

\$~1

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

+ **W.P.(C) 11013/2015**

DR. JAI MOAL KURIAN @ DR. JAI

SUNNY GEORGE

..... Petitioner

Through: Mr Saurabh Jain, Adv.

versus

CENTRAL BOARD OF SECONDARY

EDUCATION

..... Respondent

Through: Mr Atul Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

10.12.2015

%

1. Mr. Kumar, learned counsel for the respondent, seeks to resist the petition. Mr. Kumar, however, says that he does not wish to file a counter affidavit, as he says the facts are not in dispute. Mr. Kumar seeks to rely upon the following rule, as obtaining on 27.06.2011:

“.... 69.1 (ii) Correction in name to the extent of correction in spelling errors, factual typographical errors in the candidate's name/ Surname, Father's name/ Mother's name or Guardian's name to make it consistent with what is given in the school record or list of candidates (LOC) submitted by the school may be made.

Application for correction in name of Candidate/ Father's/ Mother's/ Guardian's name will be considered only within ten years of the date of declaration of result provided the application of the candidate is forwarded by the head of institution with the following attested documents...”

1.1 A copy of the Rule, as extracted above, has been provided by Mr. Kumar.

1.2 Based on the aforesaid Rule, Mr. Kumar says that the period of limitation provided therein has expired, as the class XII certificate was issued to the petitioner, in 1988.

2. To be noted, the petitioner's grievance arises in the background of the following facts:

2.1 The petitioner passed class X, and was, consequently, issued a certificate by the respondent i.e. the Central Board of Secondary Education (hereafter referred to as the CBSE), on 30.06.1986. In the said certificate, the petitioner's name was set out as: "JAI MOAL KURIAN".

2.2 The petitioner, thereafter, admittedly, sat for her class XII examination, whereupon she was, once again, issued a certificate by the CBSE. This certificate, however, was issued inaccurately, in as much as, the petitioner's first and the middle name were clubbed together. In the class XII certificate issued by the CBSE, the petitioner's name appears as: "JAIMOAL KURIAN".

2.3 According to the petitioner, she got married to, one, Mr Sunny George, on 12.04.1999. It appears, that after matrimony, the petitioner, changed her name to Dr. Jai Sunny George. The Vicar, apparently, issued a certificate on 08.01.2000, certifying therein that the name which the petitioner bore before her marriage i.e. Dr. Jai Moal Kurian, and the one she is known by after marriage i.e. Dr. Jai Sunny George, related to the same person. Accordingly, the petitioner, it appears, was issued a passport on 31.07.2013, wherein her name is set out as: Ms. Jai Sunny George.

2.4 The petitioner avers that on 08.06.2015, with an intention to pursue further studies and to undertake a fellowship programme/ course at USA, she applied to the Education Commission for Foreign Medical Graduates

(hereafter referred to as the ECFMG).

2.5 The petitioner states that the ECFMG rejected her application, on 08.09.2015, as her name on the medical diploma/ MBBS degree did not match with their record.

2.6 It is, thereafter, that the petitioner commenced her inquiry as to why a discrepancy qua her name had cropped up. For this purpose, on 28.09.2015, the petitioner approached the Government Medical College, Kozhikode. The said college issued her a certificate. The certificate, so issued, adverted to the fact that as per their record, the petitioner's name appeared as: Jai Moal Kurian.

2.7 Accordingly, on 06.10.2015, the petitioner approached her former school i.e. Manav Bharti India International School, situate at Panchsheel Park, New Delhi. The principal of the school issued a certificate to the effect that the two names i.e. Jai Moal Kurian and Jaimoal Kurian related to the same person.

2.8 Armed with this certificate, on 14.10.2015, the petitioner once again, applied to the ECFMG. However, the ECFMG rejected her application, once again, vide communication dated 28.10.2015, on the ground that her name, as it appeared in the medical diploma, did not match with the name in their record.

2.9 The petitioner has further averred that she has approached the respondent/ CBSE on several occasions to carry out the necessary corrections in her class XII certificate. It is further submitted that, after examining the request made, the CBSE advised the petitioner that the correction in the class XII certificate can only be carried out after appropriate orders are obtained from a competent court.

3. It is in the background of the aforesaid, that the petitioner has approached this court by way of the captioned writ petition. Notice in the petition was issued on 30.11.2015, at which point in time, Mr. Kumar entered appearance on behalf of the respondent/ CBSE. Mr. Kumar sought time to seek instructions in the matter. The writ petition was made returnable today i.e. 10.12.2015.

3.1 As indicated at the outset, Mr. Kumar says that he does not wish to file a counter affidavit. In that sense, the assertions made by the petitioner have gone untraversed.

4. Mr. Kumar has, therefore, advanced a legal submission based on his reading of the Rule, referred to above. It is Mr. Kumar's submission that no correction can be carried out as per the aforesaid Rule, as the period of ten (10) years has elapsed from the date the petitioner cleared her class XII examination.

5. There is no dispute that the petitioner was issued a certificate on 22.08.1988.

5.1 In these circumstances, what has to be examined is: whether the aforesaid Rule, will at all apply in this particular case? A close perusal of the Rule would show that correction in the name, can be made, to the extent of correction in spelling errors, factual typographical errors in the candidate's name, sur-name, father's name, mother's name or guardian's name so as to make it consistent with what is given in the school record or in the list of candidates submitted by the school.

5.2 Furthermore, qua these corrections if an application is made it can be considered only within a period of ten (10) years from the date of declaration of the result, provided the application of the candidate is

forwarded by the head of the institution, with certain attested documents.

5.3 There are series of documents, which are referred to in the Rule. The reference to them is presently, not necessary.

6. As is evident from the facts set out above, the petitioner seeks correction in her class XII certificate based on the CBSE's record. In other words, it is petitioner's assertion, which again is not disputed, that the manner in which her name is set out in the class XII certificate, is not in line with the class X certificate, issued by the CBSE. Therefore, a limited correction which is sought is, of the CBSE's own record, which, as indicated above would require, in effect, unbundling, if you like, of the first and the middle name of the petitioner. To my mind, therefore, the Rule, if read plainly, would have no application in the instant case.

7. The CBSE, while not disputing the facts, has thrown the limitation period at the petitioner, and based on that, taken the stand, that, it cannot come to the aid of the petitioner. According to me, on a plain reading the said Rule, cannot apply to the petitioner. The petitioner's advancement in academics is stalled on account of the CBSE taking recourse to the said Rule and, in effect, pleading helplessness qua a situation for which it is, if not wholly, at least partially, responsible.

8. In these circumstances, the writ petition is allowed.

9. At this stage, Mr. Kumar, learned counsel for the CBSE, says that, on the petitioner surrendering her class XII certificate, the CBSE will carry out the necessary corrections thereon.

10. It is ordered accordingly. The petitioner will do the needful within one week from today. On the petitioner surrendering her the class XII certificate, the respondent will carry out the necessary corrections,

immediately thereafter, though not later than one (1) week therefrom.

10. The petition is, accordingly, disposed of.

11. Dasti to parties, under the signatures of the Court Master.

RAJIV SHAKDHER, J

DECEMBER 10, 2015

kk