

\$~16

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

Date of Decision- 23.05.2018.

+ W.P.(C) 3453/2017

IQRA AND ORS

..... Petitioners

Through: Mr.Vikas Sood & Mr.Natansh
Kr. Pal, Advs.

versus

C B S E AND ORS

..... Respondents

Through: Ms.Seema Dolo & Mr.Amit
Bansal, Advs. for R-1.
Mr.Aditya Garg, Adv. for R-2.
Mr.Sanjay Sharma, Adv. for R-4.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the Petitioners No. 1 and 2 seek quashing of order dated 18.11.2016 (hereinafter referred to as "Impugned Order"), whereby the Respondent No. 1/Central Board of Secondary Education (hereinafter referred to as "CBSE") has rejected their request for correcting the spelling of their father's name from 'Nafees' to 'Nafis' in their Class X certificates. The Petitioners No. 1 and 2 have also sought a direction to the Respondents No.1 and 2 to change the name of their father, who is Petitioner No. 3 in the present petition, from 'Nafees' to 'Nafis' in their respective records.

2. The relevant facts that are necessary for determining the present petition are that the Petitioners No. 1 and 2 are twin sisters belonging to the Ansari community, which is stated to be an Other Backward Class (hereinafter referred to as "OBC"). It has been averred in the petition that their father's name was always 'Nafis Ahmed', in respect of which reliance has been placed on the Unique Identification Card issued by the Government of India as also the Ration Card and OBC certificate issued by the Government of NCT.

3. It is the Petitioners' case that when both Petitioners No.1 and 2 took admission in Respondent No. 3/Dayanand Model School in 2004, their father's name was correctly recorded as 'Nafis Ahmed'. The Petitioners No. 1 and 2 studied in Respondent No. 3 till Class-II and, thereafter, joined the Respondent No. 4/Khrist Raja Secondary School in 2007. It is an admitted position that when the Petitioners No. 1 and 2 joined the Respondent No. 4/School, their father's name was correctly shown as 'Nafis Ahmed'. However, it transpires that at a subsequent stage, when the registration form was filled, the name of the Petitioner No. 3, who is the father of Petitioners No. 1 and 2, was incorrectly recorded as 'Nafees Ahmed', and due to this inadvertent spelling mistake, the Respondent No. 1 while issuing the Class X certificate, also entered the name of the Petitioner No. 3 as 'Nafees Ahmed'.

4. It further transpires that the Petitioners No. 1 and 2 joined the Respondent No. 2/Salwan Girls Sr. Secondary School in 2014, where based on the transfer certificate issued by the Respondent No.4, the name of Petitioner No.3 was entered as 'Nafees Ahmed' in the

records of Respondent No. 2. Thus, the Respondent No. 2 on the basis of its records, which records carried forward the error committed by the Respondent No. 4, furnished information to the Respondent No.1 depicting the name of the Petitioner No.3 as ‘Nafees’ instead of “Nafis”. It further transpires that the Petitioners No. 1 and 2 realized that the name of their father/Petitioner No. 3 had been wrongly recorded, only after they had obtained their respective Class X certificates. In these circumstances, they approached the Respondent No. 2/School as also the Respondent No. 1/CBSE with a request to have the name of their father/Petitioner No. 3 corrected from “Nafees” to “Nafis”. At the request of the Petitioners, the Respondent No. 2, after examining the requisite documents, also requested the Respondent No.1 to make the necessary corrections in the spelling of Petitioner No. 3’s name, which request has been rejected vide the Impugned Order dated 18.11.2016. The Petitioners have, in these circumstances, approached this Court by preferring the present petition.

5. Having set out the facts hereinabove, I may now deal with the rival contentions of the learned counsels for the parties. Learned counsel for the Petitioners submits that the Petitioners are neither seeking a change nor correction in any name, but are merely seeking a correction *in the spelling* of the name of Petitioner No. 3, who is the father of Petitioners No. 1 and 2. Therefore, he submits, there is no reason why the Respondent No. 1 had refused to accede to the Respondent No. 2’s aforementioned request for changing the Petitioner No. 3’s name in the Class X certificates of the Petitioners

No. 1 and 2. He submits that the case of the Petitioners is squarely covered by Rule 69.1(ii) of the CBSE Examination Bye-laws. He also places reliance on a decision of this Court in the case of ***Arya Kariyatil Chendakera vs. CBSE & Anr.***[LPA 705/2017], in support of his contention that a Division Bench of this Court has categorically held that cases pertaining to corrections of spelling mistakes cannot be treated as cases of change in name, which stand on a completely different footing.

6. At this stage, it may be noted that the learned counsels for the Respondents No. 2 and 4 have supported the Petitioners' stand mentioned hereinabove.

7. On the other hand, Ms. Seema Dolo, Advocate who appears for Respondent No. 1/CBSE, opposes the petition and submits that it is an admitted case that the Respondent No. 2 had forwarded the Petitioner No. 3's name as 'Nafees' and, therefore, it is not a case where there was any typographical mistake on the part of the Respondent No.1. She submits that only cases where there is a typographical error on the part of the Respondent No. 1/CBSE in making entries vis-a-vis the record received from the school, can the case be treated as one requiring correction in spelling. She, thus, contends that in view of the admitted position that there is no typographical error on the part of the Respondent No. 1, who had faithfully reproduced the information forwarded to it by the Respondent No. 2, the present case will not fall within the ambit of Rule 69.1(ii) of the CBSE Examination Bye-laws. By placing reliance on a decision of this Court in the case of ***Mazhar Saleem***

Chandroth (Minor) Thr. Saleem Chandroth (Father and Natural Guardian) vs. CBSE[LPA No.315/2017]as also ***Ms. Jigyaa Yadav through Guardian/Father Mr. Hari Singh vs. CBSE & Ors.[WP(C) No. 3774/2010]***, she submits that the present case is a clear instance of when the CBSE has merely incorporated the name and the spelling as forwarded by the concerned school and, therefore, the writ petition is liable to be dismissed.

8. Having considered the rival contentions of the learned counsels for the parties, I find that the basic issue which arises for adjudication is whether the present case falls within the ambit of Rule 69.1(ii) of the CBSE Examination Bye-laws or not. It is an admitted position that, if the present case falls within the ambit of Rule 69.1(ii), then it is incumbent upon the Respondent No. 1/CBSE to carry out the necessary corrections in the spelling mistakes without any further enquiry.

9. Before dealing with the rival contentions of the parties, it may be appropriate to refer to Rules 69.1(i) as also 69.1(ii) of the CBSE Examination Bye-laws, which read as under:-

“Rule 69.1(i)

Applications regarding changes in name or surname of candidates may be considered, provided the changes have been admitted by the Court of law and notified in the Government Gazette before the publication of the result of the candidate.

Rule 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 one year 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... ”

10. The facts as emerge from the record clearly show that the name of the Petitioner No. 3 has been noted as ‘Nafis’ in all government documents as also in the Respondent No. 4’s records at the time the Petitioners No. 1 and 2 had taken admission in the same. It is only at subsequent stages where the name ‘Nafis’, being a common name, appears to have been misspelled as ‘Nafees’. The question at this stage would be whether, merely because the Respondent No. 2/School did not make any typographical mistake and forwarded the name of the Petitioner No. 3 as ‘Nafees’, which is how the Petitioner No. 3’s name was reflected in the Respondent No. 2’s records due to the carrying forward of mistakes made in the Petitioners No. 1 and 2 migration certificates from the Respondent No 4/School, can the Petitioners be penalized for the same and can the present matter be said to lie beyond the ambit of Rule 69.1(ii)?

11. Having given my thoughtful consideration to the matter, I am of the considered view that Rule 69.1(ii), which permits correction in the name of a student to the extent of corrections pertaining to spelling errors, cannot be read in such a restricted matter so as to include only those cases where there is a typographical error on the part of the CBSE, as has been contended by the learned counsel for the Petitioners. The very purpose of Rule 69.1(ii), being different from Rule 69.1(i), clearly shows that even the intention of the

Respondent No. 1 is to treat cases where there is a spelling mistake differently from cases where there is a change in the name. Thus, in my considered view, the spelling errors envisaged in Rule 69.1(ii) would include spelling errors made even by the concerned schools at the time of forwarding information to the Respondent No. 1/CBSE. Thus, the purpose of Rule 69.1(ii) cannot be defeated by insisting that the spelling mistake would be corrected, only if it is done at the end of Respondent No.1.

12. I have also considered the decisions relied upon by learned counsel for the Respondent No. 1, and I find that the said decisions are not at all applicable to the facts of the present case, since they relate to cases where the names were sought to be changed, whereas in the present case, only a spelling error in the same name is sought to be corrected. In *Mazhar Saleem Chandroth* (*supra*), the correction sought in the name was from ‘Mazhar Chandroth’ to ‘Mazhar Saleem Chandroth’, which meant that a completely new word was sought to be added in the name of the concerned person. Thus it is evident that the petitioner in that case had sought a change in his name, which could obviously not be treated as a mere spelling error. In *Ms. Jigya Yadav* (*supra*), the change sought by the petitioner therein was a change in her father’s name from ‘Hari Singh Yadav’ to ‘Hari Singh’, and a change in her mother’s name from ‘Mamta Yadav’ to ‘Mamta’. Therefore, even that was a case of deletion of one word from the names of both the parents, and the same was rightly treated as an instance of change of name, as opposed to a spelling error.

13. On the other hand, I find that the decision of the Division Bench of this Court in the case of *Arya Kariyatil Chendakera (supra)*, which has been relied upon by learned counsel for the Petitioners, squarely applies to the facts of the present case. For the sake of ready reference, the relevant paragraphs 6 and 7 of the decision of this Court in *Arya Kariyatil Chendakera (supra)*, are reproduced hereinbelow:-

“6. A bare perusal of the afore-said bye-laws shows that the change(s) and the correction(s) as provided for, are to be dealt with distinctly. It therefore necessarily follows that to deal with any such application, one has to first consider as to whether the application made is for a change or correction in the name(s). In this perspective, when one adverts to the case in hand, it is seen that the application made by the appellant was actually for corrections and not for any change in the name(s). What is sought, put in a simple manner, is as follows:

	<i>Recorded Name</i>	<i>Proposed to be recorded</i>
<i>Appellant</i>	<i>Arya KC</i>	<i>Ms.Arya Kariyatil Chendakera</i>
<i>Father of Appellant</i>	<i>K.C.Dilip</i>	<i>Sh.Kariyatil Chendakera Deleep Kumar</i>
<i>Mother of Appellant</i>	<i>Kavitha Dilip</i>	<i>Smt.Kavitha Deleep</i>

7. A careful look into the names appearing in the subject document and the amendments proposed only leads to the conclusion that appellant, in effect, seeks to furnish the full name, surname, and the middle name of the respective persons. In other words, the abbreviations used for the name, middle name or the surnames are only sought to be done away with. Such corrections in the school records and 'the subject document' in our considered view by no means can be construed to be a change of name. Though, the surname is sought to be corrected/amended as 'Deleep' instead of 'Dilip', it also has the effect of correction only rather than a change. It is thus seen that the application made by the appellant was

actually for the correction in names rather than for any change. The reliance placed upon Aditya Srivastva's case (supra) by the ld. Single Judge, in our considered view, was misplaced inasmuch as, in that case, the appellant had sought change in name from 'Randhir Srivastava' to 'Aditya Srivastava' and for the purpose, reliance was placed upon un-amended Bye-law 69.1(i). That is not the position in the case in hand. The instant case, in our considered view, falls within the category of Bye-law 69.1(ii), which deals with the correction in the names. It is also not the case nor was it pointed out during the hearing that the identity of either the appellant or her parents or their relationship is in dispute. What is asserted to by the appellant, in fact, also finds support from the gazette notification for correction in names issued on 26.05.2017 as also the respective passports and the Aadhar Card, which are duly supported by an affidavit. It is thus clear that the appellant's application was required to be considered for correction in name as provided for under Bye-law 69.1(ii). The plea urged to the contrary in the counter affidavit filed on behalf of CBSE is therefore, wholly misconceived and meritless."

14. What is of particular importance in the present case is that the name 'Nafis' is fairly common and its inadvertent substitution with the word 'Nafees', due to the phonetic similarity between the two words, is an even more common mistake. Therefore, it is not inconceivable that the Petitioner No. 3's name was at some point accidentally spelled incorrectly as "Nafees" instead of "Nafis" in the Respondent No. 4/School's internal records, despite the fact that the registration form filled at the time the Petitioners No. 1 and 2 had taken admission in Respondent No. 4/School clearly reflected the Petitioner No. 3's name as "Nafis". It is for this reason that the transfer certificates of the Petitioners No. 1 and 2 issued by the Respondent No. 4, contained the aforementioned spelling error in the Petitioner No. 3's name, which error was then carried forward in the

records of the Respondent No. 2/School based on the aforementioned documents issued by the Respondent No. 4.

15. Thus, keeping in view the observations of the Division Bench of this Court in the case of *Arya Kariyatil Chendakera (supra)* as also the fact that the spelling error committed in the present case is a common mistake, I find no merit in Ms. Dolo's contention that Rule 69.1(ii) of the CBSE Examination Bye-laws only applies to typographical errors committed by the CBSE and not those committed by the concerned school at the time of forwarding the requisite details of the students. Therefore, the Respondent No. 1 is directed to make the necessary corrections in the Class X certificate of the Petitioners No. 1 and 2. Upon the Petitioners No. 1 and 2 surrendering their original Class X certificates, the Respondent No. 1 is directed to issue fresh Class X certificates, correcting the spelling error in the Petitioner No. 3's name. Since the results of Class XII examinations, in which the Petitioners No. 1 and 2 had appeared, are yet to be declared, it is directed that as and when the same are declared, Respondent No. 1 will issue the certificates for Class XII also, showing the Petitioner No. 3's name as 'Nafis Ahmed'.

16. For the aforesaid reasons, the petition is allowed in the above terms without any order as to costs.

(REKHA PALLI)
JUDGE

MAY 23, 2018/gm