
(2019) 05 DEL CK 0249

In the Delhi High Court

Case No : Civil Writ Petition No. 8 Of 2018

Hemant Nimesh

APPELLANT

Vs

Central Board Of Secondary Education And Anr

RESPONDENT

Date of Decision : 23-05-2019

Acts Referred:

Citation : (2019) 05 DEL CK 0249

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Arav Kapoor, Ashok Kumar, Ankur Goel

Final Decision : Allowed

Judgement

1. The petitioner seeks alteration in the name of his father, as reflected in the Continuous and Comprehensive Evaluation Certificate, issued by the CBSE, in 2011, at the time when the petitioner cleared his X class, from "Surinder Nimesh" to "Surender Kumar Nimesh".

2. His request, to the said effect, to the CBSE, having not met with any favourable response, the petitioner is before this Court.

3. Sub-clauses (i) and (ii) of the Examination Bye-laws of the CBSE deal with change, and correction, in the name of the candidate, or his/her father/mother/guardian, as entered in the record of the CBSE, at any stage while studying in class IX to XII, or thereafter.

4. The said clauses, prior to their amendment, vide Notification dated 25th June, 2015, of the CBSE, and consequent thereto, may be set out, in a tabular fashion, thus:

Rule No.

Existing Rule

Amended Rule

69.1(i)

Change in name of candidate/Father/Mother/Guardian once entered in the Board's record at any stage while studying in Class IX, X, XI, XII or thereafter, within a period of ten years from the date of issue of first such document shall be considered on written request of the Candidate (not minor) /father/mother/guardian duly forwarded by the Head of the Institution supported by the following documents:

- a) Original copy of two newspapers (daily English/Hindi newspaper at National level & daily newspaper in a vernacular language circulated in the locality), in which the desired change has been published.
- b) Original Affidavit duly sworn before the Judicial Magistrate, First Class / Metropolitan Magistrate/ Executive Magistrate/ Sub Divisional Magistrate.
- c) Original copy of Publication in Government Gazette.
- d) Payment of prescribed fee.
- e) True Copy of admission form filled in by the parents duly updated as per Gazette Notification of desired change and duly attested by the Head of the concerned institution.
- f) True Copy of School Leaving Certificate of the previous school submitted by the parent/candidate at the time of admission and updated as per Gazette Notification of desired change, duly attested by the Head of the concerned institution.
- (g) True Copy of the page of admission and withdrawal register of the school where the entry has been made in respect of candidate showing updation as per Gazette Notification of desired change, duly attested by the Head of the concerned institution.

Applications regarding changes in name or surname of candidates may be considered, provided the changes have been admitted by the Court of law and notified in the Government Gazette before the publication of the result of the candidate.

69.1(ii)

Correction in name to the extent of correction in spelling errors, factual typographical errors in the Candidate's name /Surname, Father's name / Mother's name or Guardian's name to make it consistent with what is given in the school record or list of candidates (LOC) submitted by the school may be made.

Application for correction in name of Candidate/Father's/Mother's/ Guardian's name will be considered only within ten years of the date of declaration of result provided the application of the candidate is forwarded by the Head of Institution with the following attested documents:

- a) true Copy of Admission form(s) filled in by the parents at the time of admission duly attested by the Head of the concerned institution
- b) true Copy of the School Leaving Certificate of the previous school submitted by the, parents of the candidate at the time of admission duly attested by the Head of the concerned institution,
- c) True copy of the portion of the page of admission and withdrawal register of the school where the entry has been made in respect of the candidate, duly attested by the Head of the concerned institution

Correction in name to the extent of correction in spelling errors, factual typographical errors in the Candidate's name/ Surname, Father's name/ Mother's name or Guardian's name to make it consistent with what is given in the school record or list of candidates (LOC) submitted by the school may be made.

Application for correction in name of Candidate/ Father's/ Mother's/ Guardian's name will be considered only within one year of the date of declaration of result provided the application of the candidate is forwarded by the Head of Institution with the following attested documents:

- a) True Copy of Admission form(s) filled in by the parents at the time of admission duly attested by the Head of the concerned institution
- b) True Copy of the School Leaving Certificate of the previous school submitted by the parents of the candidate at the time of admission duly attested by the Head of the concerned institution.
- c) True copy of the portion of the page of admission and withdrawal register of the school where the entry has been made in respect of the candidate, duly attested by the Head of the concerned institution

5. In all such cases, the attempt of the court, in the first instance, is to ascertain whether the request of the candidate is for "change" in name or "correction" in name. Thereafter, the court is required to adopt a common sense approach. Where the records indicate that the request of the candidate is genuine, technical considerations ought not to stand in the way of the court granting relief as sought.

6. In the present case, the following features are relevant:

- (i) The name of the father of the petitioner, as entered in his Secondary School Certificate, on 14th June, 1982, is "Surender Kumar Nimesh". The probative value of the Secondary School Certificate already stands recognized by the Supreme Court in Board of Secondary Education of Assam v. Md. Sarifuz Zaman, (2003) 12 SCC 408.
- (ii) The Birth Certificate of the petitioner has been placed on record but, unfortunately, the surname of the petitioner's father, as entered therein, is

completely unintelligible. It is impossible to derive, from the said document, as to whether the surname has been entered as "Kumar Nimesh" or as "Nimesh". The said certificate, therefore, cannot guide this Court in deciding the present case.

(iii) At the time of seeking admission in the Respondent No.2 School (hereinafter referred to as "the School"), the name of the petitioner's father was entered, in the handwriting of the petitioner's father, as "Surinder Nimesh". However, in the report card issued by the School to the petitioner for the academic session 2001-2002, the name of the petitioner's father is entered as "Surinder Kumar Nimesh".

(iv) In the School Leaving Certificate, of the petitioner, issued by the CBSE, on 8th August, 2012, the name of the petitioner's father is reflected as "Surinder Kumar Nimesh", which is also the name to be found in the Miniature Cards - which, learned counsel for the petitioner informs me, are the ID cards issued to the student at the time of entry into class XI. In the said ID cards, too, the name of the petitioner is shown as "Surinder Kumar Nimesh".

(v) The petitioner has also annexed, with this writ petition, the identity cards, issued by the School, of the petitioner for the academic session 2007-2008 and 2009-2010, which, too, reflect the name of his father as "Surender Kumar" and "S.K. Nimesh" respectively.

(vi) Additionally, the petitioner has filed statutory documents filed by his father as well as of his mother, in the form of their Aadhar cards, Election ID cards, PAN Card and Driving Licence, in which, too, the name of the petitioner's father is shown as "Surender Kumar Nimesh".

(vii) At the same time, it is correct that, in the list of students forwarded by the School to the CBSE, the name of the petitioner's father has been shown as "Surender Kumar Nimesh".

7. The CBSE has framed clear cut guidelines governing applications for change, and correction of name, and advisedly so, at times, the name of the student, or her or his parents, becomes an identity marker, and any ambiguity therein may have serious consequences at a later stage. In cases where there, therefore, appears to be any degree of ambiguity, even slight, regarding the claim, for change of the name, made by the candidate herself/himself, or her/his parent, courts are required to adopt a circumspect approach and cannot be unruly lenient.

8. Having said that, however, where the records reveals that the prayer for change of name is genuine, the court cannot be hypertechnical in broaching the issue. This is probably best reflected in a recent judgment of the Division Bench of this Court in *Imran Ali Khan v. Central Board of Secondary Education*, 2019 SCC OnLine Del 6980. The name of the student, in that case, was Filza Khan (referred hereinafter as "Filza"). Her father petitioned this Court, for changing

the name of his wife, i.e. Filza's mother, in the records of Filza as issued by the CBSE, from "Kiran Khan" to "Fakiha Khan".

This Court noted the fact that at the time of securing admission, of the student Filza, her mother's name was recorded as "Kiran Khan" and that this continued to be so during the period of school education of Filza. In the information furnished by the school to the CBSE, too, therefore, the name of Filza's mother was reflected as "Kiran Khan". As a result, in the grade sheet-cum- certificate of performance of Secondary School Examinations 2012, of Filza, her mother's name was again mentioned as "Kiran Khan". The case of the petitioner, before this Court, was that "Kiran Khan" was the nickname of his wife, i.e., Filza's mother and that her real name was "Fakiha Khan", and that the mention of her name as "Kiran Khan" in the admission form, as filled in while securing admission for Filza, was an inadvertent error.

9. Relying on Clause 69.1 of its Bye-laws, the CBSE rejected the request for change of name of Filza's mother from "Kiran Khan" to "Fakiha Khan", thereby compelling the petitioner to move this Court.

10. Having failed to succeed before the learned Single Judge, the matter was carried in appeal vide LPA 128/2017 and came to be decided by the aforesaid judgment, of the Division Bench. Paras 4 to 6 of the judgment, which speak eloquently for themselves, may be reproduced, to advantage, thus:

"4. Having considered the diverse aspects and the admitted factual conspectus on record, we find, the case in hand, is not a case of any change of name, but, a mere correction in the mother's name of the child Ms. Filza Khan. Apparently, an inadvertent mistake in mentioning the mother's nickname "Ms. Kiran Khan" in the admission form in the year 2005, got transmitted by the respondent No.2 school to the respondent No.1 Board. The application made by the petitioner was not for any change of name, but, for correction of an inadvertent mistake in mentioning the name of the mother in the admission form as "Kiran Khan" instead of "Fakiha Khan", which fact, undisputedly, finds support from the birth certificate dated 17.12.02, copy whereof forms part of the record as Annexure-P1. This birth certificate clearly mentions that Ms. Filza Khan was born to the petitioner and Ms. Fakiha Khan. The applicant has placed on record other documents, such as the educational certificates of the mother Fakiha Khan, her passport etc., which show that her name always was Fakiha Khan. Thus, it is not a case of change of name of the mother to Kiran Khan, from Fakiha Khan, post the filling up of the examination form of the appellant's daughter. Pertinently, even in the documents relating to the daughter of the appellant Filza Khan, such as her Birth Certificate, the name of the mother is recorded as "Fakiha Khan" and not "Kiran Khan". Thus, the case in hand is certainly not a case of change of name as contemplated under Rule 69.1(i). It is also not a case of correction in spelling errors and factual typographical errors as contemplated under Rule 69.1(ii). The case in hand is completely founded on the premise of an inadvertent mistake in mentioning the name of the mother in the admission

form, which was filled way back in the year 2005 at the time of admission of the child in class -I. Such a case is neither covered under Rule 69.1(i), nor Rule 69.1(ii). We also observe that the subject Examination Bye-laws are not statutory, as observed to by the Co-ordinate Bench in Mazhar Saleem Chandroth (Minor) Thr. Saleem Chandroth (father and natural guardian) vs. Central Board of Secondary Education, LPA 315/2017 decided on 16.04.2018. In the given facts and the circumstances, the petitioner cannot be left high and dry for the redressal of the grievance relating to his minor child.

5. We feel, the respondent No.1 Board has been too recalcitrant in a case of the kind in hand inspite of the clear and specific observations made by the Co-ordinate bench of this in Mazhar Saleem's case (supra), to the following effect:

"Extant rules applicable to the appellant however, do not extend such discretion. At least, none has come to be pointed out during the course of hearing. We therefore, do not find any merit in the appeal. This court is also of the opinion that the validity of the Bye-laws was upheld in the previous judgments. Undoubtedly the nature of the Bye-laws (which are not statutory) are restrictive. The CBSE is not obliged to, nor is shown to provide specific warning to students or their parents about the conclusive nature of the Bye-laws, whose time-lines are focused to cater to organizational convenience. India is a vast country; not all students who join affiliated schools are from affluent backgrounds or have fully aware and educated parents. Such students are admitted to CBSE affiliated schools, on asparitional basis, by such parents who might not accurately reflect the full or correct names. By the time the student realises this error (of omission) it is too late: furthermore, she cannot be said to realise the importance of the incorrect name because in most cases, she would be not even a major. The repercussions of this finality due to the nature of Bye-laws are serious, because every other document - identity, passport, etc. would reflect another name. In this age, when capturing name and identify consistently becomes the key for education, travel and employment, inconsistencies (such as the inevitable consequence of the way Bye-law 69.1 is cast) lead to denial of opportunity. These aspects need to be re-examined by the CBSE within six months, to suitably re-cast its Bye-laws to provide a better mechanism to reflect name changes like the present case."

During the course of hearing, when the learned counsel for the respondent No.1 Board was queried as to what steps have been taken by the respondent No.1 in the light of the foregoing observations for re-casting of the Bye-laws, it came to be stated that but for extending the time limit for making the applications in consonance with the Rules from one year to five years, no other decision has come to be taken. This attitude of the respondent No.1 Board cannot be appreciated.

6. 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."

(Emphasis Supplied)

11. I am of the view that the present case is entirely covered by the judgment of this Court in *Imran Ali Khan* (supra) though Mr. Ashok Kumar, learned counsel for the CBSE, would seek to submit that the judgment in *Imran Ali Khan* (supra), should be read as having been rendered in personam and not in rem. The submission obviously is totally without any basis, and is accordingly rejected. Precedent is one of the sources of law in our legal system, and the overarching consideration of consistency in the exercise of judicial decision-making accords it pride of place. The binding value of judgments cannot be sought to be avoided by any tenuous attempt at treating decisions, otherwise binding, as having being rendered in personam, unless the judgment itself contains unmistakable indicia that is, indeed, a judgment rendered in personam. Court lower in the precedential hierarchy have no authority to categorize decisions of "higher" courts as rendered in personam. Any such attempt would erode at the very foundation of the precedential edifice.

12. Courts are, therefore, not expected to avoid relying on precedent by treating them as limited to the facts of those cases where the judgments themselves do not indicate. There is nothing in the judgment of the *Imran Ali Khan* (supra), in my view, which shows that the court intended to limit the enunciation of the law therein, to the fact and situation available before it.

13. *Imran Ali Khan* (supra), therefore, binds me.

14. The *raison d'etre* in *Imran Ali Khan* (supra) is, clearly, that where the court finds, from the documents before it, that the request for change of name is genuine, it has to grant the request, rather than reject it by adopting a hypertechnical approach. In *Imran Ali Khan* (supra), noting the fact that the claim of the petitioner, therein, was borne out by the birth certificate of Filza, the school certificate of her mother and her passport, this court observed that it was

apparent that the name of the Filza's mother was, in fact, "Fakiha Khan " and not "Kiran Khan".

15. In the present case, too, (i) the High School Certificate of the petitioner's father issued as far back as on 14th June, 1982, (ii) the Election Id cards of the petitioner's father and mother, (iii) the PAN card of the petitioner's father, (iv) the Driving License of the petitioner's father, (v) the Aadhar card of the petitioner and his mother, (vi) the report card of the petitioner for the academic session 2001-2002, (vii) the report card of the petitioner for the academic session 2008-09, (viii) the School Leaving Certificate issued by the School on 8th June, 2012 and (ix) the Miniature card issued to the petitioner at the time of entry into class XI, all reveal that the name of the petitioner's father as "Surinder Kumar Nimesh". Besides, the ID cards issued by the School for the academic session 2007-08, 2009-2010, record the name of the petitioner's father's name as "Surender Kumar" and "S.K. Nimesh" respectively

16. Perhaps most important, among these documents, is the High School Certificate of the petitioner's father, which was issued much before the birth of the petitioner, in 1982, which, too, reflects the name of the petitioner's father as "Surender Kumar Nimesh".

17. Though, therefore, the petitioner's father ought to have been more careful while entering his name in the admission form, entered by him, at the time of seeking admission for his ward, that factor, by itself, in my view, cannot wish away the evidence referred to hereinabove, which clearly indicates that the petitioner's father's name was, in fact, "Surender Kumar Nimesh".

18. I may also refer, in this context, to a judgment of the Division Bench of this Court in *Arya Kariyatil Chendakera v. Central Board of Secondary Education*, 2018 SCC OnLine Del 8402, in which, too, the Division Bench allowed the change of name of the petitioner's father from "K C Dilip" to "Kariyatil Chendakera Deleep Kumar", styling the alterations, which included the addition of the surname "Kumar", to come within the purview of "correction" rather than "change".

19. It has also sought to be contended, by Mr. Ashok Kumar, that the application of the petitioner, for alteration of the name of his father, was barred by time, having been submitted more than one year after the issuance of the Continuous and Comprehensive Evaluation Certificate, by the CBSE, in 2011. He submits that, at the time when the request was made, the Bye-laws of the CBSE stood amended vide notification dated 25th June, 2015, and the time period, within which an application for change, or correction of name could be made, stood reduced from the pre-existing 10 years to one year. This submission merits rejection on two counts. Firstly, according to Imran Ali Khan (*supra*), cases such as this would fall entirely outside the pale of the Bye-Laws of the CBSE, so that the time periods stipulated therein would, quite obviously, not apply. Secondly, the certificate, in which the petitioner desires the correction to be effected, was

issued in 2011. As the Bye-Laws stood at that time, the petitioner could apply for change, therein, within a period of 10 years, which period is yet to expire. By amending the Bye-Laws in 2015, reducing the period to one year, the petitioner could have been divested of the right which vested in his favor in 2011.

20. In view of the above, I am of the opinion that the prayer of the petitioner deserves to be allowed. A writ shall, accordingly, issue to the CBSE to correct the name of the petitioner's father, in the Continuous and Comprehensive Evaluation Certificate, issued by the CBSE, in 2011 from "Surinder Nimesh" to "Surender Kumar Nimesh".

21. Mr. Ashok Kumar submits that the petitioner would, for this purpose, be required to return the Continuous and Comprehensive Evaluation Certificate, issued by the CBSE. Learned counsel for the petitioner undertakes to do so within one week.

22. The CBSE is directed to carry out the necessary correction and issue a fresh certificate within six weeks thereof.

23. The writ petition is allowed in the above terms, with no order as to costs.