

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

***Reserved on:- 03.12.2024
Pronounced on:- 16.12.2024***

**Case No. WP(C) No. 2259/2022
CM No. 6629/2024
CM No. 6131/2022**

**Ayaan Chowdhary, Age 11 years
S/o Anil Kumar
R/o Dewal, Tehsil Kathua
Through his mother
Vishali Kumari
W/o Anil Kumar
R/o Dewal, Tehsil Kathua
At present Jammu.**

.... Petitioner(s)

Through: - Ms. Rozina Afzal, Advocate

V/s

- 1. Union Territory of Jammu & Kashmir
Through its Commissioner/Secretary
Education Department;
Civil Secretariat, Srinagar/Jammu(J&K)**
- 2. Director School Education;
Jammu.**
- 3. Chief Education Officer (CEO);
Jammu.**
- 4. Principal Vidhya Peeth Public Secondary
Chogan Salathia
Tehsil & District Jammu.**

.....Respondent(s)

Through: - Mr. Raman Sharma, AAG

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGMENT**

PRAYER

01. The instant petition has been preferred under Article 226 of the Constitution of India for the issuance of the following reliefs:-

***(a) "Writ of Mandamus directing the official respondents for
directing/recommending the Vidya Peeth Public Secondary***

School, Chogan Salathia, Jammu School, to enter the name of the petitioner which has been changed in police records, recommended by Ld. Court and in view of new birth certificate.

(b) Issue or pass any writ, direction or order, which this Hon'ble Court may deem fit and proper in the facts of the case and in the interest of probity and rule of law.

02. Before proceeding further in the matter and to clinch the controversy in question, it is apposite to give brief resume of the facts, which, in nutshell, are summarized as under:-

FACTUAL MATRIX OF THE CASE

03. The petitioner in the instant petition was studying in class 6th at Vidya Peeth Public Secondary School, Chogan Salathia, Jammu since 08.04.2019. The specific case of the petitioner is that he was born on 23.11.2011 at a place in Malti Tehsil Billawar District Kathua and at the time of his birth, his name has been recorded as Mohan Chandel in the birth certificate and, accordingly, a birth certificate was issued under Sections 12 and 17 of Registration of Birth and Death Act, 1969 by the Station House Officer (SHO), Police Station, Billawar vide No. 515/Jel dated 24.12.2011. The parents of the petitioner wanted to change the name of the petitioner from Mohan Chandel to Ayaan Chowdhary and for the said purpose, the mother of the petitioner filed an application under Section 13(3) of Registration of Birth and Death Act, 1969. After verification of the correctness of the application and after obtaining the prescribed fee, the application was allowed by the Court of learned Munsiff (JMJC) Billawar (for short '***Court below***') and a direction was issued to SHO Police Station, Billawar

to enter the name of petitioner as Ayaan Chowdhary S/o Anil Kumar with a direction that the said direction shall be binding between the parties to the application. Consequently, vide Registration No. 1682/15-A dated 23.11.2021, SHO Police Station Billawar issued the Birth Certificate in the name of the petitioner reflecting his name as Ayaan Chowdhary.

04. The alleged cause of action according to the petitioner, was accrued when the parents of the petitioner paid visit to concerned school where the petitioner was studying for recognizing his name in the school as Ayaan Chowdhary instead of Mohan Chandel. However, the Principal of Vidhyapeeth School refused to consider the relevant documents issued by competent authorities and asked parents of the petitioner to get an order or a direction from the Court.

05. As per the petitioner, since all the Government schools are recognized by the respondents (J&K Union Territory Govt.), as such, the petitioner approached respondent no. 3 (Chief Education Officer, Jammu) with a legal notice seeking a direction/recommendation to the principal concerned to enter the new name of the petitioner in the school records recommended by the Competent Court under the name of Ayaan Chowdhary instead of Mohan Chandel. Since the grievance of the petitioner was not redressed inspite of the issuance of legal notice, the petitioner filed the instant petition.

ARGUMENTS ON BEHALF OF THE PETITIONER

06. Learned counsel for the petitioner has fairly admitted that the petitioner was born on 23.11.2011 at Malti Tehsil, Billawar, District Kathua. At the time of birth, his name was recorded as Mohan Chandel in the school record and a birth certificate was issued under Sections 12 and 17 of the Registration of

Birth and Death Act, 1969 by SHO Police Station, Billawar vide No. 515/Jel dated 24.12.2011.

07. Learned counsel for the petitioner has argued that since the parents of the petitioner wanted to change the name of the petitioner, the mother of the petitioner preferred an application under Section 13(3) of the Registration of Birth and Death Act 1969 before the Court below and pursuant to the depositing of the requisite fee, the Competent Court allowed the said application by issuing a direction to the concerned SHO to enter the date of birth as Ayaan Chowdhary S/o of Anil Kumar. In compliance to the aforesaid order, a fresh birth certificate was issued in the name of the petitioner by reflecting his name as Ayaan Chowdhary by virtue of registration certificate No. 1682/15-A dated 23.11.2021 by SHO Police Station, Billawar.

08. Learned counsel for the petitioner has argued that since the name of the petitioner has been changed from Mohan Chandel to Ayaan Chowdhary, respondent no. 4 was under a legal obligation qua the petitioner to have redressed the grievance of the petitioner by making necessary correction in the school record, but despite of the issuance of the order passed by the Competent Court, the needful was not done by the concerned Principal of the school.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

09. *Per contra*, reply has been filed on behalf of the respondents in which preliminary objection has been taken with regard to the maintainability of the instant petition on the ground that the petitioner has not come before this Court with clean hands and has tried to mislead this Court by sheer misrepresentation of facts. Accordingly, the writ petition suffers from

suppressio-veri, suggestio-falsi, which renders the writ petition liable to be dismissed *in limine*.

10. Respondents while filing the reply have admitted that the petitioner has approached this Court through his mother for seeking direction to the respondents to enter the name of the petitioner, which has been changed in the police record, as recommended by the Court below in view of the new birth certificate issued. However, the fact remains that the mother of the petitioner while filing the application before the Court below stated that the date of birth of her son-Ayaan Chowdhary has not been recorded in the birth register of the Police Station, Billawar at the time of his birth and, accordingly, filed an application before the said Court with a prayer to record the date of birth of her son in conformity with Section 13(3) of the Registration of Birth and Death Act, 1969.

11. It is the specific stand of the respondents that in the aforementioned order passed by the Competent Court on which reliance has been placed by the petitioner, there is no specific direction with respect to the change of name of the petitioner from Mohan Chandel to Ayaan Chowdhary. The said order merely gave direction to SHO Billawar to enter the date of birth of the petitioner, the details of which were given by the mother of the petitioner as Ayaan Chowdhary.

12. Respondents after examination of the school record have pleaded that petitioner is a student of Vidya Peeth Public Higher Secondary School, Mubarak Mandi, Jammu and in the said school his name has already been registered as Mohan Chandel on the basis of date of birth certificate submitted at the time of his admission in the said school, which was issued by SHO Police Station

Billawar. Thus, as per the respondents, petitioner has misrepresented the facts before this Court and the Court below and, accordingly, the writ petition which is utterly misconceived, false and frivolous deserves dismissal with costs.

13. Learned counsel for the respondents has argued that the order of Court below is silent about the change of the name of the petitioner, as the said order is only confined to a direction to SHO to register the date of birth of Ayaan Chowdhary. Thus, he submitted that the writ petition which has been filed by suppression of material facts deserves dismissal in limine.

LEGAL ANALYSIS

14. With a view to appreciate the controversy in question, it would be apt to reproduce Section 13(3) of the Registration of Birth and Death Act, 1969. For facility of reference, Section 13(3) of the aforesaid Act is reproduced as under:-

"Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee."

15. Thus, from a bare perusal of the aforesaid statutory provision, it is emphatically clear that powers under Section 13(3) can be exercised by the Competent Court in the eventuality, if any birth or death has not been registered within one year of its occurrence. If the same has not been registered within one year of its occurrence, then a direction can be issued by the learned Magistrate 1st Class after verifying the correctness of the birth or death on payment of a prescribed fee. However, in the present case, it appears from the record that the petitioner has not approached the Court below with clean hands and has suppressed material facts to the extent of projecting the name of the petitioner as

Ayaan Chowdhary. It appears that the Court below was led to believe as if the name of the petitioner has already been changed from Mohan Chandel to Ayaan Chowdhary.

16. In the aforesaid backdrop, the learned Magistrate issued a direction to the SHO concerned to enter the date of birth of the applicant's son (application was preferred by the mother on behalf of her minor son) Ayaan Chowdhary as 23.11.2011. A perusal of the order passed by the Court reveals that the Court below proceeded on the premise that the name of the petitioner had already been changed to Ayaan Chowdhary as the application under Section 13(3) has been filed under the said name. The stand of the petitioner as culled out from the petition appears to be that the name of the petitioner was changed by virtue of the order dated 09.09.2021 passed by the Court below under Section 13(3) of the Registration of Birth and Death Act 1969. However, the said order is conspicuously silent on any change of name as the Court had proceeded on the assumption that the name of the petitioner is, already Ayaan Chowdhary. Even otherwise, the contours of Section 13(3) are entirely different.

17. The Court below was misled by the mother of the petitioner that the name of the petitioner has already been changed to Ayaan Chowdhary and the application was only confined to the extent of entering the date of birth of her son and the Court below in the aforesaid backdrop, issued the aforesaid direction. The powers under Section 13(3) of the Registration of Birth and Death Act, 1969 can be exercised by the learned Magistrate in the eventuality, if any birth and death is not registered within a period of one year from the date of its occurrence. However, the date of birth had already been recorded by the

concerned SHO as 23.11.2011 by reflecting the name of the petitioner as Mohan Chandel.

18. The Hon'ble Apex Court in the case of **K. Jayaram and others vs Bangalore Development Authority and ors** reported in **2022 (12) SCC 815**, has held as under:

38....As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

19. Keeping in view the conduct of the petitioner who has proceeded deliberately playing fraud with this Court by suppressing material facts, this Court place reliance on the judgment rendered by Hon'ble Apex Court in **Kishore Samritee V/s State of Uttar Pradesh and Ors.** rendered in **(2013) 2 SCC 398** wherein, in paras 32 & 35, the Apex Court has been pleased to observe as under:-

"32. The cases of abuse of process of court and such allied matters have been arising before the courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the

courts with “unclean hands”. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.

32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the courts, irrespective of the consequences but that practice no longer proves true, in all cases. The court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the court with clean hands. It is the bounden duty of the court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of process of court. One way to curb this tendency is to impose realistic or punitive costs.”

20. Consequently, no direction can be issued to the official respondents for directing the private respondents to enter the name of the petitioner on the changed date of birth on the basis of an order, which has been obtained by the petitioner by way of misrepresentation of facts. From a bare perusal of the

record, it is manifestly clear that the mother of the petitioner has never initiated the process of changing the name of the petitioner from Mohan Chandel to Ayaan Chowdhary and on the other hand, the Court below was made to believe that the change of name of the petitioner from Mohan Chandel to Ayaan Chowdhary has already taken place, but his date of birth was not recorded within the statutory period of one year and, accordingly, the Court below issued the aforesaid direction.

21. Thus, the argument of the learned counsel for the petitioner that the name of the petitioner has been changed in the year 2021 by the Court below is not tenable in the eyes of law and is liable to be rejected for the simple reason that the process for the change of the name of the petitioner was never initiated. On the other hand, the mother of the petitioner filed an application under the name of Ayaan Chowdhary for issuing a direction to register his date of birth and the application filed by the mother of the petitioner was confined only to the extent of entering the date of birth of the petitioner (Ayaan Chowdhary) as 23.11.2011. Thus, this Court does not find merit in the arguments of the counsel for the petitioner. The judgments relied by the learned counsel for the petitioner are also not applicable to the instant case.

CONCLUSION

22. Thus, in light of what has been discussed hereinabove, this Court is of the view that any order, which has been obtained by the petitioner or his mother by way of misrepresentation cannot be acted upon and no direction to that extent can be issued by this Court. Accordingly, the writ petition which is utterly misconceived deserves dismissal. It is, however, made clear that the dismissal of

the writ petition shall not come in the way of the petitioner to take steps for change of his name, if the petitioner is desirous of changing his name in school records strictly in accordance with law and as per the norms.

23. The instant petition is, accordingly, *dismissed* along with all connected application(s).

(Wasim Sadiq Nargal)
Judge

Jammu:
16.12.2024
Mihul

Whether the order is speaking : *Yes/No*
Whether the order is reportable : *Yes/No*

