
(2010) 10 DEL CK 0001

In the Delhi High Court

Case No : Writ Petition (C) No. 6379 of 2010

Pallavi @ Pallavi Chandra

APPELLANT

Vs

C.B.S.E. and Others

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Citation : (2011) 1 ILR Delhi 459

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sandeep Khatri, for the Appellant; Atul Kumar, for R-1, Manisha and Amit Bansal for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner took the Senior School Certificate Examination held by the respondent No. 1 Central Board of Secondary Education (CBSE) in the year 2004 and was issued a certificate therefor. In the said certificate the name of the petitioner is given as "Pallavi" and that of her father as "Ramesh Chandra".

2. The petitioner claims to have joined School of Open Learning (respondent No. 4) of the respondent No. 2 University of Delhi in the year 2004 and graduated in the year 2007. In the certificate issued for the same also the name of the petitioner is given as "Pallavi".

3. The petitioner in the year 2010 decided to change her name from Pallavi to Pallavi Chandra and inserted an advertisement in the newspaper to the said effect and also got the said change effected by publication in the weekly Gazette published by the Delhi Government on 20th August, 2010. The petitioner thereafter applied to the respondent No. 1 CBSE and to the respondent No. 2 University of Delhi for change of her name as given in the certificate issued by them from "Pallavi" to "Pallavi Chandra" and that of her father in the certificate issued by University from "Ramesh Chander" to "Ramesh Chandra". Upon the

refusal of respondent No. 1 CBSE and the inaction of respondent No. 2 University of Delhi to do so, the present writ petition has been filed claiming the relief of direction to the respondent No. 1 CBSE and to the respondent No. 2 University of Delhi to so change/correct the name of the petitioner and her father respectively in their records and to issue fresh certificates to the petitioner with the changed/corrected names.

4. A number of such petitions have been coming before this Court. The contention of the counsel for the respondent No. 1 CBSE appearing in those petitions had been that the matter is no longer res integra having been decided in the order dated 18th September, 2008 in WP(C) No. 7933/2007 titled Ms. Parul Dabas v. Central Board of Secondary Education and in the order dated 16th April, 2009 in W.P.(C) No. 5967/2008 titled Sajjad Barakat v. Central Board of Secondary Education. On the basis of the said judgments, I have also dismissed WP(C) No. 5978/2010 titled Sh. Karan Kapoor v. Central Board of Secondary Education on 6th September, 2010.

5. However, on the contention of the counsel for the petitioner that another Single Judge of this Court in judgment dated 23rd March, 2009 in W.P.(C) No. 3577/2008 titled Dhruva Parate v. Central Board of Secondary Education had taken a different view, notice of this petition was issued.

6. Though the respondent No. 1 CBSE and the respondent No. 2 University of Delhi have not filed counter affidavits but the counsels have been heard.

7. The counsel for the respondent No. 1 CBSE has contended that Dhruva Parate (supra) was a case of correction of name; in that case, the correction had been carried out in the school record even prior to the student leaving the school. It is contended that it was in these circumstances that the respondent No. 1 CBSE abiding by the said judgment did not challenge the same. It is argued that the present is not a case of correction of name having been carried out in the school records before the petitioner left the school and thus the judgment in Dhruva Parate does not apply. Else it is contended that the judgments in Parul Dabas, Sajjad Barakat (supra) & Sh. Karan Kapoor (supra) would apply.

8. The counsel for the respondent No. 1 CBSE has also contended that though prior to the Amendment of 2007, Rules of CBSE permitted change of name even after passing the school examination, the same is not permitted now. The Rule as it stands now is as under:

69. Changes in Board's Certificate

69.1 Changes & Correction 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.

9. The counsel for the respondent No. 2 University of Delhi states that she has received instructions to the effect that the petitioner in the year 2004 had joined the course of B.A.(Hon.) Hindi in the respondent No. 3 Ram Lal Anand College (Eve) and had taken the first year exam in the year 2005 but had failed in the same. It is stated that the petitioner could not have pursued both B.A. (Hon.) Hindi & Open School of Learning at the same time and the matter will have to be investigated. It is further urged that perhaps it is for this reason only that the change is being sought.

10. The counsel for the petitioner though has not disputed that the petitioner had joined the B.A. (Hon.) Hindi course in respondent No. 3 Ram Lal Anand College (Eve) but contends that the petitioner had subsequently migrated to the School of Open learning with the consent of the respondent No. 3 College. He however states that the said fact remained to be mentioned in the petition. On being asked about the migration certificate if any issued by the respondent No. 3 College permitting the petitioner to migrate to the School of Open Learning, it is stated that no migration certificate was issued but the petitioner was permitted by the respondent No. 3 College to appear in the first year exam of the School of Open Learning also while appearing in the first year exam of B.A. (Hon.) Hindi. The counsel for the respondent No. 2 University of Delhi states that a student is not permitted to appear in the exam of two different courses in the same year.

11. Be that as it may, the matter has been considered de hors the aforesaid controversy. The counsel for the petitioner has relied on paragraphs 7 to 9 of the judgment in Dhruva Parate as under:

7. The applicability of bye-law 69.1 (ii), in the opinion of the Court, is undoubtedly meant to limit the discretion of the CBSE. The two-year period imposed by it and the restriction of having to change the name before the

publication of results are likewise self-imposed. Concededly, the question is not governed by any statute-in that sense, there is no legislative mandate controlling the exercise of this discretion. In this case, though the petitioner's name was different when he appeared in the Class X, the fact remains that it was subsequently changed; the same was also notified in the newspapers and the school records were duly corrected. Such being the case, when the identity of the person, father's name and the school are undisputed and a series of records, also reflect the name change, all that the CBSE is putting forward is a self-imposed limitation or restriction.

8. The interests of efficiency of an organization ordinarily determine the guidelines that have to be administered; yet when they constrain the authorities of the organization, which is meant to sub-serve the general public, from doing justice, in individual cases, the guidelines become self-defeating. In such cases, as in the present one, the end result would mean that the petitioner would be left with two certificates with different names and a whole lifetime spent possibly on explaining the difference - hardly conducive to him, reflecting the inadequacy in the system.

9. It is settled law that an executive agency operating within the field of its discretion, cannot unduly fetter or circumscribe, it [Ref. Indian Aluminium Company Vs. Kerala State Electricity Board, ; J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, . The CBSE's decision is precisely one enforcing a condition which fetters and restricts its otherwise wide discretion in the matter. Accepting its plea would mean fostering the injustice, which is unacceptable to the Court.

and which do show that the observations made by this Court were in general notwithstanding the peculiarity of facts of that case as pointed out by the counsel for the respondent No. 1 CBSE.

12. However, in view of the differing opinion in Parul Dabas and Sajjad Barakat, I have deemed it appropriate to consider the matter.

13. The counsel for respondent No. 1 CBSE has argued that the change of name effected by the petitioner is prospective. I find considerable force in the said contention of the counsel for the respondent No. 1 CBSE. The Gazette Notification is as under:

I, hitherto known as Pallavi daughter of Late Ramesh Chandra, residing at 504, Laxmi Bai Nagar, New Delhi-110 023, have changed my name and shall hereafter be known as Pallavi Chandra.

It is certified that I have complied with other legal requirements in this connection.

Pallavi

[Signature (in existing old name)]

14. A bare perusal of the aforesaid Gazette Notification would show that the petitioner admits therein that till the date of the said Gazette Notification, she was known as Pallavi and it is only after the said date that her name stood changed. It is thus not as if the effect of the said Notification is to treat the changed name of the petitioner as her name since her birth. The Notification is not intended to be retrospective but is only prospective. That being the position, as on the date of the issuance of the certificates by the respondent No. 1 CBSE and the respondent No. 2 University of Delhi, the name of the petitioner was Pallavi only and which name has been correctly shown and issuance of a changed certificate would rather create an anomalous situation and if such change is allowed the name appearing of the petitioner thereon on the date of issuance thereof would be different from the admitted name of the petitioner then.

15. The counsel for the petitioner relies on the judgment *Anika Jain v. University of Delhi* 2009 (107) DRJ 42 to contend that the welfare of the student should be the prime concern and cannot be brushed aside. The said observations were made in the context of giving NOC for migration from one College to another. The counsel contends that the petitioner is now proceeding abroad for pursuing further studies and would face insurmountable difficulties in explaining to foreign universities regarding the controversy qua her name. It is stated that had the petitioner continued to do her education within the country the need would not arise for the same.

16. As aforesaid, the issuance of revised certificates as claimed would rather create a discrepancy and reflect a status which did not exist at the time of issuance thereof. If anyone were to make a deeper enquiry, they will wonder that if the name was changed only in 2010, how the changed name appears on a certificate issued on a prior date. Rather the procedure of having a Gazette Notification for changed name is intended to obviate the said difficulties and to give sanctity to the change in name.

17. The counsel for the petitioner at this stage states that the petitioner has since got her name changed in the Class X certificates of National Open School and contends that the same would pose a difficulty. The said difficulty, if any, is of the petitioner's own creation and cannot entitle the petitioner to a relief as a matter of right; rather it has been enquired from the counsel for the petitioner as to what is the right, if any, of the petitioner to have the name so changed now. No right has been disclosed.

18. The prayer for correction of name of the father of the petitioner is consequential to the prayer for change of name of the petitioner which has been disallowed, and hence does not survive.

19. The petition is therefore dismissed. No order as to costs.