

\$~17 (2021 Cause List)

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

Date of Decision 3rd August, 2021

+ **W.P.(C) 6440/2021**

PRANJALI KUREEL

..... Petitioner

Through: Mr. S.P. Jain, Advocate.

versus

CENTRAL BOARD OF SECONDARY EDUCATION &
ANR. Respondents

Through: Mr. Sanjay Khanna, Advocate
for R-1/CBSE.

Mr. S Rajappa, Standing
Counsel with Mr. R.
Gowrishankar, Advocate for R-
2.

Mr. Sanjeev Sabharwal,
Standing Counsel for SDMC.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. The petitioner has filed this writ petition for a direction upon the respondent No.1-Central Board of Secondary Education ["CBSE"] to correct her date of birth in her Class X and Class XII certificates.
2. The petitioner states that her date of birth was wrongly stated at the time of her admission into school as 01.04.1998, rather than her

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correct date of birth, which is 10.04.1998. The aforesaid error continued to be reflected in her school records and was also incorporated in her Class X and Class XII certificates issued by the CBSE in 2013 and 2015 respectively.

3. The petitioner has since graduated with a B.A. (Hons) in History degree from Lady Shri Ram College for Women, University of Delhi, and has completed her Master of Arts in Social Work (Dalit and Tribal Studies and Action) from Tata Institute of Social Science, Mumbai. She has now received a conditional offer of admission for an M.Phil. degree in Modern South Asian Studies from the University of Cambridge, United Kingdom, and has been selected for a Commonwealth Scholarship.

4. The difficulty which has occasioned the present petition is that the discrepancy between the date of birth in her school and CBSE records, as compared to the date of birth in her passport and other public documents, is coming in the way of her pursuing further studies overseas.

5. The petitioner avers in the writ petition that this discrepancy of approximately ten days has arisen at the time of her admission in school and continued due to the bona fide mistake of her parents, who did not realise the ramifications that it may later acquire.

6. In support of her contention regarding her correct date of birth, the petitioner has produced a copy of her passport and her PAN card which reflect her date of birth as 10.04.1998. The petitioner has also produced a computerised birth certificate issued by the South Delhi Municipal Corporation [“SDMC”], which indicates her date of birth as

10.04.1998 and that it was registered under Registration No. 395 on 17.04.1998.

7. The genesis of the confusion in the petitioner's date of birth apparently lies in a handwritten birth certificate that was earlier issued by the Government of National Capital Territory of Delhi ["GNCTD"]. A copy of the handwritten certificate has also been annexed to the writ petition. While it records the Registration No. as 395, and the date of registration as 17.04.1998, the date of birth mentioned in this certificate is 01.04.1998. In fact, even the name of the child is left blank in this handwritten certificate.

8. In view of this discrepancy, while issuing notice in the writ petition on 13.07.2021, this Court also directed that a copy of this petition be served upon Mr. Sanjeev Sabharwal, learned Standing Counsel for the SDMC, who was requested to ascertain the factual position. With the consent of the parties, SDMC is impleaded as respondent No. 3 to the writ petition. Mr. Sabharwal, learned Standing Counsel, accepts notice on its behalf. Amended memo of parties be filed by tomorrow.

9. Mr. Sabharwal has forwarded to the Court Master, a copy of the original communication received from the Sub Registrar (B&D), South Zone, SDMC and a copy of the original register. The documents are taken on record.

10. The communication dated 26.07.2021 is reproduced below:-

"It's submitted that on examination of old birth record of PRANJALI KUREEL D/O SUNITA W/O ASHOK. As per record child D.O.B is 10/04/1998 and date of registration is 395 dated 17.04.1998. Place of birth is CGHS

Hospital. At the time of birth her address is 430/Sec-II sadiq Nagar N.D. Copy of Birth record is enclosed herewith.”

11. The aforesaid details, including the name of the petitioner, are also reflected in the photocopy of the register of the SDMC transmitted to this Court by the SDMC.

12. In these circumstances, the public records comprising of the birth certificate (supported by the aforesaid verification by the SDMC), the passport and the PAN card support the petitioner’s version regarding her date of birth. The circumstances which gave rise to the error in her date of birth in her academic records have also been explained.

13. Mr. S.P. Jain, learned counsel for the petitioner, and Mr. Sanjay Khanna, learned counsel for the CBSE, have drawn my attention to a recent judgment of the Supreme Court in *Jigya Yadav (minor) through Guardian/father Hari Singh vs. C.B.S.E (Central Board of Secondary Education) & Ors.*¹, wherein the Supreme Court has considered the question of corrections and changes in the particulars in the CBSE’s records, and examined the validity of the applicable byelaws of the CBSE. The judgment requires detailed consideration for the proper adjudication of this petition.

14. As far as date of birth is concerned, the Supreme Court has observed that there is no question of change in the date of birth, which is only susceptible to correction, as a person’s date of birth is immutable. The Examination Byelaws of the CBSE, insofar as they

¹ 2021 SCC Online SC 415 [Judgment dated 03.06.2021 in Civil Appeal No. 3905/2011 and connected matters]

relate to correction in the date of birth, have been upheld by the Supreme Court with the following observations:-

“168. The conditions regarding "correction" in name or date of birth are not as stringent as conditions applicable to change thereof. For correction in name, the 2018 Byelaws provide for a limitation period of five years and permit such corrections that can be characterized as typographical, factual or spelling mistake in comparison with school records. Understandably, a correction would mean retention of the original record with slight modification to make it consistent with the school records. This requirement of modification could be born out of various reasons, namely typographical mistake at the time of publishing, spelling error or factual error i.e., an error of fact as it existed at the time when the certificate was published. Thus, correction in name is done to bring unanimity between the school records (as they existed at the time of sending information to the Board) and CBSE certificates. However, if school records are altered afterwards and Board is called upon to alter its certificates in light of the updated school records, the same cannot be termed as correction per se but would be in the nature of recording change. Therefore, substantially deviating from a "correction", the Byelaws provide for an option to "change" the name, which is subject to different conditions.

169. Similar provision is available for "correction" in date of birth, either on the basis of school records or on the basis of order of court. The word "change" is not used for date of birth as, unlike name, there can only be one date of birth and there can only be a correction to make it consistent with school record or order of Court. It cannot be changed to replace the former with a fresh date of

one's choice. Be it noted, provisions relating to correction in date of birth and name are just and reasonable and do not impose any unreasonable restriction on permissibility of corrections. The restriction regarding limitation period shall be examined later, along with other provisions."²

15. Mr. Khanna has drawn my attention to the Byelaws 69.2 and 69.3 of the CBSE Examination Byelaws dated 01.02.2018, which deal with corrections in date of birth. The provisions of Byelaws 69.2 and 69.3 are reproduced below:-

"69.2

Change in Date of Birth

No change in the date of birth once recorded in the Board's records shall be made.

69.3 (Correction in Date of Birth)

A. Correction as per the school records:

i. Corrections to correct typographical and other errors to make the certificate consistent with the school records can be made provided that corrections in the school records should not have been made after the submission of application form for admission to Examination to the Board

ii. Such correction in Date of Birth of a candidate in case of genuine clerical errors will be made under orders of the Chairman where it is established to the satisfaction of the Chairman that the wrong entry was made erroneously in the list of candidates/application form of the candidate for the examination.

² Emphasis supplied

iii. Request for correction in Date of Birth shall be forwarded by the Head of the School alongwith attested Photostat copies of:

a) application for admission of the candidate to the School;

b) Portion of the page of admission and withdrawal register where entry in date of birth has been made along with attested copy of the Certificate issued by the Municipal Authority, if available, as proof of Date of Birth submitted at the time of seeking admission; and

c) the School Leaving Certificate of the previous school submitted at the time of admission.

iv. The application for correction in date of birth duly forwarded by the Head of school along with documents mentioned in byelaws 69.2(iii) shall be entertained by the Board only within **Five Years of the date of declaration of result**. No correction whatsoever shall be made on application submitted after the said period of Five Year.

v. **This rule will be applicable to all cases after Class X/XII 2015 examination onwards.**

B. Correction as per Courts Orders.

Applications regarding correction in date of birth of candidates **will be** considered provided the correction have been admitted by the Court of law.

In cases of correction in date of birth in documents after the court orders caption will be mentioned on the document “CORRECTION ALLOWED IN DATE OF BIRTH FROM _____ TO _____ ON (DATED) _____ AS PER COURT ORDER NO. _____ DATED _____.”

16. The present case does not raise the question of inconsistency between the CBSE's record and the school records, as those are admittedly consistent. The question to be considered is whether the petitioner is entitled to an order of the Court, consequent upon which the correction may be effected under Byelaw 69.3(B). The approach of the Court in such a situation, and the question as to whether the CBSE record can be corrected to make it consistent with the petitioner's date of birth as recorded in other public documents, has been dealt with by the Supreme Court in *Jigya Yadav*³ as follows:-

“172. Suffice it to observe that frequent amendments in the Byelaws have been made providing for different dispensations for the relevant period. For the nature of final directions that we propose to issue, it may not be necessary to dilate on the validity of the concerned Byelaw as amended from time to time. Broadly, it can be noted that the Byelaw recognises two different dispensations. First is to carry out modifications in the original certificate on request for making it consistent with the school records of the incumbent. The second is to incorporate particulars in the original certificate which are different from the school records.”

173. Indisputably, the candidate would pursue further education and explore future career opportunities on the basis of school records including the CBSE Board. The CBSE maintains its official records in respect of candidate on the basis of foundational documents being the school records. Therefore, the CBSE is obliged to carry out all necessary corrections to ensure that CBSE certificate is consistent with the relevant information

³ Supra (note 1)

furnished in the school records as it existed at the relevant time and future changes thereto including after the publication of results by the CBSE. However, when it comes to recording any information in the original certificate issued by the CBSE which is not consistent with the school records, it is essential that the CBSE must insist for supporting public document which has presumptive value and in the given case declaration by a Court of law to incorporate such a change. In that regard, the CBSE can insist for additional conditions to reassure itself and safeguard its interest against any claim by a third party/body because of changes incorporated by it pursuant to application made by the candidate. In the concluding paragraph, we intend to issue directions to the CBSE Board in light of the discussion in this judgment. For the nature of uniform directions that we propose to issue so as to obviate any inconsistent approach in the cases under consideration including future cases to be dealt with by the CBSE Board, it is not necessary for us to dilate on the question of validity of the respective amendments in the relevant Byelaws effected from time to time.

174. Whether CBSE is obliged to effect changes in the certificates issued by it upon production of updated public documents (other than school records), is the next issue for consideration. According to the Board, it would not be permissible as it has no independent mechanism to verify the genuineness of the public documents. Even under the Byelaws, there is no requirement for the Board to verify the genuineness of the documents. It is simply not the job of the Board.

175. The Byelaws provide for a two-tier mechanism for recording change of name or other details (as indicated

above). One of them is prior permission or declaration by a Court of law to be obtained. As regards public documents like Birth Certificate, Official Gazette, Aadhaar Card, Election Card, etc., the same enjoy legal presumption of its correctness in terms of explicit provisions contained in Chapter V of the 1872 Act. The 1872 Act extends such presumption in terms of Section 76 read with Sections 79 and 80 of the 1872 Act and as in the case of Official Gazette under Section 81 of the same Act. Even other legislations concerning public documents attach equal importance to the authenticity of such documents including while making changes in their certificates to which we have alluded to in this judgment. Understood thus, there is no reason for the CBSE Board to not take notice of the public documents relied upon by the candidate and to record change on that basis in the certificate issued by it, for being consistent with the relied upon public documents. It matters not if the information furnished in the public documents is not entirely consistent with the school records of the incumbent. The CBSE while accepting those documents as foundational documents for effecting changes consistent therewith may insist for additional conditions and at the same time while retaining the original entry make note in the form of caption/annotation in the fresh certificate to be issued by it while calling upon the incumbent to surrender the original certificate issued by it to avoid any misuse thereof at a later point of time. It would be permissible for the CBSE to insist for a sworn affidavit to be given by the incumbent making necessary declaration and also to indemnify the CBSE. The fresh certificate to be issued by the CBSE may also contain disclaimer of the Board clearly mentioning that change has been effected at the

behest of the incumbent in light of the public documents relied upon by him. In addition, the incumbent can be called upon to notify about the change in the Official Gazette and by giving public notice as precondition for recording the change by way of abundant precaution.

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179. There is no difficulty in correcting CBSE record to bring it in conformity with the school record. The difficulty arises when a statutory document is not consistent with the school record. As observed earlier, the version supported by statutory documents could be reckoned for the purpose of correction in CBSE certificate to make it consistent with public documents.

180. Post 2018 amendment of Byelaws, even in case of date of birth, corrections are permitted on two basis - to bring in conformity with school records and in pursuance of court order. The relevant provision reads thus:

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181. When a student applies to a Court of law for prior permission and/or declaration and produces public document(s). the Court would enter upon an inquiry wherein the legal presumption would operate in favour of the public document(s) and burden would shift on the party opposing the change to rebut the presumption or oppose the claim on any other ground. The question of genuineness of the document including its contents would be adjudicated in the same inquiry and the Court of law would permit the desired change only upon verifying the official records and upon being satisfied of its genuineness. At the same time, the question of justiciability of the requested changes would be considered and only upon being satisfied with the need

demonstrated by the student, the Court would grant its permission. The said permission can then be placed before the Board along with copy of publication in the official gazette and requisite (prescribed) fee (if any). The Board would then have no locus to make further enquiry nor would be required to enter upon any further verification exercise.”⁴

17. In the said judgment, the Supreme Court has directed the CBSE to amend its byelaws, consistent with the principles laid down therein. The Court has expressly directed that pending and future applications be processed on the lines of the principles laid down, even during the pendency of the process of amendment.

18. From a reading of the applicable Byelaws of the CBSE and the judgment of the Supreme Court, it is clear that this Court is required to consider the public documents produced by the petitioner in the context of the legal presumption operating in their favour. In the present case, the genuineness of the documents is not contested, and the documents placed on record by Mr. Sabharwal on behalf of the SDMC confirm that the requisite change is, in fact, consistent with the contemporaneous record. The Byelaws themselves do not impose any restrictions upon the CBSE as far as correction of the date of birth pursuant to an order of the Court is concerned.

19. In these circumstances, Mr. Khanna’s only submission is that the Court should impose a restriction as to the time within which such relief can be granted to a student. Significantly, the Byelaws do not impose a time limit for a correction to be made pursuant to a Court

⁴ Emphasis supplied

order, unlike the limitation period imposed for a correction sought in terms of the school record. As far as a petition under Article 226 of the Constitution of India is concerned, the principle is that the Court would not grant relief if it has been approached with unreasonable delay and laches. This is a question which has to be considered on the facts and circumstances of each case, consistent with the general principles relating to the relief sought. The facts of the present case do not disclose any such delay as to disentitle the petitioner to the relief sought. The Court's approach to the question of delay must take into account the totality of circumstances. It must be borne in mind in this context that erroneous documentation is typically (as in this case) the consequence of an error which occurs when the affected party is a child, and has no control over her own affairs.

20. For the reasons aforesaid, the writ petition succeeds and the respondents are directed to issue revised Class X and Class XII certificates to the petitioner, incorporating her correct date of birth. The respondents will communicate the conditions for issuance of the revised certificates to the petitioner. Mr. Jain states that the petitioner will comply with the conditions imposed. The certificates will bear endorsements of the correction in terms of Byelaw 69.3. In view of the fact that the petitioner's further education depends upon the implementation of these directions, the respondents are directed to issue the revised certificates within two weeks from today.

21. The writ petition stands disposed of in these terms.

AUGUST 3, 2021/ 'vp'

PRATEEK JALAN, J.