



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.8120 of 2021

R.Sruthi Mullai

...Petitioner

Vs.

- 1.The Director,
National Institute of Open Schooling,
A-24/25, Institutional area, Sector-62,
Noida, Gautham Budh Nagar,
Uttar Pradesh.
- 2.The Regional Director,
National Institute of Open Schooling (NIOS),
Kamarajar Salai, Lady Willingdon Campus,
Triplicane,
Chennai.
- 3.The Section Officer,
(Regional Centre),
National Institute of Open Schooling (NIOS),
Kamarajar Salai, Lady Willingdon Campus,
Triplicane,
Chennai.
- 4.The Principal,
Little Kingdom Senior School,
Vedapuri,
Aranmanaipudur,
Theni.

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order of the third respondent vide No.542-13/2020/NIOS/RCC/18431 dated 23.09.2020 and quash the same and further direct the respondents 2 and 3 to rectify the date of birth of petitioner as 04.08.1998 instead of 04.08.1988 in the SSLC Mark Statement within the time frame fixed by this Court.

For Petitioner : Mr.K.K.Udayakumar
for Mr.H.Arumugam

For R-1 to R-3 : Mr.P.R.Dhilipkumar

ORDER

The present writ petition challenges the impugned communication of the third respondent, dated 23.09.2020, wherein, the request made by the petitioner for rectification of the date of birth in the SSE



Mark Statement was rejected on the ground that the application has been made beyond three years and hence, cannot be considered.

2.The petitioner was born on 04.08.1998. The same is substantiated through the Birth Certificate filed along with the writ petition. The petitioner had studied in the 4th respondent school, which was affiliated to National Institute of Open Schooling (NIOS). The petitioner completed her SSE during April 2014. Thereafter, she did her Under Graduation at PSG College of Arts and Science. When the petitioner applied for the Post Graduate Course in the same Institution, the date of birth as found in the SSE Mark Statement was pointed out and it was found that instead of mentioning the date of birth as 04.08.1998, it was mentioned as 04.08.1988. The petitioner was asked to rectify this mistake that had crept in the Mark Statement.

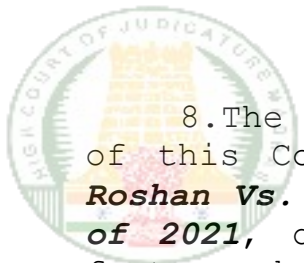
3.Accordingly, the petitioner applied for the modification of the date of birth before the NIOS and it came to be rejected through the impugned letter, dated 23.09.2020 on the ground that the application has been made beyond three years from the date of registration. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The second respondent has filed a counter affidavit in this case. At paragraph 8 of the counter affidavit, Clause 2.12 of the prospectus issued by NIOS has been extracted. One of the stipulation that has been made in this Clause is that no request for correction will be accepted after three years from the date of registration. The petitioner had admittedly made the application beyond three years and hence, the request made by the petitioner was rejected by citing this clause.

5.Heard Mr.K.K.Udayakumar, learned counsel appearing for the petitioner and Mr.P.R.Dhilipkumar, learned counsel appearing for the respondents 1 to 3.

6.It is seen from records that the birth certificate issued in the name of the petitioner by the concerned authority shows the date of birth of the petitioner as 04.08.1998. That apart the bonafide certificate and the transfer certificate issued by the 4th respondent school also reflects the date of birth as 04.08.1998. A confusion arises only with regard to the Mark Statement and Provisional Certificate issued to the petitioner when she passed the Secondary School Examination, wherein, the date of birth is mentioned as 4th August 1988.

7.The only issue that arises for consideration is as to whether the NIOS can be directed to carry out the correction of the date of birth in the Mark Statement and the Provisional Certificate.



8.The learned counsel for the petitioner brought to the notice of this Court the Judgment of the Kerala High Court in **Mohammed Roshan Vs. Director of NIOS and two others** made in **W.P.(C).No.22671 of 2021**, dated 17.12.2020. This case also arose out of similar facts and NIOS took the same stand in that case by quoting the clause in the prospectus while rejecting the request on the ground that it was made beyond three years from the registration. While dealing with this issue, the Kerala High Court drew inspiration from a Division Bench Judgment in the case of **Subin Mohammed Vs. Union of India** reported in **2016 (1) KLT 340** and held that the Court can exercise its discretion by taking into consideration the interest of the student and issue directions to NIOS to correct the entry made in the Mark Statements.

9.This Court is in complete agreement with the reasoning given by the Kerala High Court. In the present case, the birth certificate issued to the petitioner categorically states that the date of birth of the petitioner is 04.08.1998. The Birth Certificate has a higher evidentiary value since it is an entry made at the time of the Birth of a person. That apart, such a Certificate is given by a Public authority and there is a legal presumption on the correctness of the entry in such a Birth Certificate.

10.In the present case, there is an obvious error that had crept in at the time of issuing the Mark Statement and the Provisional Certificate to the petitioner after she passed the Secondary School Examination. If the date of birth of the petitioner is taken to be 4th August 1988, in the year 2014, she would have completed 26 years and it will be absurd to expect a 26 year old girl to have undergone her 10th Standard in the 4th respondent school. The date of birth found in the Birth Certificate perfectly coincides with the age of the petitioner when she completed the Secondary School which will be 16 years.

11.In view of the above discussion, taking into consideration the interest of the petitioner and the hardship she will face while applying for Higher Education or while applying for jobs due to the wrong entry found in the Mark Statements and Provisional Certificate, this Court is inclined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India and issue appropriate directions to the respondents. Even though the prospectus prescribes for a three year limitation, that does not in any way stand in the way of this Court exercising its jurisdiction in order to safe guard the interest of a student.

12.In the result, the impugned refusal letter, dated 23.09.2020, issued by the second respondent is hereby quashed. There shall be a direction to the second respondent to rectify / correct the date of birth in the Mark Statement and the Provisional



Certificate as 04.08.1998. The petitioner is directed to make a fresh application before the second respondent along with a copy of this order. If any payment has to be made for processing the application, the same shall also be paid by the petitioner. The second respondent shall issue the corrected Mark Statement and Provisional Statement to the petitioner, within a period of four weeks from the date of receipt of the application from the petitioner.

13.This writ petition is allowed with the above directions. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

Note In view of the present lock down owing
: to COVID-19 pandemic, a web copy of
the order may be utilized for official
purposes, but, ensuring that the copy
of the order that is presented is the
correct copy, shall be the
responsibility of the
advocate/litigant concerned.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-19591[F] dated 18/06/2021)

+1 CC to M/s.P.R.DHILIPKUMAR, Advocate (SR-19720[F] dated
21/06/2021)

**W.P. (MD) .No.8120 of 2021
17.06.2021**

KK(01.07.2021) 4P 3C