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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **DECIDED ON: 20.05.2013**

\+ **LPA 251/2009, CM APPL.8032/2013**

MAMTA SHARMA ..... Appellant

versus

C.B.S.E. & ANR. ..... Respondents

LPA 252/2009, CM APPL.8031/2013

VIJAYA SHARMA ..... Appellant

versus

C.B.S.E. & ANR. ..... Respondents

Present: Mr. R.K. Saini with Ms. Minal Sehgal, Advocates for appellants.
Mr. Amit Bansal, Advocate for Resp-1/CBSE.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

CM APPL.8032/2013 (early hearing)IN LPA 251/2009 &
CM APPL.8031/2013 (early hearing) IN LPA 252/2009

In view of the submissions and averments made in the applications, the same are allowed.

Applications stand disposed of.

LPA 251/2009 & LPA 252/2009

1. Issue Notice. Mr. Amit Bansal, Advocate accepts notice. With

consent of counsel, the appeals are taken up for final disposal.

2. By these appeals, a common judgment and order of a learned Single Judge dated 18.04.2009 dismissing the two writ petitions, i.e., W.P. (C) 3819/2008 and 3820/2008 filed by the present appellants - Ms. Vijaya Sharma and her sister Ms. Mamta Sharma - has been questioned.

3. The petitioners have sought for directions that the respondent/CBSE should correct their date of birth in the certificates issued by it.

4. It was contended that the Vijaya Sharma's correct date of birth is 26.01.1969 and that of Mamta Sharma is 05.06.1972. The appellants had placed considerable reliance upon the enquiry proceedings of Sub Divisional Magistrate (SDM) which culminated in an order stating that the date of birth previously recorded - and entered into CBSE records - were not correct and the respective date of birth of the said appellants were 26.01.1969 and 05.06.1972.

5. Learned counsel for the appellant Mr. R.K. Saini submits that the previous order of this Court in two proceedings on 06.12.2004 had taken into consideration all the factors, especially enquiry proceedings by the SDM. The learned Single Judge, it is emphasized, even took note of the affidavit filed by one Kartar Singh, the then SDM who went on the record to state that he had duly conducted the enquiry as well as materials taken into account by him to direct correction of the date of birth. It was contended that the order setting aside that judgment - of the learned Single Judge - was premised upon two decisions of the Karnataka and the Madras High Courts (*H. Subbarao v. The Life Insurance Corporation of India and Anr.*, AIR 1979 Karnataka 231 and *G.V. Vijarangan v. The State Bank of India*, 1987 (1) MLJ 82). The Court, it is submitted, merely stated that the order of the

SDM under Section 13 was not conclusive but was conceded to be an important piece of evidence.

6. It is argued that the learned Single Judge fell into error in completely ignoring the SDM's report in the present case and holding that the reliefs sought were not admissible having regard to the circumstances of the case. The learned counsel placed reliance on the judgment of the Supreme Court in *Cidco vs. Vasudha Gorkhnath Mandevlekar* (2009) 7 SCC 283, wherein it was held that the entries in the rolls maintained under the Birth and Death Register and the Rules framed under it were presumpted. It was also argued that the Birth and Death Register ordinarily result in presumption of correctness as to the entries which are admissible as evidence under Section 35 of the Indian Evidence Act. Counsel submitted that the learned Single Judge, in the present case, fell into error in overlooking this important position in law.

7. The impugned order - as a facial reading - took note of the SDM's order which led to the entry in the Birth and Death Register. Learned Single Judge also placed the history of these two cases in the previous order and the rationale which persuaded the Division Bench to set aside the learned Single Judge's earlier determination. The Court then took into consideration the judgment cited by the present appellant, i.e., *Zunnoor Faisal v. CBSE & Anr.* - W.P. (C) 6600/2006 and proceeded to distinguish the facts. In that case, the change in date of birth was of no consequence or benefit to the petitioner and in fact fell within the same admission or academic period. Also the remedial measures for correcting the date of birth of the petitioner was initiated within a year of the Class-X Board Examination results being declared.

8. This Court has considered the materials on record. Whilst the appellant's arguments about the evidentiary value to be given to entries in the Birth and Death Register cannot be doubted - as also to the importance to be accorded to such entries by virtue of Section 35 of the Indian Evidence Act which make them admissible as evidence, nevertheless, the weight to be attached to the said materials will have to be largely dependent on attendant circumstances of each case. In the present case, this Court noticed that the entries were not made, concededly, contemporaneously at the time of the birth. They were sought to be introduced after the SDM's order in 2000, i.e., almost 28 and 30 years after the event, i.e. births of the two petitioners respectively, and 18 and 16 years after the Matriculation Board Examination Results were declared in 1982 and 1985. Under these circumstances, the Court cannot assume that such entries have to be accorded some presumption as is sought to be urged in the present case. So far as the enquiry of the SDM goes, a reading of the material suggest that even in the earlier round, the records of the SDM enquiry was not available and that the concerned individual sworn an affidavit 5/6 years after the incident. This appears to have persuaded the learned single Judge, in the first instance, into allowing the writ petition. However, these circumstances, in the opinion of the Court, are sufficient to alert the Court considering the justness or legality of such a claim, to entirely rely upon it. It is too much to expect an official who deals with possibly 100 files each day to remember the facts of the case, which in the present writ proceedings were referred to six years later. Therefore, like in the case of the entry in the Birth and Death Register, the evidence by way of an affidavit filed by the SDM could not have been conclusive.

9. Counsel for the appellant has lastly submitted that CBSE could not arrogate to itself the rights, by either accepting or reject any claim, for correction in date of birth. This Court is conscious that the CBSE's rules of non-interference for change/correction of Date of Birth extends to two years after the declaration of the result of Class X examination. That apparently has been done by way of policy which the Court does not deem appropriate to question or correct in these proceedings. Even otherwise the said byelaws cannot oust the jurisdiction of the Court which would, having regard to the facts of each case decide whether the date of birth given is correct or not. Having said that, in the facts of the case, the Court is not persuaded with the appellant's submission that the learned Single Judge fell into error.

10. The appeals are dismissed accordingly.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MAY 20, 2013
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