

(2014) 07 DEL CK 0111
In the Delhi High Court
Case No : W.P. (C) 3266/2014

Abhishek Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 144 DRJ 8

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : R.K. Narang, Advocate for the Appellant; Atul Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.

C.M. No. 6745/2014(exemptions).

1. Allowed subject to just exceptions.

2. The CM stands disposed of.

W.P. (C) No. 3266/2014.

3. This petition under Article 226 of the Constitution of India, i) impugns Rule 69.1 of the Examination Bye-Laws of the respondents no. 2&3 Central Board of Secondary Education (CBSE), on the ground of the same being illegal, unconstitutional and ultra vires the Fundamental Rights guaranteed to the petitioner under the Constitution of India; ii) seeks quashing of the order dated 12th February, 2014 of the respondent CBSE rejecting the request of the petitioner for change of his name in the records of the respondent CBSE; and, iii) seeks a mandamus to the respondent CBSE to change the name of the petitioner in its records as well as in the certificates of Class X and Class XII issued to the petitioner.

4. It is the case of the petitioner:-

(a) that the petitioner, born on 18th January, 1970, was named Bal Kishan by his parents;

(b) that the petitioner passed the Class X and Class XII examinations conducted by the respondent CBSE in the years 1988 and 1990 respectively;

(c) that the petitioner, throughout his school and college education, was teased by the other students about his name;

(d) that the petitioner decided to change his name from Bal Kishan to Abhishek Kumar and his name was so mentioned in the invitation card of his wedding held on 2nd December, 1999;

(e) that the petitioner, on 15th May, 2008, also published in newspaper The Statesman of having so changed his name "for all future purposes";

(f) upon being advised that for changing the name he was required to publish a Notification to the said effect in the Gazette published by the Government of India, the petitioner, after declaring so by way of another insertion in the newspaper The Sunday Express of 18th December, 2010, got published in the Gazette of India of January 1-January 7, 2011 as under:-

I, hitherto known as BAL KISHAN son of Late M.R. SINGH, residing at G-12/8, Gali No. 4, Braham Puri, Delhi-110 053, have changed my name and shall hereafter be known as Abhishek Kumar.

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

Bal Kishan

[Signature (in existing old name)]

(g) that the petitioner, on 5th December, 2013 approached the Delhi Government Mediation and Conciliation Centre, Delhi Disputes Resolution Society (Regd.) for a direction to the respondent CBSE to change his name and the respondent CBSE on 9th January, 2014 before the said Society agreed that upon the petitioner applying for change of name, the respondent CBSE shall consider the same sympathetically; and,

(h) that though the petitioner so applied for change of name but the respondent CBSE vide its order dated 12th February, 2014 supra refused to so change the name of the petitioner in its record and in the certificates of Class X and Class XII issued to the petitioner, for the reason of the same being permissible only within ten years of issuance of such certificate and the petitioner having applied for change of name on 20th January, 2014 i.e. after more than ten years of 22nd August, 1988 when the first certificate of Class X was issued to the petitioner.

5. The petitioner contends that Rule 69.1 supra which prohibits the petitioner

from applying for change of name after ten years from the issuance of certificate, is violative of the Constitutional mandate ensuring each citizen liberty of thought, expression, belief, faith, worship, equality of status and opportunity and imposes fetters on such freedom of the petitioner.

6. We have heard the counsel for the petitioner.

7. We have at the outset enquired from the counsel for the petitioner that since the petitioner, as per Gazette dated January 1-January 7, 2011 also, changed his name from Bal Kishan to Abhishek Kumar "with effect from the date of the said publication", as is evident from use of the words "hitherto" and "shall hereafter be known as" therein, how was the petitioner entitled to have his name changed in the certificates issued by the respondent CBSE prior thereto. As per the said Gazette Notification, the petitioner till the date of publication thereof on January 1-January 7, 2011, was known as Bal Kishan and was to be thereafter only known as Abhishek Kumar. We further enquired that when the petitioner, till January 1-January 7, 2011 was known as Bal Kishan, how could his name be shown as Abhishek Kumar in the certificates issued in the years 1988 and 1990.

8. The counsel for the petitioner instead of answering the said question has contended that the respondent CBSE having agreed before the Conciliation Centre to entertain the application of the petitioner for change of name, is not entitled to resile therefrom.

9. As far as the aforesaid argument of the counsel for the petitioner is concerned, the same has to be noted to be rejected. Without going into the sanctity of the Settlement Agreement signed before the Conciliation Centre, the said Settlement Agreement also merely provided that the application if made by the petitioner for change of name shall be considered sympathetically by the respondent CBSE. It is not as if the respondent CBSE has not abided by the Settlement Agreement. It, though has considered the application for change of name of the petitioner, but has rejected the same citing the rules of its Examination Bye-Laws. The Settlement Agreement nowhere records that the respondent CBSE had agreed to change the name of the petitioner as sought by the petitioner.

10. Else, we are of the opinion that the issuance of revised certificates with changed name as sought by the petitioner would create a discrepancy and reflect a status which did not exist at the time of issuance thereof. The petitioner though has changed his name, but after the date of issuance of the said certificates. Axiomatically the certificates cannot bear the changed name. If anyone were to make a deeper inquiry, they will wonder that if the name was changed only in 2011, how the changed name appears on certificates issued on a prior date. Rather the procedure of having a Gazette Notification for changed name is intended to obviate the said difficulties and to give sanctity to the change in name. The said view was taken by one of us (Rajiv Sahai Endlaw, J.) in *Pallavi @ Pallavi Chandra Vs. C.B.S.E. and Others*, and in order dated 9th November, 2010

in W.P. (C) No. 4044/2010 titled Ashik Gurung Vs. CBSE and which matters are not found to have been agitated further. We see no reason to take a different view.

11. Though in view of above there is no need to deal with the challenge made to Rule 69.1 supra on the ground of imposing the limitation of ten years for applying for change of name, we may record that the Division Bench of this Court in Ms. Jigya Yadav through Guardian/Father Mr. Hari Singh Vs. Central Board of Secondary Education and Others, faced with the same challenge though on facts also held that there was no need to deal with the challenge of the Constitutional validity on the ground of time provided for applying for such change of ten years being arbitrary nevertheless held Rule 69.1 to be reasonable and held that the Court has to be reluctant to substitute its own views in such matters in preference to those formulated by professionals having experience of dealing with working of educational institutions. We however further find SLP CC No. 7348/2011 to have been preferred against the said judgment to have been granted on 02.05.2011 and the matter to be still pending in the Supreme Court.

12. Mention may also be made of Rule 69.2 of the said Examination Bye-Laws which similarly imposes a time of two years for applying for corrections of date of birth in the records of and certificates issued by the CBSE. A Division Bench of this Court in Bhagwat Dayal Vs. CBSE and Others, in relation thereto held that beyond two years correction could not be made. The same view was reiterated by another Division Bench of this Court in the order dated 27th May, 2011 in LPA No. 496/2011 titled Mukul Singal Vs. Central Board of Secondary Education arising from a detailed judgment dated 29th March, 2011 in W.P. (C) No. 8546/2008. The appeal thereagainst being SLP CC No. 14782/2012 was dismissed in limine on 10th September, 2012. The same view was reiterated in Chirag Jain Vs. CBSE and Others, preferred thereagainst was dismissed on 29th August, 2011 and SLP CC No. 16919/2013 preferred whereagainst also was dismissed in limine on 30th September, 2013.

13. We therefore do not find any merit in the petition which is dismissed.

No costs.