
(2012) 05 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition No. 433 of 2012

Master Arshad Khalid Jamal, a Minor Through His Father,
Guardian and Next Friend Khalid Jamal Shakera

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Secondary School Code — Rule 26.3, 26.4, 26.4(2)

Citation : (2012) 4 ALLMR 117 : (2012) 3 BomCR 774 : (2012) 4 MhLj 646

Hon'ble Judges : S.S. Shinde, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Makrand Kale, instructed by Mr. M.P. Vashi and Associates, for the Appellant; Bharat Mehta, A.G.P. for Respondent Nos.1 to 3., for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Rule made returnable forthwith. Respondents waive service. With the consent of parties heard finally. This writ petition is filed seeking directions to the respondent authorities for correction in the petitioner's first name in his school leaving certificate, passing certificate, mark sheet etc.

2. The petitioner who is minor has filed this writ petition through his father, guardian and next friend. The petitioner herein was a student of 4th respondent school in Standard X in the year 2009-10. He passed SSC Examination in March 2010. When he was studying in the 4th respondent school, there was an error in the spelling of his first name which was written as "JAMAL ASHAAD". His correct name is "JAMAL ARSHAD". When he noticed mistake, he approached the headmistress of the 4th respondent school requesting her for correction of the school record. In turn, the petitioner was advised by the headmistress to get his name corrected by publishing the corrected name in the Government Gazette. Accordingly, the petitioner has got corrected the first name and same is published in the Government Gazette. The petitioner has placed on record at

Exhibit-A, the copy of Government Gazette dated 1-12-2011 to 7-12-2011.

It is further case of the petitioner that, after he passed the Standard "X" Examination (SSC Examination), in the month of March 2010, he took admission in the 5th respondent College in Standard "XI (Commerce stream). By an application/letter dated 17-09-2010 the petitioner's father requested the Principal of the 5th respondent Junior College to effect the change in the relevant record with the correct name of the petitioner. The said correspondence between the Principal of the 5th respondent and the father of the petitioner is placed on record alongwith writ petition. The Principal of the 5th respondent in turn, wrote to the 2nd respondent Deputy Director of Education making the similar request to make the correction in the petitioner's first name. By a letter dated 12-07-2011 the 2nd respondent informed the Principal of the 5th respondent College that as per the provisions of Rule 26.3 of the Secondary School Code the name or surname of a student cannot be changed once school is left by him/her.

Another letter dated 12-10-2011 was written by the petitioner's father to the 2nd respondent referring to the correspondence. However, there was no positive response from the 2nd respondent. Therefore, the petitioner by the Advocate's notice dated 03-11-2011 to all the respondents, requested to correct the first name, on failure, it was stated that the petitioner will have to file the writ petition. However, there was no response from the respondent authorities. Hence this writ petition under Article 226 of the Constitution of India is filed by the petitioner.

3. The learned Counsel appearing for the petitioner submits that, the petitioner's correct name is "Arshad". In stead in the school record, College record and other record such as school leaving certificate, mark sheet, hall ticket etc., his name has been wrongly mentioned as "Ashaad". It is submitted that, the petitioner has got his name corrected by gazetting the same in the Government Gazette. In spite of that, the correction has not been carried out by the respondent authorities in the school record It is further submitted that, it was a bonafide mistake on the part of 4th respondent school while giving school leaving certificate. It is submitted that, merely because the petitioner has left the school, cannot be ground to refuse to correct the school record. It is submitted that, Rule 26.3 of the Secondary School Code cannot be read in isolation and same has to be read conjointly with Rule 26.4 of the Secondary School Code. It is submitted that, Education Inspector refused to entertain the request of the petitioner citing Rule 26.3 which pertains to change in date of birth whereas he could have done it under Rule 26.4 (2) of the Secondary School Code. Therefore, the learned Counsel for the petitioner would submit that, this writ petition deserves to be allowed. In order to lend support to aforesaid contentions, the learned Counsel appearing for the petitioner pressed into service unreported judgment of this Court in the case of Kishor s/o Sukhdeo Walhekar vs. The State of Maharashtra and others dated 07-01-2009 in Writ Petition No.3319 of 2005

and submitted that, in the facts of that case, this Court has invoked provisions of Rule 26.4 of the Secondary School Code and directed the authorities to consider the prayer of the petitioner therein for correction of date of birth. Therefore, in the facts of this case also, this Court may direct the respondent authorities to consider the prayer/request of the petitioner for correction of his first name in school record.

4. On the other hand, the learned A.G.P. for respondent Nos. 2 and 3 would contend that, the respondent authorities have rightly invoked Rule 26.3 of the Secondary School Code. The authorities have no power to make the correction in the school record once the candidate has left the school. Therefore, according to the learned A.G.P., there is no merit in the writ petition and same may be dismissed.

The learned A.G.P. pressed into service unreported judgment of this Court in the case of Azam Khan s/o Dagd Khan Pathan vs. The State of Maharashtra and others in Writ Petition No. 266 of 2011 dated 07-03-2011 and also provisions of Rule 26.3 of the Secondary School Code.

5. We have given thoughtful consideration to the rival submissions. Upon perusal of the pleadings in the petition, annexures thereto and after hearing Counsels for respective parties, prima facie it appears to us that, while preparing the school leaving certificate and other documents incidental thereto, there is apparent mistake in the first name of the petitioner. The first name of the petitioner is "Arshad", however, in the school record it appears as "Ashaad". From perusal of the copies of the documents which are placed on record alongwith the petition, there is copy of Government Gazette issued by the Government of Maharashtra where the name of the petitioner has been shown corrected as "Arshad" in stead "Ashaad". From careful perusal of annexure- A to the petition, at more than one place the said correction has been shown in the "Government Gazette dated 01-12-2011 to 07-12-2011. It further appears from perusal of Exhibit-C to the petition that, on 17-09-2010 letter was written by the father of the petitioner to the Principal of 5th respondent requesting for change of name/spelling. It further appears that, in turn by letter dated 11-10-2010, the said Principal had written to the Deputy Director of Education, Greater Mumbai, requesting him to do the needful by directing the concerned to correct the school record. However, by letter dated 12-07-2011 the Deputy Director of Education, Mumbai Region, Mumbai has communicated to 5th respondent that no such correction can be done at College level and accordingly, request to correct the name of the petitioner in school/college record has been turned down by the Deputy Director of Education. It appears that, the Deputy Director of Education relied upon Rule 26.3 of the Secondary School Code, while entertaining the request for correction in the name of the petitioner in school/college record, and turned down the same. In our opinion, the approach of the Deputy Director of Education to ignore Rule 26.4 of the Secondary School Code cannot be countenanced. Rule 26.3 and 26.4 of the Secondary School Code reads thus

26 3 No alteration in the date of birth or other entries in the General Register, including correction of spelling shall be allowed without the previous permission of the appropriate authority. No such alteration in the figure of Date of Birth shall, however be allowed even with such permission after the students has left secondary school. This shall not however preclude corrections of obvious mistakes, this is the date of a particular month which does not exist in the calendar. Before giving sanction to correct spelling or the obvious mistake in figures, the same shall be verified with the original evidence, if any, produced at the time of making the relevant entry. When such an alteration is made on the strength of the written order of the said authority an entry to that effect shall be made in the remarks column of the General Register by writing the number and date of the order of the said authority. The written order shall be preserved as permanent record.

26.4. Application for change or correction of date of birth, name, surname, case etc, as entered in the General Register shall be entertained from or on behalf of a pupil who is attending a school. Such application shall not be entertained from or on behalf of a pupil, who has left the school, as the same amounts not only to a change in the entries in the General Register but also to a change in the School Leaving Certificate.

However, for the purposes like an admission to another educational institution the School Leaving Certificate is relied upon as an evidence for name, surname, caste, date of birth etc. and hence in bonafide cases where wrong spelling of a word or an obvious mistake of the type mentioned in sub-rule 3 above is noticed any time after issue of the School Leaving Certificate and the same is required to be corrected so as to be consistent with the corresponding entries in the General Register of the school or those in the School Leaving Certificate issued by the previous school, such application shall be entertained. The procedure to be followed in such cases is in Appendix Six. (Emphasis supplied).

Appendix six

With a view to securing uniformity in the procedure followed in dealing with applications received by the Department in connection with the changes in entries, in the record of schools such as names, surnames, caste/sub-caste, date of birth, etc. the following instructions are issued: 1)...

2) ...

3) ...

4) ...

5) ...

6) ...

7) ...

8) ...

Change in the Name and Surname :

(9) For change in names, the following documentary evidence must accompany the application and no change should be allowed without carefully examining the following evidence and being satisfied about it :

(a) In case of change due to adoption, the original-deed or a certified copy of that deed or a certificate of a stipendiary Magistrate showing the name changed as a result of adoption.

(b) In the case of change due to marriage, a declaration by the parent or guardian attested by two witness and the girl herself or a certified copy of the certificate of registration of marriage.

(c) In all other cases, including correction of spelling of name, father's name, surname etc., an affidavit made before a Stipendiary Magistrate by the parent or guardian.

(Emphasis supplied).

(10) If the change in name is sanctioned, in the case of a pupil who has passed a public examination he/she should be required to notify the change in his/her name in Maharashtra Government Gazette. It is not, however, necessary to notify the change in name due to marriage in the Maharashtra Government Gazette.

(11) The application shall be submitted in Form No.2 accompanying these rules.

6. Bare perusal of provisions of Rule 26.4 and clause-c in the afore mentioned Appendix Six below Rule 26.4 of the Secondary School Code would make it abundantly clear that, there is a provision and procedure for correction of spelling of name, father's name, surname etc., While entertaining such request for correction, the authority has to verify original record maintained by the concerned candidate/applicant.

Therefore, in the aforesaid background, in the facts and circumstances of this case, Deputy Director of Education, Mumbai Region, Mumbai was not correct in refusing to entertain the request of the petitioner on the ground that, there is no enabling provision/power under the Rules of Secondary School Code to entertain such prayer/request of the petitioner for correction of his first name in the school record.

7. The learned A.G.P. for the respondent Nos. 2 and 3 pressed into service unreported judgment of this Court in the case of Azam Khan s/o Dagd Khan Pathan (supra) to contend that, such correction in the first name by the petitioner in the school record cannot be entertained once candidate has left the school. In our opinion, said argument is devoid of any merits. In case of Azam Khan s/o Dagd Khan Pathan (supra), in the facts of that case, this Court in para-7 of the judgment noticed that the school leaving certificate which was

placed on record of the petitioner therein is dated 10-06-1972. The petitioner therein did not produce either school leaving certificate issued by the previous scholar the record on the basis of which, the original entries were effected in the general register/leaving certificate. The only basis on which the petitioner sought correction, is the duplicate school leaving certificate issued sometime in May, 2009 of his brother Hussain Khan Pathan. The petitioner therein did not produce any document on record in support of his claim and therefore, this Court in the facts of that case, rejected the writ petition filed by the petitioner therein. However, in the present case, the copy of the Government Gazette is placed on record by the petitioner in which it clearly appears that, the Government authorities by issuing notification in official gazette have published the corrected first name of the petitioner as "Arshad" in stead "Ashaad". The said document is not considered at all by the respondent authorities. The respondent authorities and in particular Deputy Director of Education, Mumbai Region, Mumbai declined to entertain the prayer of the petitioner merely relying upon the provisions of Rule 26.3 of the Secondary School Code.

In our opinion, in the facts and circumstances of this case, the respondent authorities ought to have invoked Rule 26.4 of the Secondary School Code and Appendix Six below said Rule. In our opinion, the provisions of Rule 26.4 enables even a student no longer studying to apply to the concerned Officer to make correction in the change in first name based on the documentary evidence available. Appendix Six to the said Rule in unequivocal term provides for procedure for correction in the name or surname as the case may be. Therefore, it is clear that the Government authorities are not powerless to entertain the prayer for correction in name or surname as the case may be. Therefore, in the facts and circumstances of this case, we are convinced that the respondent Deputy Director of Education, Mumbai Region, Mumbai and School Inspector ought to have considered the prayer of the petitioner for correction of his first name in the school leaving certificate and all other school/college record in relation to the petitioner.

8. In the aforesaid background, we feel it appropriate to relegate the petitioner before the Deputy Director of Education, Mumbai Region, Mumbai for redressal of his grievance.

9. Accordingly, keeping in mind the provisions of Rule 26.4 of the Secondary School Code, Appendix Six below therein and relevant procedure which is reproduced hereinabove, we direct the Deputy Director of Education, Mumbai Region, Mumbai to consider the prayer/request of the petitioner for correction in his first name. The petitioner to appear before the Deputy Director of Education, Mumbai Region, Mumbai on 09-05-2012 at 11-00 a.m. The Deputy Director of Education, Mumbai Region, Mumbai to hear the petitioner and after perusal of original record available with the petitioner to consider his prayer for correction of first name in the school record, as permissible under the provisions of Rule 26.4 of the Secondary School Code and after following procedure in Appendix Six

below of the said Rule, take decision on or before 25-05-2012 and communicate the same to the petitioner. Writ petition is allowed to the above extent .Rule made absolute in above terms.