

(2017) 05 DEL CK 0152

In the Delhi High Court

Case No : 1672 of 2017

**KHUSHBU KAUSHIK (MINOR) THR. HER FATHER LT. COL. RAJESH
CHANDRA KAUSHIK Vs CENTRAL BOARD OF SECONDARY EDUCATION
THROUGH ITS CHAIRMAN & ORS.**

Date of Decision : 23-05-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 05 DEL CK 0152

Hon'ble Judges : Prathiba M. Singh

Bench : SINGLE BENCH

Advocate : Sunil Kumar Jha, Ashok Kumar, Shubham Singh, Romy Chacko

Final Decision : Allowed

Judgement

1. The petitioner in this writ petition, inter alia, seeks correction/rectification of the name of her father in the Secondary School Examination (Class X) Grade Sheet cum Certificate of Performance issued by the Central Board of Secondary Education (CBSE).
2. The petitioner Khushbu Kaushik is a student studying in Class XII enrolled with the Central Board of Secondary Education (CBSE). She appeared for her class 10th board examination in the academic year 2014-15. In the class 10th "Grade Sheet cum Certificate of Performance" issued by the CBSE (hereinafter - respondent no.1), on 29th May 2015, her mother's name is recorded as "Kalpana Kaushik" and her father's name is recorded as "Rajesh Kaushik".
3. According to the Petitioner, her father's full name is Rajesh Chandra Kaushik, and he is a Lt. Colonel in the Indian Army. The middle name "Chandra" was missing in the class 10th certificate and hence she approached the CBSE, seeking correction of the name of her father, on 4th December 2015.
4. The petitioner submits that she was told by the CBSE that a publication of the correction of her father's name as Rajesh Chandra Kaushik needs to be effected

in the local newspaper for enabling correction in her father's name. The publication to this effect was got done by the Petitioner in the Gazette of India dated 13th February, 2016. Thereafter, she submitted the additional documents including the Gazette Publication, to the CBSE, on 18th February, 2016.

5. So far as corrections in the name of candidate/father/mother/guardian is concerned, the CBSE has notified the "Examination Bye-Laws relating to correction & change in name and period for correction in date of birth". As per the Bye-Laws as they stood in May 2015, prior to the amendments in June 2015, corrections were permissible for a period of 10 years from the date of first issue of the document subject to the fulfilment of the conditions specified therein. It appears that material amendments were made in these Bye-Laws with effect from 25th June, 2015. We extract below the tabulation of the extant rules as applicable on 29th May, 2015 when the petitioner's secondary school certificate was issued and the amended rule post 25th June, 2015.

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 all 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.

6. From the above table it is evident that the amendments were carried out inter alia, in Chapter 8 - Rules 69.1 and 69.2(iv) relating to "Correction and change in name and period for correction in date of birth". Under the extant Bye-laws (prevalent in May 2015), a period of ten years was available for seeking corrections, but under the amended bye-laws the ten year period was removed. As per the amended bye-laws, "applications regarding changes in name of 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". (emphasis supplied)

7. The Petitioner initially filed a writ petition before this court being W.P.(C) No.3312/2016. The said writ petition came to be withdrawn by petitioner, as recorded in the order dated 15th December 2016, passed by the Ld. Single Judge, in order to file a fresh petition challenging the Amended Bye-Laws of the CBSE notified on 25th June, 2015.

8. The present petition has thus been filed seeking the following prayers:- "(a) Declare that the petitioner is entitled to correction in the name of her father from Rajesh Kaushik to Rajesh Chandra Kaushik as per old Bye-Laws dated 27.06.2011 with consequential directions in the nature of writ of mandamus or any other directions to the respondents to process the application of the petitioner and make necessary correction;

(b) In alternative declare that the amendment dated 25.06.2015 in Bye-Laws of CBSE giving retrospective effect is bad in law;

(c) Declare that the amendment dated 25.06.2015 in old Bye-Laws of CBSE dated 27.06.2011 to the extent of amendment discriminatory, arbitrary and violative of principle of natural justice and void & unconstitutional".

9. The Ld. Counsel for the petitioner has relied upon the following documents in support of the Petitioner's case that the father of the petitioner, a serving commissioned officer of the Indian Army, is "Rajesh Chandra Kaushik" who is also referred to as "Rajesh C Kaushik" or "Rajesh Ch. Kaushik". (i) Secondary school certificate examination mark sheet of the Petitioner's father, issued by Rashtriya Indian Military College, Dehradun which records the Petitioner's father's name as "RAJESH CHANDRA KAUSHIK".

(ii) Senior school certificate examination mark sheet of the Petitioner's father, issued by Rashtriya Indian Military College, Dehradun which records the father's name as "RAJESH CHANDRA KAUSHIK".

(iii) The Gazette of India notification regarding appointments, Promotions, Leave etc. of officers issued by the Ministry of Defence dated 9th to 15th December,

2006 which records the name as "Rajesh Chandra Kaushik".

(iv) Aadhar card of Rajesh Chandra Kaushik.

(v) Election I-Card of Rajesh Chandra Kaushik.

(vi) Passport of Rajesh Chandra Kaushik.

(vii) Birth certificate of petitioner issued by Registrar of Birth and Death, Naxalbari, Government of West Bengal, Department of Health & Family Welfare which records the father's name as "RAJESH CH KAUSHIK".

(viii) Transfer certificate issued by the Army Public School, Bareilly where she was previously studying which records the Petitioner's father's name as "Lt. Col. RAJESH C. KAUSHIK".

(ix) Letter dated 3rd December 2015, from the Directorate General of Supplies & Transport in the Ministry of Defence confirming that Khushbu Kaushik's date of birth is 10th June, 1999 and she is the daughter of Lieutenant Colonel Rajesh Chandra Kaushik.

(x) Aadhar card of Khushbu Kaushik reflecting her father's name as Rajesh Chandra Kaushik.

(xi) Passport of Khushbu Kaushik showing her father's name as Rajesh Chandra Kaushik.

10. On the basis of the above documents, Mr. Sunil Kumar Jha learned counsel for petitioner contends that the CBSE may be directed to correct the name of the Petitioner's father in the 10th class certificate of the petitioner or a declaration be issued to the effect that the petitioner is the daughter of Rajesh Chandra Kaushik and that the CBSE be directed to carry out the correction accordingly. He further submits that the Bye-Laws of the CBSE, which were notified on 25th June, 2015, do not apply to the petitioner as her 10th class certificate was issued in May, 2015 prior to the amendment in the rule.

11. We note that the Petitioner's school/respondent no.4 herein has confirmed on 28th March, 2016 that the request for change of her father's name has been forwarded to CBSE but no response has been received from the CBSE.

12. We find that the stand of the CBSE is contained in the counter affidavit filed by it in W.P.(C) No.3140/2016 and has been placed before us. The CBSE, inter alia, submits that its certificate is based upon the information received from the petitioner's school. According to Mr. Ashok Kumar Singh, learned counsel for CBSE, List of Candidates ("LOC") would reveal that the CBSE has committed no error in mentioning the name of the petitioner's father as "Rajesh Kaushik".

13. Learned counsel for the CBSE further submits that grant of relief under Art. 226 is discretionary and discretion thereunder ought not to be exercised in favour of the Petitioner. He further submits that the efficacious remedy for the petitioner is to file a civil suit seeking declaration.

14. We have considered the rival submissions made on behalf of the parties. The documents and facts placed on record clearly reveal that the petitioner is the daughter of Lt. Colonel Rajesh Chandra Kaushik, who is working in the Indian Army. It can also be seen that the documents have described the father of the petitioner as "Rajesh C. Kaushik", "Rajesh Ch. Kaushik" or "Rajesh Chandra Kaushik". It is not disputed that it is the same person.

15. The petitioner has placed reliance on official records of the Government of India certifying that petitioner Khushbu Kaushik is the daughter of Rajesh Chandra Kaushik. Clearly "C" in her father's name is used as an initial for Chandra and middle name "Ch." is an acronym thereof. The mentioning of the petitioner's father's name as Rajesh Kaushik was an incomplete reference. Given the certification by the Army Authorities, Aadhar Card and Voter Identity card (which are issued after due factual verification), there can be no challenge or dispute as to the identity of the petitioner or her parents. It is noteworthy that no one has disputed the identity of petitioner or her parents in response to the newspaper publication effected by her to meet the CBSE requirements. In the given facts, we hold and declare that petitioner Khushbu Kaushik is daughter of Rajesh Chandra Kaushik, who is also described as Rajesh Kaushik, Rajesh C. Kaushik or Rajesh Ch. Kaushik.

16. It is also well settled that if there is no dispute as to the facts then the Court is obliged to consider the documents with the affidavit and proceed to pass appropriate directions without relegating the parties to the remedy of a suit. In this regard it would be apt to quote the decision of the Supreme Court in Smt Gunwant Kaur & Ors. vs. Municipal committee, Bhatinda and Ors. (1969)3 SCC 769:- " (14) The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioners right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles....."

17. In the present case, we are also extremely conscious of the fact that a young girl's further education and career could be jeopardised due to merely a technical or inadvertent mistake in the Class X certificate. The petitioner is currently appearing in the Senior Secondary (Class XII) Examination and if the same mistake continues to be perpetuated in her Class XII mark sheet and certificate it could also lead to drastic consequences to the petitioner, and impact her higher education as well as her career in India or abroad as it may create confusion and cast a cloud over her identity.

18. The court has to be conscious of the realities on the ground especially in the

case of citizens like the petitioner who throughout their education are under a compulsion to change schools and colleges repeatedly, owing to their parents serving in the Army or like establishments. During such transfers from one school to another, errors in school records could occur.

19. So long as the identity of the Petitioner is clear and there is no doubt as to the name and identity of her parents, merely abbreviated recordal or mistake in recordal of the names, cannot be perpetuated, resulting in inconvenience and hardship to the Petitioner. The CBSE does not dispute the identity of the father or of the Petitioner. The CBSE merely submits that it did not commit any mistake and relied upon the LOC (list of candidates) and the form submitted by the school. The petitioner being a minor may not be always equipped with ready help and assistance from her father, who is an army officer of the rank of Lieutenant Colonel, in a transferable position. Owing to such circumstances an inadvertent & bonafide error may have occurred, justifying exercise of our jurisdiction.

20. In the present case, the issue being extremely narrow and the documents on record clearly evidencing that the petitioner is the daughter Lt. Colonel Rajesh Chandra Kaushik, directing the petitioner to file a civil suit would led to injustice and unintended consequences including delay. Any delay would be detrimental to the Petitioner's further education.

21. CBSE may be justified in evidencing the circumstances that its mark sheet merely contains the particulars as given in the application of petitioner, which was forwarded by the school. Without going into the issue as to, in what manner, the mistake, if any, occurred, either due to the petitioner or by the school or by the CBSE, it is sufficient in the facts & circumstances of the present case, to direct CBSE to rectify the error and bring a quietus to the matter.

22. In view of the above, we direct as follows:- (a) Petitioner is declared as being the daughter of Rajesh Chandra Kaushik, who is a Lt. Colonel in the Indian Army.

(b) CBSE is directed to issue a corrected Secondary School Examination Grade cum Performance Certificate to the petitioner reflecting the name of her father as "Rajesh Chandra Kaushik". The same be done within four weeks.

(c) CBSE is also directed to carry out modification in its records for future purposes including the mark sheet & certificate, which CBSE is going to issue for the Senior Secondary Certificate Examination i.e. the Class 12 examination.

23. In view of the directions given above, the other prayers with respect to Constitutional validity of the Amended Bye-Laws dated 25th June, 2015 are not being gone into in the present writ petition and the challenge is left open. No other prayers are pressed.

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