

(2018) 04 DEL CK 0073
In the Delhi High Court
Case No : LPA 315 of 2017

MAZHAR SALEEM CHANDROTH (MINOR) THR SALEEM
CHANDROTH (FATHER AND NATURAL GUARDIAN)

APPELLANT

Vs

CENTRAL BOARD OF SECONDARY EDUCATION

RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2018) 04 DEL CK 0073

Hon'ble Judges : A. K. CHAWLA, S. RAVINDRA BHAT

Bench : Division Bench

Advocate : Chandrachur Bhattacharyya, Ashok Kumar

Final Decision : Dismissed

Judgement

A.K. CHAWLA, J.

1.This Letters Patent Appeal is preferred assailing the judgment dated 12.04.2017 passed by the learned Single Judge, whereby, a petition filed by the appellant under Articles 226 and 227 of the Constitution of India purportedly seeking direction for correction in the name from ""Mazhar Chandroth"" to

Mazhar Saleem Chandroth"" in the record of the respondent - CBSE and re-issuance of the marks-list and transfer certificate, was dismissed.Â

2.Concisely, the facts relevant to the subject are that for the academic sessions 2003 to 2005, the appellant studied in LKG and UKG withÂ

International Indian School, Jeddah, which is affiliated to CBSE. At the time of such admission and studies withÂ International Indian School, Jeddah,

the name of the appellant is said to have been given as ""Mazhar Saleem Chandroth"" with father's name ""Saleem Araiylakath Chandroth"".Â This

school is said to have issued the leaving certificate with such names of the

appellant and his father. Thereafter, the appellant took admission with Al Falah International School, DPS Jeddah furnishing his name as ""Mazhar"" and the family's name as ""Chandroth"" and father's and mother's name being Saleem Araiylakath Chandroth"" and ""Khadeeja Mayalakara"" and on his completion of class X the respondent-CBSE declared the examination results 2015 with the appellant's name ""Mazhar Chandroth""; father's name ""Saleem Araiylakath Chandroth""; and, mother's name ""Khadeeja Mayalakara"". A migration certificate dated 02.02.2015 was also issued by CBSE with the appellant's name as ""Mazhar Chandroth"" son of Smt. Khadeeja Mayalakara and Sh. Saleem Araiylakath Chandroth. Al Falah International School, DPS Jeddah has then also issued a transfer certificate dated 09.06.2015 with the same particulars of the name of the appellant and his parents as given in the migration certificate dated 02.02.2015 issued by CBSE. Thereafter, the appellant migrated to the St. Joseph's Higher Secondary School, Thalassery, Kerala in the year 2015. Before such migration, he had applied to his school, DPS Jeddah, which, in turn, took up the subject for correction in name of the appellant from ""Mazhar Chandroth"" to ""Mazhar Saleem Chandroth"". Similarly, St. Joseph's H.S.S., Kerala also took up the subject with CBSE. Respondent-CBSE declined such request by its communication dated 26.01.2016, as according to it, this was a change in name and impermissible in terms of the amended rule 69.1(i) of the Examination Bye-laws, notified by the Board on 25.06.2015. Another representation made on behalf of the appellant dated 24.10.2016 was also rejected. This resulted in filing of the writ petition, which was dismissed by the impugned judgment.

3. During the course of the proceedings in appeal, notices were also directed to be issued to International Indian School and Al Falah International School at Jeddah besides the respondent-CBSE. Those overseas school, however, did not join the proceedings. CBSE filed its counter affidavit, stating that the case involved change of name and was not a case of correction, as addition and/or deletion of a part of the name is governed by the Examination Bye-laws no. 69.1. It elaborated that the certificates issued by CBSE to the appellant were based on the records provided by the concerned school and there was no mistake in their issuance by the respondent-CBSE and that, the said Examination Bye-laws no.69.1 has not been

interfered with by any Court, though, Civil Appeal no. 3905/2011 Jigya Yadav vs. CBSE & Ors. on the similar issue of change of name was pending

before the Supreme Court.Â Â

4.Counsel urged that at the initial admission of the appellant with International Indian School, his name was correctly recorded as ""Mazhar Saleem

Chandroth"" and the school leaving certificate dated 11.04.2005 was issued and that, at the time of admission with Al Falah International School, DPS

Jeddah, the application form was filled with the appellant's first name as ""Mazhar"" and his family's name ""Chandroth"" only, as the

admission/application form did not contemplate or provide for a middle name i.e. ""Saleem"" and that, immediately on getting to know of the incomplete

name (of the appellant) in the Secondary School Examination (Class X) 2015, and the migration certificate issued by CBSE as well as the transfer

certificate issued by Al Falah International School, DPS Jeddah, he had applied for the correction in the name.Â He supported this request by

providing the requisite documents like Birth Certificate, Passport and Aadhar Card and that, such correction was permissible under Rule 69.1(ii).Â

According to counsel, ""correction of spelling"" would mean ""incorrect addition or absence of a part or component in the full/entire name"".Â In support

of such submission, reliance was placed upon Mohd. Shahabudin Mohd. Shafiurrahman vs. Deputy Director of Education, Pune, 2013(4) Mh. L.J.

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5.CBSE relies on the difference in seeking correction as contemplated under the Examination Bye-laws no. 69.1(ii) pertaining to the correction and

the Bye-laws no. 69(i) pertaining to the change of name. Its stand is that the case in hand is of change in name rather than a correction as stipulated

under Byelaws no. 69.1(ii). According to CBSE, the documents on the premise of which the appellant asserts his case for his actual name being

Mazhar Saleem Chandroth""Â were prepared after passing of X class.Â CBSE's stated stand therefore, is that the impugned judgment was in

conformity with the Examination Bye-laws no. 69.1, which have a legal sanctity.Â Reliance is placed upon the judgment of the Supreme Court in

Maharashtra State Board of Secondary and Higher Secondary Education & Anr. vs. Paritosh Bhupesh Kumar Seth etc., 1985 SCR (1) 29 and upon

the judgments of this Court in LPA no.41/2017 Aditya Srivastava vs. CBSE and

Examination Bye-laws 69.1 was upheld by the Co-ordinate Bench of this Court.

69.1(i) or 69.1(ii), is the precise question for consideration now before this Court. It is not in dispute that in the school records of Al Falah International

School, DPS Jeddah, the name of the appellant was recorded as ""Mazhar Chandroth"" and on the basis of such records only, CBSE declared the Class

X examination results 2015 and issued the appellant's mark-sheet besides issuing the transfer and the migration certificates. It is thus clear that till the issuance of the transfer certificate dated

09.06.2015, which was certainly much after the publication of the class X examination results 2015, the appellant never took up the cause of any error

in his name either with the school authorities or anyone else. In this factual conspectus, it is relevant to advert to the relevant Examination Bye-laws of

the CBSE, which are as under:

Rule No.	Existing Rule	Amended Rule
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96	96	96
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99	99	99
100	100	100

69.1(i)Change in name of Applications regarding changes in candidate/Father/Mother/Guardian name or surname of candidates once

entered in the Board's record may be considered, provided the at any stage while studying in changes have been admitted by the Class IX, X, XI, XII

or thereafter, Court of law and notified in the within a period of ten years from Government Gazette before the the date of issue of first such

publication of the result of the document shall be considered on candidate.

written request of the Candidate (not a minor)/ father/mother/guardian a a a a
a a a a a a duly forwarded by the Head of the Institution

supported by the following documents :

.....

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

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:

..... 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 :

.....

7.In Ms. Jigya Yadav's case (supra), the constitutionality and the legality of the afore-going Bye-law 69.1(i) has been upheld by this Court. This Bye-

law/Rule stipulates that any change in name or surname may be considered, when such change is admitted to by the Court of law and notified in the

official gazette before the publication of the result of the candidate. In the present case, the change was sought after the publication of the result and

also after issuance of the transfer and migration certificates by CBSE. Therefore, the change in name cannot be carried out under Bye-law 69.1(i).

As such, said Bye-law 69.1(i) not coming to the aid of the appellant, appellant seeks attraction of Bye-law 69.1(ii), which pertains to correction in the

name.Â It applies only to the extent of correction in spelling error, 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. As observed to earlier, undisputedly, what name(s) appears in the marks-sheet/marks-list and the migration certificate as also the transfer

certificateÂ issued by CBSE, are consistent with what was in the school records or came to be provided by the school prior to the publication of the

results. The appellant's claim is not that there was any spelling or factual typographical error in the certificate needing correction of CBSE records.Â

The relief sought by the appellant therefore cannot be said to be in the nature of

a correction in errors or factual typographical errors.Â In effect, the appellant seeks addition of name ""Saleem"" which, if allowed, would be inconsistent with the school record or the list of candidates submitted by the school prior to the declaration of the class X examination results 2015. Such addition on the plain reading of Bye-laws 69.1(ii) in our considered view, does not fall within the scope of a correction stipulated in that provision or it cannot be termed a spelling or typographical error or any elaboration of an abbreviation, already existing in the name in the school record on the basis whereof, the class X examination results 2015 and the transfer/migration certificates were issued by CBSE.Â

8. For these reasons, it is irrelevant to consider as to whether at the time of admission with International Indian School for the academic sessions 2003

to 2005, where the appellant studied in LKG and UKG, his name was given, as is sought to be pressed now. The reliance placed upon Mohd.

Shahbuddin's case (supra) by the appellant is misplaced. In that case, the Court was concerned with the rules applicable to Maharashtra State SSC

and HSC Board, which are different from the Examination ByelawsÂ applicable to the appellant. In those rules, changes could be allowed with the

permission of the appropriate authority. 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.Â We therefore, do not find any merit in the appeal.Â This court is also of the opinion that the validity of the

Bye-laws was upheld in the previous judgments.Â Undoubtedly the nature of the Bye-laws (which are not statutory) are restrictive.Â 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 aspirational basis, by such parents who might not

accurately reflect the full or correct names.Â 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.Â 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.Â These aspects need to be reexamined 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.

9. In view of the foregoing findings, the appeal is dismissed but subject to the above directions. All the pending application also stand disposed of. No order as to costs.