

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6741 of 2022

Sibam Pattnaik

....

Petitioner

Mr. S.B. Mohanty, Advocate

-versus-

State of Odisha & others

....

Opp. Parties

*Mr. D. Mohapatra, Standing Counsel
(School and Mass Education Deptt.) for
opposite parties 1 and 3*

*Mr. S.S.Rao, along with Mr. B.K.
Mohanty, Advocates for O.P. No.2-
Board of Secondary Education*

**CORAM:
JUSTICE M.S. SAHOO**

**ORDER
08.04.2022**

Order No.

- 02.
1. This matter is taken up through hybrid mode.
 2. The matter was last taken up on 22.03.2022 and was adjourned at the instance of the learned counsel for the petitioner to obtain instruction.
 3. Mr. B.K. Mohanty, along with Mr. S.S. Rao, learned counsel appears on behalf of Board of Secondary Education – O.P. No.2 on advance notice and files vakalatnama today in Court. The said vakalatnama be kept on record.
 4. The writ petition has been filed by the petitioner with the following prayer:-

“To direct the Secretary, Board of Secondary Education, Orissa, Cuttack to correct surname of the petitioner as well as his parents in the spelling of “PATTNAIK” instead of “PATTANAIAK” as mentioned in the Board Certificate issued in the year 2020, in view of full Bench judgment of this Hon’ble court rendered in the case of Satyasiva

Sundar Nayak vrs. Secretary, Board of Secondary Education, Orissa and others reported in 2019 (II) ILR-CUT-7 (Annexure-8) of the writ petition taking into consideration the relevant documents like Birth Certificate, Disability Certificate, Aadhaar Cards of the petitioner as well as his parents and a revised certificate be issued forthwith in order to face the interview and ensuing admission in +2 Class and the Headmaster of the School, opposite party No.4 be directed to supply the relevant documents to the Board for undertaking the processing in the interest of justice and equity.”

5. The petitioner inter alia has prayed to correct the surname of the petitioner as well as his parents i.e. to change the spelling of “Pattnaik” instead of “Pattanaik” as mentioned in the Certificate of High School Examination issued in the year 2020 (Annexure-8).

6. The brief facts of the case as narrated in the writ petition are that the petitioner is a good student. He enrolled as a student in Nahakani High School, Ramkumar Pur, under the District Education Officer (D.E.O), Cuttack, in the High School Certificate Examination he appeared through Nahakani High School, Ramkumar Pur and having passed the Examination he obtained the Certificate as a regular student wherein his name with surname has been mentioned as Sibam Pattnaik, S/o- Aarati Pattanaik (mother) and Pabitra Kumar Pattnaik (Father). As per the Board Certificate the Headmaster of the School issued a School Leaving Certificate in the same name with surname of the petitioner and parents. It is contended that also in the migration certificate issued by the Board of 29.07.2020 the surname of the petitioner is mentioned as “Pattanaik”.

7. The petitioner relies on the Certificate of Birth issued by the Bhubaneswar Municipal Corporation dated 06.01.2010

having No.191 which indicates his name, his father's name and his mother's name, the date of birth being 10.10.2004 and the date of registration is 25.11.2009. The said Certificate has been annexed to the writ petition marked as Annexure-4.

8. It is further stated that after passing of the examination held in the year February, 2020, result having been published on 29.07.2020. An affidavit was sworn (enclosed to the writ petition marked as Annexure-7) by the mother of the petitioner namely Smt. Arati Pattnaik stating that surname of her husband, the deponent herself and the son (petitioner) is recorded wrongly as "Pattanaik" instead of "Pattnaik" in the HSC certificate of the son.

9. Learned counsel for the petitioner relies on the decision rendered by the Full Bench of this Court, reported in **2019 (II) ILR-CUT-7:Satyasiva Sundar Nayak vrs. Secretary, Board of Secondary Education, Orissa & others.**

The said Full Bench of this Court has approved the view taken earlier by this Court in the case of **Ranjit Kumar Mallick vrs. Director of Secondary Education, Orissa & other: 83 (1997) CLT 74.**

The observations of the Full Bench as indicated in the said reported case at paragraphs-8, 12 and 13 are as follows:-

"8. When a minor is admitted in the primary school, the school admission register is maintained by the concerned teacher of that school. If any bona fide mistake occurs in the school admission register, then the same cannot continue. At the time of filling up of the form to appear at the HSC Examination or after issuance of HSC certificate if mistake is detected, the Board can rectify the same. The Division Bench rightly held that the authorities issuing a document have the power of making necessary corrections, if they are satisfied about any incorrectness. Such power is ancillary. xxx

12. In Ranjit Kumar Mallick's case there is no time stipulation for making an application for correction of father's/mother's name. Regulation 39 provides for change of date of birth of the candidate. It provides that the application should be made

through Headmaster of the concerned High School within three years of the passing of the HSC Examination.

13. We hasten to add that the application for correction of name of the father/mother shall be made within three years of the passing of HSC Examination so that authorities are not put to any difficulty. The application has to be made through the concerned Headmaster of the High School.”

10. The ingredients as laid down in the Full Bench decision for getting the name as entered in a certificate issued by Board of Secondary Education, Odisha as at para-8 are as follows:

- (i) If any bona fide mistake occurs in the school admission register, then the same cannot continue;
- (ii) At the time of filling up of the form to appear at the HSC Examination or after issuance of HSC certificate if mistake is detected, the Board can rectify the same; and
- (iii) The principles laid down in the Division Bench decision earlier : *Ranjit Kumar Mallick* are to be followed that the authority issuing a document have the power to make necessary correction, if they are satisfied about any incorrectness.

11. In fact, the Full Bench also approved the decision rendered in the case of *Dipti Baliar Singh vrs. Board of Secondary Education, Orissa* reported in *AIR 1999 Orissa 166*, having arrived at a conclusion that there is no apparent conflict between *Ranjit Ku. Mallick (supra)* and *Dipti Baliar Singh (supra)*.

12. On perusal of the pleadings in the writ petition, the petition is completely silent regarding “*any bona fide mistake occurring in the school admission register*” as laid down in Full Bench decision of this Court.

13. The affidavit sworn to by the mother of the petitioner is self-serving and is dated 07.10.2020 without referring to any of the school admission register or the form that was filled-up to appear at the Class-10 Examination held in the month of

February, 2020.

14. The School Leaving Certificate annexed to the writ petition as at Annexure-2 dated 07.09.2020 does not refer to the date of admission or date of leaving the school. The earlier School Leaving Certificate when the petitioner passed Class-8 examination in the year 2018 at page-22 (part of Annexure-7) issued by the Headmaster Nahakani U.P. School, Ramkumarpur dated 6.4.2018, where the petitioner had studied from 10.04.2015 to 31.03.2018 indicates the spelling of surname of the petitioner to be “*Pattanaik*” and the same spelling is of the surname of his mother and father that has also appeared in the HSC certificate.

15. A three Judge Bench of the Hon’ble Supreme Court in the case of ***Jigya Yadav vs. Central Board of Secondary Education and others: (2021) 7 SCC 535***, have laid down the principles after considering the matter in detail regarding the duty and power of the Central Board of Secondary Education (in short “CBSE”) as per its examination bye-laws to correct/carry out change in the certificate issued by the CBSE.

The Hon’ble Supreme Court had taken note of the fact that various students with need based request had approached different High Courts resulting into inconsistent outcome leading up to batch of appeals. The facts of the case in *Jigya Yadav* has been noted in Para-6 of SCC, which is quoted herein:-

“Para-6. *The appellant in this case, Ms Jigya Yadav, has assailed the decision of the High Court of Delhi, dated 20-12-2010 in Jigya Yadav v. CBSE, wherein the High Court rejected the prayer for direction to the Board to carry out correction of her parents’ name in the marksheets issued by it. The appellant’s case was that the name of her parents was incorrectly recorded as “Hari Singh Yadav” instead of “Hari Singh” (as recorded in the identity documents of father) and “Mamta Yadav”) instead of “Mamta”.*

16. Apparently, the names of parents of the student-Jigya

Yadav were incorrectly recorded as “Hari Singh Yadav” to be father instead of “Hari Singh” and mother’s name “Mamta Yadav” instead of “Mamta”. The Hon’ble Supreme Court have noted the facts of the petitioner-Jigyaa Yadav apart from the other connected petitions and have laid down the principles as at para-194 of SCC, which is quoted herein:-

“194. As regards request for “change” of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is one the basis of public documents like birth certificate, Aadhar Card, election card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

(Emphasis supplied)

194.1. Reverting to the first category, as noted earlier, there is legal presumption in relation to the public documents as envisaged in the 1872 Act. Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administrative expenses. The CBSE may also insist for issuing public notice and publication in the Official Gazette before recording the change in the fresh certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant. The fresh certificate may contain disclaimer and caption/annotation against the original entry (except in respect of change of name effected in exercise of right to be forgotten) indicating the date on which change has been recorded and the basis thereof, In other words, the fresh certificate may retain original particulars while recording the change along with caption/annotation referred to above (except in

respect of change of name effected in exercise of right to be forgotten).

194.2 However, in the latter situation where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/declaration by a court of law in that regard and publication in the Official Gazette including surrender/return of original certificate (or duplicate original certificate, as the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above, retain the original entry (except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded and other details including disclaimer of CBSE. This is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant.”

(Emphasis supplied)

17. As per the law laid down by the Hon’ble Supreme Court, the request for change can be made in two different situations. The *first* is on the basis of public documents like Birth Certificate, Aadhar Card, election card, etc. and to incorporate change in the CBSE certificate consistent therewith. The *second* possibility is when the request for change is due to the acquired name by choice at a later point of time, that change need not be backed by public documents pertaining to the candidate.

18. Since the petitioner has not annexed the application made before the Board of Secondary Education regarding the change of spelling as contained in the Certificate of HSC Examination, this Court is not in a position to know what exact contention has been raised in the said application. In the case at hand, only the pleadings made in the writ petition can be referred to in absence of the said application.

However, the order issued by the authority of the Board of Secondary Education as at Annexure-11 dated 01.12.2021 impugned in the writ petition discloses the following:-

“I have examined the admission register of the

school where it is found that surname has been recorded in accordance with the cancelled T.C. and even the form was filled up to appear at the HSC examination in the correct surname reflected in the school record. There is no clerical or printing error.

In view of the above it is not possible to change the name, I may also inform you that Board cannot change the Surname of the candidates and his parents under Rule 40, Sec-VI, Chapter-X of Rule 40 Board's regulation.

Rule-40:- No change in the name or Surname of any candidate who has or who is registered to appear at the High School Certificate Examination shall be allowed except in cases of clerical error or printing mistake. No application for correction shall be entertained unless it is sent through the head of the institution concerned. The Secretary shall make necessary correction in the Board's records after the correction is approved by the Examination Committee. The original certificate shall be cancelled and retained when a corrected certificate is issued.

In view of the above submission the representation filled by the petitioner's vide annexure is considered and rejected."

19. The order passed by the Board of Secondary Education is very conspicuous in its finding that there is no clerical or any printing error. The spelling of the word (requested to be changed) is in accordance with the filled up form and the cancelled transfer certificate (TC) of the earlier school records. As noted above, the School Leaving Certificate dated 06.04.2018 (part of Annexue-7) indicates the surname to be "Pattanaik". Therefore, applying the principle laid down in the *Jigyada*, the present case would come within the second category or in the *latter situation* as indicated in *Para-194.2*.

20. The Hon'ble Supreme Court has held the change is to be effected upon insisting for prior permission/declaration by a court of law in that regard and publication in the official gazette including surrender/return of original certificate.

21. In view of the above discussions, the writ petition in its present form is dismissed being devoid of any merit.

It shall be open to the petitioner to follow the procedure as

laid down by the Hon'ble Supreme Court in *Jigya Yadav (supra)* as per para-194.2.

(M.S. Sahoo)
Judge

