no ongoing relationship with the child and has expressly indicated that he does not oppose the reliefs sought in the writ petition.

14. However, I am not inclined to grant the prayer for changing the father's name in the birth certificate in the absence of a valid adoption order. In my view, such a change can only be considered upon the legal adoption of the minor by petitioner no. 1. The Hon'ble Supreme Court in the case reported at **2022 SCC OnLine SC 928 (Akella Lalitha vs. Konda Hanumantha Rao)** has held that upon the death of the biological father, the mother, as the sole natural guardian, has the authority to determine the child's surname and to give the child in adoption.

15. In light of the above, the writ petition is disposed of with liberty to petitioner no. 2 to make an application before the Kolkata Municipal Corporation for changing her surname and the surname of the minor child

to “Chatterjee” in Corporation record, supported by appropriate documentation evidencing her second marriage.

16. If such an application is filed within two weeks from today, the Corporation is directed to effect the necessary changes in the birth certificate within two weeks thereafter.

17. Accordingly, W.P.A. No.12592 of 2024 is disposed of.

18. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)