

(2023) 02 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6858 Of 2022

Anjuma Khatun

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 20-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 94, 94(2)

Citation : (2023) 02 GAU CK 0046

Hon'ble Judges : R.M. Chhaya, CJ;Suman Shyam, J

Bench : Division Bench

Advocate : A. Chaudhury, D. Nath, D.K. Bagchi

Final Decision : Allowed

Judgement

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner Anjuma Khatun seeking issuance of a Writ in the nature of Habeas Corpus and a direction to release her from the illegal custody of her parental house where she was allegedly facing inhuman torture from her parents, brothers, etc.

2. Brief facts relevant and essential for disposal of the present petition may be noted herein below. The petitioner herein eloped and contracted the marriage with one Omar Faruque on 05.07.2022. The paternal family members of the girl lodged an FIR against Md. Omar Faruque at the Dhula Police Station and during the course of investigation thereof, the petitioner was traced out and was presented to the Child Welfare Committee (CWC) concerned. When the statement of the girl was recorded by the competent Court during the course of investigation, she made a categorical deposition that her date of birth was 03.07.2004. The corresponding school document, i.e. the Secondary School Certificate, was presented in support of this statement. Md. Omar Faruque was apprehended. Custody of the girl was thereafter handed over to the parents by the Child Welfare Committee, Darrang. However, she again escaped where after,

another FIR No.220/2022 came to be registered at the Dhula Police Station. The girl was again traced out and this time, she was sent to the Child Care Institute, Darrang. However, custody of the girl was again handed over to her parents whereupon, she has preferred the captioned writ petition in this Court seeking a direction to release her from the illegal custody of her parents. It is also alleged by the petitioner that she was being tortured by her father (respondent No.5) and brother (respondent No.4) and apprehended threat to her life and limb, at their hands.

3. In support of the claim of majority, the petitioner has placed reliance on a certificate dated 30.07.2021 (Annexure-1) issued by the Board of Secondary Education, Assam, wherein her date of birth is recorded as 03.07.2004. Copy of the marriage certificate dated 05.07.2022 is filed as Annexure-2 to the writ petition wherein also, the date of birth of the petitioner is mentioned as 03.07.2004.

4. Upon entertaining the writ petition, this Court directed the respondent authorities to produce the corpus before this Court. On 11.11.2022, this Court was apprised that the corpus is major and she has been kept in the State Home for Women at Jalukbari, Guwahati. After repeated directions, the girl was produced in the Court and she expressed an unequivocal desire to proceed with her husband and repelled the suggestion of being sent with her parents. She was continued to be lodged in the State Home for Women where she is presently staying. Pleadings have been completed.

5. Learned counsel representing the petitioner corpus contended that the age of the corpus recorded in the school documents conclusively establishes that she was major when she contracted marriage with Md. Omar Faruque. He submits that the documents relied upon by the respondent Nos.4 & 5, i.e. the brother and father, respectively, of the girl have no evidentiary value because as per Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as "2015 Act"), the age recorded in the matriculation certificate has to be given preference over any other age related document. He has urged that a direction deserves to be issued to forthwith release the girl from the State Home for Women and to allow her to proceed with her husband.

6. Learned counsel representing the respondent Nos.4 & 5, on the other hand, vehemently and fervently contended that the date of birth of the girl as recorded in the Secondary School Certificate is incorrect. In support of this contention, the learned counsel relied upon the following documents:-

(i) A birth certificate dated 10.10.2017 issued by the Department of Health Services, Government of Assam wherein, the date of birth of the girl is recorded as 31.12.2005;

(ii) A certificate issued by the Dhanshirikhah West Subba Primary School, District - Darrang wherein, the date of birth of the girl is recorded as 01.12.2005;

(iii) Aadhaar Card wherein, the date of birth of the girl is recorded as 31.12.2005.

7. On basis of these documents, the counsel for the respondent Nos.4 & 5 contended that the date of birth as recorded in the matriculation certificate cannot be considered as the affirmative age proof of the girl. As per him, since the girl is minor, she can either continue to stay at the Care Institution or else, she can be handed over into the guardianship of her father.

8. Learned Government counsel adopted the arguments advanced by learned counsel for the private respondents and sought dismissal of the petition.

9. In the rejoinder, the learned counsel for the petitioner drew the Court's attention to a transfer certificate dated 02.01.2016 issued by Shyamtila Pre-Senior Madrasa, wherein the date of birth of the girl was recorded as 03.07.2004.

10. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the documents placed on record as well as the pleadings of the parties.

11. At the outset, we would like to make a reference to Section 94 of the 2015 Act, which prescribes the procedure for determination of date of birth of a person produced before any Child Care Institution. The language of Section 94(2) of the 2015 Act makes it clear beyond the pale of doubt that the options given in this Section are arranged in the order of priority. Precedence is required to be given to the school certificate or the matriculation certificate and if any such documents are not available, the date of birth certificate issued by the Municipality can be referred. Last in the order of priority is the ossification test.

12. Apparently, there is no material on record of the case to doubt the veracity of the matriculation certificate (Annexure-1) which is relied upon by the petitioner in support of her claim of being major. Needless to say that the responsibility to get the girl admitted to the school would have been of her parents. Thus, the burden to explain the discrepancy, if any, in the date of birth as recorded in the different documents placed on record would be upon the respondents. We have serious doubt on the veracity of the documents annexed by the respondent Nos.4 & 5 in the affidavit in reply. The birth certificate (Annexure-1 to the affidavit-in-opposition) produced by the respondent Nos.4 & 5 records the date of birth of the girl as 31.12.2005. The registration number, which is mentioned in this document is of the year 2013 whereas, the document itself was issued in the year 2017. In the school certificate (Annexure-2 to the affidavit-in-opposition), the date of birth of the girl is recorded as 01.12.2005.

13. Apparently thus, the documents relied upon by the respondents for disputing the claim of majority of the petitioner are contradictory and unreliable on the face of the record. As against this, the petitioner has affirmed that her the date of birth is 03.07.2004 by annexing the transfer certificates dated 02.01.2016 and

04.03.2019 with the rejoinder affidavit.

14. Otherwise also, law is well settled that the date of birth as indicated in the school certificate or the matriculation certificate has to be given precedence over any other document to the contrary. Reference in this regard may be given to the judgment rendered by the Apex Court in Rishipal Singh Solanki -Vs- State of Uttar Pradesh & Ors., reported in (2022) 8 SCC 602.

15. In the wake of the discussion made hereinabove, we are of the firm view that the date of birth of the petitioner is 03.07.2004 and she being a major, her confinement at the Care Institution is grossly illegal. The petitioner, who is a major as on date, shall forthwith be released from the State Home for Women at Jalukbari, Guwahati. The Superintendent of Police concerned shall ensure that the petitioner is safely escorted to the place desired by her. A compliance report in this regard be forwarded to the Registrar (Judicial) of this Court within a period of 7(seven) days from today.

16. With the aforesaid observations and directions, the writ petition is allowed.