

#26 & 27

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3819/2008

Date of decision: 18th April, 2009

VIJAYA SHARMA Petitioner
Through Mr. Rakesh Tiku, Advocate.

versus

C.B.S.E. & ANR Respondents
Through Ms. Manish Singh, Advocate with
Mr. Amit Bansal, Advocate for CBSE.

+ W.P.(C) 3820/2008

MAMTA SHARMA Petitioner
Through Mr. Rakesh Tiku, Advocate.

versus

C.B.S.E. & ANR Respondents
Through Ms. Manish Singh, Advocate with
Mr. Amit Bansal, Advocate for CBSE.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

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1. This is second round of litigation by the two petitioners seeking amendment and change in the date of births as recorded in the Class X certificate issued by the Central Board of Secondary Education. As per Class X certificates issued by Central Board of Secondary Education, date of birth of Vijaya Sharma as recorded is 26.1.1967 and date of birth of Mamta Sharma as recorded is 5.6.1970. The claim of the petitioners is that these dates should be rectified and amended in the case of Vijaya

Sharma as 26.1.1969 and in the case of Mamta Sharma as 5.6.1972.

2. Vijaya Sharma and Mamta Sharma had appeared in Class X examination in the year 1982 and 1985 respectively. The date of births mentioned in the said certificates issued by Central Board of Secondary Education were as per the details given by the petitioners and as per the record maintained by the school in which the two petitioners had studied.

3. It appears that in the year 2000, the two petitioners moved applications before the Sub Divisional Magistrate for change of date of births. The Sub Divisional Magistrate on the basis of affidavit filed by the father of two petitioners passed an order recording the date of births of Vijaya Sharma as 26.1.1969 and Mamta Sharma as 5.6.1972.

4. After the order passed by the Sub Divisional Magistrate, the two petitioners approach Central Board of Secondary Education for recording the change of date of births and issuance of fresh Class X certificates. The request was rejected.

5. Thereupon, these two petitioners filed two writ petitions in this court, which were allowed vide order dated 6.12.2004. The Central Board of Secondary Education, however, preferred appeals in the case of both petitioners. The appeals are allowed vide order dated 18.10.2005 in LPA Nos. 439 and 428 of 2005. The Division Bench noticed the facts of the case including the order passed by the Sub Divisional Magistrate. Relying upon Judgment of Karnataka High Court in ***H. Subba Rao Vs. The Life***

Insurance Corporation of India and Another, reported in AIR 1979 Karnataka 231 and the Madras High Court in ***G. V. Vijarangan Vs. The State Bank of India***, reptd by the Chief General Manager, Ist Line Beach Madras I and Another, 1987 Vol. I MLJ 82, the Division Bench set aside the order of the Single Judge observing that the order of Sub Divisional Magistrate is not conclusive piece of evidence on the basis of which Central Board of Secondary Education can be compelled to change the date of births. Learned Judges specifically recorded that they agree with the decision of the Karnataka and Madras High Courts. Central Board of Secondary Education was given a direction to pass a fresh order preferably within two months in accordance with law by treating the Sub Divisional Magistrate order as evidence though not conclusive. A review application was filed by the petitioners was also dismissed by the Division Bench vide order dated 9.5.2007.

6. Central Board of Secondary Education thereafter passed another order dated 6/10.1.2006 and has rejected the request for change of date of births in the case of the petitioners.

7. Learned counsel for the petitioner submitted that in addition to the orders passed by the Sub Divisional Magistrate, the petitioners have filed copy of the ration card and affidavit of the father in support of their claim for change of date of births. It is accordingly submitted that there is overwhelming evidence to show that the date of births as recorded in the

Class X certificates issued by the Central Board of Secondary Education is not correct. Learned counsel also relies upon the decision of a Single Judge of this Court in W.P.(C) No. 6600/2006 titled ***Zunnoor Faisal Vs. CBSE and Another.***

8. The ration card relied upon by the petitioners before CBSE was prepared/issued on 10.7.2000. The petitioners did not file the copy of the earlier ration card or any other document or material in support of their claim for change of date of births. It cannot be said that the Central Board of Secondary Education has adopted a wrong approach or wrongly did not place reliance on the said ration card. The orders passed by the Sub Divisional Magistrate as held by the Division Bench is only a piece of evidence though not conclusive. Other than this evidence, there is no other evidence, which was produced by the petitioners to substantiate their claim for change of date of births. It may be relevant to notice the time gap between the class X examination in which the petitioners had appeared in the years 1982 and 1985 and the date on which the application was filed before the SDM, i.e., 2000. It is also not denied that the petitioners or their parents did object to the date of births as mentioned in the Class X certificate from 1982 and 1985 onwards till 2000. The petitioners have not filed the document relating to the date of births as per the records in the school, where the petitioners had studied. It appears that school wants to wash away their hands by stating that the

records pertaining to the said years have been destroyed in floods. The factual position in the case of Zunnoor Faisal (supra) is entirely different. In the said case, the date of Birth as recorded in the certificate was 2.9.1990. The petitioner claimed that the correct date of birth was 1.3.1990. The petitioner had appeared in Class X examination in the year 2005 and had immediately thereafter filed the writ petition in the year 2006. The Court observed that the petitioner in the said case could not have profited or benefited by declaring the date of birth as 1.3.1990 instead of 2.9.1990. The change of Date of Birth was of no consequence or benefit to the petitioner therein and therefore bona fide request had been made. In the present case, the petitioner Vijaya Sharma is working as a Lecturer. The difference in the two date of births is substantial. Further, in ***Zunnoor Faisal*** (supra), the birth as registered in the Sub Registrar office and birth certificate was 1.3.1990 and this was an undisputed fact. The error was apparent and therefore corrected.

In view of the above, I do not find any merit in the present writ petitions and the same are dismissed.

SANJIV KHANNA, J.

APRIL 18, 2009
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