

#49

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 06.09.2018

W.P.(C) 4990/2018

ROHIT AKKA

..... Petitioner

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sidharth Luthra, Senior Advocate with Mr. Aditya Singla and
Ms. Supriya Juneja, Advocates

For the Respondents : Mr. Atul Kumar, Advocate for R-1
Mr. Sunil Kumar Singh, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The writ present petition under Article 226 of the Constitution of India, essentially prays for a direction commanding Central Board of Secondary Education (for short 'CBSE'), respondent No.1 herein, to issue a fresh marksheet and a fresh Class X Secondary School Examination Certificate to the petitioner, recording therein, his correct surname, date of birth,

mother's name and father's name, in accord with the birth certificate issued to him by the Municipal Authorities.

2. A perusal of the birth certificate issued to the petitioner on 08.08.2003 by the Government of National Capital Territory of Delhi, clearly reflects his name as 'Rohit Akka' and that of his parents as 'Bilcho Minj' and 'Jalyes Minj'. It further records his date of birth as 26.07.1999.
3. The parents of the petitioner are stated to belong to a remote and backward village, Tapka Pani situated in District Gumla, Jharkhand and belong to the Oran Community, which is a Scheduled tribe. The petitioner has been residing along with his mother in New Delhi and states that his father, who he has no recollection of, has since expired.
4. It is further pointed out that, the petitioner's mother has been diagnosed with acute Paranoid Psychosis and has been undergoing treatment under the care of the Vidyasagar Institute for Mental Health Neuro and Allied Sciences, New Delhi.
5. It is stated on behalf of the petitioner that, he was admitted to Nagar Nigam Prathmik Vidyalaya, (MCD Model School), Defence Colony, New Delhi (hereinafter referred to as the 'Prathmik Vidyalaya'), in the year 2004.

6. Immediately thereafter, in the year 2006, the health of the petitioner's mother is stated to have deteriorated to such an extent that she had to be taken back to her native place.
7. Unable to receive the requisite care and attention in her native place and in view of her deteriorating mental health, she returned to Delhi and sought employment in a household.
8. In this backdrop, it was considered appropriate to admit the petitioner in a school, which had the facility of a hostel for boys to ensure the continuance of his education, without any impediment or distraction.
9. The petitioner was, therefore, admitted to the Stephen Thomas Home for Boys at Raj Niwas Marg, New Delhi, which is a hostel accommodation provided to young boys who are, *inter alia*, educated at United English Medium School, located at 17-A Raj Niwas Marg, Delhi.
10. In this behalf, it is pertinent to observe that, the transfer certificate issued to the petitioner by the Prathmik Vidyalaya clearly reflects the petitioner's date of birth and his parent's name, in consonance with the said date of birth certificate.
11. It transpires that, on account of his inability to cope with English as the medium of instruction at United English Medium School, he was required

to be shifted to a Hindi medium school namely, Delhi United Christian Senior Secondary School, respondent No.2 herein, (hereinafter referred to as 'respondent No.2'), operated within the same compound.

12. It is, at this point of time that, an affidavit was filed on behalf of the petitioner by his mother, which has become a millstone around his neck. A perusal of the said affidavit reflects the petitioner's name as 'Rohit Ekka' and his date of birth as 25.12.2001, which is at variance with the details specified in the said date of birth certificate.
13. At this juncture, it would be relevant to observe that, it further records that the petitioner was studying in Class I at the respondent No.2 school and therefore was eligible to admission to Class II.
14. As a consequence of the filing of the above said affidavit by the petitioner's mother, the record of the respondent No.2 school reflected his name as aforestated at variance with the said date of birth certificate.
15. The petitioner successfully appeared for the Class X examinations conducted by the CBSE in February-March 2017 and was duly issued the Class X Secondary School Examination Certificate (hereinafter referred to as 'subject certificate'), the correction of which is the subject matter of the present proceedings.

16. Mr. Sidharth Luthra, learned Senior Counsel appearing on behalf of the petitioner would urge that, the said affidavit was signed and verified by the petitioner's mother, at a time when her physical and mental health was at its most vulnerable.
17. In addition thereto, having attended school only till Class V in a native place and that too in the vernacular language; she was obviously unaware of the details elaborated in the subject affidavit, which was filed in English.
18. In other words, it is submitted that, on account of her circumstances elaborated hereinabove, the petitioner's mother made an error of judgment, which has since become the bane of his existence.
19. Mr. Sidharth Luthra, learned Senior Counsel appearing on behalf of the petitioner would, therefore, urge that, the petitioner who was a minor at the relevant time and had no knowledge of the submission of the subject affidavit, by his ill and uneducated mother, ought not to be precluded from seeking correction of the subject certificate, in consonance with the date of birth certificate issued to him.
20. Learned counsel appearing on behalf of the respondent No.2 school invites my attention to their communication dated 18.12.2017, addressed

to the CBSE on the subject dispute, to urge that, they had requested the CBSE, in view of the peculiar facts and circumstances of the case, and particularly, in view of the variance between the petitioner's date of birth certificate and his school records, to issue a corrected subject certificate, in accord with the petitioner's date of birth certificate.

21. *Per Contra*, Mr. Atul Kumar, learned counsel appearing on behalf of the CBSE would urge that, in terms of the mandate of Rule 69. 2 (i) of the Examination Bye laws, no change founded on a date of birth certificate can be carried out in the subject certificate, if it is contrary to the details elaborated in the school record.

22. I find myself unable to agree with the contention made on behalf of the CBSE for the following reasons:

- a. The law requires the mandatory registration of all births by the municipal authorities.
- b. The date of birth certificate issued on behalf of the municipal authorities is the basis for the issuance of all other documents, including the Aadhar Card, passport, ration card, PAN card etc.

23. As a matter of fact, it is an admitted position that, even the subject Bye-law requires the Head of the school to furnish, *inter alia*, the date of birth

certificate submitted by the student at the time of seeking admission, along with the request for correction of the subject certificate.

24. In this view of the matter, in my considered opinion, the refusal on the part of the CBSE to carry out necessary corrections in the subject certificate, even though, they are warranted, in terms of the date of birth certificate issued to the petitioner, cannot be sustained.

25. In this behalf, it is trite to state that, the date of birth, in relation to a juvenile, is determined in law, on the basis of the birth certificate issued by the municipal authorities and in absence thereof, certificate issued to him by the school first attended.

26. In this regard it is relevant to observe that, it is an admitted position that, both the date of birth certificate, as well as, the certificate issued by the school first attended by the petitioner, clearly reflect his name as 'Rohit Akka' and the name of his mother as 'Bilcho Minj'. It further records his date of birth as 26.07.1999.

27. For the foregoing reasons, the solitary issue that requires determination by this Court is, whether the petitioner ought to be bound down and precluded from seeking the necessary corrections in the subject certificate, by reasons of the subject affidavit, filed by his ill and illiterate

mother, in a language alien to her, at the time of his admission in respondent No.2 school, particularly, when the Principal of the respondent No.2 school has himself requested the CBSE to carry out the necessary corrections in view of the circumstances antecedent and attendant.

28. In my view, the consideration of the above issue must be informed by the rules of prudence, which do not permit of a cloistered and insensitive approach.

29. From the foregoing discussion and the facts and circumstances elaborated hereinabove, in my view and upon due consideration, the act of commission of the CBSE, in rejecting the petitioner's application for correction of his name, as well as, that of his parents' and the correction of his date of birth; all in accord with the information recorded in the date of birth certificate issued by the competent authority, is unsustainable and liable to be set aside.

30. Consequently, the present petition is allowed. The CBSE is directed to issue a fresh Grade Sheet cum Certificate of Performance with the correct details of the petitioner i.e., his correct surname, date of birth, mother's and father's name, in accord with his date of birth certificate which

reflects the same as 'Rohit Akka', 26.07.1999, 'Bilcho Minj' and 'Jalyes Minj' respectively.

31. The petitioner is, however, directed to surrender the original Grade Sheet cum Certificate of Performance to the CBSE, in order to enable the latter to carry out the above corrections, within a period of one week from today forthwith.

32. With the above directions, the writ petition is disposed of.

**SIDDHARTH MRIDUL
(JUDGE)**

SEPTEMBER 06, 2018

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