



2024:DHC:3514



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

+ **W.P.(C) 5961/2023**

KIRTI

..... Petitioner

Through: Md. Wasiq Khan, Mr.
Vishwajeet Singh, Advs. with petitioner in
person

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Richa Dhawan, Senior
Panel Counsel, Mr. Anuj Chaturvedi and
Ms. Shreya Manjari, Advocates, for UOI.
Mr. Arun Kumar and Ms. Sarbani Kar,
Advocates, for Respondent 2.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (O R A L)

25.04.2024

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1. The petitioner is aggrieved by the communication dated 26 May 2022 issued by the National Institute of Open Schooling (NIOS) whereby the petitioner's request for correction of his date of birth in the mark-sheet, migration-cum-transfer certificate and provisional certificate of Secondary School examination, issued by the NIOS, has been rejected.

2. The impugned order rejects the petitioner's request only on the ground of limitation. It states that the norms of the NIOS permit correction in the name of the student, her parents or her date of birth



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prior to appearing in the first examination or within three years from the date of registration.

3. Inasmuch as the documents in which the petitioner seeks correction of her date of birth were issued on 9 June 2014, the impugned order refuses to correct the date of birth of the petitioner on the ground that the request for doing so has been made three years after the registration of the petitioner with the NIOS.

4. The impugned letter further states that the records of the petitioner have also been weeded out by the NIOS.

5. Mr. Arun Kumar, learned Counsel for the NIOS, places reliance, to support the impugned decision, on para 193.1 of the judgment of the Supreme Court in *Jigya Yadav v. CBSE*¹ which reads as under:

“193.1 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 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

¹ 2021 7 SCC 535



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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.”

6. The law relating to the correction of the date of birth or of the name of a student or of her parents in the records of the CBSE or in such other authority, stands settled by the judgment of the Supreme Court in *Jigya Yadav*.

7. The conclusion and directions to the CBSE – which was the authority issuing the certificate in that case – as contained in paras 192 to 194.2 of the judgment read thus:

“192. 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.

193. 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.

193.1. 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



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such correction. It may retain the original 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.

193.2. 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.

193.3. 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 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.

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



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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.

194.1. 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).

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.”



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8. The reliance, by Mr. Arun Kumar, on para 193.1 does not appear, to me, to be entirely apt. Paras 193.1 to 193.3 are sub-paras of para 193 which deals with a case in which the student seeks correction in the certificate issued by the CBSE, consistent with the particulars mentioned in the school records.

9. Cases where the change is sought on the basis of details contained in public records such as birth certificate, Aadhar Card, Election Card, etc., are covered by para 194 and, particularly, para 194.1. In this context, it is also relevant to refer to the following paras from *Jigya Yadav*:

“Point 3

Binding value of public documents

167. 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 Bye-laws, there is no requirement for the Board to verify the genuineness of the documents. It is simply not the job of the Board.

168. The bye-laws 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.



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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.

169. This Court in *CIDCO v. Vasudha Gorakhnath Mandevlekar*², 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 :

“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*³.)”

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. Bye-law 6.1 is instructive and relevant extract thereof reads thus:

“6. Admission : General Conditions:

² (2009) 7 SCC 283

³ 1988 Supp SCC 604 : AIR 1988 SC 1796



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6.1. (a) A student seeking admission to any class in a 'School' will be eligible for admission to that Class only if he:

(iv) produces:

...

(c) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed, as stipulated in Section 14(1) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

(d) No child shall be denied admission in a school for lack of age proof, as stipulated in Section 14(2) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009."

Therefore, even at elementary education level, there is a clear legislative intent to rely on statutory birth certificates for the purpose of date of birth. The authoritative value of these certificates is duly affirmed in this scheme.

170. 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."

10. Clearly, the decision in *Jigyada Yadav* distinguishes between a case in which change is sought on the basis of details contained in public documents such as birth certificate, Aadhar Card, Election Card etc., and where the change is only sought on the basis of the school record.

11. A reading of paras 167 to 170 of the decision in *Jigyada Yadav* reveals that cases in which the correction is sought on the basis of the



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details entered in public records have been regarded as being on a different footing, inasmuch as Section 67 read with Sections 79 and 80 of the Evidence Act, 1872 extends a legal presumption of validity to public records. The Supreme Court has also relied, in this context, in its earlier decision in *CIDCO v. Vasudha Gorakhnath Mandevlekar*⁴.

12. Where, therefore, the change is sought on the basis of public documents such as certificate of date of birth or Aadhar card etc., it may not be correct for the authority concerned to reject the request solely on the ground of limitation.

13. Nonetheless, the authority would be well within its right, even in such a case, to indemnify itself by requiring the petitioner to file an affidavit, or produce records from the Official Gazette etc. The discretion of the authority in that regard would, needless to say, have to be exercised judicially and not capriciously.

14. In view of the aforesaid, I am of the opinion that, where correction is sought on the basis of the public documents, the authority issuing the certificates concerned cannot reject the application solely on the ground of limitation. Where the correction is on the basis of solely the school records, the authority is well within its right not to accommodate such requests, after the period of limitation stipulated in that regard is crossed. This is for the reason that the certificate issuing authority, such as the CBSE, would have to verify the correctness of the claimant's claim by comparison with the school records and once

⁴ (2009) 7 SCC 283



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the school records stand weeded out by the authority, such verification is not possible.

15. At the cost of repetition, where the correction is sought on the basis of public documents, this approach may not be correct.

16. In that view of the matter, as the impugned order dated 26 May 2022 rejects the petitioner's application solely on the ground of limitation, it is quashed and set aside. The petitioner's application seeking correction of her date of birth is remanded to the NIOS for re-consideration afresh on merits. The reconsideration would abide by the law laid down in *Jigya Yadav*.

17. Ther NOIS would be within its right to indemnify itself by the means that have been envisaged in the decision in *Jigya Yadav*.

18. Let a fresh decision that regard, if any, be taken within a period of four weeks from today.

19. The writ petition stands allowed to the aforesaid extent.

C. HARI SHANKAR, J

APRIL 25, 2024

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[Click here to check corrigendum, if any](#)