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

% *Decided on: January 31st, 2023*

+ W.P.(C) 5995/2020

TANISHKA MAHESHWARI

..... Petitioner

Through: Mr. Anil Kumar Mishra & Mr.
Supantha Sinha, Advocates.
(supanthasinha@gmail.com)
(7595993179)

versus

CENTRAL BOARD OF SECONDARY EDUCATION &
ANR. Respondents

Through: Mr. Ashok Kumar & Ms.
Chhavi, Advocates for R-1.
(ashok1166@yahoo.com)
(9810011826)
Mr. Abhishek Yadav, Advocate
for R-2.
(eminentjurists@gmail.com)
(9910692949)

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. By way of the present petition, the petitioner is seeking change of her father's name in the Central Board of Secondary Education (hereinafter referred to as CBSE) records and certificates/marksheet issued for Class X and Class XII Board Exams from her Stepfather's name to the name of her Biological father.
2. The petitioner had earlier made a representation through her

mother to the School Authority (respondent No.2 herein), which had further requested the CBSE i.e. the respondent No.1 herein to consider the request of the mother of the petitioner for change of father's name in the CBSE records. It is submitted that the representation for change of name was made even before conduct of Class X examinations, however, till date, the respondent No.1 has not considered the representation of the school.

3. It is the case on behalf of the petitioner that her biological father is Dr. Mayank Bansal. His name is reflected in the birth certificate of the petitioner issued by the Government of Uttar Pradesh and also in her passport.

4. It is submitted that since the parents of the petitioner had separated and her mother had re-married, the name of the step father came to be reflected in her certificates issued by the CBSE for Class X & XII. However, now it is the prayer on behalf of the petitioner that since in the other public documents namely the birth certificate and the passport, the name of her biological father is reflected, in order to protect her identity and in order to ensure that there is uniformity in the name of the father as reflected in the various documents, name of her biological father be reflected in the CBSE certificates, instead of the name of her step father.

5. At the outset, learned counsel appearing for the respondent No.2- School submits that the School has no objection, if the CBSE carries out the requisite changes in the certificates issued to the petitioner herein.

6. Learned counsel appearing for the respondent No.1 raises

objection to the fact that the birth certificate as submitted by the petitioner is not in terms of Section 13 of the Birth and Death Registration Act, 1969. As per learned counsel appearing for respondent No.1, the birth certificate has to be issued within one month of the birth of the child or maximum within one year with the prior permission of the MM concerned. Thus, he submits that in the present case, the birth certificate as attached by the petitioner pertains to the year 2009, whereas, the date of birth of the petitioner is of the year 2002. Thus, he submits that the birth certificate as filed by the petitioner cannot be relied upon.

7. Learned counsel appearing for the respondent No.1 has drawn the attention of this Court to paragraph 172 of the said judgment in the case of ***Jigya Yadav (Minor) Through Guardian/ Father Hari Singh) Vs. C.B.S.E. (Central Board of Secondary Education) & Ors., (2021) 7 SCC 535***, to contend that the question of genuineness of the public documents including its contents have to be adjudicated, before the Court of law permits the desired changes.

8. This Court has heard the submissions on behalf of the parties and perused the record.

9. It is seen from the documents on record that name of Biological father of the petitioner, i.e., Dr. Mayank Bansal, is reflected on the birth certificate as well as passport of the petitioner. The petitioner now wants rectification in her Class X & XII certificates, in order, that the name of her biological father is reflected in the said certificates, instead of her step father.

10. Every child has a right to have the identity, which reflects their

true character and identification. Thus, the request of the petitioner that the name of her biological father be reflected in the Class X & XII certificates cannot be considered as unjustified. The petitioner has full right to have the name of her biological father reflected in her CBSE certificates, especially so, when in the other public documents viz. the birth certificate and the passport, the name of her biological father is already reflected.

11. This Court cannot be oblivious of the fact that in case the name of the father is reflected differently in different documents, it would cause grave prejudice to the petitioner's academic and professional future, not to mention the prejudice that would be caused to the identity of the petitioner. Such discrepancy in the name of her father may also have adverse effect on the psyche of the petitioner.

12. The objection raised on behalf of the CBSE with respect to the birth certificate of the petitioner, is totally unwarranted. The issue with respect to the birth certificate of the petitioner is not in question before this Court. There is nothing before this Court to doubt the veracity of the birth certificate as attached by the petitioner. The only purpose of relying upon the birth certificate by the petitioner is to show that the name of her biological father is reflected in the same. The date of birth of the petitioner is not in dispute and is accordingly reflected in the school and CBSE records.

13. When the petitioner was studying in Class IX in the year 2017, her mother had submitted an application dated 04.07.2017 to the school authorities requesting for correction of father's name of the petitioner. The said representation by petitioner's mother was duly

forwarded by the school by way of letter dated 06.12.2017 to the CBSE for correction in the name of father of the petitioner in the records of CBSE, since the petitioner had already been registered for Board with CBSE. However, CBSE failed to act upon the representation sent by school authorities of the petitioner mentioning about the request of the petitioner's mother for change of name of petitioner's father in the CBSE records.

14. Supreme Court as well as various other courts have time and again observed that identity of an individual is one of the most closely guarded areas of constitutional scheme in India. The sanctity of identity of an individual has been recognised in several cases. Thus, Supreme Court in the case of **Jigyda Yadav** (supra) has thus held as follows:

“125. Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely “for all times”. Such control would inevitably include the aspiration of an individual to be recognised by a different name for a just cause. Article 19(1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] , this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.

126. Having recognised the existence of this right, the

essential question pertains to the rights that flow due to the change of name. The question becomes vital because identity, as stated above, is a combination of diverse set of elements. Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] dealt with “natural identity” and here we are dealing with name, which can only be perceived as an “acquired identity”. Therefore, the precise scope of right and extent of restrictions could only be determined upon deeper examination.”

15. In the aforesaid case of **Jigyā Yadav**, the Supreme Court has emphasized that as regards the information contained in a CBSE certificate, the Board must afford opportunity to the students to modify it, subject to complying with requisite formalities which are reasonable in nature. Thus, it has been held as follows:

“150. No doubt, it is true that CBSE certificates are not strictly meant to be considered as identity documents, however, the same are being relied upon for corroborative purposes in all academic and career related transactions as foundational document. In fact, the CBSE itself has conceded to this fact that their certificates are relied for all official purposes, as noted above. The date of birth in matriculation certificate, in particular, is relied upon as primary evidence of date of birth of a citizen. Therefore, as regards the information contained in a CBSE certificate, the Board must afford opportunity to the students to modify it subject to complying with requisite formalities which are reasonable in nature. If all other State agencies could allow it for the preservice of consistency and accuracy, alongside being enablers in free exercise of rights by the citizens, there is no reason for the CBSE to not uphold that right of the students. More so, it would be in the interest of CBSE's own credibility that their records are regarded as accurate and latest records of a

student worthy of being relied upon for official purposes. Therefore, this approach would serve twin purposes — enabling free exercise of rights and preservice of accuracy.”

16. The progress report of Standard Nursery of the petitioner reflects the name of her biological father. Similarly, the passport of the petitioner reflects the name of her biological father. As noted earlier, the birth certificate of the petitioner also reflects the name of her biological father.

17. While dealing with the aspect of information as contained in public documents, Supreme Court in the case of ***Jigyasa Yadav (Supra)*** has held that records maintained by statutory authorities have a presumption of correctness in their favour. It has further been 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.”

18. As regards the correction in CBSE certificate to make it consistent with public documents, Supreme Court itself has categorically stated that legal presumption would operate in favour of the public document and burden would shift on the party opposing the change to rebut the presumption. There is nothing that has been brought on record by the CBSE to doubt the genuineness of either the birth certificate or the passport of the petitioner which reflect the name of her biological father.

19. Even otherwise, the petitioner has attached copy of the order dated 06.09.2008 passed by Supreme Court Lok Adalat *in Transfer Petition (C) No. 683/2007*. The said order clearly records that father of the petitioner herein, i.e., Mayank Bansal, shall pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs) towards the maintenance of his daughter, i.e., Tanishka, petitioner herein. The said order passed by the Supreme Court Lok Adalat records the terms of settlement of divorce between the parents of the petitioner, i.e., Seema Bansal, her mother and Mayank Bansal, her father. Thus, there is no doubt that the name of the biological father of the petitioner is Dr. Mayank Bansal.

20. It is relevant to note that Bye-Law 68 of Examination Bye-Laws of CBSE provide that in case name of biological parents are known, no other names can be mentioned. Relevant portion of the said bye-laws is reproduced hereunder:

“68

a).....

b) *The candidates (who are orphans) will have*

the option to mention the guardian's name in the records of the Board (Certificate, Marks Statement, etc.). In no case will the name of guardian be mentioned if the names of either or both of the parents are known."

21. 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 held in categorical terms that 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 CBSE cannot be justified. It has further been held that examination bye-laws of CBSE are not of statutory nature. 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.”

22. The High Court of Punjab and Haryana in the case of ***Divya Jyoti Vs. Central Board of Secondary Education and Others***, reported as **2017 SCC OnLine P&H 5949** in a case involving similar set of facts, permitted change of name of the petitioner’s father. Thus, it was held as under:

“4. In this case the name of the natural parent of petitioner are known, namely, Kewal Krishan and Ranbir Kaur, therefore, the name of Kamal Kumar, who is the alleged step father of the petitioner, is not required to be mentioned in the certificate issued to the petitioner by respondent No.2 for Class 10th and 10+2.

5. Thus, keeping in view the facts and circumstances of the case, the present writ petition is hereby allowed and the impugned letter/order dated 12.8.2015 is set aside and direction is issued to respondent No. 2 to issue fresh certificates to the petitioner of Class 10th and 10+2 incorporating the name of her father as Kewal Krishan instead of the name of alleged step father Kamal Kumar.”

23. High Court of Punjab and Haryana similarly in the case of ***Anshu Vs. Central Board of Secondary Education***, reported as **2018 SCC OnLine P&H 7862**, allowed prayer of the petitioner in the said case for change of father’s name in CBSE records, thereby directing the CBSE to issue fresh certificates after incorporating the name of biological father of the petitioner in place of name of the step father.

24. In view of the aforesaid discussion, considering overall welfare of the petitioner, it is deemed expedient to give directions to the CBSE

to make the requisite corrections in Class X & XII certificates of the petitioner.

25. Accordingly, the present petition is allowed. The respondent CBSE is directed to issue fresh certificates/marksheet in respect of Class X and XII to the petitioner after incorporating the name of her biological father instead of her step father.

26. The petitioner may produce the original of the passport as well as birth certificate before the CBSE, in case it is so required by the CBSE. The petitioner is further directed to return the old original certificates and marksheets of the Class X & XII to the CBSE. The petitioner is also directed to submit any other declaration or document along with requisite fees, as the CBSE may require for effecting the said change.

27. The CBSE is directed to make the requisite changes expeditiously, preferably within a period of two months from today.

28. The present writ petition is allowed along with all pending applications, in terms of the aforesaid directions.

MINI PUSHKARNA, J

JANUARY 31, 2023

Nc/au