

(2010) 12 DEL CK 0244

In the Delhi High Court

Case No : Writ Petition (C) No's. 3774 of 2010 and CM 7565 of 2010

Ms. Jigya Yadav through Guardian/Father Mr. Hari Singh	APPELLANT
Vs	
Central Board of Secondary Education and Others	RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19(1), 21, 226

Citation : (2011) 1 AD 552

Hon'ble Judges : Dipak Misra, C.J; Manmohan, J

Bench : Division Bench

Advocate : Indira Unninar, for the Appellant; Atul Kumar, for R-1 and Manoj Kumar, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—By the present writ petition filed under Article 226 of the Constitution of India, the Petitioner who is a minor, through her father, challenges the constitutionality and legality of Bye-law 69.1(i) of Central Board of Secondary Education Examination Bye-laws, primarily on the ground that it does not permit any correction in name, either of the candidate or his/her parents in the school certificate unless such correction/alteration matches with the school records. The impugned Bye-law 69.1 reads as under:

69.1 Changes and Corrections in Name

(i) No change in name/surname once recorded in the Board's records shall be made.

However, correction in the name to the extent of correction in spelling errors, factual typographical errors in 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.

Provided further that in no case, correction shall include alteration, addition, deletion to make it different (except as mentioned above) from the LOC or the school records.

(ii) Application for correction in name/surname will be considered only within ten years of the date of declaration of result provided the application of the candidate is forwarded with the following documents:

(a) Admission form(s) filled in by the parents at the time of admission.

(b) The School Leaving Certificate of the previous school submitted by the parents of the candidate at the time of admission.

(c) Portion of the page of admission and withdrawal register of the school where the entry has been made in respect of the candidate.

(iii) The Board may effect necessary corrections after verification of the Original records of the school and on payment of the prescribed fee.

2. It is the Petitioner's case that her parents' names have been incorrectly recorded as "Hari Singh Yadav" and "Mamta Yadav" instead of "Hari Singh" and "Mamta" respectively. According to Ms. Indira Unninar, learned Counsel for Petitioner, simply getting an inadvertent error made by oversight in school records is simply getting perpetuated because the aforesaid Bye-law does not permit any correction in class X or XII certificates as they do not tally with the school records. In this connection, Ms. Indira draws our attention to the Petitioner's birth certificate wherein the parent's names have been mentioned as "Hari Singh" and "Mamta".

3. Ms. Indira also contrasts the impugned Bye-law 69.1(i) with the same Bye-law prior to amendment, which reads as under:

Correction in name means correction in spelling errors, factual errors, typographical errors in candidate's name/surname, father's name/mother's name to make it consistent with what is given in the school record.

Change in name also includes alteration, addition, deletion to make it different from the school records.

4. Ms. Indira submits that the impugned Bye-law leaves no recourse to candidates for correction of names of their parents and, thus it is a case of passing arbitrary bye-laws by Respondent by not using relevant considerations such as hardship caused to students and balance of convenience, etc. According to Ms. Indira, even if an inadvertent error has been made by Petitioner, the Petitioner is entitled to correct the same instead of being forced to repeat the error. She further submits that Respondent No. 1 has illegally constrained/fettered its powers in the limited interest of its own efficiency thereby sacrificing the cause of justice in individual cases including that of the Petitioner. In this context, she relies upon judgments of the Supreme Court in *Indian Aluminium Company Vs. Kerala State Electricity Board*, *J.K. Aggarwal Vs. Haryana Seeds*

Development Corporation Ltd. and others, and judgment of this Court in W.P.(C) 3577/2008 titled as Dhruva Parate v. CBSE and Anr. decided on 23rd March, 2009 wherein it has been held that an executive agency operating within the field of its discretion, cannot unduly fetter or circumscribe its own rights.

5. Ms. Indira further submits that if the Petitioner is not permitted to correct such an inadvertent error, it would result in enormous confusion and would affect the Petitioner's right in terms of education, career, travel for higher education and would thus violate Petitioner's fundamental rights granted under Articles 14, 19(1)(g) and 21 of the Constitution of India.

6. Ms. Indira also relies upon a judgment of Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, wherein the Supreme Court relied upon the test propounded by the English Court in *Kruse v. Johnson* (1898) 2 Q.B. 91 to determine whether a bye-law is arbitrary or not. In *Sukhdev Singh and Ors* (supra), the Supreme Court has held as under:

174. In *Kruse v. Johnson* 1898 2 QB 91 in regard to by-laws it was said:

But first it seems necessary to consider what is a bye-law. A bye-law, of the class we are here considering, I take to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the bye-law, they would be free to do or not do as they pleased. Further, it involves this consequence that, if validly made, it has the force of law within the sphere of its legitimate operation.

175. In *Halsbury's Laws of England* (3rd ed., Vol. 9, p. 40) the law is set out thus:

All regulations made by a corporation and intended to bind not only itself and its officers and servants, but members of the public who come within the sphere of their operation, may properly be called "bye-law", whether they are valid or invalid in point of law; but the term may also be applied to regulations binding only on the corporation, its officers and servants.

7. Per contra, Mr. Atul Kumar, learned Counsel for Central Board of Secondary Education (for short "CBSE") submits that a writ petition against Respondent No. 1 is not maintainable as it is not a State within the meaning of Article 12 of the Constitution of India. He states that CBSE is an autonomous society registered under the Societies Registration Act, 1860 which is self-financed and is discharging functions of conducting examinations, prescribing educational courses, generally maintaining the standards of school education and advising the Government of India when called upon to do so, on matters pertaining to

school education. He reiterates that CBSE is not created under a statute and it is governed by its own rules and regulations. Consequently, according to him, CBSE being an autonomous and independent body is not amenable to writ jurisdiction.

8. Mr. Kumar also points out that the names of Petitioner's parents, as mentioned in the record of CBSE only reproduce the details which have been mentioned in the records of the school where the Petitioner is studying.

9. Mr. Kumar lastly submits that CBSE has no power and resources to independently verify the particulars of the candidates who appear in the examinations conducted by CBSE. He reiterates that CBSE has to rely upon the school record where the pupils are studying.

10. In rejoinder, Ms. Indira submits that Respondent No. 1, CBSE is a State under Article 12. She submits that the Apex Court has repeatedly held that the test to determine whether a body is a State, is whether the said body performs a public function or whether there is deep and pervasive control exercised by the State or Central Government. In this connection, she relies upon the judgments of Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, .

11. Having heard the parties, we are of the opinion that the preliminary objection raised by the Respondent No. 1 is misconceived on facts and untenable in law. In fact, the relevant portion of Article 226 of the Constitution of India stipulates as under:

226. Power of High Courts to issue certain writs.

(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

12. In our view, the expression "any person or authority" used in Article 226 of the Constitution of India is not to be confined to statutory authorities and instrumentalities of the State as defined in Article 12 of the Constitution. The said expression covers "any person or body" performing public duty (*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*,).

13. In fact, the Supreme Court in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, has held that even private bodies discharging public functions are amenable to writ jurisdiction under Article 226. The relevant portion of the said judgment is reproduced hereinbelow:

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p. 682,

1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit.

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

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32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.

14. However, upon a perusal of the records, in particular the school records, were of the opinion that there is no inadvertent error or mere oversight by the Petitioner's parents in entering their names in the school records. In the Nursery application form, the school admission form and the stream allotment form for ClassXI, the Petitioner's parents have consistently filled/entered their names as "HariSingh Yadav" and "Mamta Yadav" as father and mother respectively. The relevant extracts of the aforesaid three forms filled at different points of time are reproduced hereinbelow:

(i) NURSERY APPLICATION FORM :

NURSERY APPLICATION FORM ONLY

DELHI PUBLIC SCHOOL

Mathura Road, P.O. Box 3042, New Delhi-11003

Application No 975019

The Principal

Delhi Public School

Mathura Road

New Delhi

I apply for the admission of my Son/Daughter for Nursery Class of 1997-98 session.

He/She is presently in Aster Public School, Mayur Vihar pre-Nursery School.

Child's Name : Master/Miss JIGYA YADAV

xxx xxx xxx 6. Father's Name Hari Singh Yadav Annual Income 85 thousand If an Ex-student of DPS, Indicate Year Academic Qualifications B.Sc., M.A. (Maths), B.Ed. Designation or exact nature of Business Sub-Inspt. in Delhi Police

7. Mother's Name Mamta Yadav If an Ex-student of DPS, Indicate Year Academic Qualifications M.Com., M.Phil Designation, if employed Lecturer in D.U. Annual Income 95 thousand

8. Residential Address C-7F, Delhi Police Society, Mayur Vihar, Phase-I, Delhi-91

Office Address: FRRO, Hans Bhawan, Delhi....

xxx xxx xxx I certify that I am the father/mother of the child and the information furnished above is correct to the best of my knowledge and I have carefully read the information given overleaf.

Dated 25 September, 1998

Sd/-

Signature of Father/Mother

xxx xxx xxx INFORMATION

5. The application form should be returned to the school office duly filled up latest by 27 SEPTEMBER, 1996.

Sd/-

Signature of Father/Mother

Name in full Hari Singh Yadav

xxx xxx xxx (ii) SCHOOL ADMISSION FORM :

DELHI PUBLIC SCHOOL Regd. No. & Date 975019 MATHURA ROAD DELHI
Admission No. 97250 Admitted to Class NUR-F Session 97,98 A Particulars of
the Pupil

1. Name in Full Master/Miss JIGYA YADAV

(Block Letters) First Middle Lastxxx xxx xxx 4.

a) Mother Tongue HINDI

1. Mother's Name Mrs. Mamta Yadav

b) Home Town Rewari (Haryana)

2. Educational Qualifications. M.Com, M.Phil.

c)Nationality Indian

3. Designation & Office Lecturer,

Address if Employed

Bhim Rao Ambedkar College, Geeta Colony, Delhi University

Annual Income Rs. 95,000/-

Particulars of the Father/Legal Guardian

1 Father's/Legal Guardian's Name HARI SINGH YADAV

(Block Letters) First Middle Last 2 Educational Qualifications M.A. (Maths, B.Ed.)

3 Profession/Designation or exact Sub-Inspector, Delhi Police Name of business
and Annual Income

xxx xxx xxx

6. Specimen signature of the Father/Mother/Guardian which should be accepted
by the school authorities.

Specimen Signatures Name and Relationship with the pupil Sd/-Hari Singh Yadav,
Father

I, the undersigned hereby declare that I am the legal guardian of Master/Miss
Jigya Yadav and that the information provided in this form is correct to the best
of my knowledge. I have read the school rules given below and agree to abide by
them.

Dated 19/03/1997 Signature __Sd/-_____ Name Hari Singh

Relationship with the pupil Father

xxx xxx xxx 3. I do understand that programming and philosophy or Education of
DPS Mathura Road is to lay great deal of stress on sports & excursions,

swimming and riding and other co-curricular activities which involve some amount of risk. I as a parent will fully co-operate with the school in this direction.

Sd/-

Signature of the parent/guardian

Hari Singh Yadav

(Name in full)

(iii) STREAM ALLOTMENT FORM FOR CLASS XI:

DELHI PUBLIC SCHOOL MATHURA ROAD, NEW DELHI-110003

STREAM ALLOTMENT FORM FOR CLASS-XI(10+2) STUDENTS

Admn. No.

(Class X)

(Final Allotment)

Science with Eco

1. Name of the Student (in block letters) JIGYA YADAV

xxx xxx xxx 8. FAMILY INFORMATION :

FATHER MOTHER Name (in bloc letters) HARI SINGH YADAV MAMTA YADAV
Educational Qualification LLM M.Phil, Ph.D. Qualification Occupation Govt. Service
Govt. Service Designation Inspector Associate Professor Name of the DELHI
POLICE Dr. B.R. organization Ambedkar College.xxx xxx xxx CERTIFICATE

1 I/we, Certify that I am/we are, the father/mother/guardian of the child and the information furnished above is correct to the best of my/our knowledge.

2 I/we also accept that the decision of the Principal/Admission committee regarding admission is...final and binding.

3 I/we further undertake to abide by the school rules.

Sd/-

Date: 02/06/2009 Signature of Parent/Guardian

13. I father/mother/guardian of JIGYA YADAV hereby undertake that I will not ask for any change for the allotment of the subject.

Signature of the Father/

Mother/Guardian:

sd/

14. Signature of the candidate JIGYA

Name of the Father/Mother/Guardian:

HARI SINGH YADAV

2 Date: 02/06/2009 Date: 02/06/2009 (emphasis supplied)

15. From the aforesaid, it is apparent that despite the parents of the Petitioner having mentioned their names as "Hari Singh" and "Mamta" in the Petitioner's birth certificate, they have consciously and consistently chosen to record their names as "Hari Singh Yadav" and "Mamta Yadav" in the school record. Consequently, we are of the opinion that this Court in the present petition should not deal with the challenge of constitutional validity as it is the Petitioner's parents who are at fault and the error, if any, has been repeated on a number of occasions by the Petitioner's parents themselves. In fact, we are of the view that for the fault of the Petitioner's parents, the impugned Bye-law of the Respondent No. 1 cannot be set aside. The Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, has held as under:

28. As pointed out by a Constitution Bench of this Court in *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, "the test of reasonableness is not applied in vacuum but in the context of life's realities (*Fatehchand Himmatlal and Others Vs. State of Maharashtra*,).

16. Today, one finds that there is a growing tendency to file petitions challenging the validity of statutes, rules and bye-laws on the ground of being arbitrary and unreasonable even when the Petitioner's conduct is not free from blame. In *Mritunjoy Pani and Another Vs. Narmanda Bala Sasmal and Another*, , the Supreme Court has also held as under:

5. ...This is only another illustration of the well settled principle that a trustee ought not to be permitted to make a profit out of the trust. The same principle is comprised in the latin maxim *commodum ex injuria sua nemo habere debet*, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act....

17. We are also of the view that in a country where there is reservation on caste and religious grounds, change of names of parents or ward's name cannot be allowed at the drop of the hat.

18. Moreover, in our opinion, even if the Regulations permitted change of names of parents, this is not a case where the change of name should be allowed as the parents have repeatedly filled up the forms themselves and they alone are liable for the error/mistake, if any.

19. In any event the test with regard to unreasonableness qua delegated legislation has been laid down by the English Court in *Kruse v. Johnson* (supra) wherein Lord Russell of Killowen while upholding the validity of a municipal by-law banning singing within 50 yards of dwelling houses observed as under:

...But, when the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, "benevolently" interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canons of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any bye-law, so made under such conditions, on the ground of supposed unreasonableness....

But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires". But it is in this sense, and in this sense only, as I conceive, that the question of reasonableness can properly be regarded. A bye-law is not unreasonable merely because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not, too much to say that in matters which directly and mainly concern the people of the country, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges. Indeed, if the question of the validity of bye-laws were to be determined by the opinion of Judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle of definite standard by which reasonableness or unreasonableness may be tested....

(emphasis supplied)

20. The test laid down in *Kruse v. Johnson* (supra) has been adopted by the Indian Supreme Court in the case of *H.C. Suman and another Vs. Rehabilitation Ministry Employees Co-operative House Building Society Ltd. New Delhi and others*, wherein it has been held as under:

In *Kruse v. Johnson* it was held that in determining the validity of bye-laws made by public representative bodies, such as country councils, the court ought to be slow to hold that a bye-law is void for unreasonableness. A bye-law so made

ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it. In view of this legal position the Notification dated October 27, 1987 deserves to be upheld as, in our opinion, it does not fall within any of the exceptions referred to in the case of *Kruse v. Johnson*.

(emphasis supplied)

21. Even if one were to apply the aforesaid test one finds that the Respondent No. 1 essentially records what has been mentioned in the school records consistently and that too, upto Class X, that means, for more than 10 years the child and/or her parents have the liberty to rectify the record. Consequently, we are of the opinion that the impugned Bye-law is perfectly reasonable.

22. Moreover, we are of the view that the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to take a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice - as contended by the Respondent No. 1 in its counter affidavit.

23. In view of the aforesaid, the present petition and application, being devoid of merit, are dismissed but with no order as to costs.