

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 12595/2009

% Judgment delivered on: 10th May, 2011

Chirag Jain Petitioner.

Through: Mr. Rahul Chaudhary and
Mr. Akshay Chandra, Advs.

versus

CBSE & Ors.. Respondents

Through: Mr. Atul Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. Oral

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1. By this petition filed under Article 226 of the
Constitution of India, the petitioner seeks directions to direct
respondent to revoke the impugned entry pertaining to his

date of birth in the Class 10th pass certificate and Class 10th Mark Sheet.

2. The brief facts of the case which have led to the filing of the present petition are that the petitioner was born on 18th May, 1991 in Ram Manohar Lohia Hospital and his date of birth was duly registered with the NDMC on 17th June, 1991 as 18th May, 1991. The petitioner also stated that he holds an Indian passport which was issued in his favour on 23rd May, 1997 for a period of 10 years and there also his date of birth was recorded as 18th May, 1991. It is also stated that the petitioner had joined Delhi Public School, R.K.Puram in the year 2004 after he migrated from Ramjas School, Pusa Road, New Delhi. While studying in DPS he had appeared for class 10th examination under Roll No.6172168 and in the same school he had appeared for class 12th examination in the year 2008 under Roll No.6267327. He also stated that his class 10th result was declared on 20th May, 2006 but his date of birth in the class 10th pass certificate as well as in mark sheet issued by the CBSE was wrongly shown as 18th

March, 1991. It is also the case of the petitioner that after passing class 12th examination from the DPS on 23rd May, 2008 he has tried in various colleges for further studies and he had filled the same date of birth in all the admission forms as was shown in the class 10th pass certificate and mark sheet. It is also stated that some time in 2009 the petitioner realized that inconsistency in his date of birth would create problem in near future for higher studies for which he took steps and applied to the Principal of the Delhi Public School requesting the change of his date of birth in the said certificates. It is also stated that the said request of the petitioner was forwarded by the DPS to the CBSE and was rejected by the CBSE vide letter dated 7th July, 2009 taking a stand that no change/correction in the date of birth which is the date from previous school records is permissible under rule 69.2 of the CBSE Examination Bye-Laws. Feeling aggrieved with the said decision taken by the CBSE, the petitioner has preferred the present petition.

3. Mr.Rahul Chaudhary, learned counsel appearing for the petitioner submits that the parents of the petitioner had been inadvertently furnishing the wrong date of birth just due to mistake as the actual date of birth based on the municipal records of the petitioner is 18th May, 1991. Counsel further submits that the same date of birth was also disclosed by the petitioner in his passport and accordingly the passport of the petitioner carries the correct date of his birth. Counsel, thus, urges that the said two documents, that is, date of birth certificate issued by the NDMC and the passport cannot be doubted and therefore based on the same, directions be given to the respondent CBSE to correctly record his date of birth as 18th May, 1991 instead of 18th March, 1991 on the secondary certificate as well on the mark sheet. In support of his arguments, learned counsel for the petitioner has placed reliance on the judgment of this Court in ***Km. Para vs. Director, Central Board of Secondary Education AIR 2004 Delhi 310.***

4. Opposing the present petition, Mr. Atul Kumar, learned counsel for the respondent CBSE submits that the respondent has placed on record various documents pertaining to the petitioner right from the transfer certificate issued by Maharaja Sawai Man Singh Vidyalaya, Jaipur where the petitioner has studied upto class 6th which clearly records his date of birth as 18th March, 1991. Counsel further submits that even in the admission forms duly filled in by the parents of the petitioner for class VII in Ramjas School and in the school leaving certificate of the said school, the date of birth of the petitioner has been disclosed as 18th March, 1991 and similarly in the admission form issued by the Delhi Public School and also the examination form of class 10th examination which was signed by the petitioner himself, the same date of birth, that is 18th March, 1991 has been filled in by the petitioner. Counsel however submits that firstly there is no scope of any mistake in the date of birth of the petitioner because the said date was either filled in by the petitioner himself or by the parents of the petitioner and

secondly the said date of birth was also filled in words as well. Counsel further placed reliance on Bye-law 69.2 of the Examination Bye-laws of CBSE to contend that as per the said Bye-laws, the date of birth once recorded in the Board's record cannot be changed and it is only the correction which is permissible to correct typographical errors so as to make the certificate consistent with the school records and that too where request is made for such corrections before the submission of an application for admission for the Board examination. Counsel further submits that the request made by the petitioner is not to carry out the correction in his date of birth in the school records rather the case of the petitioner herein is that his date of birth was wrongly recorded in the school records itself and, therefore, the request of the petitioner was rightly rejected by the respondent vide letter dated 7th July, 2009. In support of his arguments counsel has placed reliance on the judgment of the Division Bench of this court in the case of ***Bhagwat Dayal vs. CBSE & Ors.*** LPA No.783/2010 decided on 24.1.2011.

5. I have heard learned counsel for the parties and given my anxious consideration to the arguments advanced by them.

6. The petitioner herein seeks rectification in his date of birth in his class 10th certificate and mark sheet from '18.3.1991' to '18.5.1991' at the threshold of his career as recently he has noticed the incorrect recording of his date of birth in his 10th class certificate and the mark sheet while his correct date of birth has been recorded in his passport. The petitioner has taken a stand that the only authentic document to ascertain the correct date of birth would be the birth certificate which has been issued by the NDMC and there can be no reason to disbelieve the same. As per the petitioner he was born in Ram Manohar Lohia Hospital on 18.5.1991 and through the administrative office of the hospital the said date of birth was sent to the NDMC wherefrom the birth certificate recording the date of birth as 18.5.91 was issued in favour of the petitioner. The petitioner has also taken a

stand that the records maintained by the public authorities must be given due weightage and credence instead of admission form and other school forms where due to human error sometimes wrong information can be recorded.

7. The counsel for the respondent CBSE on the other hand submits that the respondent Board is bound by its rules and under Rule 69.2 of the CBSE Examination Bye-laws, the date of birth once recorded in the record of the Board cannot be changed. Counsel has further argued that under the said bye laws only if any typographical error has crept in, the records can be rectified but to the limited extent of making the said certificate consistent with the school records, provided no correction is made in the school records after the submission of the application form by the student for admission to the examination of the Board. Counsel has also placed reliance on the judgment of the Hon'ble Division Bench in ***Ms. Jigya Yadav Vs. Central Board of Secondary Education & Ors. W.P.(C) No. 3774/2010*** decided on 20.12.2010. Counsel for the respondent has also taken a

stand that the petitioner was a student of Maharaja Sawai Man Singh Vidyalaya, Jaipur and in the transfer certificate issued by the said school on 1.4.2002 his date of birth has been recorded as 18.3.1991 both in figures and in words. Counsel further argued that the petitioner had joined Ramjas School, Pusa Road, New Delhi in class VII where the father of the petitioner had filled the admission form on 2.4.2002 in his own hand writing and there also the date of birth of the petitioner was recorded as 18.3.1991 again both in figures and in words. The respondent further submits that in the school leaving certificate issued by the Ramjas School on 7.8.2003, again the date of birth of the petitioner was recorded as 18.3.91 and similarly when the petitioner was admitted in class 8th in Delhi Public School, R.K. Puram, the father of the petitioner had filled the same date of birth in his own hand writing and the said form was signed by both the parents of the petitioner on 1.8.03 and even in the admission register of Delhi Public School, the same date of birth has been duly recorded. The counsel has also contended that the

father of the petitioner had also filled the declaration form dated 1.8.2003 and the same was also signed by both the parents of the petitioner and there also the date of birth of the petitioner was recorded as 18.3.1991 both in figures and in words. Counsel has further submitted that in the list of students submitted by the school for the All India Secondary School Examination 2006, the date of birth of the petitioner was recorded as 18.3.1991 both in words and in figures. Counsel has further submitted that the petitioner passed the said examination and on having passed the said examination a certificate was issued to the petitioner recording the same date of birth i.e. 18.3.1991.

8. On a bare perusal of various admission forms and the school leaving certificates, enrolment forms and extracts of the admission records pertaining to the petitioner, there is no room to doubt that throughout the parents of the petitioner and even the petitioner himself has furnished his date of birth as 18.3.1991. The date of birth was not only filled in figures but in words as well in various admission and

other forms, therefore it cannot be said there was a possibility of any error being committed in recording the said date of birth by the school authorities. The date of birth in the school record is recorded at the instance of the parents of the petitioner as who else would know the correct date of birth of the petitioner except his own parents. It is not the case of the petitioner that his parents are illiterate or they belong to any rural background or somebody else had filled the said forms. Every such form either had been filled by the father of the petitioner or the petitioner himself and most of these forms were signed by the father of the petitioner and some of the forms were signed by both the parents of the petitioner. In the teeth of all these school records, it cannot be believed that there was any error committed by the parents of the petitioner in recording the date of birth of the petitioner.

9. Now as per the examination bye law 69.2 of the respondent CBSE, no change in the date of birth as recorded in the Board's records can be made unless the correction is

to correct a typographical error to make the certificate consistent with the school records. For better appreciation, bye-law 69.2 is reproduced as under:

"69.2 Change/Correction in Date of Birth

(i) No change in the date of birth once recorded in the Board's records shall be made. However, corrections to correct typographical and other errors to make the certificate consistent with the school records can be made provided that corrections in the school records should not have been made after the submission of application form for admission to Examination to the Board.

(ii) Such correction in Date of Birth of a candidate in case of genuine clerical errors will be made under orders of the Chairman where it is established to the satisfaction of the Chairman that the wrong entry was made erroneously in the list of candidates/application form of the candidate for the examination.

(iii) Request for correction in Date of Birth shall be forwarded by the Head of the School alongwith attested Photostat copies of :

- (a) application for admission of the candidate to the School;
- (b) portion of the page of admission and withdrawal register where entry in date of birth has been made; and
- (c) the School Leaving Certificate of the previous school submitted at the time of admission.

(iv) The application for correction in date of birth duly forwarded by the Head of School alongwith documents mentioned in byelaws 69.2(iii) shall be entertained by the Board only within two years of the date of declaration of result of Class X examination. No correction whatsoever shall be made on application submitted after the said period of two years."

It would be thus seen that under bye-law 69.2 only typographical error can be rectified and that too where such an error crept in the Board's records does not tally with the school records. The Hon'ble Division Bench in ***Bhagwant Dayal(supra)*** was also confronted with a similar situation where also the petitioner had relied upon the birth certificate issued by the municipal authority but without commenting upon the same, the Hon'ble Division Bench held as under:

*"5. The decisions of the learned Single Judge in case of **Km. Meenu and Kumari Para** (supra) cannot be relied upon in the present case. It may be noted here that this Court is not correcting or commenting upon the certificate issued by the Registrar of Births & Deaths under the Registration of Births & Deaths Act, 1969. Single judges in the said cases were dealing with the prior bye-laws, which did not have any specific bar or prohibition or fixed time limit. We are concerned with the Bye-laws 69.1 and 69.2 of the CBSE Bye-laws. Bye-law 69.1 of the CBSE Bye-laws has been quoted above. There is a bar/prohibition and a time limit has been fixed in the bye-laws. Bye-law 69.2 which deals with the change or correction of date of birth, reads as under:-*

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8. In the present case, class 10 certificate is dated 3rd June, 2000. Thereafter, the appellant had appeared in the All India Secondary School Certificate Examination in the year 2003. At that time also, the appellant did not challenge or ask for change of the date of birth or the name of his father. The plea taken by the appellant that he could not observe the aforesaid mistake till January, 2010 when the appellant was appearing in Civil Services Examination has been rightly not accepted. The appellant had obtained a certificate from Health Department of Government of Haryana on 2nd February, 2010 and then had approached CBSE and his school. Learned single judge has further observed that notices were issued to three schools where the appellant had studied. One school had stated that records were not available;

another school had stated that no student by the appellant's name was enrolled with them and the third school where the appellant was studying when he had appeared in 10th class examination, had enclosed copy of admission form dated 21st April, 1999, extract of the admission withdrawal register and the transfer certificate dated 31st March, 1999 issued by his previous school. In these documents, the date of birth was recorded as 18th March, 1984 and not 18th March, 1985. The appellant's father's name was mentioned as Bhim Singh and not Bhim Sain.

9. *For the reasons stated hereinabove, we do not find any merit in the appeal and the same is dismissed with no order as to costs."*

Thus it would be manifest from above that the petitioner cannot be allowed to sleep over the mistake committed by him once and then repeating it throughout his academic career, till the time it becomes an immutable damage. The period of limitation of two years provided in the said bye law is a reasonable time for a student to take notice of a discrepancy that has crept in and make amends. It cannot be lost sight of the fact that getting an entry corrected in the certificates is not a vested right and is subject to limitations as stipulated by the respondents. Delay defeats justice and loss of limitation destroys the remedy. Directing to frequently correct the entries of date of birth in the certificates issued by the respondents without any time frame

would be casting a shadow of doubt on the credibility of the certificates itself.

10. The 10th certificate issued by the CBSE goes with the life of a student as this certificate is the authenticated proof of the date of birth of a student. Such certificate is invariably accepted as a valuable piece of evidence in proof of date of birth and age of the applicant throughout his career ahead and even the courts attach a high degree of probative value to the certificate and the date of birth as entered in the certificate is accepted as almost binding. A student and his/her parents have to be very careful, alert and vigilant while disclosing the date of birth at the time of submission of forms for the examination of 10th class as any error at that stage certainly can prove fatal. In the present case, the parents of the petitioner had throughout been disclosing the date of birth of the petitioner as 18.3.1991 and this would be evident from the transfer certificate issued by Maharaja Sawai Man Singh Vidyalaya, Jaipur on 1.4.2002 and the said date of birth remained consistent in various

subsequent forms filled in and signed by the petitioner and his parents. In the face of all these documents, it is hard to believe that the parents of the petitioner and the petitioner himself would keep committing the mistake in furnishing the said date of birth. The particulars in the certificates, especially the date of birth carry with them a prima facie guarantee of correctness as they are furnished by the parents or the applicant himself and hence it is difficult to assume that they are false or incorrect. Date of birth is something that no parent or child can forget or mistake and while receiving the certificate if there is a mistake then the student would make out within no time the mistake in the certificate and take steps for immediate rectification. The contention of the counsel for the petitioner that in the passport the date of birth disclosed by the petitioner was 18.5.1991, does not find any merit in the eyes of law as the said information also must have been furnished by the petitioner or his parents and the said information could also be erroneous.

11. Hence, in the light of the aforesaid discussion, this court does not find any merit in the present petition and the same is accordingly dismissed.

May 10, 2011

KAILASH GAMBHIR, J