

jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5088 OF 2021

Arjun Vitthal Chavan

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. P.R. Kateneshwarkar i/b. Mr. Ajinkya M. Udane for the
Petitioner.

Mrs. P.J. Gavhane, AGP for State - Respondent Nos.1, 2, 3 & 4.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.

DATE : 7 SEPTEMBER, 2021.

ORDER :

1. By this Writ Petition under Article 226 of the Constitution of India the Petitioner seeks writ of mandamus directing Education Officers of District Raigad, Solapur and Kolhapur to forthwith correct and carry out the changes in the date of birth of Petitioner's son from 20th July, 2004 to 21st September, 2005.

2. Learned Counsel for the Petitioner invited our

attention to the various documents annexed to the Petition showing the different dates of birth of the Petitioner. It is submitted that the birth certificate issued to the Petitioner on 26th September, 2005 is showing the date of birth as 21st September, 2005, whereas some of school leave certificate are showing the date of birth as 27th July, 2004.

3. It is submitted by learned Counsel for the Petitioners that the last two schools have already corrected the date of birth as 21st September, 2005 in line with the birth certificate dated 19th October, 2020 showing the date of registration on 26th September, 2005.

4. Learned Counsel for the Petitioner placed reliance on the judgment of Full Bench of this Court in the case of *Janabai d/o. Himmatrao Thakur Vs. State of Maharashtra & Ors.*¹ and in particular paragraph 39. He also placed reliance upon the judgment in the case of *CIDCO Vs. Vasudha Gorakhnath Mandevlekar*² and in particular paragraph 18 and would submit that no case of inconsistency between the death and births register maintained by the statutory authorities

1 2019 (6) Mh.L.J. 769.

2 (2009) 7 Supreme Court Cases 283.

raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Evidence Act and would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the Respondent.

5. Mrs. Gavhane, learned AGP for Respondent – State on the other hand invited our attention to paragraph 39(a) and (b) of the said judgment delivered by Full Bench of this Court in *Janabai (Supra)* and also Rule 26.3 of the Secondary School Code and would submit that since the Petitioner has already left the school, no such application in change of date of birth can be made thereafter. On perusal of Rule 26.3 and 26.4. We agree with the submission made by the learned AGP. The Petitioner has already left the school. We thus cannot direct the school authorities to make change in the date of birth at this stage.

6. At this stage learned Counsel for the Petitioner states that the view taken by the Court in paragraph 18 of the said judgment in case of *CIDCO (Supra)* would apply to the facts

of this case. It is made clear that the Petitioner would be at liberty to press into service the said judgment before the authority before whom the Petitioner seeks to rely upon the said birth certificate. The concerned authority to consider the judgment on its own merits and take appropriate action.

7. The Writ Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]