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

% **Date of decision : 06.02.2019**

+ **LPA 128/2017**

IMRAN ALI KHAN Appellant
Through **Mr. M. Rais Farooqui, Adv.**

versus

CENTRAL BOARD OF SECONDARY EDUCATION & ANR.
..... Respondents
Through **Mr. Ashok Kumar, Adv. for R-1.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

A.K. CHAWLA, J. (ORAL)

1. This Letters Patent Appeal has come to be preferred assailing the order dated 15.12.2016 passed by the Id. Single Judge, whereby, WP(C) No. 6996/2016 preferred by the petitioner, in effect, seeking correction of the mother's name of his daughter Ms. Filza Khan, appearing in the records of the respondents as "Kiran Khan" to "Fakiha Khan", and the consequent issuance of the fresh grade sheet-cum-certificate of performance of Secondary School Examination (Session 2013-2015), was dismissed.

2. Concisely, the relevant facts are that at the time of admission of Ms. Filza Khan with the respondent No.2 school, the name of her mother was recorded as Ms. Kiran Khan. This happened, when she was admitted in the

school in Class-I in the year 2005 and continued to remain so, over the years. Such particulars came to be furnished by the respondent No.2 school to the respondent No.1 Board. Resultantly, in the grade sheet-cum-certificate of performance of All India Secondary School Examination-2015 of Ms.Filza Khan, with Roll No. 8212966, her mother's name came to be mentioned "Kiran Khan". At this stage, the parents realized that the name appearing in the certificate was not the actual mother's name inasmuch as the real/original name of the mother of Ms. Filza Khan was Ms. Fakiha Khan and not Ms. Kiran Khan. According to the petitioner, Ms. Kiran Khan was the nick name of Ms. Fakiha Khan and inadvertently, it had come to be so stated in the admission form, when Ms.Filza Khan was got admitted in class - I with the respondent No.2 school. On getting to know of such inadvertent mistake, the petitioner made application dated 05.04.2016 to the respondent No.2 school for correction/change in the name of the mother of his daughter and that was duly forwarded to the respondent No.1. In the absence of any satisfactory response from the respondent No.1, the petitioner approached this court by way of WP(C) 4809/2016 and on that, this court issued direction to the respondent No.1 to decide the application made by the petitioner within four weeks. On this, the respondent No.1 vide its communication dated 27.05.2016 adverting to the amendment of Rule 69.1(i) of its Examination Bye-laws, which were notified vide notification dated 25.06.2015, conveyed that the request made was not allowed by the competent Authority. It resulted into filing of the WP(C) 6996/2016 by the petitioner, which has come to be dismissed vide the impugned order.

3. Respondent No.1 had carried out additions/amendments in its Examination Bye-laws relating to the change(s) and correction(s) vide notification dated 25.06.2015, and, relevant to the context, the amendments to Bye-law Nos. 69.1(i) and 69.1(ii), read as under :

Rule No.	Existing Rule	Amended Rule
69.1(i)	Change in name of candidate/Father/Mother/Guardian once entered in the Board's record at any stage while studying in Class IX, X, XI, XII or thereafter, within a period of ten years from the date of issue of first such document shall be considered on written request of the Candidate (not minor)/ father/ mother/ guardian duly forwarded by the Head of the Institution supported by the following documents :	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.
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.	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	Application for correction in name of Candidate/Father's/ Mother's/ Guardian's name will be

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: 	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 :
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A bare reading of the above-said amended Rule 69.1(i) would show that for all intents and purposes, it would be attracted, when an application is made for change in name or surname and, on such changes having been admitted by the court of law and notified in the Govt. Gazette. Was the case of the petitioner a change of name inviting an admission or declaration by a court of law and/or the notification thereof in the Govt. Gazette, we observe, is the moot question for consideration.

4. Having considered the diverse aspects and the admitted factual conspectus on record, we find, the case in hand, is not a case of any change of name, but, a mere correction in the mother's name of the child Ms. Filza Khan. Apparently, an inadvertent mistake in mentioning the mother's nickname "Ms. Kiran Khan" in the admission form in the year 2005, got transmitted by the respondent No.2 school to the respondent No.1 Board. The application made by the petitioner was not for any change of name, but, for correction of an inadvertent mistake in mentioning the name of the mother in the admission form as "Kiran Khan" instead of "Fakiha Khan", which fact, undisputedly, finds support from the birth certificate dated 17.12.02, copy whereof forms part of the record as Annexure-P1. This birth

certificate clearly mentions that Ms. Filza Khan was born to the petitioner and Ms. Fakiha Khan. The applicant has placed on record other documents, such as the educational certificates of the mother Fakiha Khan, her passport etc., which show that her name always was Fakiha Khan. Thus, it is not a case of change of name of the mother to Kiran Khan, from Fakiha Khan, post the filling up of the examination form of the appellant's daughter. Pertinently, even in the documents relating to the daughter of the appellant Filza Khan, such as her Birth Certificate, the name of the mother is recorded as “Fakiha Khan” and not “Kiran Khan”. Thus, the case in hand is certainly not a case of change of name as contemplated under Rule 69.1(i). It is also not a case of correction in spelling errors and factual typographical errors as contemplated under Rule 69.1(ii). The case in hand is completely founded on the premise of an inadvertent mistake in mentioning the name of the mother in the admission form, which was filled way back in the year 2005 at the time of admission of the child in class -I. Such a case is neither covered under Rule 69.1(i), nor Rule 69.1(ii). We also observe that the subject Examination Bye-laws are not statutory, as observed to by the Co-ordinate Bench in ***Mazhar Saleem Chandroth (Minor) Thr. Saleem Chandroth (father and natural guardian) vs. Central Board of Secondary Education***, LPA 315/2017 decided on 16.04.2018. In the given facts and the circumstances, the petitioner cannot be left high and dry for the redressal of the grievance relating to his minor child.

5. We feel, the respondent No.1 Board has been too recalcitrant in a case of the kind in hand inspite of the clear and specific observations made by the Co-ordinate bench of this in ***Mazhar Saleem's*** case (supra), to the following

effect :

"Extant rules applicable to the appellant however, do not extend such discretion. At least, none has come to be pointed out during the course of hearing. We therefore, do not find any merit in the appeal. This court is also of the opinion that the validity of the Bye-laws was upheld in the previous judgments. Undoubtedly the nature of the Bye-laws (which are not statutory) are restrictive. The CBSE is not obliged to, nor is shown to provide specific warning to students or their parents about the conclusive nature of the Bye-laws, whose time-lines are focused to cater to organizational convenience. India is a vast country; not all students who join affiliated schools are from affluent backgrounds or have fully aware and educated parents. Such students are admitted to CBSE affiliated schools, on asparitional basis, by such parents who might not accurately reflect the full or correct names. By the time the student realises this error (of omission) it is too late: furthermore, she cannot be said to realise the importance of the incorrect name because in most cases, she would be not even a major. The repercussions of this finality due to the nature of Bye-laws are serious, because every other document - identity, passport, etc. would reflect another name. In this age, when capturing name and identify consistently becomes the key for education, travel and employment, inconsistencies (such as the inevitable consequence of the way Bye-law 69.1 is cast) lead to denial of opportunity. These aspects need to be re-examined by the CBSE within six months, to suitably re-cast its Bye-laws to provide a better mechanism to reflect name changes like the present case."

During the course of hearing, when the learned counsel for the respondent No.1 Board was queried as to what steps have been taken by the respondent No.1 in the light of the foregoing observations for re-casting of

the Bye-laws, it came to be stated that but for extending the time limit for making the applications in consonance with the Rules from one year to five years, no other decision has come to be taken. This attitude of the respondent No.1 Board cannot be appreciated.

6. The adoption of a strict and restrictive approach in the matter of change or correction of name of the candidate or his/her parents, in the certificates issued by the respondent No.1, cannot be justified on the foundation that such changes, when made later, may be exploited to mislead all concerned about the identity of the candidate. Such a strict and restrictive approach cannot be justified merely on the ground of some administrative inconvenience. After all, respondent No.1 charges the fee to cover its costs for undertaking such an exercise. In the present case, there is no possibility of the identity of the candidate Filza Khan being changed by permitting the change of name of her mother from "Kiran Khan" to Fakiha Khan", since the name of the child/ candidate; the name of the father; the date and place of birth, continue to remain the same. Even the name of the mother – which is now sought to be brought on record, is the real name of the mother which has always remained so and the same name of the mother is also reflected in the Birth Certificate of the child/ candidate Filza Khan. In fact, the non-amendment of the name of the mother of the child/ candidate from "Kiran Khan" to "Fakiha Khan" would, in future, lead to confusion and may mar the future prospects of the child/ candidate while seeking admissions to institutions of higher education, or employment.

7. For the foregoing reasons, this Letters Patent Appeal is allowed and the respondents are directed to carry out the necessary corrections in the

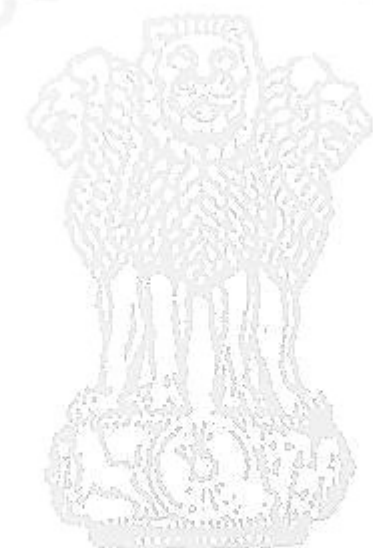
mother's name of Ms. Filza Khan (Roll No. 8212966 - Session 2013-2015) and issue her fresh grade sheet-cum-certificate of performance of Secondary School Examinations, with all consequential effects, within four weeks from today. For the hardships to which the petitioner has been subjected to in the given facts and circumstances of the case, the costs, quantified at ₹20,000/-, are imposed upon the respondent No.1 and shall be payable to the petitioner. Petition stands disposed of accordingly.

A. K. CHAWLA, J

VIPIN SANGHI, J

FEBRUARY 06, 2019

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