



W.P.No.3732 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

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THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.Nos.3732 of 2020
and W.M.P.No.4406 of 2020

Kunal Chetana Dharmashi

... Petitioner

Vs.

1. The Chairman,

Central Board of Secondary Education (Head Office)
“Shiksha Kendra”, 2, Community Centre
Preet Vihar, Delhi-110 092.

2. The Regional Officer,

Central Board of Secondary Education (Regional Office),
New No.3, Old No.1630-A,
J Block, 16th Main Road,
Anna Nagar (West),
Chennai-600 040.

3. The Principal,

Ram Ratna Vidya Mandir,
Keshav Srushti Gorai Road,
Uttam, Bhayandar (W),
Thane District,
Maharashtra-401 106.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ, Order, Direction particularly in the nature of Writ of Certiorarified Mandamus to call for the records in respect of the proceedings of the 2nd respondent in CBSE/RO(M)/CORR/REJECTION/2017/9820 dated 16.08.2019 quash the same and consequently direct the 2nd respondent to make necessary corrections in the 10th Mark Sheet and Passing Certificate in respect of the Petitioner Old name “Kunal Kishore Patidar” and replace petitioner new name “Kunal Chetana Dharmashi” and issue petitioner's 10th Mark Sheet and passing certificate to the petitioner.

For Petitioner : Mr.S.Vinoth Kumar
For Respondents : Mr.G.Nagarajan,
for R1 & R2.
: No Appearance for R3.

ORDER

Petitioner has come up with this Writ Petition seeking to quash the proceedings dated 16.08.2019 issued by the 2nd Respondent and for a consequential direction to the 2nd Respondent to effect corrections in respect of his new name as “Kunal Chetana Dharmashi” in (i) X Standard Mark Statement and Pass Certificate and issue the same to him within a stipulated period, based on the letter dated 29.05.2019 sent by the 3rd respondent.



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2. It is stated by the Petitioner that, he completed his 10th standard in the 3rd respondent school in the year 2015. While so, in the year 2015, his mother changed the petitioner's name from “Kunal Chetana Patidar” to “Kunal Chetana Dharmashi” by publishing his name in the Gazette Notification. Since, the petitioner's name was changed prior to the issuance of 10th standard marksheet, he approached the 3rd Respondent School by way of a representation to rectify the correction in his name in the 10th standard marksheet. Pursuant to which, the 3rd Respondent sent a letter dated 29.05.2019 to the 2nd respondent with regard to the petitioner's request for change of name in the 10th standard marksheet. However, the 2nd respondent has rejected the petitioner's request vide the impugned proceedings dated 16.08.2019 stating that, after verification of documents, it was found that, the correction sought for is not in consonance with the 4th Respondent's School records. Challenging the said rejection order, the petitioner has come up with this Writ Petition.

3. Learned counsel for the Petitioner submitted that, the issue



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raised in the present Writ Petition is no longer res integra and the issue has already been settled by the Hon'ble Apex Court in Civil Appeal No.3905 of 2011 in the case of Jigya Yadav (Minor) Vs. C.B.S.E. (Central Board of Secondary Education). Hence, he prayed that, this Court may issue direction to the Respondents to entertain the representation of the Petitioner seeking correction of his name in the X Standard Mark Statement and Pass Certificate, without citing any by-law or any other impediments, and issue fresh Certificates for X Standard to the Petitioner, within a reasonable time frame.

4. Learned Standing Counsel appearing for the respondents did not dispute the ratio laid down by the Hon'ble Apex Court in Civil Appeal No.3905 of 2011 in the case of ***Jigya Yadav (Minor) Vs. C.B.S.E. (Central Board of Secondary Education)***; however, he submitted that, the Application for correction of the Petitioner's name has to be made through proper channel. The Petitioner has to make an Application to the School and the School will forward the same to the Respondents. As the Petitioner has directly made an Application to the Respondents, the same is not



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sustainable.

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5. Heard the learned counsel on either side and perused the material documents available on record.

6. As rightly pointed out by the learned counsel appearing for the Petitioner, the issue raised in the present case is no longer res integra and the issue has already been settled by the Hon'ble Apex Court in Civil Appeal No.3905 of 2011 in the case of Jigya Yadav (Minor) Vs. C.B.S.E. (Central Board of Secondary Education), relevant portion of which, is extracted hereunder:

“2. The seminal issue in these cases is: whether an individuals control over such cardinal element of identity could be denied to him/her by the Central Board of Secondary Education 1 on the specious ground that its Examination Byelaws of 2007 2 must prevail over the claim of the candidate, which are merely intended to regulate such a claim and to delineate the procedure for correction/change in the contents of certificate(s) issued by it including regarding maintenance of its office records?

3. The CBSE Examination Bye laws restrict, both qualitatively and quantitatively, the corrections/changes that can be carried out in the certificates issued by the Board. Various students with



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need? based requests approached different High Courts resulting into inconsistent outcomes leading up to this batch of appeals. Apart from the fact that the judgments have produced conflicting outcomes, the petitions raise some peculiar questions on the 1 for short, CBSE or Board, as the case may be 2 for short, Byelaws constitutional validity of CBSE Examination Byelaws (as amended from time to time) and interpretation thereof.

CONCLUSION AND DIRECTIONS TO CBSE 79 supra at Footnote No.16

169. Although we have discussed the broad issues canvassed before us, in the ultimate analysis the real dispute requiring resolution is about the nature of correction or change, as the case may be, permissible to be carried by the CBSE at the instance of the student including past student. As noted earlier, broadly, two situations would arise.

170. The first is where the incumbent wants correction in the certificate issued by the CBSE to be made consistent with the particulars mentioned in the school records. As we have held there is no reason for the CBSE to turn down such request or attach any precondition except reasonable period of limitation and keeping in mind the period for which the CBSE has to maintain its record under the extant regulations. While doing so, it can certainly insist for compliance of other conditions by the incumbent, such as, to file sworn affidavit making necessary declaration and to indemnify the CBSE from any claim against it by third party because of such correction. The CBSE would be justified in insisting for surrender/return of the original certificate (or duplicate original certificate, as the case may be) issued by it for replacing it with the fresh certificate to be issued after carrying out necessary corrections with caption/annotation against the changes carried out and the date of such correction. It may retain the original



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entries as it is except in respect of correction of name effected in exercise of right to be forgotten. The fresh certificate may also contain disclaimer that the CBSE cannot be held responsible for the genuineness of the school records produced by the incumbent in support of the request to record correction in the original CBSE certificate. The CBSE can also insist for reasonable prescribed fees to be paid by the incumbent in lieu of administrative expenses for issuing fresh certificate. At the same time, the CBSE cannot impose precondition of applying for correction consistent with the school records only before publication of results. Such a condition, as we have held, would be unreasonable and excessive. We repeat that if the application for recording correction is based on the school records as it obtained at the time of publication of results and issue of certificate by the CBSE, it will be open to CBSE to provide for reasonable limitation period within which the application for recording correction in certificate issued by it may be entertained by it. However, if the request for recording change is based on changed school records post the publication of results and issue of certificate by the CBSE, the candidate would be entitled to apply for recording such a change within the reasonable limitation period prescribed by the CBSE. In this situation, the candidate cannot claim that she had no knowledge about the change recorded in the school records because such a change would occur obviously at her instance. If she makes such application for correction of the school records, she is expected to apply to the CBSE immediately after the school records are modified and which ought to be done within a reasonable time. Indeed, it would be open to the

CBSE to reject the application in the event the period for preservation of official records under the extant regulations had expired and no record of the candidate concerned is traceable or can be reconstructed. In the case of subsequent amendment of school records, that may



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occur due to different reasons including because of choice exercised by the candidate regarding change of name. To put it differently, request for recording of correction in the certificate issued by the CBSE to bring it in line with the school records of the incumbent need not be limited to application made prior to publication of examination results of the CBSE.

171. 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 on the basis of public documents like Birth Certificate, Aadhaar 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.

(a) Reverting to the first category, as noted earlier, there is a 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



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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).

(b) 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.

172. In light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paragraphs 170 and 171, as may be applicable, until amendment of relevant Bye laws. Additionally, the CBSE shall take immediate steps to amend its relevant Bye laws so as to



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incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it.”

7. A perusal of the decision cited supra makes it clear that the Hon'ble Apex Court has issued directions to the Central Board of Secondary Education to entertain and process the Applications made for correction or change, as the case may be, in the Certificates issued by it. In view of the above, there is no need for submitting an Application seeking corrections in the Certificate, before the School.

8. In the case on hand, as the Certificate was issued by the Central Board of Secondary Education, they shall entertain the Application/representation made by the Petitioner and in case of any clarification, CBSE can call for information from the School and issue correct Mark Statement cum Certificate as sought for by the Petitioner, by effecting necessary corrections in his name “ Kunal Chetana Patidar “ in X Standard Mark Statement and Pass Certificate within a period of eight weeks from the date of receipt of a copy of this order.



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9. This Writ Petition stands disposed of accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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Index : Yes / No

Speaking Order : Yes / No

NHS

M.DHANDAPANI, J.



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To

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