

Delhi High Court

Ms. Jigya Yadav (Minor) (Through ... vs Central Board Of Secondary ... on 20 December, 2010

Author: Manmohan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI +

W.P.(C) No. 3774/2010 & CM 7565/2010

MS. JIGYA YADAV (MINOR)
(THROUGH GUARDIAN/FATHER
MR. HARI SINGH) Petitioner

Through: Ms. Indira Unninayar, Advocate

versus

CENTRAL BOARD OF SECONDARY
EDUCATION AND ORS. Respondents
Through: Mr. Atul Kumar, Advocate
for R-1. Mr. Manoj Kumar,
Advocate for R-3.

% Reserved on: 16th November, 2010.
Date of Decision : 20th December, 2010.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT

MANMOHAN, J

1. 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 Boards 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 guardians 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 petitioners 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, 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 petitioners birth certificate wherein the parents 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 candidates name/surname, fathers name/mothers 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 v. Kerala State Electricity Board*, (1975) 2 SCC 414, *J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd. and others*, (1991) 2 SCC 283 and judgment of this Court in *W.P.(C) 3577/2008*

titled as Dhruva Parate Vs. CBSE & 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 and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr., (1975) 3 SCR 619 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 petitioners 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 Ors. v. Khalid Mujib Sehravardi and Ors.*, (1981) 1 SCC 722 and *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors.*, (2002) 5 SCC 111.

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 & Ors. vs. V.R. Rudani & Ors.*, (1989) 2 SCC 691, para 20 at 700 and *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey & Ors.*, AIR 1999 SC 753, paras 22, 23, 24, 25 and 26).

13. In fact, the Supreme Court in *Binny Ltd. and Anr. v. V. Sadasivan and Ors.*, (2005) 6 SCC 657 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 Halsburys 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, we are of the opinion that there is no inadvertent error or mere oversight by the petitioners parents in entering their names in the school records. In the Nursery application form, the school admission form and the stream allotment form for Class XI, the petitioners parents have consistently filled/entered their names as "Hari Singh 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 Paste Latest Delhi
Public School Passport size Mathura Road photograph 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.

Childs Name : Master/Miss JIGYA YADAV xxxxx xxxxx xxxxx xxxxx

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.....

xxxx xxxx xxxx 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

xxxx

xxxx

xxxx

xxxx

INFORMATION

5. The application form should be returned to the school office duly filled up latest by 27 SEPTEMBER, 96.

Sd/-

Signature of Father/Mother

Name in full Hari Singh Yadav

xxxx

xxxx

xxxx

xxxx

(ii) SCHOOL ADMISSION FORM :

DELHI PUBLIC SCHOOL
MATHURA ROAD DELHI

Regd. No. & Date 975019
Admission No. 97250

Admitted to Class NUR-F
Session 97,98

A Particulars of the Pupil

Paste

Latest

1. Name in Full Master/Miss JIGYA YADAV

Passport

(Block Letters)

First Middle Last

size

photograp

- ### C Particulars of the Father/Legal Guardian

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

Dated 19/03/1997

Signature Sd/-

Name Hari Singh

Relationship with the pupil Father

xxxx

xxxx

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

Paste Latest	Paste Latest	Admn. No.	97250
		Session:	2008-09
Passport size (Class X)	Passport size photograph	Passport size photograph	
Section (Class X)	G		
		House	GANGA
		Day Scholar/Boarder	Day Scholar
		Stream Allotted in	Science
		Class XI	
		(Final Allotment)	Science with Eco
		Section in XI	

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

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 organization	DELHI POLICE	Dr. B.R. Ambedkar
College.	xxxx	xxxx
xxxx		

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

15. 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 petitioners 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 petitioners parents who are at fault and the error, if any, has been repeated on a number of occasions by the petitioners parents themselves. In fact, we are of the view that for the fault of the petitioners 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 & Anr. v. Paritosh Bhupeshkumar Sheth & Ors., (1984) 4 SCC 27 has held as under:-

"28. As pointed out by a Constitution Bench of this Court in Fatehchand Himmatlal v. State of Maharashtra "the test of reasonableness is not applied in vacuum but in the context of life realities". : (AIR 1977 SC 1825)."

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 petitioners conduct is not free from blame. In Mrutunjay Pani & Anr. v. Narmada Bala Sasmal & Anr., (1962) 1 SCR 290, 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 wards 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 Vs. Johnson* (supra) has been adopted by the Indian Supreme Court in the case of *H.C. Suman & Anr. Vs. Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi & Ors.* (1991) 4 SCC 485 at page 499 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.

Ms. Jigya Yadav (Minor) (Through ... vs Central Board Of Secondary ... on 20 December, 2010

MANMOHAN, J CHIEF JUSTICE DECEMBER 20, 2010 rn