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

% *Decided on: January 31st, 2023*

+ **W.P. (C) 332/2018**

VIJAY KUMAR

..... Petitioner

Through: Mr. Jivesh Tiwari and
Ms. Samiksha, Advocates
(Ph. 9811612855, e-mail:
jusassociates201@gmail.com)

versus

**CENTRAL BOARD OF SECONDARY
EDUCATION**

..... Respondent

Through: Mr. Ashok Kumar &
Ms. Chhavi Arora, Advocates
for R-1 (Ph. 9810011826, e-
mail: ashok1166@yahoo.com)

Ms. Sakshi Mendiratta and
Ms. Varnika Gupta, Advocates
for R-2- School
(Ph. 9717889462, e-mail:
sakshi@puneetmittal.in)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed for direction to the respondents to correct the surname of father from Vijay Gupta to Vijay Kumar in the records of the CBSE and for issuance of fresh certificates/ marksheet to son of the petitioner by CBSE for Class 10th and Class 12th Board Examination.

2. It is the case on behalf of the petitioner that his son, Devansh Sarthak studied in the respondent No.2 school and has now passed out from the school in the year 2018. Since the name of the petitioner has been shown as Vijay Gupta in the Certificates and marksheet issued by the CBSE, the present petition has been filed for change of name to Vijay Kumar on the premise that name of the petitioner has always been Vijay Kumar and not Vijay Gupta.

3. Learned counsel appearing for the petitioner has submitted that when his son took admission in the school in the year 2003, at that time in the Admission Form, the petitioner filled his name as Vijay Gupta. However, subsequently the petitioner has only used the name as Vijay Kumar, as reflected in the various documents issued by the school itself. Attention of this Court has been drawn to the various Certificates and Report Card/ Progress Report issued to the son of the petitioner by the school. In the said documents, name of the petitioner has been reflected as Vijay Kumar and not Vijay Gupta.

4. Learned counsel for petitioner also submits that the birth certificate of the son of the petitioner was also rectified and the birth certificate duly issued by the Municipal Corporation on 30.08.2005 clearly shows the name of the petitioner as Vijay Kumar.

5. Similarly, learned counsel for petitioner has also referred to the other documents on record viz. the PAN Card and ID Card issued by the Election Commission of India in favour of the petitioner, which show the name of the petitioner as Vijay Kumar. Learned counsel for petitioner has also relied upon the passport of the student in question i.e. Devansh Sarthak, which again reflects the name of his father as

Vijay Kumar.

6. Further, learned counsel for petitioner has also drawn the attention of this Court to the publication dated 07.04.2017 in Hindustan Times, wherein the petitioner has declared that his actual name is Vijay Kumar and that his name has wrongly been reflected in the Certificates issued by CBSE. The said publication is as follows:

“It is for general information that I Vijay Kumar S/o Satyendra Bhushan Gupta residing at 330, 2nd Floor, Sant Nagar, East of Kailash, New Delhi – 110065 declare that name of mine has been wrongly written as Vijay Gupta in my minor son’s Devansh Sarthak aged 16 years CBSE 10th Class Grade Sheet cum Certificate of Performance. The actual name of mine is Vijay Kumar which may be amended accordingly.”

7. Learned counsel has also relied upon the Gazette Notification, wherein it has again been declared that the name of the petitioner is Vijay Kumar, which has wrongly been written as Vijay Gupta in the Certificates as issued by the CBSE. The Gazette Notification dated April 29- May 05, 2017 reads as under:

“It is for general information that I, Vijay Kumar S/o Satyendra Bhushan Gupta, residing at 330, 2nd Floor, Sant Nagar, East of Kailash, New Delhi-110065, declare that name of mine has been wrongly written as Vijay Gupta in my minor son's Devansh Sarthak aged 16 years CBSE 10th Class Grade Sheet cum Certificate of Performance. The Actual name of mine is Vijay Kumar which may be amended accordingly.

It is certified that I have complied with other legal requirements in this connection.

*Vijay Kumar
[Signature]”*

8. Thus, relying upon the aforesaid, it is prayed on behalf of the petitioner that requisite rectification may be directed to be done in the CBSE Certificates/ Marksheet of his son as issued by the CBSE for Class 10th and 12th.

9. On the other hand, learned counsel appearing for respondent No. 1 – CBSE has opposed the present petition on the ground that the relief prayed is not covered by the present Examination Bye-Laws of CBSE. It is submitted that change in name is not permissible, as the present is a case of change of name, which is not permissible in view of the Bye-Law No. 69.1. It is further submitted that the petitioner has approached belatedly for change of name in the Certificates/ Marksheets.

10. Learned counsel appearing on behalf of respondent No. 2 school has submitted that at the time of submitting the admission form of his son for securing admission in Class Nursery, the petitioner had explicitly mentioned his name as Vijay Gupta and not Vijay Kumar. The petitioner had also submitted the Birth Certificate of his son at the time of admission process, which again reflected the name of the petitioner as Vijay Gupta and not Vijay Kumar.

11. Learned counsel appearing for the school further draws the attention of this Court to the list of candidates as prepared by the school for the purpose of registration of the petitioner's ward for Class 10th Board Examination, which was on the basis of the records available with the school. The said document again reflects the name of the petitioner as Vijay Gupta. Thus, it is submitted that on the basis

of data and information provided by the petitioner at the time of admission process of the petitioner's ward in the school, requisite information was sent to CBSE, showing the name of the petitioner as Vijay Gupta.

12. However, learned counsel for respondent No. 2 school submits that the school has no objection if requisite rectification is carried out by the CBSE.

13. I have heard learned counsels for the parties and have perused the record.

14. At the outset, the objection as raised on behalf of CBSE that the change in surname is not permissible as the same is not covered within the scope of Bye-Law 69.1 of Examination Bye-Laws of CBSE, is considered totally unacceptable and unjustifiable.

15. In the present case, the school itself has been issuing certificates and progress report/report card to the son of the petitioner, wherein the name of the petitioner has been reflected as Vijay Kumar. Further, the petitioner has also made a declaration to the effect that his name is Vijay Kumar in newspaper and has also got the said declaration published in Gazette Notification.

16. The public documents viz. ID Card issued by the Election Commission of India and the PAN Card of the petitioner also show his name as Vijay Kumar and not Vijay Gupta. Further, the passport of the son of the petitioner also shows the name of his father as Vijay Kumar and not Vijay Gupta. Thus, it is clear that there is inconsistency in the particulars as reflected in the school records and other public documents showing the name of the petitioner and the

Certificates/ Marksheets as issued by the CBSE for Classes 10th and 12th to the son of the petitioner.

17. If such inconsistency in the name of the petitioner is allowed to exist, it would perpetrate confusion and may have adverse effect on the future prospects of the son of the petitioner for admission to various institutes for higher education as well as while applying for jobs in various government or private institutes. The documents on record clearly show that the petitioner has been using the name as Vijay Kumar and not Vijay Gupta. Thus, there is no legal impediment in changing the name of the petitioner in the records of the CBSE.

18. This court in the case of ***Imran Ali Khan Vs. Central Board of Secondary Education and Another***, reported as **2019 SCC OnLine Del 6980** has clearly held that Examination Bye-Laws of CBSE are not of statutory in nature. It has further been held that restrictive and strict approach is not warranted in matters involving correction or change of name by the Board. Thus, it has been held as follows:

“8. The adoption of a strict and restrictive approach in the matter of change or correction of name of the candidate or his/her parents, in the certificates issued by the respondent No.1, cannot be justified on the foundation that such changes, when made later, may be exploited to mislead all concerned about the identity of the candidate. Such a strict and restrictive approach cannot be justified merely on the ground of some administrative inconvenience. After all, respondent No.1 charges the fee to cover its costs for undertaking such an exercise. In the present case, there is no possibility of the identity of the candidate Filza Khan being changed by permitting the change of name of her mother from "Kiran Khan" to Fakiha Khan", since the name of the

child/ candidate; the name of the father; the date and place of birth, continue to remain the same. Even the name of the mother – which is now sought to be brought on record, is the real name of the mother which has always remained so and the same name of the mother is also reflected in the Birth Certificate of the child/ candidate Filza Khan. In fact, the non-amendment of the name of the mother of the child/ candidate from “Kiran Khan” to “Fakiha Khan” would, in future, lead to confusion and may mar the future prospects of the child/ candidate while seeking admissions to institutions of higher education, or employment.”

19. At this stage, reference may be made to the judgment of High Court of Rajasthan, Jaipur Bench in the case of **Arpit Agarwal Vs. Central Board of Secondary Education and Others**, reported as **2017 SCC OnLine Raj 2371**. In the said case, change in the name of father of the petitioner was allowed and it was held as follows:

“4. Having heard counsel for the parties, I am of the considered view that CBSE cannot be allowed to take a very technical view of the matter, relating to changes of details in a mark-sheet/certificate issued by it. Even though the petitioner and his parents were not careful while filling the form for admission of the petitioner to the school and while filling up the examination form for the secondary school examination to be conducted by the CBSE in the year 2016, their carelessness and casualness cannot be held to unrectifiable, to do so, would be wholly insensitive and arbitrary. CBSE's Examination Bye-laws on the issue of change of details in the mark-sheet/certificate issued by it are merely directory to be applied with reference to the facts of each case. To hold them to be mandatory would entail a challenge, quite sustainable to their arbitrariness and hence unconstitutionality.”

20. Supreme Court in the case of *Jigyada Yadav (minor) Vs. CBSE and Others*, reported as (2021) 7 SCC 535, has held that while dealing with the aspect of information as contained in public documents, records maintained by statutory authorities have a presumption of correctness in their favour. It has further held that as regards request for change of particulars in the certificate issued by the CBSE, the CBSE ought to entertain such request by considering the public documents like Birth Certificate, Aadhaar Card/Election Card, etc. Thus, there are clear directions by the Supreme Court to the CBSE to incorporate changes in the CBSE certificates consistent with the particulars as given in the public documents. Thus, Supreme Court has held as follows:-

“169. This Court in Cidco v. Vasudha Gorakhnath Mandevlekar [Cidco v. Vasudha Gorakhnath Mandevlekar, (2009) 7 SCC 283 : (2009) 2 SCC (L&S) 319] , has observed that the records maintained by statutory authorities have a presumption of correctness in their favour and they would prevail over any entry made in the school register. The Court observed thus : (SCC p. 288, para 18)

“18. The deaths and births register maintained by the statutory authorities 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. It 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. (See Birad Mal Singhvi v. Anand Purohit [Birad Mal Singhvi v. Anand Purohit, 1988 Supp SCC 604 : AIR 1988 SC 1796] .)”

The same position of law can be extended to the mandate laid down in Right to Education Act and Chapter 3 of the CBSE Bye-laws relating to admission of students.....

170.

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 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 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.”

21. Considering the aforesaid discussion, CBSE is directed to change the name of the petitioner in the Class 10th and Class 12th Certificates/ Marksheets as issued to the son of the petitioner, Devansh Sarthak, to reflect the name of the petitioner, i.e., father of Devansh Sarthak as Vijay Kumar.

22. The petitioner may produce the original documents showing the name of the petitioner as Vijay Kumar, in case so required by the

CBSE. The petitioner is further directed to surrender the original of the old Class X and Class XII Certificates/ Marksheets of his son to the CBSE. The CBSE is directed to issue rectified Certificates/ Marksheets to Devansh Sarthak reflecting the name of his father as Vijay Kumar.

23. The aforesaid rectification be done by the CBSE expeditiously, preferably within two months from the date of passing of this order.

24. The present writ petition is disposed of in the aforesaid terms.

MINI PUSHKARNA, J

JANUARY 31, 2023

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