
(2014) 01 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 5255 of 2007

Shri Prasanta Kr. Das

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Citation : (2014) 01 GAU CK 0014

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : P. Kataki, Mr. M. Haloi and Ms. S. Khataniar, for the Appellant; T.C. Chutia, S.C. for the Respondent 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. P. Kataki, the learned Counsel for the petitioner. The Board of Secondary Education, Assam (for short SEBA) is represented by Mr. T.C. Chutia, the Standing Counsel. The Principal of the Raha Higher Secondary School (respondent No. 5) is unrepresented although a counter affidavit was filed on his behalf on 30.6.2009. The matter pertains to the plea for correction of the date of birth of the petitioner in the High School Leaving Certificate issued by SEBA. According to the petitioner, his date of birth was wrongly recorded as 26.2.1972 whereas his correct date of birth is 2.3.1975 and for the correction of the SEBA certificate, the petitioner is before the Court with a 3rd case.

2. The petitioner appeared in the matric examination in the year 1990 and when he appeared in the examination, the SEBA issued him an Admit Card showing his date of birth as 2.3.1975 (Annexure-II). But when the petitioner received his original School Leaving Certificate from his school i.e. Raha Higher Secondary School, in the said certificate issued by SEBA, his date of birth was found to be recorded as 26.2.1972. Accordingly the petitioner applied for correction of his date of birth as 2.3.1975.

3. But since his application was not being considered, the petitioner filed the first

case i.e. WP(C) 5351/2006 which was disposed of on 19.2.2007 (Annexure-XII) with a direction to SEBA to examine the petitioner's plea for correction of his date of birth on the basis of relevant documents. On the plea of SEBA that the request for change of birth date after 3 years from matriculation examination, the Court observed that the 3 years cut off stipulated in SEBA's Regulations doesn't denude the Board of its power to examine a claim for correction of date of birth beyond 3 years and accordingly consideration on merit was directed by the Court while disposing of the WP(C) 5351/2006.

4. A speaking order was thereafter passed on 27.3.2007 (Annexure-XIII), whereby the petitioner's plea for correction of his age was rejected on the ground that the date of birth entered in the school admit card was found to be manipulated and that the application for correction was filed beyond 3 years of the examination. The 2nd writ petition i.e. WP(C) 1916/2007 was filed by the petitioner by contending that the speaking order was passed without affording any opportunity of hearing and considering the said plea, the Secretary, SEBA was directed to facilitate the petitioner to produce his supporting materials and requiring the Secretary, SEBA to consider the same and to take an appropriate decision on the representation in accordance with law. The 2nd case was accordingly disposed of with this direction through the order dated 27.4.2007 (Annexure-XIV).

5. Following the Court's direction, the petitioner produced several documents i.e. (i) Copy of School Leaving Certificate issued by the Headmistress, Dudhnoi Govt. Practicing School, (ii) Attested copy of the extracts of the School Admission Register maintained at Raha H.S. School, Raha, (iii) Attested Office copy of Statement of Candidates appearing in the HSLC Examination, 1990 from Raha H.S. School, (iv) Admit Card issued by the Secretary, Board of Secondary Education, Assam, (v) Provisional Certificate issued by Raha H.S. School, Raha (vi) HSLC Exam pass certificate (vii) Letter dated 9.1.2006 by Principal of Raha H.S. School and (viii) Forwarding letter dated 10.1.2006 issued by the Asst. Inspector of Schools, with his plea of correction of his date of birth to 2.3.1975. But through the speaking order dated 19.7.2007 (Annexure-XVII), the petitioner's prayer for the correction of the date of birth was rejected by the SEBA Secretary. Accordingly the aggrieved petitioner has approached the Court with this 3rd case.

6. Mr. P. Kataki, the learned Counsel refers to the speaking order to project that there was no consideration of the many documents produced by the petitioner and in fact the petitioner's representation was rejected only on two ground i.e. the prayer for correction was made beyond 3 years from the HSLC Exam and the Admit Card issued by the School was found to be manipulated.

7. However in the counter affidavit filed by the Principal of the Raha Higher Secondary School, on the petitioner's plea for correction of his date of birth in the HSLC Certificate, the following averments is made:

That, with regard to the statements made in paragraph 6 of the writ petition, the deponent begs to state that it is a fact that on 3.5.2006 he submitted a representation before the Secretary, Board of Secondary education for correction of date of birth which has been wrongly recorded in the H.S.L.C pass certificate. It was also pointed out that the statement of candidates for H.S.L.C. Examination, 1990, the date of birth of the petitioner might be wrongly recorded as 26.2.1972 instead of 2.3.1975 due to oversight. In fact in the statement of the candidates of H.S.L.C. Examination, 1990 which has been kept in the office of the school, the date of birth was initially recorded as 26.2.1972 instead of 2.3.1975. But the same was later on corrected. But the copy, which was sent to the Board of Secondary Education, may not have been corrected and as a result wrong date of birth was recorded in the original H.S.L.C. pass certificate.

8. From the above affidavit of the School Principal, it is clear that the petitioner's date of birth was wrongly recorded as 26.2.1972 in the statement of the Matric examination candidates of 1990 and although the initial error was corrected as 2.3.1975, inadvertently the uncorrected statement was sent to the office of the SEBA and as a result, a wrong date of birth was recorded in the H.S.L.C. Pass Certificate issued by SEBA. From this averment of respondent No. 5, it is clear that the petitioner had nothing to do with the error in the Admit Card and the Principal of the School acknowledges the error to be a bona fide mistake and therefore it is my view that it can't be treated to be case of manipulation.

9. As regards the 2nd ground stated in the speaking order of the SEBA Secretary, it was clearly stated in the order passed by this Court on 19.2.2007 in the WP(C) 5351/2006 that although the prayer for correction of date of birth was submitted beyond 3 years of the matriculation examination, the same should be considered on merit on the basis of the documents produced by the petitioner. Yet the authority has rejected the petitioner's plea by declaring that the application for correction was submitted 3 years after the matriculation examination.

10. Representing the SEBA authorities, advocate Mr. T.C. Chutia contends that the petitioner failed to furnish any reliable documents for correction of his date of birth in the H.S.L.C. Pass Certificate. He also contends that SEBA Regulations doesn't permit belated plea for correction of certificates issued by SEBA.

11. The petitioner's plea for age correction in the H.S.L.C. Pass Certificate was ordered to be considered on merit by this Court in the two earlier cases and in fact in the WP(C) 5351/2006 the Court specifically directed consideration on merit without factoring the lateness of the request made after expiry of 3 years from the date of examination. Therefore as long as the Court's order dated 19.2.2007 in the WP(C) 5351/2006 remains undisturbed, the petitioner's prayer for correction of his matriculation certificate can't be left non-considered on the ground that the same was filed 3 years after the date of examination. If this is allowed, the Secretary of SEBA will be sitting over the decision of the Court in the WP(C) 5351/2006.

12. Although it is projected by the lawyer for SEBA that the documents produced by the petitioner were considered, the speaking order is conspicuously devoid of any such projection. The Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, had declared that...public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind; or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting's and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.... If this be the legal principle on which the speaking order is to be tested, it is obvious that the submission made by the learned Counsel for SEBA in Court or the averments made in the counter affidavit can't be utilized to support the speaking order. Therefore I hold that these subsequent explanations are to be ignored to examine the legality of the speaking order.

13. In the result when the speaking order examined on the touchstone of the reasons stated in the order itself, it doesn't inspire confidence since neither of the two reasons of the SEBA Secretary are found to be good reasons. Consequently the impugned order dated 19.7.2007 (Annexure-XVII) is declared to be bad in law and the same is accordingly quashed.

14. In view of the above conclusion, the Secretary, SEBA is directed to take note of the supporting documents furnished by the petitioner along with his representation dated 3.7.2007 (Annexure-XVI) for re-considering his plea for correction of his birth date to 2.3.1975 in his Matriculation Certificate. During this process, the SEBA should consider the plea on merit and should not undermine the request on the two grounds stated in the speaking order dated 19.7.2007 as they were found to be not germane. To facilitate the fresh exercise, the petitioner will produce this order and his representation dated 3.7.2007 with all the enclosures mentioned thereto and the de novo consideration should then be made expeditiously and preferably within 8 weeks of receipt of intimation from the petitioner. The case accordingly stand allowed without any order on cost.