REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3905 OF 2011

JIGYA YADAV (MINOR)
(THROUGH GUARDIAN/FATHER
HARI SINGH) ...APPELLANT

Versus

C.B.S.E. (CENTRAL BOARD OF
SECONDARY EDUCATION) & ORS. ...RESPONDENT(S)

with

CIVIL APPEAL NO. 3572 OF 2019

CIVIL APPEAL NO(S). 1822/2021
(ARISING OUT OF S.L.P. (C) NO(S). 7381 OF 2021)
(@ DIARY NO. 9445 of 2020)

CIVIL APPEAL NO(S). 1823/ 2021
(ARISING OUT OF S.L.P. (C) NO(S). 7382 OF 2021)
(@ DIARY NO. 9482 of 2020)

CIVIL APPEAL NO(S). 1824/ 2021
(ARISING OUT OF S.L.P. (C) NO(S). 7383 OF 2021)
(@ DIARY NO. 14737 of 2020)

CIVIL APPEAL NO(S). 1825/ 2021
(ARISING OUT OF S.L.P. (C) NO(S). 7384 OF 2021)
(@ DIARY NO. 16291 of 2020)

CIVIL APPEAL NO. 1826/2021
(ARISING OUT OF S.L.P. (C) NO. 10927 OF 2020)

CIVIL APPEAL NO. 1827/2021
(ARISING OUT OF S.L.P. (C) NO. 10948 OF 2020)

CIVIL APPEAL NO(S). 1828/2021
(ARISING OUT OF S.L.P. (C) NO(S). 7385 OF 2021)
(@ DIARY NO. 18711 of 2020)

CIVIL APPEAL NO. 1829/2021
(ARISING OUT OF S.L.P. (C) NO. 10959 OF 2020)

CIVIL APPEAL NO. 1830/ 2021
(ARISING OUT OF S.L.P. (C) NO. 10801 OF 2020)

CIVIL APPEAL NO. 1831/ 2021
(ARISING OUT OF S.L.P. (C) NO. 10795 OF 2020)

CIVIL APPEAL NO. 1832/2021
(ARISING OUT OF S.L.P. (C) NO. 10796 OF 2020)

CIVIL APPEAL NO(S). 1833/2021
(ARISING OUT OF S.L.P. (C) NO(S). 7386 OF 2021
(@ DIARY NO. 19181 of 2020)

CIVIL APPEAL NO. 1834/ 2021
(ARISING OUT OF S.L.P. (C) NO. 11320 OF 2020)

CIVIL APPEAL NO. 1835/ 2021
(ARISING OUT OF S.L.P. (C) NO. 11558 OF 2020)

CIVIL APPEAL NO(S). 1836/ 2021
(ARISING OUT OF S.L.P. (C) NO(S). 7387 OF 2021)
(@ DIARY NO. 21923 of 2020)

CIVIL APPEAL NO(S). 1837/2021
(ARISING OUT OF S.L.P. (C) NO(S). 7388 OF 2021)
(@ DIARY NO. 25053 of 2020)

CIVIL APPEAL NO. 1838/2021
(ARISING OUT OF S.L.P. (C) NO. 15089 OF 2020)

CIVIL APPEAL NO. 1839/ 2021
(ARISING OUT OF S.L.P. (C) NO. 15124 OF 2020)

CIVIL APPEAL NO. 1840/2021
(ARISING OUT OF S.L.P. (C) NO. 15625 OF 2020)

AND

T.P. (C) NOS. 1139-1140 OF 2020

J U D G M E N T

A.M. Khanwilkar, J.

1. "*What's in a name? that which we call a rose by any other name would smell as sweet*", said Juliet. This quote from William Shakespeare's "Romeo and Juliet" is unarguably one of the most iconic dialogues in classical literature. It conveys that the natural characteristics of an individual are more important than his/her artificial/acquired characteristics. A poetic statement as it certainly is, it does not go in tune with the significance of a name in marking

the identity of an individual in his/her societal transactions. To put it differently, name is an intrinsic element of identity.

2. The seminal issue in these cases is: whether an individual's control over such cardinal element of identity could be denied to him/her by the Central Board of Secondary Education[1] on the specious ground that its Examination Byelaws of 2007[2] must prevail over the claim of the candidate, which are merely intended to regulate such a claim and to delineate the procedure for correction/change in the contents of certificate(s) issued by it including regarding maintenance of its office records?

3. The CBSE Examination Byelaws restrict, both qualitatively and quantitatively, the corrections/changes that can be carried out in the certificates issued by the Board. Various students with need-based requests approached different High Courts resulting into inconsistent outcomes leading up to this batch of appeals. Apart from the fact that the judgments have produced conflicting outcomes, the petitions raise some peculiar questions on the

1 for short, "CBSE" or "Board", as the case may be
2 for short, "Byelaws"

constitutional validity of CBSE Examination Byelaws (as amended from time to time) and interpretation thereof.

4. The present case involves a batch of 22 petitions wherein questions relating to correction/change in name/surname/date of birth of candidates or their parents in the certificates issued by the Board have been raised.

5. In order to identify the precise scope of challenge, we may now delineate the factual matrix in individual petitions.

CIVIL APPEAL NO. 3905 OF 2011

6. The appellant in this case, Ms. Jigya Yadav, has assailed the decision of the High Court of Delhi, dated 20.12.2010 in W.P. (C) No. 3774/2010, wherein the High Court rejected the prayer for direction to the Board to carry out correction of her parents' name in the marksheets issued by it. The appellant's case was that the name of her parents was incorrectly recorded as "Hari Singh Yadav" instead of "Hari Singh" (as recorded in the identity documents of father) and "Mamta Yadav" instead of "Mamta" (as recorded in the

identity documents of mother). Relying upon Byelaw 69.1 of the CBSE Examination Bye-laws, 2007, the High Court affirmed the decision of the Board in refusing the desired corrections/changes. The Court relied upon the nursery application form, school admission form and stream allotment form for class XI filled by the parents of the appellant to conclude that the errors were not inadvertent, and they had consciously chosen and retained the said names despite having opportunity to rectify before the Xth standard. It observed thus:

> "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 Court, however, made an avoidable observation that in a country with caste-based reservations, changes in name cannot be permitted readily. It noted thus:

> "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."

The Court then observed that Byelaw 69.1 permits CBSE to carry out corrections only to the extent of bringing the record in conformity with the school record. In paragraph 21, the Court noted thus:

> "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."

While concluding, the Court observed that the Courts must be wary of interfering in academic matters and should refrain from giving an expansive interpretation to statutory rules/byelaws as it may render the system unworkable. It noted in paragraph 22:

> "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."

7. Assailing the decision, the appellant contends that Byelaw 69.1 (after 2007 amendment) is invalid as being unreasonable and arbitrary, thereby violative of Article 14 of the Constitution, as it puts a blanket embargo on corrections other than those which are necessary for bringing the documents in conformity with the school record. It is contended that the amended byelaw does not address the possibility of error in the school record itself, and leaves the student with no opportunity to correct the error committed by the parents in the school records. To buttress this submission, the appellant has submitted that the resultant hardship caused to her is infringement of her right guaranteed in Article 19(1)(g), right to freely express one's identity as per Article 19(1)(a) and right to dignity in Article 21 of the Constitution.

8. In the written submissions, the appellant has urged that CBSE certificates are public records of the Board and they carry a presumption of genuineness which must be respected by preserving the accuracy of such certificates. It is further urged that the 2007

Byelaws place school records above public documents which carry presumption of genuineness under the Indian Evidence Act, 1872[3]. To buttress this submission, it is stated that it would be contrary to the objectives of CBSE if it refuses to correct its documents despite having verified the genuineness of the supporting public documents (like Aadhar card, Passport, Birth Certificate etc.) and continues to perpetuate the obvious errors in the school records.

9. The appellant has further submitted that by amending Byelaw 69.1 in this manner, CBSE has acted in violation of Regulation 10 and objectives of CBSE by rendering itself incapable of rectifying errors in the certificates and issuing accurate certificates, which is a basic function of the Board. The CBSE has, the appellant submitted, exceeded its powers by effecting the said amendment as it was never meant to exercise such authority of putting fetters on its basic duties. Reliance has been placed upon ***Dhruva Parate vs. CBSE & Anr.[4], State of NCT of Delhi & Anr. vs. Sanjeev @ Bittoo[5], Indian Aluminium Company vs. Kerala State***

3 For short, "1872 Act"
4 ILR 2009 V Delhi 371
5 2005 (5) SCC 181

Electricity Board[6] and ***J.K. Aggarwal vs. Haryana Seeds Development Corporation Ltd. & Ors.***[7] to urge that CBSE cannot circumscribe its own powers with a self-imposed limitation in this manner.

10. The appellant has further submitted that the impugned judgment erroneously connects the subject matter of the case with caste-based reservations which displays stereotype prejudice of the Court towards her cause. The appellant also takes exception to the observations regarding wrongful conduct of the appellant's parents in failing to get the records rectified before Xth standard. It is stated that the impugned judgment overlooked the fact that the parents had no choice of getting the application form corrected in XIth standard as it necessarily reflected the details of Xth standard without offering a choice of alteration.

11. In response, the Board has relied upon Byelaw 69.1 to submit that the appellant's request for rectification was considered and the certificates were found to be matching with the school records and thus, no case for rectification was made out. It is submitted that

6 1975 (2) SCC 414
7 1991 (2) SCC 283

before amendment Byelaw 69.1 permitted a different procedure for rectification – approval by Court of law and notification in the gazette. Under this procedure, umpteen number of cases were filed, even after more than ten years of declaration of result, for rectification of name/surname and Courts were constantly approached for seeking leave to get the rectification done. As a result, objections were raised by various government authorities questioning the power of the Board to carry out changes in the identity of the students even after they have passed the examinations conducted by the Board. It is submitted that various Courts also expressed displeasure and suggested rephrasing of Byelaw 69.1. Resultantly, the 2007 amendment was effected permitting corrections only to the extent of bringing the certificates in conformity with the school record.

12. To buttress the above submission, it is urged that CBSE, being an autonomous society registered under the Societies Registration Act, 1860, has the power to make, amend or delete its Rules, Regulations and Byelaws. Accordingly, Byelaw 69.1 was amended as the basic record of a student is kept by the school and

the Board has no option but to rely upon the school record. It is further submitted that the parents of the appellant had ample opportunity to correct the school record and they chose not to do so. In fact, the respondent adds, they repeatedly filled the same particulars of their names in all the school forms from time to time.

13. The Board has also filed elaborate written submissions to support their case. It is submitted that the Examination Byelaws of the Board are statutory in nature as they were framed in furtherance of the powers granted to the Board as per Government of India Resolution dated 1.7.1929 and deviation cannot be permitted from the Byelaws. As regards the argument of violation of fundamental rights, the Board has submitted that there may be a fundamental right to be identified as per the choice of an individual, but there can be no fundamental right to claim that the changed identity must be operative since birth thereby compelling all including statutory bodies to carry out changes in documents issued by them. It is urged that any other view would amount to misuse of liberty and cause serious confusion at different level.

Reliance has been placed upon ***Rayaan Chawla vs. University of Delhi & Anr.***[8] to support this position.

14. The Board has further submitted that the restrictions/conditions for change of name and date of birth are reasonable as all the details are supplied by the students/parents at various stages of admissions which offers a *prima facie* guarantee of genuineness. It is submitted that change of name and date of birth in a reckless manner could have serious repercussions – misuse for employment, manipulating age of the accused etc. Reliance has been placed upon ***Sanjeev Kumar Gupta vs. State of Uttar Pradesh & Anr.***[9] to illustrate this.

15. The written submissions also touch upon the question of relevant date for the applicability of 2007 Byelaws. It is submitted that the relevant date would be the date of passing Xth standard examination and not the date of making application for changes. Lastly, it is submitted that the remedy of writ petition may not be appropriate for effecting changes in CBSE certificates as usually,

8 275 (2020) Delhi Law Times 314
9 (2019) 12 SCC 370

students come up with independent documents for supporting their claim and the writ Courts are not expected to adjudicate disputed facts concerning the relied upon documents. To buttress this submission, it is stated that despite presumption in favour of certified copies of public documents, they cannot be accepted at face value without providing an opportunity to rebut them as per Section 4 of the 1872 Act.

CIVIL APPEAL NO. 3572 OF 2019

16. In this appeal, the appellant (CBSE) has assailed the judgment dated 6.2.2019 passed by the High Court of Delhi in L.P.A. No. 128/2017, reversing the order of learned Single Judge in W.P. (C) No. 6996/2016, wherein the prayer of the respondent (father of the student) to change the mother's name in the certificate was rejected. The respondent had applied to CBSE for the change of mother's name from "Kiran Khan" to "Fakiha Khan" stating that "Kiran Khan", being the nickname of the mother, was inadvertently recorded in the school record of the student at the time of her admission in class I in 2005.

17. The Division Bench granted the prayer primarily on the ground that the stated change was a mere correction of name and not a change of name *per se* as per the language of Rules 69.1(i) and 69.1(ii) of the Byelaws (as amended in 2015). To reach this conclusion, the Court relied upon the birth certificate of the student, educational certificates of mother, passport etc. which revealed that the mother's name was recorded as "Fakiha Khan" in all these documents and it was nothing but an inadvertent error on the part of parents to have used the nickname of the mother while filling her school forms. The High Court noted that the case is neither a change of name as per Rule 69.1(i) nor a correction of typographical nature as per Rule 69.1(ii). It is relevant to reproduce paragraph 4 of the impugned judgment, which reads thus:

> "4. Having considered the diverse aspects and the admitted factual conspectus on record, we find, the case in hand, is not a case of any change of name, but, a mere correction in the mother's name of the child Ms. Filza Khan. Apparently, an inadvertent mistake in mentioning the mother's nickname "Ms. Kiran Khan" in the admission form in the year 2005, got transmitted by the respondent No.2 school to the respondent No.1 Board. The application made by the petitioner was not for any change of name, but, for correction of an inadvertent mistake in mentioning the name of the mother in the admission form as "Kiran Khan" instead of "Fakiha Khan", which fact, undisputedly, finds support from the birth certificate dated 17.12.02, copy whereof forms part of the record as Annexure-P1. This birth certificate clearly mentions

> that Ms. Filza Khan was born to the petitioner and Ms. Fakiha Khan. The applicant has placed on record other documents, such as the educational certificates of the mother Fakiha Khan, her passport etc., which show that her name always was Fakiha Khan. Thus, it is not a case of change of name of the mother to Kiran Khan, from Fakiha Khan, post the filling up of the examination form of the appellant's daughter. Pertinently, even in the documents relating to the daughter of the appellant Filza Khan, such as her Birth Certificate, the name of the mother is recorded as "Fakiha Khan" and not "Kiran Khan". Thus, the case in hand is certainly not a case of change of name as contemplated under Rule 69.1(i). It is also not a case of correction in spelling errors and factual typographical errors as contemplated under Rule 69.1(ii). The case in hand is completely founded on the premise of an inadvertent mistake in mentioning the name of the mother in the admission form, which was filled way back in the year 2005 at the time of admission of the child in class -I. …"

The Court, relying upon ***Mazhar Saleem Chandroth (Minor) Thr. Saleem Chandroth (father and natural guardian) vs. Central Board of Secondary Education***[10], also observed that the Examination Byelaws of the appellant (CBSE) are not of a statutory nature. The Court, before parting, further noted that a restrictive and strict approach is not warranted in matters involving correction or change of name by the Board merely on ground of administrative inconvenience. It noted thus:

> "6. The adoption of a strict and restrictive approach in the matter of change or correction of name of the candidate or his/her parents, in the certificates issued by the respondent No.1, cannot be justified on the foundation that such changes, when made later, may be exploited to mislead all

10 LPA 315/2017

> concerned about the identity of the candidate. Such a strict and restrictive approach cannot be justified merely on the ground of some administrative inconvenience. After all, respondent No.1 charges the fee to cover its costs for undertaking such an exercise. ..."

Observing that the subject change in the mother's name would not result into an alteration of identity of the student as the name "Fakiha Khan" was a part of the documents all along, it noted thus:

> "6. ...In the present case, there is no possibility of the identity of the candidate Filza Khan being changed by permitting the change of name of her mother from "Kiran Khan" to Fakiha Khan", since the name of the child/candidate; the name of the father; the date and place of birth, continue to remain the same. Even the name of the mother – which is now sought to be brought on record, is the real name of the mother which has always remained so and the same name of the mother is also reflected in the Birth Certificate of the child/candidate Filza Khan. In fact, the non-amendment of the name of the mother of the child/candidate from "Kiran Khan" to "Fakiha Khan" would, in future, lead to confusion and may mar the future prospects of the child/candidate while seeking admissions to institutions of higher education, or employment."

18. The appellant (CBSE), in this appeal, has submitted that the impugned judgment has incorrectly treated the subject change in mother's name as a mere correction born out of an inadvertent error. It is submitted that the said change is a complete change of name which was continuously retained in the school records for a period of 11 years. It is urged that the impugned judgment has failed to give effect to Rules 69.1(i) and 69.1(ii) of the Board as such

change of name without an order of the Court and followed by a notification in the official gazette was outrightly prohibited. Justifying the said Rules, it is submitted that the Board has no power or independent sources to verify the identity of the students and owing to the nature of its functioning, it has to rely upon the school records to furnish certificates.

19. The appellant (CBSE) further submits that the records were sent by the school in the academic year 2014-2015 when the student filled the examination form for submission to the Board and the said form not only recorded the mother's name as "Kiran Khan" but also carried the signature of the mother in the verification portion of the form. To buttress this submission, it is urged that the said mistake (if any) could not have been treated as inadvertent as it was retained as such for a long period of 11 years. It is added that parents themselves were the source of information regarding the name and thus, there could be no reason to regard it as inadvertent.

20. The appellant has further submitted that the impugned judgment is in conflict with another judgment of a co-ordinate

bench of the High Court in ***Mazhar Saleem Chandroth***[11] wherein the prayer for addition of word "Saleem" in the name was not held to be a correction or typographical error and was rejected stating that such change would be inconsistent with the school record and thus, impermissible. It is added that in such a situation, the Division bench ought to have sent the matter for consideration by a larger bench.

CIVIL APPEAL NO(S) 1822/2021
(arising out of SLP (C) No(s) 7381/2021
(@ Diary No. 9445/2020)

21. In this appeal, the appellant (CBSE) has assailed the judgment dated 5.11.2019 passed by the High Court of Kerala in W.A. No. 2225/2019 affirming the decision of learned Single Judge in W.P. (C) No. 5287/2019 dated 28.2.2019. The respondent student had approached the Board for correction of his father's name in the CBSE certificate from "P.P. Abdul Latheef" to Latheef P.A.". The said request was denied by the Board citing Byelaw 69.1 of the 2007 Byelaws, as applicable. The Board stated that the respondent's case does not meet the conditions stipulated in the

11 supra at Footnote No.10

said byelaw and thus, change in name cannot be permitted. Aggrieved by this denial, the respondent moved the High Court. The correction or change of name was then permitted by the High Court upon payment of Rs. 5,000 by the student to the Board for availing its service. The Board appealed against that decision. Affirming the decision, the High Court observed that the decision is in accordance with the decision of a co-ordinate bench of the same High Court in ***Subin Mohammed vs. Union of India***[12] wherein a change in date of birth of a student was permitted by the Court. While recognising that the case at hand involved the change of father's name (and not date of birth), the Court noted the similarity of grounds raised by the appellant before it, and relied upon ***Subin Mohammed***[13] to reject the same. It observed thus:

> "6. Though the issue relates to correction of the petitioner's father's name in the CBSE certificate, the grounds on which the appellants had assailed the correctness of the judgment of the writ court are more or less similar, based on the bye-law of the CBSE and the delay in making the application for correction. Except the above, there is no variance. Though Mr. Nirmal S., learned counsel for the appellants, made submissions on the grounds extracted supra assailing the correctness of judgment of the writ court, we are not inclined to accept the said contentions for the reason that a Hon'ble Division Bench of this Court in Subin Mohammed S. v. Union

12 2016 (1) KLT 340
13 supra at Footnote No.12

> of India and others reported in 2016 (1) KLT 340, has considered the said contentions and rejected the same. ..."

22. The impugned judgment relied upon the respondent's Birth Certificate dated 25.7.2013 and his father's Death certificate dated 12.8.2009 to conclude that the father's name was indeed "Latheef P.A." in statutory records and there could be no objection in permitting the said change.

23. In its challenge, the primary ground of the appellant is that the reliance placed by the High Court upon ***Subin Mohammed***[14] is misplaced. For, the said judgment is inapplicable in the factual matrix of the case. It is submitted that in ***Subin Mohammed***[15], the case involved a change in date of birth and the Court had recorded a specific finding that CBSE Byelaws would not permit the said change. It is further submitted that the Court failed to acknowledge that CBSE Byelaws, though not strictly statutory, have a regulatory colour and must bind those who have chosen to comply with them while participating in the examinations conducted by the Board.

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14 supra at Footnote No.12
15 supra at Footnote No.12

24. The appellant has further submitted that neither Byelaw 69.1(i) nor 69.1(ii) apply to the facts of the case. It is stated that Byelaw 69.1(i) would apply only when change of name is approved by a Court of law followed by a notification in the official gazette, that too before the declaration of result by the Board. To buttress this submission, it is added that the respondent obtained his birth certificate in 2013, one year before the matriculation examination in 2014 and thus, there was no difficulty for the respondent in applying for the said change as per Byelaw 69.1(i). According to the appellant (CBSE), the conditions of the aforesaid Byelaws have not been fulfilled by the respondent and in absence thereof, no such changes can be permitted.

25. The appellant has also urged that the reliance upon Birth Certificate and Death Certificate is unwarranted as both these documents were not proved before any Court of law and there is no material on record to establish that "P.P. Abdul Latheef" and "Latheef P.A." is the same person. The appellant has placed reliance upon ***Board of Secondary Education of Assam vs. Md.***

Sarifuz Zaman & Ors.[16] to further argue that correction of entries in a certificate duly issued by the Board cannot be claimed as a matter of legal right and frequent corrections cannot be permitted readily as it would have the effect of rendering this power arbitrary, in addition to reducing the credibility of certificates issued by the Board.

CIVIL APPEAL NO(S). 1823/2021
(arising out of SLP (C) No(s). 7382/2021
(@ Diary No. 9482/2020)

26. The challenge in this appeal is against the judgment dated 20.11.2019 of the Kerala High Court in W.A. No. 2354/2019 affirming the decision of learned Single Judge in W.P. No. 11876/2018, wherein the respondent student's prayer for change in date of birth was granted by the Court. The respondent passed her matriculation examination in 2011. The concerned certificate issued by the Board recorded her date of birth as 28.11.1995. Thereafter, in 2013, the respondent applied for the issuance of Birth Certificate which was issued on 28.6.2013 bearing her date of birth as 21.11.1995.

16 (2003) 12 SCC 408

27. The respondent applied to the Board for change in date of birth. It was rejected by the Board. The High Court allowed her prayer after placing reliance on ***Subin Mohammed***[17]. The observations of the High Court are similar to those in civil appeal arising from SLP (C) No(s). 7381/2021 (@Diary No. 9445/2020) and are not being discussed again for brevity.

28. The appellant (CBSE) has assailed the decision on the ground that the respondent's case does not fulfil the criteria/conditions for change in date of birth under Byelaws 69.2 and 69.3 of the 2007 Byelaws, as applicable. It is submitted that as per Byelaw 69.2, change in date of birth is permissible only before the same is recorded in the record of the Board and despite having sufficient time, the respondent did not approach the Board for any correction on or before 2011. Afterwards, under Byelaw 69.3, corrections of merely typographical or other similar errors are permissible to bring the particulars in consonance with the school record. It is stated that the respondent's case does not fulfil any of these criteria.

17 supra at Footnote No.12

29. It is further submitted that the impugned judgment was passed without granting an opportunity to the appellant for ascertaining the genuineness of the request for change in date of birth, which is a mandatory requirement as per ***Subin Mohammed***[18]. The appellant has raised a question on the genuineness of the request by stating that even if the incorrect date of birth is treated as an error, it is inconceivable that the appellant or her parents could not notice the error for a period of 23 years.

30. The submissions regarding the inapplicability of the dictum in ***Subin Mohammed***[19] are similar to those made in civil appeal arising from SLP (C) No(s). 7381/2021 (@ Diary No. 9445/2020) and are not being repeated for brevity.

CIVIL APPEAL NO(S). 1824/2021
(arising out of SLP (C) No(s). 7383/2021
(@ Diary No. 14737/2020)

31. In this appeal, the appellant (CBSE) has assailed the judgment dated 13.12.2019 passed by the High Court of Judicature for Rajasthan in D.B. Civil Special Appeal (Writ) No. 838/2019 confirming the order of the learned Single Judge in S.B. Civil Writ

18 supra at Footnote No.12
19 supra at Footnote No.12

Petition No. 18013/2018 in terms of the Byelaws (as amended in 2015 and as applicable to the case).

32. The case involves a request for change of mother's name of the student in CBSE certificates from "Seema Manak" to "Sanyogeta Manak". The respondent participated in the matriculation examination conducted by the Board in May, 2016. In October, 2016, the said request was made when the mother changed her name. The Board denied the request for change of name citing their inability under the Byelaws. Another request was made by the respondent which was met with the same response from the Board. The matter went to the High Court by way of a writ petition and the Court granted the prayer for change of name by holding that the Board failed to perform its duty in denying the request for change of name. The Court took note of the birth certificate of the respondent, copy of passport and copy of Aadhar card of the mother, and also noted that the requirements of newspaper publication and gazette notification were fulfilled. It then directed the Board to effect the change. The Court observed that the CBSE rules cannot prohibit an individual from having his/her identity

recognized through the parents and if they are applied for denying such corrections, it would be *ultra vires* the rules as they are not statutory in nature. It observed thus:

> "In the opinion of this Court such rules framed by CBSE go contrary to the basic principles laid down in the circumstances regarding individual to have his identity recognized from his/her parents, the CBSE cannot be allowed to force any individual to have his mother's name or his father's name different from what his/her mother's name or father's name is known in the Society as well as in the records. If such rules are applied for denying a candidate from getting correction done in the mark sheet or certificates, the same have to be declared as ultra vires to the rules since the rules not statutory."

33. In order to assail the above decision, the appellant has relied upon Byelaws 69.1(i) and 69.1(ii) to contend that Byelaw 69.1(i) provides for change of name of the student only and change of name of parents is not envisaged in it. It is submitted that Byelaw 69.1(ii) provides for corrections and the present case is not one of corrections, rather, it involves a material change of name. Similar to the submissions advanced in previous appeals, it is submitted that the Board cannot act in violation of their byelaws and permit corrections when the same are not permitted under them. The appellant has urged that they duly applied their mind to the request

of the respondent twice and there was no occasion for the Court to pass an order in complete ignorance of the byelaws.

34. It is further submitted that the impugned judgment holds the byelaws as *ultra vires* despite the fact that their validity was not even in question before the Court. Reliance has been placed by the appellant upon ***Md. Sarifuz Zaman***[20] to urge that there is no vested right to claim corrections in certificates at any point of time.

CIVIL APPEAL NO(S). 1825/2021
(arising out of SLP (C) No(s). 7384/2021
(@ Diary No. 16291/2020)

35. The challenge in this appeal is against the decision dated 20.11.2019 passed by the High Court of Kerala in W.A. No. 2340/2019 confirming the order passed by learned Single Judge in W.P. (C) No. 8540/2019, wherein the High Court allowed the prayer for change of the respondent student's name from "Mohammed Shafeek" to "Mohammed Shafeek S." in terms of the 2007 Byelaws, as applicable. The respondent passed matriculation examination in 2014. During school, the name of the respondent was recorded as "Mohammed Shafeek" in accordance with the birth certificate

20 supra at Footnote No.16

issued in 2002. After passing matriculation, another birth certificate was issued in 2017 wherein a different name i.e., "Mohammed Shafeek S." was recorded. In accordance with the second birth certificate, the respondent approached the Board for change of name which was denied by the Board citing failure to fulfil the conditions envisaged in the Byelaws. The High Court granted the prayer by placing reliance upon the dictum in ***Subin Mohammed***[21].

36. The reasoning adopted by the High Court is similar to that in civil appeals arising from SLP (C) No(s). 7381/2021 (@ Diary No. 9445/2020) and SLP (C) No(s).7382/2021 (@ Diary No. 9482/2020), and we are not reiterating the same.

37. Assailing the decision, the appellant's submissions are largely similar to those in previous appeals. Other than grounds already urged before, the appellant has submitted that the Court failed to consider the presence of two birth certificates and went on to grant the prayer without weighing the genuineness of the certificates and

21 supra at Footnote No.12

without seeking an explanation from the respondent for bringing two birth certificates on record.

38. It is submitted that in 2004, while taking admission in class I, the respondent's name was recorded as "Mohammed Shafeek". The same name was carried forward while filling the admission form again in 2008 for a different school. It is further submitted that even at the time of filling the form for class XI, the same name was recorded and it was duly communicated by the school to the Board. The name recorded in the certificate, therefore, is in complete accordance with the school record. To buttress this submission, it is urged that the record clearly shows that there is no possibility of typographical error in the record of the respondent and a subsequent substantial change of name cannot be permitted in the certificates of the Board in this manner.

CIVIL APPEAL NO. 1826/2021
(arising out of SLP (C) No. 10927/2020)

39. The challenge in this appeal is against the judgment dated 24.8.2020 passed by the Delhi High Court in L.P.A. No. 219/2020 confirming the order of learned Single Judge in W.P. (C) No.

10841/2019 wherein the respondent student's prayer for addition of surname was granted in terms of the 2007 Byelaws, as applicable. The respondent passed the examinations conducted by the Board under the name "Jyoti". The name was consistently recorded as such in all her school records and accordingly, the CBSE certificates carried the same name. Thereafter, she completed her MBBS and applied for education in a foreign institution. As a part of her application, she was asked to mention her surname. Since none of her documents carried this information, she applied to the Board for addition of surname and change her name from "Jyoti" to "Jyoti Dalal" in the certificates. The Board refused and the respondent approached the High Court.

40. The High Court considered the applicability of Byelaws 69.1(i) and 69.1(ii) and ruled that the said byelaws are inapplicable to the facts of the case as the respondent's case is not one for change of name but for incorporation of a surname which existed throughout in the records of her parents and for which no ambiguity could be alleged. It observed thus:

> "8. Looking to the peculiar facts and circumstance of the present case, we are of the opinion that the same does not fall

under the ambit of Clause 69(1)(i) of the Examination Bye-Laws as:-

> a) This is not a case of change of name, but of incorporation of the surname of the person concerned,
>
> b) This is not a case where something which was altogether omitted is to be added, as the parents' names were available in full in the records of the appellant-Board,
>
> c) The respondent (original petitioner) in this case carries the surname of the father and the mother which she wanted to mention after her name. There is no dispute about her identity or confusion about the veracity of the name which she seeks to incorporate."

Before parting, the High Court specifically noted that its decision must not be treated as a precedent and would operate on the specific facts of the case.

41. The appellant has assailed the decision by contending that any request for change of name is to be examined as per Byelaw 69.1(i) and not beyond it. If such change is not permissible under the said byelaw, then it would be wholly improper for the Court to direct such changes. It is contended that there was no challenge to the validity of the byelaws, and until and unless the byelaws are declared to be invalid, the Court cannot direct any action in complete contravention thereof. As urged in previous cases, it is added that the respondent's case failed to fulfil the condition

precedent in the said byelaw – prior approval by a Court of law followed by publication in gazette – and the impugned order had the effect of diluting these conditions.

42. The appellant has submitted that the relief claimed by the respondent is highly delayed in time and in law, delay defeats discretion. It is urged that the respondent was always aware of the absence of surname in her records and she kept on sleeping on her rights for a period of seven years and therefore, the loss of limitation must bar any legal remedy for her. It is further submitted that such changes cannot be permitted in a routine manner as the credibility attached with CBSE certificates would be compromised and subsequent changes would create anomalies in the record. Reliance has been placed upon ***Abhishek Kumar @ Bal Kishan vs. Union of India & Ors.***[22] to urge that subsequent issuance of revised certificates would create discrepancy in the record and reflect status which did not even exist at the time of making certificates.

22 (2014) 144 DRJ 8 (DB) : 2014 SCC OnLine Del 3459

43. The appellant has submitted that exercise of jurisdiction under Article 226 of the Constitution in this manner is unwarranted as it amounts to substitution of the views of the Court in the place of byelaws formulated on the basis of technical advice. It is urged that the Court must be reluctant to venture into academic matters in this manner.

CIVIL APPEAL NO.1827/2021
(arising out of SLP (C) No. 10948/2020)

44. The challenge in this appeal is against the decision dated 13.7.2020 by the High Court of Kerala in W.A. No. 863/2020 confirming the order of the learned Single Judge in W.P. (C) No. 21357/2019, wherein the respondent student's prayer for change in date of birth was granted on the basis of the birth certificate in terms of the 2007 Byelaws, as applicable. The observations of the High Court are similar to those in civil appeals arising from SLP (C) No(s).7381/2021 (@ Diary No. 9445/2020), SLP (C) No(s).7382/2021 (@ Diary No. 9482/2020) and SLP (C)

No(s).7384/2021 (@ Diary No. 16291/2020). We are not reiterating the same for the sake of brevity.

45. On perusal of the submissions, we find that the grounds urged for assailing the decision are also similar to those taken in previous appeals and we are not repeating the same.

46. In addition to grounds already advanced, the respondent has filed elaborate written submissions and additional written submissions to which we may make a brief reference. It is submitted that as per Byelaw 7 of the Examination Byelaws, the admission procedure upto class VIII is to be regulated by rules/regulations/orders of the concerned State Government. Accordingly, reference has been made to the Kerala Education Act, 1958 and Chapter-VI of Rules framed thereunder which provides that the primary source for determining date of birth is birth certificate. It is submitted that even under the Right to Education Act, the primary proof of age is the birth certificate and therefore, primacy has to be accorded to birth certificate for determination of correct date of birth and CBSE's Byelaws must provide for bringing their certificates in accord with such official or public documents.

47. In additional written submissions, the respondent has answered this Court's query as to what would be the relevant point of time for determining the application of byelaws. It is submitted that the relevant date would be the date of considering the application i.e., the Byelaws in force at the time of considering the application for recording correction/change. The date of examination would be irrelevant for this purpose. Reliance has been placed upon ***Somdev Kapoor vs. State of West Bengal & Ors.***[23] and ***State of Kerala & Ors. vs. Palakkad Heritage Hotels***[24] to advance the legal proposition that rules standing on the date of final decision by the competent authority would be applicable.

CIVIL APPEAL NO(S). 1828/2021
(arising out of SLP (C) No(s).7385/2021
(@ Diary No. 18711/2020)

48. The challenge in this appeal is against the judgment dated 19.11.2019 passed by the High Court of Kerala in W.A. No. 2328/2019 confirming the order of learned Single Judge in W.P. (C)

23 (2014) 14 SCC 486
24 (2017) 13 SCC 672

No. 8465/2019 wherein the respondent student's request for change in date of birth was allowed. The case of the respondent is that his date of birth was recorded as 16.4.1994 instead of 16.4.1995 in the school records. On the basis of the birth certificate and other supporting documents, the respondent applied for change in date of birth which was rejected by the appellant Board citing the 2007 Examination Byelaws.

49. The High Court allowed the change on grounds similar to those in the previous appeals. We are not repeating the same.

50. The submissions of the appellant Board are also similar to those in previous appeals and there is no need to reiterate the same.

CIVIL APPEAL NO. 1829/2021
(arising out of SLP (C) No. 10959/2020)

51. The appellant Board has assailed the decision dated 3.7.2020 passed by D.B. Special Appeal Writ No. 450/2020 confirming the order of learned Single Judge in W.P. (C) No. 8808/2019 allowing the respondent student's prayer for change of her father's and

mother's names in the certificates issued by the CBSE. Citing it as an error, a request was made by the respondent for change of name of father from "Vinod Mittal" to "Vinod Kumar Jain" and mother from "Meenakshi Mittal" to "Meenakshi Agarwal".

52. The High Court did not consider the permissibility of this change under the applicable Byelaws (as amended in 2018) and instead noted that no prejudice would be caused to the Board if the said changes are allowed. It observed thus:

> "It is noticed that in the writ petition, respondent seeks only to amend the surname of her parents and not their names. On a query by this Court from the counsel for the appellants that on account of change of surname, what prejudice was going to be caused to the appellants, he has failed to give any response."

53. The submissions advanced by the appellant are substantially similar to those adopted in previous appeals. Non-applicability of Byelaws, absence of any typographical error, consonance between school record and certificates, and lapse of substantial time despite knowing the alleged errors are primary submissions which form the basis of this challenge. We are not elaborating upon the same to avoid repetition.

CIVIL APPEAL NO. 1830/2021
(arising out of SLP (C) No. 10801/2020

54. The challenge in this appeal is against the judgment dated 4.6.2020 passed by the Kerala High Court in W.A. No. 697/2020 confirming the order of learned Single Judge in W.P. (C) No. 11791/2019, wherein the respondent student's request for change in date of birth was allowed in terms of the 2007 Byelaws, as applicable. The respondent's case was that her date of birth was incorrectly recorded as 22.3.1990 instead of 21.6.1989. The High Court allowed the prayer on grounds similar to those in appeals arising from SLP (C) No(s). 7381/2021 (@ Diary No. 9445/2020), SLP (C) No(s). 7382/2021 (@ Diary No. 9482/2020), SLP (C) No(s). 7384/2021 (@ Diary No. 16291/2020) and SLP (C) No(s). 7385/2021 (@ Diary No. 18711/2020). We are not reiterating the same.

55. Having gone through the appeal memo, we note that the submissions are similar to those in previous appeals and we are not repeating them.

CIVIL APPEAL NO. 1831/2021
(arising out of SLP (C) No. 10795/2020)

56. In this appeal, the challenge is against the decision dated 6.8.2020 passed by the High Court of Kerala in W.A. No. 987/2020 confirming the order of learned Single Judge in W.P.(C) No. 25663/2019, wherein the respondent student's prayer for change of name of his mother and father was allowed and accordingly, CBSE was directed to modify the certificates.

57. Originally, the school records and CBSE certificates recorded the father's name as "Shaji" and mother's name as "Jijimol". These names were in also in accordance with the old birth certificate of the respondent dated 27.10.2002. As stated by the respondent, they noticed this mistake for the first time in 2018 after CBSE released the respondent's Secondary School Examination certificate on 29.5.2018. Thereafter, the respondent applied for issuance of fresh birth certificate wherein father's name was changed from "Shaji" to "Shaji P." and mother's name from "Jijimol" to "Jijimol S.". It was issued on 27.10.2018 and in furtherance thereof, the respondent applied to the appellant Board for changing the

certificates in light of the changed names. The Board refused that request citing the Byelaws (as amended in 2018) and the matter reached the High Court.

58. The grounds that weighed upon the High Court while granting the prayer are substantially similar to those in civil appeals arising from SLP (C) No(s). 7381/2021 (@ Diary No. 9445/2020), SLP (C) No(s). 7382/2021 (@ Diary No. 9482/2020), SLP (C) No(s). 7384/2021 (@ Diary No. 16291/2020), SLP (C) No(s). 7385/2021 (@ Diary No. 18711/2020) and SLP (C) No. 10801/2020.

59. The grounds urged by the appellant are similar to those in previous appeals and we are not reiterating the same.

60. The respondent has filed written submissions to submit that the present case does not involve any delay in applying for change of name as they took prompt action upon receiving the CBSE certificates and realizing the defect, and applied for a new birth certificate so that changes could be made at the earliest. It is also submitted that it is not a case of change of name or correcting a mistake in name *per se.* Rather, it is a case of merely including initials of mother and father in their respective names in

accordance with a duly modified birth certificate which leaves no question as regards the genuineness of record.

CIVIL APPEAL NO. 1832/2021
(arising out of SLP (C) No. 10796/2020)

61. In this appeal, the appellant (Board) has challenged the decision dated 19.12.2019 passed by the High Court of Kerala in W.A. No. 2513/2019 confirming the decision of learned Single Judge in W.P.(C) No. 14384/2019, wherein the respondent student's prayer for change of name from "Vaibhav R." to "Vaibhav D." in certificates issued by the Board was allowed in terms of the 2007 Byelaws, as applicable.

62. The impugned judgment requires no discussion as it is reasoned in similar terms, as already delineated above.

63. The grounds urged by the appellant have already been urged in previous appeals and we need not repeat them.

CIVIL APPEAL NO(S). 1833/2021
(arising out of SLP (C) No(s). 7386/2021
(@ Diary No. 19181/2020)

64. The appellant Board herein has impugned the decision dated 8.11.2019 passed by the High Court of Kerala in W.A. No. 2207/2019 confirming the order of learned Single Judge in W.P. (C) No. 10410/2019, wherein the respondent student's prayer for change in his date of birth was allowed on the basis of the birth certificate issued by the appropriate authority in terms of the 2007 Byelaws, as applicable.

65. The impugned judgment requires no elaboration as it is reasoned in similar terms, as already delineated above.

66. The grounds urged by the appellant have already been urged in previous appeals and we need not repeat them.

CIVIL APPEAL NO. 1834/2021
(arising out of SLP (C) No. 11320/2020)

67. The appellant (CBSE) has approached this Court for assailing the decision dated 12.5.2020 passed by the High Court of Punjab & Haryana at Chandigarh in R.S.A. No. 499/2020 declining to

interfere with the decision of the District Judge, Karnal who upheld the decision of the Additional Civil Judge (Senior Judge), Assandh in Civil Suit No. 204/2018 wherein, a declaratory relief was granted in favour of the respondent student declaring his date of birth as 7.5.2004 instead of 15.2.2001, father's name as "Joginder" instead of "Joginder Singh" and mother's name as "Darshan" instead of "Darshan Devi" (as mentioned in the CBSE certificate). The declaratory relief was coupled with a mandatory injunction directing the appellant Board to effect necessary changes in the certificates of the respondent.

68. The High Court referred to the birth certificate issued by the authorities under the Registration of Births and Deaths Act, 1969 and noted that correctness of the certificate is not under dispute and thus, the information recorded in the certificate cannot be questioned. It observed thus:

> "As far as correctness of the certificate issued by the authorities under the 1969 Act, identity of the plaintiff as also correctness in the names of his parents are not disputed."

Noting thus, the High Court declined to interfere with the concurrent findings of fact by the two Courts below.

69. In addition to the grounds already advanced by the Board in light of the applicable Byelaws (as amended in 2018), it is submitted that the relief of declaration and mandatory injunction could not have been granted by the Court due to non-joinder of necessary parties in the case. It is submitted that Registrar of Births and Deaths (owing to change in date of birth) and the concerned school (owing to changes in their records) were necessary parties in the case and ought to have been joined. It is urged that the non-joinder would be fatal.

70. It is further submitted that the respondent's claim was barred by the principle of estoppel as he was mandatorily required to submit his birth certificate in school at the time of admission as per Byelaw 6 of the Examination Byelaws, 1995 so that the school record could be in consonance with the birth certificate. Since the respondent failed to produce the same at the time of admission, it is urged, the school record carried the information voluntarily supplied in the admission form and no change can be permitted at this stage.

71. The respondent has further submitted that the relief of mandatory injunction was barred due to Sections 41(g) and 41(i) of the Specific Relief Act, 1963 which specifically provide that no such relief could be provided if the plaintiff when he/she has acquiesced of rights. In the instant case, it is stated, the respondent failed to apply for change in date of birth for 15 years, despite there being a long gap of three years between the recorded date and modified date, and such conduct must bar any such relief.

CIVIL APPEAL NO. 1835/2021
(arising out of SLP (C) No. 11558/2020)

72. The appellant Board has approached this Court in appeal against the judgment dated 29.7.2020 passed by the High Court of Kerala in W.A. No. 724/2020 confirming the order of learned Single Judge in W.P. No. 24214/2019, wherein the respondent student's prayer for change in date of birth from 30.5.1992 to 23.7.1991 was granted and original record was held to have recorded an incorrect date. For reaching this conclusion, reliance was placed by the High Court upon a subsequently obtained birth certificate.

73. The impugned judgment requires no discussion as it is reasoned in similar terms, as already delineated above.

74. The appellant has placed reliance upon the Byelaws (existing before 2007) to assail the decision. The grounds urged by the appellant have already been urged in previous appeals and we need not repeat them.

CIVIL APPEAL NO(S). 1836/2021
(arising out of SLP (C) No(s). 7387/2021
(@ Diary No. 21923/2020)

75. The present appeal involves a challenge against the judgment dated 13.11.2019 passed by the High Court of Kerala in W.A. No. 2267/2019 confirming the order of learned Single Judge in W.P.(C) No. 8034/2019, wherein the respondent student's prayer for change of name from "Ganga" to "Ganga S" and father's name from "Rajendran C" to "Rajendran Pillai C" was allowed in terms of the Byelaws (as amended in 2018).

76. The impugned judgment requires no discussion as it is reasoned in similar terms, as already delineated above.

77. The grounds urged by the appellant have already been urged in previous appeals and we need not repeat them.

CIVIL APPEAL NO(S). 1837/2021
(arising out of SLP (C) No(s). 7388/2021
(@ Diary No. 25053/2020)

78. In this appeal, the appellant (Board) has assailed the judgment dated 26.11.2019 passed by the High Court of Judicature at Madras in W.A. No. 4077/2019 affirming the order of learned Single Judge with slight modification. The respondent student had prayed for change of his father's name from "Fazal Rehmaan" to "Shaik Fazul Rahiman" which was permitted by the learned Single Judge. In writ appeal before the High Court, the learned counsel for the Board, citing the applicable Byelaws (as amended in 2018), submitted that appropriate precautions ought to be taken while issuing such directions for change of name as there is a possibility of misuse. The High Court observed that such corrections must not be permitted for ulterior or extraneous reasons. In order to prevent such possibility, the Board was permitted to obtain an affidavit in the nature of indemnity against any such exigency. It observed thus:

> "2. We find that the request made by the learned counsel to that extent is appreciable, inasmuch as a person should not be allowed to carry out corrections if the same is for any ulterior motive or for any extraneous considerations that may have itself roots either in any form of impersonation arising out of any civil or criminal activity. In this regard, it will be open to the appellant Board to obtain an affidavit from the candidate in the nature of indemnity against any such exigency as referred to above and correction be carried out subject to such conditions as may be necessary."

79. As regards cases wherein the request for change of name is *bona fide* and there is no scope for prejudice, the decision of learned Single Judge directing such changes was held to be correct. The Court observed thus:

> "3. On the other hand, we find that if correction has been genuinely and bona fide sought and no prejudice is caused, then in that event the conclusion arrived at by the learned Single Judge cannot be said to suffer from any infirmity."

80. The grounds urged by the appellant herein (CBSE) have since been adverted to and require no reiteration.

CIVIL APPEAL NO. 1838/2021
(arising out of SLP (C) No. 15089/2020)

81. The challenge in this appeal is against the judgment dated 25.9.2020 passed in W.A. No. 1102/2020 affirming the order of learned Single Judge wherein the respondent student's prayer for change in date of birth from 17.1.1992 to 17.1.1991 was allowed

upon payment of cost of Rs.1000 to the school authority and Rs.5000 to the Board. Like previous cases, the prayer was granted on the basis of a subsequently obtained birth certificate and in light of the applicable 2007 Byelaws.

82. The impugned judgment requires no discussion as it is reasoned in similar terms, as already delineated above.

83. The grounds urged by the appellant have also been urged in previous appeals and we need not repeat them.

CIVIL APPEAL NO. 1839/2021
(arising out of SLP (C) No. 15124/2020)

84. This appeal involves a challenge to the judgment dated 25.9.2020 passed by the High Court of Kerala in W.A. No. 1037/2020 affirming the order of learned Single Judge, wherein the respondent student's prayer for change in date of birth in the certificates issued by the Board was allowed upon payment of certain costs to the school and the Board. Reliance was again placed upon a subsequently obtained birth certificate for ordering the said changes and on the applicable 2007 Byelaws.

85. The impugned judgment requires no discussion as it is reasoned in similar terms, as already delineated above.

86. The grounds urged by the appellant have also been urged in previous appeals and we need not repeat them.

CIVIL APPEAL NO.1840/2021
(arising out of SLP (C) No. 15625/2020)

87. The challenge in this appeal is against the judgment dated 7.9.2020 passed by the High Court of Kerala in W.A. No. 1155/2020 confirming the order of learned Single Judge, wherein the respondent student's prayer for change of his father's name from "Hashim Abdulla" to "Hashim A." and mother's name from "Shahina Duneera" to "Shahina Beegum D.S." was allowed in terms of the applicable Byelaws (as amended in 2018).

88. In the facts of the case, the respondent obtained the certificate issued by the Board on 29.5.2018 after passing the Secondary School Examination, 2018 wherein the names of his parents were recorded in accordance with the school records and old birth certificate. Contrary to the names in these documents, the names of

father and mother of the respondent were recorded as “Hashim A.” and “Shahina Beegum D.S.” respectively in their school leaving certificates. In light of this conflict, the respondent applied to the Registering Authority for issue of a corrected birth certificate under Section-15 of the Registration of Births and Deaths Act, 1969 read with Rule-11 of the Kerala Registration of Births and Deaths Rules, 1999. The High Court permitted the changes in accordance with this subsequently obtained birth certificate.

89. The impugned judgment requires no discussion as it is reasoned in similar terms, as already delineated above.

90. The grounds urged by the appellant have also been urged in previous appeals and we need not repeat them.

91. Apart from grounds already advanced in previous cases, the respondents have advanced certain additional grounds in support of the impugned decision. It is submitted that the CBSE has no jurisdiction or power to deny correction of records belonging to a student after due changes by competent public authorities and acceptance of the same by school. It is further submitted that CBSE is a society and its Byelaws cannot be treated as equivalent

to a law made by a competent legislature. Thus, they cannot be invoked to deny the fundamental rights of the students much less being reasonable restriction.

92. The respondents have further questioned the *vires* of the Byelaws on the ground that the government resolution providing for the power to frame Byelaws does not permit the Board to impose such conditions for denying corrections in certificates. Relying upon Sections 76 and 77 of the 1872 Act, it is lastly submitted that the certified copies of public records are duly admissible and the Board ought to ensure that their certificates are corrected in light of such updated public records.

T.P. (C) NOS. 1139-1140 OF 2020

93. The petitioner (CBSE) herein seeks a direction from this Court to withdraw before itself two proceedings, namely – W.P. (C) No. 5828/2016 pending before the Jharkhand High Court and L.P.A. No. 423/2020 pending before the High Court of Punjab & Haryana at Chandigarh, as similar questions are involved in these proceedings.

94. The former proceeding before the Jharkhand High Court is for change of name of the student from "Saddam Hussain" to "Sajid Hussain" on the basis of changes effected in Official Gazette, Passport, Aadhar card, Driving License and PAN card. The proceeding before the High Court of Punjab & Haryana at Chandigarh is against the decision of learned Single Judge in CWP No. 21388/2018, wherein the student's prayer for change of name in the certificates issued by the Board from "Satish Kumar s/o Rampal" to "Shrey s/0 Rampal" was allowed on the basis of public notices in two local newspapers, official gazette notification notifying change of name, Aadhar card and PAN card.

95. The Board submits that it is already contesting multiple cases before this Court in which similar questions touching upon the power of Courts to issue directions for changing particulars in CBSE certificates is being examined, despite there being a clear prohibition against the same in the Examination Byelaws. The Board submits that identical arguments are required to be advanced by it at multiple forums and it is causing grave harm to it including in passing of conflicting directions.

96. Respondent No. 6 (Satish Kumar @Shrey) has filed "Note on submissions" wherein various grounds have been advanced to question the prohibitory Byelaws of the Board and support the case for permitting genuine changes in certificates. It has been submitted that the Byelaws are not statutory in nature and thus, they cannot be made as "law" within the meaning of Article 19(2) of the Constitution and cannot be the basis to deprive the students of their fundamental right to express their identity under Article 19(1)(a). Reliance has been placed upon ***Kabir Jaiswal vs. Union of India & Ors.***[25] to support this position.

97. It is then submitted that there is a conflict between ***Kalpana Thakur & Anr. vs. Central Board of Secondary Education & Anr.***[26] and ***Vyshnav @ Vishnu Viswam V. vs. Central Board of Secondary Education & Ors.***[27] as regards the relevant point of time for determining the applicability of Byelaws, as amended from time to time. Supporting the view taken in ***Vyshnav***[28], it is urged

25 2020 SCC OnLine All 1488
26 2015 SCC OnLine Del 12156
27 2017 SCC OnLine Ker 39806
28 supra at Footnote No.27

that the relevant point of time ought to be the date of issuance of certificate.

98. Having gone through the elaborate set of submissions and documents on record in the respective matter, the following broad points emerge for our consideration:

(i) Whether the CBSE Examination Byelaws have the force of law?

(ii) Whether examination byelaws impose reasonable restrictions on the exercise of rights under Article 19 of the Constitution including fail the test of rationality for excessively restricting the scope of permissible corrections/changes?

(iii) Whether the Board is obliged to carry out corrections/changes in the certificates issued by it owing to correction/updation of public records/documents which have statutory presumption of genuineness?

(iv) Whether the examination byelaws in force on the date of examination conducted by CBSE or the date of consideration of the application for recording correction/change would be

relevant? And, whether the effect of correction or change, as the case may be, will have retrospective effect from the date of issue of the original certificate?

(v) Whether writ of mandamus issued for effecting corrections in CBSE certificates can be in the teeth of explicit provisions in the examination byelaws, without examining validity of the byelaws?

Point No. 1

99. Indubitably, the CBSE Board came to be established vide Government of India resolution dated 1.7.1929 with a view to "enable it to play a useful role in the field of Secondary Education" and "make the services of the Board available to various educational institutions in the country", as stated in the Constitution of the Board. Article 9[29] of the said Constitution deals with the "Powers and Functions of the Board", which include to do all such things as may be necessary for furthering the objectives of

29 "9. The Board shall have the following powers: -
xxx xxx xxx
(xvi) To do all such or other things as may be necessary in order to further the objectives of the Board as a body constituted for regulating and maintaining the standard of secondary education."

the Board. One of the functions or so to say power of the Board is to make regulations for giving effect to the afore-stated resolution as predicated in Article 16[30] of the Constitution. Clause (2) thereof envisages that the Regulation so framed may provide for conditions for issuing certificates for examination conducted by the Board. We may also take note of Article 18[31] of the Constitution of the Board, which makes it amply clear that the byelaws to be framed by the Board ought to be consistent with and subservient to the Regulations and the Resolution establishing the Board. This Article also indicates that byelaws may be made for the purposes referred to in clauses (a) to (c) pertaining to procedural aspects. Indisputably, the constitution/organisation or structure of CBSE is

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30 "16.POWERS OF THE BOARD TO MAKE REGULATIONS

xxx xxx xxx

(2) In particular and without prejudice to any generality of the foregoing powers, the Board may make Regulations for all or any of the following matters, namely:

.....

(f) The conditions for the award of certificates of the Board;"

31 "18. The Board and its Committees may make Bye-laws, consistent with this Resolution and the Regulations, for the following purposes, namely:

(a) Laying down the procedure to be observed at their meetings and the number of members required to form a quorum;

(b) Providing for all matters which, consistent with this Resolution and the Regulations, are to be prescribed by Bye-laws; and

(c) Providing for all other matters solely concerning the Board and its Committees and not provided for by the Resolution and the Regulations."

not backed by a statute. It is, therefore, a misnomer to characterise byelaws framed by the Board as statutory.

100. The real question is: whether byelaws so framed have the force of law?

101. To have the force of law, it must qualify the test predicated in Article 13 of the Constitution, else it would be mere contractual terms of engagement. For the nature of activities undertaken by the Board including the powers and functions of the Board, it can be safely assumed that the Board is a State within the meaning of Article 12 of the Constitution of India and as a corollary thereof, its actions would be amenable to Part-III of the Constitution of India. The fact that the Board can be treated as a State within the meaning of Article 12 of the Constitution does not mean that the byelaws framed by it would necessarily become law within the meaning of Article 13 of the Constitution of India. Only a "law" under Article 13 can be reckoned as a restriction in respect of rights guaranteed under Article 19 of the Constitution.

102. Before we proceed to analyse any further, it would be apposite to reproduce Article 13 of the Constitution of India to answer the

point under consideration. Article 13 of the Constitution reads thus:-

> "13. Laws inconsistent with or in derogation of the fundamental rights.— (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
>
> (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
>
> (3) In this article, unless the context otherwise requires, —
>
> **(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;**
>
> (b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
>
> (4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."
>
> (emphasis supplied)

103. The tenor of Article 13 clearly suggests that it was not enacted to restate the obvious proposition that all statutory laws are "laws" in any legal system. For, it requires no restatement that laws enacted by the legislature are "laws". The underlying purpose of

defining "law" under Article 13 is to encompass a practical administrative reality that there can be laws other than ordinary statutory laws. It, therefore, takes within its sweep those matters (declaration in the form of Byelaws in this case) as having the "force of law" *albeit* not enacted by the legislature as such.

104. For, it defines "law" to include ordinances, orders, byelaws, rule, regulation or notification issued/made by the State. The precise meanings of these terms cannot be confined in the rigidity of language and the same is neither desirable nor required in the present case.

105. The examination revolves around the expression "***having in the territory of India the force of law",*** irrespective of the packaging in which the said provision is formally couched. The text impels us to focus on the substance of the provision, and not its form. Broadly speaking, law made by State refers to a body of rules which shapes the rights and liabilities of persons in a universal sense as opposed to a private transaction between parties. Such law has the ability to bind people by providing for all prominent aspects of their conduct as the subjects of law. Therefore, any

rule/notification/order/byelaw issued/made by the State or its instrumentalities would have the force of law and bind all entities subjected to it and operates as a code of conduct to regulate their functioning. Yet another crucial characteristic would be enforceability in a court of law. Needless to observe, we are not talking about binding codes or set of rules decided by parties for themselves as they fall under the realm of law of contract. We are dealing with rules which flow from the instrumentality of the "State" during the performance of essential public functions.

106. CBSE, despite being packaged as a registered society, is performing an essential public function for the government since its establishment in 1929. In ***Binny Ltd. & Anr. vs. V. Sadasivan & Ors.***[32], this Court laid down certain characteristics of public functions thus:

> "11. ...It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative

32 (2005) 6 SCC 657

Action (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus:

> **"A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.** Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides 'public goods' or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing.
>
> Public functions need not be the exclusive domain of the State. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, **it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'.** Non-governmental bodies such as these are just as capable of abusing their powers as is Government.""
>
> (emphasis supplied)

The principles associated with a public function deducible from the above analysis can be illustratively culled out as follows:

a. Extension of collective benefit to public by a public authority;

b. Participation in social or economic affairs including health, education, social services etc.;

c. Private bodies or charitable institutions performing public functions could also be regulated in the same manner as a public authority.

In the school education structure as we have it, there are state government boards limited to respective states. There are central boards having its area of operation throughout India, namely, Council for the Indian School Certificate Examinations (ICSE), a private board; International Baccalaureate (IB), formerly known as International Baccalaureate Organization (IBO) a non-profit foundation/organization having headquarter in Geneva, Switzerland; and CBSE.

107. CBSE is the only central body for conducting examinations in the country created by a resolution of the Central Government. All the bodies constituted at various levels are working in the direction of just educational governance. Article 41 of the Constitution, couched as a directive, is the source behind the basic functioning of

the CBSE Board as it secures nothing but right to education. It is participating in educational affairs which form an intrinsic part of social affairs. The CBSE Board is a public authority functioning in public interest for the performance of a public function.

108. We may gainfully refer to the Constitution of the Board which reaffirms the public character of the Board as the ultimate control over the functioning of the Board is exercised by the Ministry of Education (now Ministry of Education & Social Welfare)[33]. Article 1 states that:

> "1. The Board shall conduct examinations at the secondary stage of the education and such other examinations as it may consider fit, subject to the approval of the Controlling Authority or as it may be called upon to conduct by the Government of India, Ministry of Education, (now Ministry of Education & Social Welfare) and do such acts ancillary to the objects as may be necessary."

Article 4 further reads thus:

> "4. The Secretary to the Government of India, Ministry of Education (now Ministry of Education and Social Welfare) shall continue to be the Controlling Authority of the Board."

109. Reverting to the CBSE Examination Byelaws, the same are couched in the form of a code. They provide for all essential aspects relating to formal education of a student including

33 Now known as "Ministry of Human Resource Development"

admission, examination, migration, transfer, curriculum, fee for various services, issuance of verified certificates, modifications in certificates etc. This Byelaws, therefore, bind the parties and are duly enforceable in a court of law, even by way of writ remedies as we have seen in the present batch of petitions.

110. To put it differently, the Byelaws of the Board have the force of law and must be regarded as such for all legal purposes. It would serve no meaningful purpose to hold these authoritative set of rules originating from an instrumentality of the State as mere contractual terms despite there being overwhelming public interest in their just application.

111. The argument that Byelaws of the Board are contractual elements as CBSE is a registered society unbacked by a statute cannot be accepted for at least four reasons – *first*, CBSE is not a private corporate body. It is a juristic person and a "State" within the meaning of Article 12, which in itself warrants its amenability to the courts including constitutional writ courts; *second*, the functions performed by the CBSE Board are public functions and not private functions; *third*, the test of "force of law" takes within its

sweep the nature of rule, its authoritative impact on the subjects, nature of function performed by the rule making body, the origin of the body, the binding value of the rules, existence of any competing set of rules and *fourth*, absence of statute does not automatically render the rules to be contractual terms, as already observed.

112. As in the ultimate analysis, the Byelaws operate as law, the scrutiny of this Court cannot be undermined by giving them an artificial colour. For a student enrolled with the CBSE, there is no other body of rules but the subject Byelaws for dealing with all significant aspects of her education. By now it is an established tenet that even body corporates, co-operative societies, registered societies etc. can be declared as instrumentalities of the State, for the only reason that the outer form of organization must not be allowed to defeat the ultimate constitutional goal of protection of fundamental rights as and when they suffer at the hands of the State, directly or indirectly. The Court ought to intervene with circumspection even when the public body derives its authority from a government resolution.

113. We say so because there is an evolving body of jurisprudence enunciating that the principle of presumption of constitutionality attached with statutes ought not to be extended to subordinate legislations with the same vigour. For, the legislature enjoys the sacred backing of people's will and naturally, every act of legislature is presumed to be constitutional. In other words, the Courts generally do not look upon duly enacted laws with suspicion at the first glance as they enjoy legal presumption of its validity. Nevertheless, circumspect intervention on the part of the Court is to advance constitutional protection for guarantees under Part-III of the Constitution.

114. Arguendo, the Examination Byelaws are not "law" under Article 13, it would not affect the power of the Court to scrutinize them in reference to Part-III of the Constitution of India as CBSE is "State" within the meaning of Article 12 and all its actions are consequently subject to Part-III.

Point No. 2

115. The question whether Byelaws under consideration impose reasonable restrictions on the exercise of rights under Article 19 of the Constitution of India, may have to be understood in the context of enunciation of this Court that the core existence of an individual is not exemplified by her outer characteristics but by her inner self-identification and also about the significance of the acquired identity in the form of name. The identity of an individual is one of the most closely guarded areas of the constitutional scheme in India. The sanctity of identity has been recognized by this Court in a plethora of cases including ***National Legal Services Authority vs. Union of India & Ors.***[34], ***Navtej Singh Johar & Ors. vs. Union of India through Secretary, Ministry of Law and Justice***[35] and ***K.S. Puttaswamy and Anr. vs. Union of India & Ors***[36]. In fact, in ***Navtej Singh Johar***[37], the Court noted how the core existence of an individual is not exemplified by her outer characteristics but by her inner self-identification. In the context of

34 (2014) 5 SCC 438
35 (2018) 10 SCC 1
36 (2017) 10 SCC 1
37 supra at Footnote No.35

natural identity of an individual, this Court in ***Navtej Singh Johar***[38] had noted that:

> "5. The natural identity of an individual should be treated to be absolutely essential to his being. What nature gives is natural. That is called nature within. Thus, that part of the personality of a person has to be respected and not despised or looked down upon. The said inherent nature and the associated natural impulses in that regard are to be accepted. Non-acceptance of it by any societal norm or notion and punishment by law on some obsolete idea and idealism affects the kernel of the identity of an individual. ***Destruction of individual identity would tantamount to crushing of intrinsic dignity that cumulatively encapsulates the values of privacy, choice, freedom of speech and other expressions.*** It can be viewed from another angle. An individual in exercise of his choice may feel that he/she should be left alone but no one, and we mean, no one, should impose solitude on him/her."
>
> (emphasis supplied)

116. Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely "for all times". Such control would inevitably include the aspiration of an individual to be recognized by a different name for a just cause. Article 19(1)(a) of the Constitution provides for a

38 supra at Footnote No.35

guaranteed right to freedom of speech and expression. In light of ***Navtej Singh Johar***[39], this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.

117. Having recognized the existence of this right, the essential question pertains to the rights that flow due to the change of name. The question becomes vital because identity, as stated above, is a combination of diverse set of elements. ***Navtej Singh Johar***[40] dealt with "natural identity" and here we are dealing with name, which can only be perceived as an 'acquired identity'. Therefore, the precise scope of right and extent of restrictions could only be determined upon deeper examination.

118. To begin with, it is important to explain what we understand by this right to change of name as a constituent element of freedom of expression of identity. Any change in identity of an individual has to go through multiple steps and it cannot be regarded as complete without proper fulfilment of those steps. An individual

39 supra at Footnote No.35
40supra at Footnote No.35

may self-identify oneself with any title or epithet at any point of time. But the change of identity would not be regarded as formally or legally complete until and unless the State and its agencies take note thereof in their records. Afterall, in social sphere, an individual is not only recognized by how an individual identifies oneself but also by how his/her official records identify him/her. For, in every public transaction of an individual, official records introduce the person by his/her name and other relevant particulars.

119. Thus, the essential question is whether the aforesaid right to alter name would mean that the State and its agencies are unconditionally bound to reckon the changed identity of the individual and give recognition to the same by altering its records, whenever such request is made by him/her.

120. Going by the very nature of rights under Article 19, the right to get changed name recorded in the official (public) records cannot be an absolute right and as a matter of public policy and larger public interest calls for certain reasonable restrictions to observe consistency and obviate confusion and deceptive attempt.

121. We may now examine whether CBSE Byelaws are just and reasonable restrictions in the context of rights guaranteed under Part-III and in the interests of the general public.

122. The test of reasonableness requires that the impugned law is intelligently crafted in such a manner that it is able to justify the ultimate impact of the law on its subjects. If it restricts, it must restrict on the basis of reason and if it permits, it must permit on the basis of reason. Similarly, if a law draws a classification, it must classify intelligently i.e., backed by reason. Reason is the foundation of all laws and their validity is immensely dependent on the availability of sound reason. Equally crucial is the availability of a legitimate object. It is important to note that reasonableness is adjudged in the specific context of the case and is not confined to the words of a definition. In ***Om Prakash & Ors. vs. State of U.P. & Ors.***[41], this Court noted thus:

> "32. The concept of "reasonableness" defies definition. Abstract definition like "choice of a course which reason dictates" as propounded in the earliest case of this Court in Chintamanrao[42] is elastic. In the subsequent case of V.G. Row[43] therefore, this Court has observed that "no abstract

41 (2004) 3 SCC 402
42 Chintamanrao vs. State of M.P., AIR 1951 SC 118
43 The State of Madras vs. V.G. Row, AIR 1952 SC 196

> standard or general pattern" of reasonableness can be laid down as applicable to all cases. Legal author Friedmann in his book Legal Theory, 4th Edn., at pp. 83-85, comments that reasonableness is an expression used to convey basically the natural law ideal of "justice between man and man". The concept of "reasonable man" is also an application of the principles of natural justice to the standard of behaviour expected of the citizen. The functional and conceptual implication of the term "reasonableness" is that it is essentially another word used for public policy. It means the application of the underlying principles of social policy and morality to an individual case. Friedmann further observes that the "test of reasonableness is nothing substantially different from 'social engineering', 'balancing of interests', or any of the other formulas which modern sociological theories suggest as an answer to the problem of the judicial function"."

In ***V.G. Row***[44], the Court, noting that there can be no general pattern of reasonableness, laid down certain factors to be kept in mind while determining this question thus:

> "(15) …It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. ***The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.*** …"
>
> (emphasis supplied)

123. As noted above, the Byelaws permit change of name only if permission from the Court has been obtained prior to the

44 supra at Footnote No.43

publication of result. It puts a clear embargo on any change of name *sans* prior permission before the publication. The provision is problematic on certain counts. Firstly, it is not a mere restriction on the right, it is a complete embargo on the right post publication of result of the candidate. It fails to take into account the possibility of need for change of name after the publication of result including the uncertainty of timeline required to obtain such declaration from the Court of law due to law's delay and upon which the candidate has no control whatsoever. Whereas, while amending the Byelaws in 2007, the CBSE itself had noted that children are not of mature age while passing school examinations and they may not be in a position to decide conclusively on issues concerning their identity. The Byelaws completely overlook this possibility when it ordains seeking declaration from the Court prior to the publication of results of the concerned examination conducted by it.

124. The overriding state interest, as per the Board, to retain this stringency is nothing but efficiency of administration. Administrative efficiency, despite being a crucial concern, has not

been and cannot be elevated to a standard that it is used to justify non-performance of essential functions by an instrumentality of the State. To use administrative efficiency to make it practically impossible for a student to alter her identity in the Board certificates, no matter how urgent and important it is, would be highly disproportionate and can in no manner be termed as a reasonable restriction. Reasonableness would demand a proper balance between a student's right to be identified in the official (public) records in manner of her choice and the Board's argument of administrative efficiency. To sustain this balance, it would be open to the Board to limit the number of times such alterations could be permitted including subject to availability of the old records preserved by it as per the extant regulations. But to say that post the publication of examination results and issuance of certificates, there can be no way to alter the record would be a case of total prohibition and not a reasonable restraint.

125. The limitation as regards maximum period upto which changes can be permitted also requires a different approach. Upon receiving the certificates, the student would naturally be put to

notice of the particulars of certificates. Due to young age and inadvertence including being casual and indolent, a student may fail to identify the errors or to understand the probable impact of those errors and accordingly, may not apply for rectification immediately. It is also possible that a student may not have to use the certificates immediately after passing out and by the time she uses them, the limitation period for correction may elapse. Therefore, a realistic time for permitting corrections is very important. Indeed, it can be commensurate with the statutory or mandatory period upto which CBSE is obliged to preserve its old record.

126. However, we need not explore upon the question as to whether the exercise of a fundamental right can be foreclosed by prescribing a rigid period of limitation. In case of any ordinary civil rights, it is important that the action for enforcement of such rights is initiated in prescribed time and consistency is maintained, but is it permissible to say the same about fundamental rights? The rights which are recognised as fundamental under the Constitution are "preferred or chosen freedoms" and a very sensitive and realistic

approach has to be taken in such matters. We wonder whether after the lapse of prescribed time, let us say 3 years, there could be no reasonable and legitimate circumstances to warrant change of name.

127. At the same time, there is merit in CBSE's argument that frequent changes cannot be permitted as there is scope of abuse and misuse, apart from administrative burden. This argument cannot be lightly brushed aside. We deem it fit to observe that same concerns could apply to other bodies as well, like Unique Identification Authority of India[45] and Passport Authority.

128. As regards the argument of misuse, no doubt, there are instances of misuse of provisions that permit change of identity in criminal matters. However, mere possibility of abuse cannot deter the Board from fulfilling their essential functions. A possibility of abuse cannot be used to deny legitimate rights to citizens. The balance simply does not tilt in favour of such a proposition. The course of law cannot choose to change its stream merely because there are apprehensions of abuse on the way. The Board's concern

45 for short, "UIDAI"

is only to regulate and maintain efficient educational standards. It is not a penal authority. If any of the provisions of Byelaws are subjected to misuse or abuse by anyone, the Board would be well within its rights to approach the appropriate body for necessary penal or civil action. As a nodal agency made for a specific public purpose, CBSE can only use its means and resources to put proper safeguards in place while performing its functions. More so, when it is not even the job of the Board to verify anything, as changes are made after grant of permission by a Court of law. There is involvement of judicial application of mind. The Board only has to give effect to the Court order granting permission, as and when it is so pronounced irrespective of publication of examination results in earlier point of time.

129. Administrative efficiency, we must note, cannot be the sole concern of CBSE. Every institution desires efficiency in their functioning. But it does not mean that efficiency is achieved by curbing their basic functions. Article 9 of CBSE's Constitution, in point (xvi), instructively states that CBSE is a body constituted for

"regulating and maintaining" the standard of secondary education. The same is reproduced again for ready reference:

> "9. The Board shall have the following powers:-
> xxx xxx xxx
>
> (xvi) To do all such or other things as may be necessary in order to further the objectives of the Board as a ***body constituted for regulating and maintaining the standard of secondary education***."
>
> (emphasis supplied)

The terms "regulation" and "maintenance" are terms of very wide import and signify that the functioning of the Board is not narrowed down in any manner whatsoever. Regulation of standard of education would empower the Board to take all necessary steps, as permissible under the Resolution and Regulations, to control all possible aspects of school education that may have a bearing on its standard. Quality of curriculum, services extended to the students, effective grievance redressal mechanism, oversight over affiliated schools etc. are some of the essential elements touching upon the standard of education. Maintenance of those standards would demand constant upgradation of rules and services of the Board in tune with changing needs of the students and the ultimate goal of education.

130. One of the primary functions of the Board is to grant certificates to its students. Effective maintenance and regulation of standard of education would include complete accountability of the Board in grant of such certificates and its duty does not get extinguished after publication of examination results and issue of certificates. Rather, it extends to taking care of post-publication concerns of students as and when they emerge, as students seek to use their certificates for purposes of higher education and career opportunities. A narrow reading of the functions of the Board would leave glaring gaps in the field of school education and may jeopardize the welfare of students with legitimate concerns.

131. The concerned Byelaw has been framed on the assumption that there can be no situation wherein a legitimate need for change of name could arise for a student after publication of results. It is presumed that only typographical/factual errors could come in the certificates and they can be corrected using the provision for corrections. The presumption, we must note, is erroneous, absurd and distances itself from the social realities. There can be numerous circumstances wherein change of name could be a

legitimate requirement and keeping the ultimate goal of preserving the standard of education in mind, the Board must provide for a reasonable opportunity to effect such changes.

132. It would not be out of place to note that the two parties here – the Board and students – are not in an equal position of impact. In other words, the balance of convenience would tilt in favour of students. For, they stand to lose more due to inaccuracies in their certificates than the Board whose sole worry is increasing administrative burden. The obligation of Board to take additional administrative burden is no doubt onerous but the propensity of a student losing career opportunities due to inaccurate certificate is unparalleled. Illustratively, a juvenile accused of being in conflict with the law or a victim of sexual abuse whose identity gets compromised due to lapses by media or the investigative body, despite there being complete legal protection for the same, may consider changing the name to seek rehabilitation in the society in exercise of her right to be forgotten. If the Board, in such a case, refuses to change the name, the student would be compelled to live with the scars of the past. We are compelled to wonder how it

would not be a grave and sustained violation of fundamental rights of the student. In such circumstances, the avowed public interest in securing rehabilitation of affected persons would overwhelm the Board's interest in securing administrative efficiency. In fact, it would be against the human dignity of the student, the protection whereof is the highest duty of all concerned. A Board dealing with maintenance of educational standards cannot arrogate to itself the power to impact identity of students who enrol with it. The right to control one's identity must remain with the individual, subject, of course, to reasonable restrictions as observed above and as further discussed later.

133. The utility of certificates issued by the Board is not confined to educational purposes anymore. They serve a social purpose today and are often used to cross verify particulars like name and date of birth while applying for other government identity documents. They assume immense relevance while applying for various jobs, both public and private. Interestingly, CBSE itself has argued at length on the importance and authoritative value of their certificates. In such circumstances, an inaccuracy or denial of change could be

fatal to a student's future prospects and all these concerns cannot be brushed aside in the name of administrative exigencies.

134. Pertinently, the Parliament is also alive to the social realities having bearing on identity documents. There are various statutory enactments wherein detailed provisions are made for change of identity. The UIDAI allows changes in the Aadhar card upon fulfilment of required conditions. Section-31 of Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 provides for changes in the records. The provision permits both demographic and biometric changes. It reads thus:

> "**31. Alteration of demographic information or biometric information.**— (1) In case any demographic information of an Aadhaar number holder is found incorrect or changes subsequently, the Aadhaar number holder shall request the Authority to alter such demographic information in his record in the Central Identities Data Repository in such manner as may be specified by regulations.
>
> (2) In case any biometric information of Aadhaar number holder is lost or changes subsequently for any reason, the Aadhaar number holder shall request the Authority to make necessary alteration in his record in the Central Identities Data Repository in such manner as may be specified by regulations.
>
> (3) On receipt of any request under sub-section (1) or sub-section (2), the Authority may, if it is satisfied, make such alteration as may be required in the record relating to such Aadhaar number holder and intimate such alteration to the concerned Aadhaar number holder.

> (4) No identity information in the Central Identities Data Repository shall be altered except in the manner provided in this Act or regulations made in this behalf."

Schedule II attached with Aadhar (Enrolment and Update) Regulations, 2016 provides for the list of documents acceptable for the purpose of verification of identity when a request for changes is made. Proof of Identity could be verified on the basis of following documents[46]:

a. Passport;

b. PAN Card;

c. Driving License;

d. Voter ID

For proof of date of birth, following documents[47] are acceptable:

a. Birth certificate;

b. Passport;

c. Certificate of date of birth issued by Group A Gazetted Officer on letterhead.

The UIDAI website also notes why such changes could be required and we feel it relevant to reproduce the same thus:

46 List is merely illustrative, not exhaustive.
47 List is merely illustrative, not exhaustive.

"Demographic data update, the need could arise from:

- ***Changes in life events such as marriage may lead to residents changing their basic demographic details such as name and address. Address and mobile number could also change due to migration to newer locations. Residents may also want changes in their relative's details due to changes in life events such marriage, death of a relative etc. In addition, residents could have other personal reasons to change their mobile number, email address etc.***
- Changes in various service delivery platforms may lead residents to declaration request changes and to add mobile number to CIDR etc.
- Errors made during the enrolment process wherein the resident's demographic data may have been captured incorrectly. Changes to "DoB/Age" and "Gender" fields are expected primarily due to enrolment errors.
- Since a resident can enrol anywhere in India, it may happen that a native speaker of language "A" is enrolled by an operator of language "B" and consequently the resident's local language of enrolment is "B". Later, the resident may want to change the local language of enrolment to another that he/she prefers. If so, then all the demographic information that is printed on the Aadhaar letter will need to be updated in the new local language.
- UIDAI may also ascertain availability of POI, POA and other documents collected at the time of enrolment/update and its quality and decide to notify resident to update their demographic information and submit the required document."

(emphasis supplied)

Apart from changes required due to marriage, migration, death etc., the authority takes into account the need for permitting changes due to "personal reasons". The underlying idea is to ensure

accuracy of record whilst ensuring free exercise of control by an individual over her identity.

135. Similarly, Section 24 of the Passports Act, 1967 read with the Passport Rules, 1980 permit change of name and date of birth on the basis of certain documents. The Ministry of External Affairs[48] permits change of name and other information, including signature, of the passport holder as a part of its passport services. It allows change of name under three categories:

> "**Change of name may be allowed to the applicant in the following events:**
>
> 1. Following marriage, divorce or Remarriage or
> 2. Adding surname (childhood to adulthood) or
> 3. Change of complete name."

It permits such changes on the basis of certain documents which are listed as:

> "**<u>Documents required</u>**
>
> (i) Prescribed Deed Poll
>
> (ii) Original newspaper cutting announcing the change of name published in two leading daily newspapers (in the areas of residence & permanent residence) – in Indian & local Newspaper
>
> (iii) The applicant has to furnish a Sworn Affidavit(s) for the purpose quoting the reason for name change."

48 for short, "MoEA"

The Ministry also permits change in signature on the Passport upon fulfilment of certain conditions which read thus:

> "**Change of Signature**
>
> For changing signature in the passport, application for new passport has to be made and the applicant must append his / her old signature along with new signature on the second page of the passport application form along with the following documents.
>
> Requirements:
>
> 1. Application form should be completely filled in and signed.
>
> 2. 4 (four) passport size (35 mm x 45 mm) identical photographs showing frontal view of full face with white background.
>
> 3. The current passport having valid visa or residence permit is required to be enclosed. In case the latest passport is additional booklet(s) issued to the original passport, the additional booklet(s) plus the original passport must be furnished."

Furthermore, the Ministry also permits change of appearance in its records if it has changed significantly over time, thus:

> **"Change in appearance**
>
> If your appearance has changed significantly since your last passport was made, you can apply for a fresh passport with a recent photograph."

136. What emerges from the above analysis is that the government(s) is cognizant of its duty to upgrade its identity records in tune with changing requirements of the citizens. From reasons purely personal to reasons flowing from life events such as

marriage, death or migration, the authorities are responsive to the changing needs of citizens. As per the nature of identity, changes are permissible. In light of the clear dicta in ***National Legal Services Authority***[49]and ***K.S. Puttaswamy***[50]**,** it is bounden duty of all state instrumentalities to play the role of enablers in the exercise of rights by the citizens, including to correct their records owing to purely personal choices of the citizens. For instance, "gender" is an evolving concept which could warrant changes in identity documents. In such cases, too much insistence on disclosure of reasons could be invasive to privacy. Though, in an ultimate analysis, this exercise of examining the reasons has to be left to the court of law empowered to permit changes in a specific factual scenario.

137. No doubt, it is true that CBSE certificates are not strictly meant to be considered as identity documents, however, the same are being relied upon for corroborative purposes in all academic and career related transactions as foundational document. In fact, the CBSE itself has conceded to this fact that their certificates are

49 supra at Footnote No.34
50 supra at Footnote No.36

relied for all official purposes, as noted above. The date of birth in matriculation certificate, in particular, is relied upon as primary evidence of date of birth of a citizen. Therefore, as regards the information contained in a CBSE certificate, the Board must afford opportunity to the students to modify it subject to complying with requisite formalities which are reasonable in nature. If all other State agencies could allow it for the preservance of consistency and accuracy, alongside being enablers in free exercise of rights by the citizens, there is no reason for the CBSE to not uphold that right of the students. More so, it would be in the interest of CBSE's own credibility that their records are regarded as accurate and latest records of a student worthy of being relied upon for official purposes. Therefore, this approach would serve twin purposes – enabling free exercise of rights and preservance of accuracy.

138. We must, however, note that the justiciability of the requested changes can of course be gone into. Every agency has its own method of verification while accepting or rejecting changes in their records. For instance, some agencies use sworn affidavits for carrying out changes, some agencies require prior permission by a

court of law. The CBSE itself uses the same mechanism – prior permission by court of law and publication in official gazette. We may discuss the relevance of prior permission by court in deciding the questions of justiciability and genuineness of requested changes at a later stage.

139. Law gives no recognition to an act of shunning essential duties by an entity of the State. There is a settled body of cases which expounds that a body entrusted with essential public functions cannot unduly put fetters on its powers. In ***Indian Aluminium Company***[51], this Court noted the proposition thus:

> "12. This case was followed by Russell. J. in York Corporation v. Henry Leetham & Sons Ltd.[52]. There, the plaintiff-corporation was entrusted by statute with the control of navigation in part of the rivers Ouse and Fose with power to charge such tolls within limits, as the corporation deemed necessary to carry on the two navigations in which the public had an interest. The corporation made two contracts with the defendants under which they agreed to accept, in consideration of the right to navigate the Ouse, a regular annual payment of £600 per annum in place of the authorised tolls. The contract in regard to navigation of the Fose was on similar lines. It was held by Russell, J. that the contracts were ultra vires and void because under them the corporation had disabled itself, whatever emergency might arise, from exercising its statutory powers to increase tolls as from time to time might be necessary. The learned Judge, after citing Ayr Harbour's case[53] and another case Straffordshire and

51 supra at Footnote No.6
52 (1924) 1 Ch 557
53(1883) 8 App 623

Worcestershire Canal Navigation v. Birmingham Canal Navigation[54] observed:

> ***The same principle underlies many other cases which show the incapacity of a body charged with statutory powers for public purposes to divest itself of such powers or to fetter itself in the use of such powers.***
>
> 13. Finally Lord Parker, C.J. said in Southend-on-Sea Corporation v. Hodgson (Wickford) Ltd.[55]:
>
> ***There is a long line of cases to which we have not been specifically referred which lay down that a public authority cannot by contract fetter the exercise of its discretion.***"
>
> (emphasis supplied)

Similar proposition is enunciated in ***J.K. Aggarwal***[56] In the context of CBSE, the Delhi High Court in ***Dhruva Parate***[57] noted how CBSE has created self-imposed restrictions in its Byelaws by permitting no change of name. The Court deprecated this exercise of discretion and noted thus:

> "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."

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54 1866 LR 1 HL 254
55 1961 2 All ER 46
56 supra at Footnote No.7
57 supra at Footnote No.4

In light of the above discussion, we must note that there are no restrictions on the power of CBSE to permit change of name. The Constitution, Resolution and Regulations are functional documents of the Board and none of these documents provide for any such fetters. Therefore, in the exercise of its discretion, the Board cannot put fetters on its duties so as to cause grave prejudice to the students with legitimate causes for changing their certificates. The exercise of discretion in this negative manner would be arbitrary and unreasonable, at best.

140. We, thus, hold that the provision regarding change of name "post publication of examination results" is excessively restrictive and imposes unreasonable restrictions on the exercise of rights under Article 19. We make it clear that the provision for change of name is clearly severable from those for corrections in name/date of birth and therefore, our determination shall not affect them except as regards the condition of limitation period, in terms of the aforesaid discussion and guidelines stated later.

141. Let us now understand the journey of examination byelaws from 1995 to 2018, as they sailed through multiple amendments over the course of time.

142. We may begin with Byelaws which were in force upto 2007 i.e., upto the 2007 amendment. Byelaw 69 dealt with "Changes in Board's Certificate" wherein Byelaw 69.1 covered "Changes and Corrections in Name" and 69.2 covered "Change/Correction in Date of Birth". On an understanding of the language adopted in the Byelaws, we must note at the very outset that the terms "correction" and "change" are not used interchangeably in the Byelaws. Whereas, the term "correction" denotes spelling errors, factual errors or typographical errors and the term "change" denotes a complete change of name. For ready reference, a summary of the development of Examination Byelaws can be tabulated as follows:

CBSE EXAMINATION BYELAWS						
	Correction in candidate's name	**Correction in names of candidate's father/mother**	**Change of candidate's name**	**Change in names of candidate's father/mother**	**Change/correction in candidate's date of birth**	**Time period**
Before 2007 Amendment	Permitted to make it consistent with school record.	Permitted to make it consistent with school record.	Alteration/addition/deletion permitted to make it different from school record upon fulfilment of two conditions – permission by court of law and notification in government	Alteration/addition/deletion permitted to make it different from school record upon fulfilment of two conditions – permission by court of law and notification in government	No change in date of birth permitted. Only corrections permitted to make it consistent with school records.	**For correction in name**- No limitation. **For D.o.B.**- within 2 years of declaration of result.

			gazette.	gazette.		
Post 2007 Amendment	Permitted to make it consistent with school record.	Permitted to make it consistent with school record.	No change in name/surname permitted.	No change in name/surname permitted.	Same as before.	**For name**- within 10 years of declaration of result. **For D.o.B.**- same as before.
Post 2011 Amendment	Same as before.	Same as before.	Can be considered on written request of candidate/father/mother duly forwarded by Head of the Institution.	Can be considered on written request of candidate/father /mother duly forwarded by Head of the Institution.	Same as before.	**For change of name**- within 10 years of declaration of result.
Post 2015 Amendment	Permitted to make it consistent with school record but only within one year of result.	Permitted to make it consistent with school record but only within one year of result.	Can be considered upon fulfilment of two prior conditions ***before publication of result of candidate*** – permission by court of law and gazette notification.	No change in name of father/mother of candidate permissible.	Same as before. Only time was reduced to one year after declaration of result.	**For correction of name**- within 1 year of declaration of result. **For D.o.B.**- within 1 year of declaration of result.
Post 2018 Amendment	Same as before. Time limit changed to five years after declaration of result.	Same as before. Time limit changed to five years after declaration of result.	Same as before. Caption made mandatory for showing the changed information in certificate.	Change in name of father/mother permitted with same conditions as applicable in case of change of name of candidate.	No change in date of birth permitted. Two categories of corrections permitted – as per school records and as per court orders.	**For correction of name**- within 5 years of declaration of result. **For D.o.B**.- within 5 years of declaration of result.

143. The aforesaid table depicts that there is hardly any consistency in the Examination Byelaws operating during the relevant period, either in the scope of permissible changes or in the timelines provided for effecting such changes. Presumably, drawing upon experiences and judicial pronouncements, the Board had to carry out frequent amendments in the Byelaws, sometimes to do a

somersault and go back to the earlier position. By and large, the impression gathered from the above tabular analysis is that the Board has been groping in the dark without having an all-purpose long term objective policy in place as regards permissible changes.

EXAMINATION OF VALIDITY OF BYELAWS

144. At the outset, we note that there are certain characteristics of changes that students usually apply for being recorded in their certificates. Change of name of the student/father/mother, correction in name of the student/father/mother and correction in date of birth are the primary ones. All these changes cannot be weighed with the same scale. Even in the Byelaws, all these changes are not subjected to the same set of restrictions/conditions and different changes are circumscribed by different conditions.

145. The conditions regarding "correction" in name or date of birth are not as stringent as conditions applicable to change thereof. For correction in name, the 2018 Byelaws provide for a limitation period of five years and permit such corrections that can be characterized as typographical, factual or spelling mistake in comparison with

school records. Understandably, a correction would mean retention of the original record with slight modification to make it consistent with the school records. This requirement of modification could be born out of various reasons, namely typographical mistake at the time of publishing, spelling error or factual error i.e., an error of fact as it existed at the time when the certificate was published. Thus, correction in name is done to bring unanimity between the school records (as they existed at the time of sending information to the Board) and CBSE certificates. However, if school records are altered afterwards and Board is called upon to alter its certificates in light of the updated school records, the same cannot be termed as correction *per se* but would be in the nature of recording change. Therefore, substantially deviating from a "correction", the Byelaws provide for an option to "change" the name, which is subject to different conditions.

146. Similar provision is available for "correction" in date of birth, either on the basis of school records or on the basis of order of court. The word "change" is not used for date of birth as, unlike name, there can only be one date of birth and there can only be a

correction to make it consistent with school record or order of Court. It cannot be changed to replace the former with a fresh date of one's choice. Be it noted, provisions relating to correction in date of birth and name are just and reasonable and do not impose any unreasonable restriction on permissibility of corrections. The restriction regarding limitation period shall be examined later, along with other provisions.

147. The provision for "change" of name is far more stringent and calls for a thorough review to settle the correct position. As per the present law, change of name is permissible upon fulfilment of two prior conditions – prior permission of the Court of law and publication of the proposed change in official gazette. These conditions co-exist with another condition predicating that both prior permission and publication must be done ***before the publication of result***. What it effectively means is that change of name would simply be impermissible after the publication of result of the candidate even if the same is permitted by a Court of law and published in official gazette. In other words, once the examination result of the candidate has been published, the Board would only

permit corrections in name mentioned in the certificate. Further, changing the name out of freewill is simply ruled out.

148. Notably, the cases before us pertain to different periods. As aforesaid, the CBSE byelaws which existed prior to 2007 were different. The summary of the journey of the examination byelaws from 2007 till 2018 has been tabulated hitherto. The distinction between "correction" and "change" was always well-demarcated including prior to 2007. As regards the correction which could mean to carry out modification to make it consistent with school record but when it came to request for change of name of the candidate or his parents, that could be done only after complying with the pre-conditions specified therefor. However, when it came to change in the date of birth that was completely prohibited. Only correction regarding date of birth was permitted to be made consistent with the school record. And for which limitation of two years from declaration of result was specified. The requirement of two years cannot be considered as unreasonable restriction. The candidate and his parents are expected to be vigilant and to take remedial measures immediately after declaration of result of the

candidate. That too for being made consistent with school record. The Board must follow the discipline of continuation of entries in the school record as it is vital for pursuing further and higher education including career opportunities by the candidate. Significantly, the position as obtained prior to 2007 did not provide for any time limit within which correction of candidate's name or of his parents was to be pursued. These restrictions are certainly reasonable restrictions while recognising the enabling power of the Board to alter its record in the form of certificates issued to the candidate concerned to make it consistent with the school records or otherwise.

149. Suffice it to observe that frequent amendments in the Byelaws have been made providing for different dispensations for the relevant period. For the nature of final directions that we propose to issue, it may not be necessary to dilate on the validity of the concerned Byelaw as amended from time to time. Broadly, it can be noted that the Byelaw recognises two different dispensations. First is to carry out modifications in the original certificate on request for making it consistent with the school records of the incumbent. The

second is to incorporate particulars in the original certificate which are different from the school records.

150. Indisputably, the candidate would pursue further education and explore future career opportunities on the basis of school records including the CBSE Board. The CBSE maintains its official records in respect of candidate on the basis of foundational documents being the school records. Therefore, the CBSE is obliged to carry out all necessary corrections to ensure that CBSE certificate is consistent with the relevant information furnished in the school records as it existed at the relevant time and future changes thereto including after the publication of results by the CBSE. However, when it comes to recording any information in the original certificate issued by the CBSE which is not consistent with the school records, it is essential that the CBSE must insist for supporting public document which has presumptive value and in the given case declaration by a Court of law to incorporate such a change. In that regard, the CBSE can insist for additional conditions to reassure itself and safeguard its interest against any claim by a third party/body because of changes incorporated by it

pursuant to application made by the candidate. In the concluding paragraph, we intend to issue directions to the CBSE Board in light of the discussion in this judgment. For the nature of uniform directions that we propose to issue so as to obviate any inconsistent approach in the cases under consideration including future cases to be dealt with by the CBSE Board, it is not necessary for us to dilate on the question of validity of the respective amendments in the relevant Byelaws effected from time to time.

Point No. 3

BINDING VALUE OF PUBLIC DOCUMENTS

151. Whether CBSE is obliged to effect changes in the certificates issued by it upon production of updated public documents (other than school records), is the next issue for consideration. According to the Board, it would not be permissible as it has no independent mechanism to verify the genuineness of the public documents. Even under the Byelaws, there is no requirement for the Board to verify the genuineness of the documents. It is simply not the job of the Board.

152. The Byelaws provide for a two-tier mechanism for recording change of name or other details (as indicated above). One of them is prior permission or declaration by a Court of law to be obtained. As regards public documents like Birth Certificate, Official Gazette, Aadhaar Card, Election Card, etc., the same enjoy legal presumption of its correctness in terms of explicit provisions contained in Chapter V of the 1872 Act. The 1872 Act extends such presumption in terms of Section 76 read with Sections 79 and 80 of the 1872 Act and as in the case of Official Gazette under Section 81 of the same Act. Even other legislations concerning public documents attach equal importance to the authenticity of such documents including while making changes in their certificates to which we have alluded to in this judgment. Understood thus, there is no reason for the CBSE Board to not take notice of the public documents relied upon by the candidate and to record change on that basis in the certificate issued by it, for being consistent with the relied upon public documents. It matters not if the information furnished in the public documents is not entirely consistent with the school records of the incumbent. The CBSE while accepting

those documents as foundational documents for effecting changes consistent therewith may insist for additional conditions and at the same time while retaining the original entry make note in the form of caption/annotation in the fresh certificate to be issued by it while calling upon the incumbent to surrender the original certificate issued by it to avoid any misuse thereof at a later point of time. It would be permissible for the CBSE to insist for a sworn affidavit to be given by the incumbent making necessary declaration and also to indemnify the CBSE. The fresh certificate to be issued by the CBSE may also contain disclaimer of the Board clearly mentioning that change has been effected at the behest of the incumbent in light of the public documents relied upon by him. In addition, the incumbent can be called upon to notify about the change in the Official Gazette and by giving public notice as precondition for recording the change by way of abundant precaution.

153. This Court in ***CIDCO vs. Vasudha Gorakhnath Mandevlekar***[58], has observed that the records maintained by statutory authorities have a presumption of correctness in their

58 (2009) 7 SCC 283

favour and they would prevail over any entry made in the school register. The Court observed thus:

> "18. The deaths and births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. (See Birad Mal Singhvi v. Anand Purohit[59].)"

The same position of law can be extended to the mandate laid down in Right to Education Act and Chapter-3 of the CBSE Byelaws relating to admission of students. Byelaw 6.1 is instructive and relevant extract thereof reads thus:

> "6. Admission: General Conditions:
> 6.1 (a) A student seeking admission to any class in a 'School' will be eligible for admission to that Class only if he:
>
> ....
>
> ....
>
> (iv) produces:
>
> ...
>
> (c) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed, as stipulated in section 14(1) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.
>
> (d) No child shall be denied admission in a school for lack of age proof, as stipulated in section 14(2) of THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009."

59AIR 1988 SC 1796

Therefore, even at elementary education level, there is a clear legislative intent to rely on statutory Birth Certificates for the purpose of date of birth. The authoritative value of these certificates is duly affirmed in this scheme.

154. There is no difficulty in correcting CBSE record to bring it in conformity with the school record. The difficulty arises when a statutory document is not consistent with the school record. As observed earlier, the version supported by statutory documents could be reckoned for the purpose of correction in CBSE certificate to make it consistent with public documents.

155. Post 2018 amendment of Byelaws, even in case of date of birth, corrections are permitted on two basis – to bring in conformity with school records and in pursuance of court order. The relevant provision reads thus:

> "**A. "Correction as per the school records:**
>
> i. Corrections to correct typographical and other errors to make the certificate consistent with the school records can be made provided that corrections in the school records should not have been made after the submission of application form for admission to Examination to the Board.
>
> …
>
> …

B. Correction as per Court Orders.

Applications regarding correction in date of birth of candidates will be considered provided the correction have been admitted by the Court of law. **In cases of correction in date of birth in documents after the court orders caption will be mentioned on the document "CORRECTION ALLOWED IN DATE OF BIRTH FROM _____ TO ___ ON (DATED) ____ AS PER COURT ORDER NO. ____ DATED ____."**

156. When a student applies to a Court of law for prior permission and/or declaration and produces public document(s), the Court would enter upon an inquiry wherein the legal presumption would operate in favour of the public document(s) and burden would shift on the party opposing the change to rebut the presumption or oppose the claim on any other ground. The question of genuineness of the document including its contents would be adjudicated in the same inquiry and the Court of law would permit the desired change only upon verifying the official records and upon being satisfied of its genuineness. At the same time, the question of justiciability of the requested changes would be considered and only upon being satisfied with the need demonstrated by the student, the Court would grant its permission. The said permission can then be placed before the Board along with copy of publication in the official gazette and requisite (prescribed) fee (if any). The Board

would then have no locus to make further enquiry nor would be required to enter upon any further verification exercise.

157. We may now advert to the dictum of the Kerala High Court in ***Subin Mohammed***[60]. The same has been relied upon in most of the impugned judgments for permitting corrections. In that decision, the Court discussed the inadequacies in the Byelaws and issued directions to CBSE to correct date of birth with reference to statutory Birth Certificates provided the request is found to be genuine. The operative directions read thus:

> "41. Hence, to meet the ends of justice, it will be appropriate for this Court to dispose the Writ Petitions with the following directions:
>
> (i) **That CBSE shall correct the entries in the mark sheet of the petitioners with reference to their corresponding birth certificates issued by the statutory authority, if the request is found to be genuine.**
>
> (ii) Genuineness of the birth certificate can be ascertained from the respective local/statutory authority/Head of the Institution or such other method, CBSE may deem it fit.
>
> (iii) CBSE can demand in advance a consolidated fee, including all expenses for processing such applications.
>
> (iv) Each of the petitioners shall pay ₹ 5,000/- (Rupees Five thousand only) as cost to CBSE within a period of one month."
>
> (emphasis supplied)

60 supra at Footnote No.12

Thus, the task of determining genuineness of the request was left to the CBSE, which not only goes contrary to our discussion above but also fails to take into account the limitations of CBSE as a body. While considering requests for changes in certificates, CBSE cannot act as a court and it cannot effectively consider any request over and above those requests that merely require bringing the certificates in conformity with the school records or public documents, as the case may be.

Point No. 4

158. As noticed in the submissions above, there is a conflict of opinion amongst the High Courts as regards the point of time which would determine the applicability of Byelaws. The frequent amendments carried out by the CBSE had made it imperative for the courts to grapple with this question. The immediate question is whether the date of declaration of result or the date of application for changes would be determinative of the applicable Byelaws. While addressing this question, the Delhi High Court in ***Kalpana***

Thakur[61] took the view that the Byelaws existing on the date of application would apply, irrespective of amendment. This view can be discerned from the following paragraphs of the judgment:

> "12.2 In my view, the submission of Mr. Bansal that amended Bye-laws 69.1(i) would apply, is untenable, for a simple reason that the amendment to the said bye-law was notified only on 25.06.2015; a date which falls beyond the date on which the application for change of name was preferred in the instant case. The argument advanced in support of this submission by Mr. Bansal that the Office Order was in place prior to the date of the application, in my view, will not sustain, as the Office Order, is an internal document, which could have no legal validity till the position taken therein is put in public realm. The very fact that a notification in respect of the amended Bye-law was issued by respondent no. 1/CBSE, would show, that the decision to amend bye-law 69.1(i) required a public notice.
>
> 12.3 Consequently, all applications for change of name which are filed prior to notification dated 25.06.2015, will be governed, in my view, by the unamended Bye-law 69.1(i). Therefore, quite logically, the petitioners, in my opinion, would have to be given the reliefs as sought in the writ petition."

Notably, the question before the Court was slightly different. It was only whether the unamended Byelaws would continue to apply if the application was preferred before the date of amendment. Nevertheless, the Kerala High Court in ***Vyshnav***[62] has taken a different view of the matter and observed that the Byelaws existing on the date of passing out would apply. It observed thus:

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61 supra at Footnote No. 26
62 supra at Footnote No. 27

> "5. On an analysis of the said rule and amended provision it is evident that, the first respondent relied on an incorrect provision in order to non-suit the petitioner by rejecting the applications submitted for change of name. Therefore, Exts.P7 and P9 cannot be sustained under law, since the same is violative of the rule provided for the purpose. Petitioner has passed out in the year 2013 and therefore, the law as it stood then has to be taken in to account, since there is no retrospective operation to the amendment. Therefore, I quash Exts.P7 and P9, and direct the first respondent to re-consider the application submitted by the petitioner based on Rule 69(1(i), as it stood before as is specified above."

159. Considered in the context of the Byelaws, the controversy is actually simple in nature. The Byelaws consistently provide that the period of limitation is to be calculated from the date of declaration of the result and issue of certificate. It means that the period of limitation begins to run against the student after declaration of result and publication of certificates as the student is put to notice of the contents of the document, upon its issue. The student can now be said to be in a position to verify the correctness of the certificate(s). The irresistible outcome of this legal position is that the Byelaws existing on the date of such declaration/publication of result and issue of certificate would be relevant for the purpose of effecting changes in the certificates. The express language of the Byelaws would be defeated if we say that

the law existing on the date of application for recording change would be relevant. That would negate the very importance of having a period of limitation for correction of the certificates.

160. If the limitation of applicability of Byelaws was to be reckoned from the date of application for correction/change and not the date of result of the examination conducted by CBSE, we would be leaving things to a state of uncertainty. For, a student who could possibly have surpassed the limitation period under unamended Byelaws would regain the right to change the certificates if the Byelaws existing on the date of application permit so and provide for a longer period. Similarly, a student who had ten years for carrying out changes under the unamended Byelaws would lose her right if Byelaws are amended within the ten-year period so as to provide for a much shorter, say two years, limitation period. Certainty, consistency and predictability are the hallmarks of any legal relationship and it is in the interest of public policy that legal interpretation preserves and protects these hallmarks. This determination, however, is only to state the legal position and may not have any immediate bearing on the cases before us.

161. The CBSE also advanced an argument that no changes can be permitted in its records as there is no fundamental right to claim that changed records be operative since birth and any change must only be prospective and not retrospective. The crux of the argument can be traced from paragraph 23 of ***Rayaan Chawla***[63] which has been relied upon to buttress this submission. It reads thus:

> "23. The legal position that would follow from the above conspectus of the judgments noted and cited by the learned Counsel for the parties is that normally a person would have a right to have his name changed subject to fulfilment of appropriate formalities/procedures to ensure that there is no misuse or confusion created on account of the change in name. The change of name is prospective. …"

Though a well-meaning argument advanced to minimise the possibility of misuse, we are not inclined to accept it as something that could turn the case. The court, in ***Rayaan Chawla***[64], accepted that expression of one's name in the manner of their choice is indeed a fundamental right under Article 19(1)(a), but held that the right is prospective and does not extend to permitting changes in the documents already issued by the Board. It is pertinent to note that once changes are permitted in the documents

63 supra at Footnote No.8
64 supra at Footnote No.8

of CBSE, it does not *ipso facto* mean that the changes are given a retrospective effect. The changes are indeed prospective and to signify that a remedial measure is provided in the Byelaws, as existing presently. They provide for the requirement of adding a caption/annotation with the date of such change along with the changed particulars so as to indicate within the certificate that the changes have been made on a date subsequent to the date of publishing the certificates. The requirement of caption/annotation is indeed a sufficient safeguard to prevent the usage of subsequently altered documents as unchanged original records.

Point No. 5

ISSUANCE OF MANDAMUS IN CONTRAVENTION OF BYELAWS

162. The next issue for consideration is whether it is proper for the High Courts to issue mandamus to the CBSE for correction of certificates in complete contravention of the Byelaws, without examining the validity of the Byelaws. For issuing such directions, reliance has been placed upon ***Subin Mohammed***[65]**,** wherein the

65 supra at Footnote No.12

Court noted that the case does not involve correction of a typographical nature, as permissible in the Byelaws, but went on to uphold the right of the student to apply for changes on the basis of statutory certificate. It observed thus:

> "35. Therefore, we have to proceed on the basis that the bye law of CBSE cannot be applied to the fact situation. But to reconcile the date of birth entry in the mark sheet with that of the entry in the statutory certificate, the candidates should not be left without any remedy. Their right to approach the Court for redressing their grievance cannot be ruled out."

The court then delineated the principles for issuance of writ of mandamus and noted that in the strict sense, a mandamus would not lie but considering the damage that the student could face as regards his career prospects, the permission was granted. In paragraph 39, it noted thus:

> "39. It is contended that the future prospects of the petitioners to study or get employment abroad, will be substantially affected if the entry of date of birth in the mark sheet does not tally with that in the birth certificate. ***Though a writ of mandamus cannot be issued in the strict sense, we are of the view that, failure to exercise jurisdiction may put the petitioners to serious hardship. Hence, to render justice, it is always open for the Court to pass appropriate orders, taking into account the facts and circumstances of each case.*** However, if disputed questions of fact arises, it will not be appropriate for this Court to entertain the matter."
>
> (emphasis supplied)

The law regarding the writ of mandamus is settled. The foremost requirement for issuance of mandamus is the existence of a legal right against a body which is either a public body or a non-public body performing a public function. In ***Binny Ltd.***[66], this Court summed up the principle thus:

> "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,
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> > "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."

66 supra at Footnote No.32

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

In the present case, the question is not whether CBSE was amenable to writ of mandamus or not. For, we have already held the Board being a public body is performing a public function. The question is whether there was an enforceable legal right in favour of students to seek such a direction and whether Byelaws have the force of law and directions can be issued by the court only in conformity thereof.

163. The impugned judgments categorically note that the request for changes could not be permitted as per the Byelaws. Thus, there was no demonstration or inquiry to determine the existence of any legal right in favour of students. Even if we assume that courts issued directions purely on the basis of fundamental rights, there is no discussion or inquiry in this regard. More so, there is no attempt to examine the *vires* of the Byelaws in light of the breach of fundamental rights, as discussed in the initial part of this judgment. Absent any such adverse determination on the validity of the applicable rules, the fundamental principle of rule of law demands that such rules be given their intended effect. Even if a

constitutional Court feels that the case at hand is deserving of an extraordinary remedy, it may do so using its wide powers under Article 226 but only upon specific appraisal of the facts of the case and after duly demonstrating the extraordinary character of the case. Despite holding that the prayers are impermissible under the Byelaws, the Courts in the present set of cases went on to issue directions to the Board without having any regard to the factual circumstances of the case or to the nature of changes sought by the students, by mechanically relying upon the dictum in ***Subin Mohammed***[67]. We must note that ***Subin Mohammed***[68] is not in challenge before us but must be now understood in terms of opinion recorded in this judgment. Our concern is with the manner in which mechanical reliance has been placed upon the earlier decision for deciding cases which involved an altogether different set of changes.

164. Once a Court of law notes that the applicable rules do not permit it to grant a particular relief and it still goes on to grant the relief on sympathetic grounds, such decisions can in no way be

67 supra at Footnote No.12
68 supra at Footnote No.12

treated as precedents. We are constrained to note that following such decision as precedent will be in utter disregard of the well-established principle of *"equity acts in personam"* and, thus, courts cannot deploy equity in *"rem"* by replicating the same order, disregarding the personal characteristics of the case at hand. There can be no application of ***Subin Mohammed***[69] to a different set of facts.

165. The High Courts, being constitutional Courts, are duly vested with the power to review any law in light of Part-III. Despite being called upon to do so, if they choose not to do it, the same cannot be countenanced. There cannot be mechanical directions by way of mandamus to a public authority without going into the veracity of the claims and without sufficiently explaining why the case demands extraordinary treatment.

166. In fact, in ***Md. Sarifuz Zaman***[70], a two-Judge Bench of this Court noted that such exercise of power in itself would be arbitrary. It observed thus:

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69 supra at Footnote No.12
70 supra at Footnote No.16

> "10. ...***People, institutions and government departments, etc. — all attach a very high degree of reliability, near finality, to the entries made in the certificates issued by the Board. The frequent exercise of power to correct entries in certificates and that too without any limitation on exercise of such power would render the power itself arbitrary and may result in eroding the credibility of certificates issued by the Board.*** We, therefore, find it difficult to uphold the contention that the applicants seeking correction of entries in such certificates have any such right or vested right."
>
> (emphasis supplied)

Thus, the Courts need to be extra cautious and alive to the immediate factual position before permitting changes. No two requests for change of name or change in date of birth can be viewed with the same judicial eye. Sometimes, change of name could be a necessity, sometimes it could be a pure exercise of freewill without any need. As long as Byelaws or the applicable rules permit so, there is no occasion for any court to deny such relief. But when Byelaws do not permit for the same, the Court must be circumspect before issuing directions, that too without commenting upon the validity of the Byelaws and without demonstrating the rights which are at stake – constitutional or legal.

167. Before proceeding further, we must briefly note that the dictum of this Court in ***Md. Sarifuz Zaman***[71] has been relied upon by the Board to contend that it prohibits any change in contravention of the Byelaws as it does not recognize any legal right to claim such changes beyond the prescribed conditions. It has also been asserted that ***Md. Sarifuz Zaman***[72] and ***Subin Mohammed***[73] contradict each other. Whether the two judgments are in conflict with each other is an examination that is not called for. For, we have not placed any reliance upon ***Subin Mohammed***[74] for deciding this case and also because ***Md. Sarifuz Zaman***[75] is a judgment of this Court as against ***Subin Mohammed***[76] is a judgment of the Kerala High Court. It requires no reiteration that even if a conflict exists, the judgment of this Court must prevail under all circumstances unless there is another judgment of larger Bench of this Court which takes a different view.

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71 supra at Footnote No.16
72 supra at Footnote No.16
73 supra at Footnote No.12
74 supra at Footnote No.12
75 supra at Footnote No.16
76 supra at Footnote No.12

168. Be that as it may, we must examine the dictum of this Court in ***Md. Sarifuz Zaman***[77]. The case involved a request for correction of clerical nature in date of birth to bring it in conformity with the correct school records. Paragraph 3 notes thus:

> "3. One of the respondents, a student, having taken his education in Government Boys Higher Secondary School, passed the matriculation examination conducted by the Board of Secondary Education, Assam, in the year 1991. Thereafter, he passed higher secondary examination and then BSc examination in the year 1998. When he filed the writ petition, he was undergoing a course of study in computers. At that point of time, on 12-10-1999, he moved an application to the Board complaining that his date of birth was wrongly mentioned in the school records as 30-5-1974, while his actual date of birth was 16-8-1975. The mistaken date of birth, as forwarded by the school, had crept into the admit card issued by the Board. The writ petitioner student pleaded that he did not realise the importance of the correct date of birth being entered into the school records, and therefore, he did not also realise the implications thereof until he was prompted in moving the application. The application moved by the respondent to the Principal of the school, was forwarded by the latter to the Board. The Principal indicated that the age of the respondent was entered as 16-8-1975 in the admission register and other school records, but it was by mistake that while filling the form of the Board examination, the date of birth was wrongly entered as 30-5-1974. The Principal described the mistake as "clerical" and recommended for its correction. As the Board did not take any decision on the application, the respondent filed a writ petition in the High Court."

The Court was considering the Regulations framed under the Assam Secondary Education Act, 1961 which provided for a three

77 supra at Footnote No.16

years' period post the declaration of result for effecting corrections in their certificates. The student approached the Board after the expiry of three years and thus, the primary question before the Court was only whether the three years' period would be enforced as per Regulations or any relaxation could be given. The Court refused to give any relaxation stating that expiry of limitation would extinguish the remedy. In paragraph 12, it notes thus:

> "12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone. There ought to be a limit of time by which human affairs stand settled and uncertainty is lost. Regulation 8 confers a right on the applicant and a power coupled with an obligation on the Board to make correction in the date of birth subject to the ground of wrong calculation or clerical error being made out. A reasonable procedure has been prescribed for processing the application through the Inspector of Schools who would verify the school records and submit report to the Board so as to exclude from consideration the claims other than those permissible within the framework of Regulation 8. Power to pass order for correction is vested on a high functionary like Secretary of the Board. An inaccuracy creeping in at the stage of writing the certificates only, though all other prior documents are correct in all respects, is capable of being corrected within a period of three years from the date of issuance of certificate."

It, then, held the three years' period to be a reasonable time as it is sufficient time for a student to notice any error in her certificates. Paragraph 13 notes thus:

> "13. Three-year period provided by the Regulation, is a very reasonable period. On the very date of issuance of the certificate, the student concerned is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The student would realise within no time that the date of birth as entered in the certificate is not correct, if that be so, once the certificate is placed in his hands. Based on the certificate the applicant would seek admission elsewhere in an educational institution or might seek a job or career where he will have to mention his age and date of birth. Even if he failed to notice the error on the date of issuance of the certificate, he would come to know the same shortly thereafter. ***Thus, the period of three years, as prescribed by Regulation 3, is quite reasonable. It is not something like prescribing a period of limitation for filing a suit. The prescription of three years is laying down of a dividing line before which the power of the Board to make correction ought to be invoked and beyond which it may not be invoked.*** Belated applications, if allowed to be received, may open a Pandora's box. Records may not be available and evidence may have been lost. Such evidence — even convenient evidence — may be brought into existence as may defy scrutiny. The prescription of three years' bar takes care of all such situations. The provision is neither illegal nor beyond the purview of Section 24 of the Act and also cannot be called arbitrary or unreasonable. The applicants seeking rectification within a period of three years form a class by themselves and such prescription has a reasonable nexus with the purpose sought to be achieved. No fault can be found therewith on the anvil of Article 14 of the Constitution."

It can be noticed that apart from a wholly different factual matrix, the Court in ***Md. Sarifuz Zaman***[78] was dealing with a very narrow question of reasonability of the limitation period for correcting clerical mistakes under the umbrella of a statutory law. The Court had no occasion to deal with circumstances wherein a person would

78 supra at Footnote No.16

want to change her name out of her freewill in exercise of her guaranteed fundamental rights under the Constitution. The Court was looking at it as a purely civil transaction and in fact, treated it like one while speaking of how the expiry of limitation would entirely bar the remedy. As already observed above, we reiterate that we see a difference between rights originating under the civil laws and rights considered to be fundamental under the Constitution and protected as such. The exercise of a fundamental right can, at best, be regulated on reasonable grounds but not entirely foreclosed without a strong and legitimate purpose. Except that the dictum in ***Md. Sarifuz Zaman***[79] pertains to the specific facts of its case and also because no prejudice was actually caused to the student in that case (the changes were anyway permitted), we say no more.

CONCLUSION AND DIRECTIONS TO CBSE

79 supra at Footnote No.16

169. Although we have discussed the broad issues canvassed before us, in the ultimate analysis the real dispute requiring resolution is about the nature of correction or change, as the case may be, permissible to be carried by the CBSE at the instance of the student including past student. As noted earlier, broadly, two situations would arise.

170. The first is where the incumbent wants "**correction**" in the certificate issued by the CBSE to be made consistent with the particulars mentioned in the school records. As we have held there is no reason for the CBSE to turn down such request or attach any precondition except reasonable period of limitation and keeping in mind the period for which the CBSE has to maintain its record under the extant regulations. While doing so, it can certainly insist for compliance of other conditions by the incumbent, such as, to file sworn affidavit making necessary declaration and to indemnify the CBSE from any claim against it by third party because of such correction. The CBSE would be justified in insisting for surrender/return of the original certificate (or duplicate original certificate, as the case may be) issued by it for replacing it with the

fresh certificate to be issued after carrying out necessary corrections with caption/annotation against the changes carried out and the date of such correction. It may retain the original entries as it is except in respect of correction of name effected in exercise of right to be forgotten. The fresh certificate may also contain disclaimer that the CBSE cannot be held responsible for the genuineness of the school records produced by the incumbent in support of the request to record correction in the original CBSE certificate. The CBSE can also insist for reasonable prescribed fees to be paid by the incumbent in lieu of administrative expenses for issuing fresh certificate. At the same time, the CBSE cannot impose precondition of applying for correction consistent with the school records only before publication of results. Such a condition, as we have held, would be unreasonable and excessive. We repeat that if the application for recording correction is based on the school records as it obtained at the time of publication of results and issue of certificate by the CBSE, it will be open to CBSE to provide for reasonable limitation period within which the application for recording correction in certificate issued by it may be

entertained by it. However, if the request for recording change is based on changed school records post the publication of results and issue of certificate by the CBSE, the candidate would be entitled to apply for recording such a change within the reasonable limitation period prescribed by the CBSE. In this situation, the candidate cannot claim that she had no knowledge about the change recorded in the school records because such a change would occur obviously at her instance. If she makes such application for correction of the school records, she is expected to apply to the CBSE immediately after the school records are modified and which ought to be done within a reasonable time. Indeed, it would be open to the CBSE to reject the application in the event the period for preservation of official records under the extant regulations had expired and no record of the candidate concerned is traceable or can be reconstructed. In the case of subsequent amendment of school records, that may occur due to different reasons including because of choice exercised by the candidate regarding change of name. To put it differently, request for recording of correction in the certificate issued by the CBSE to bring it in line with the school

records of the incumbent need not be limited to application made prior to publication of examination results of the CBSE.

171. As regards request for "**change**" of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like Birth Certificate, Aadhaar Card/Election Card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

(a) Reverting to the **first category**, as noted earlier, there is a legal presumption in relation to the public documents as envisaged in the 1872 Act. Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as

may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administrative expenses. The CBSE may also insist for issuing Public Notice and publication in the Official Gazette before recording the change in the fresh certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant. The fresh certificate may contain disclaimer and caption/annotation against the original entry (except in respect of change of name effected in exercise of right to be forgotten) indicating the date on which change has been recorded and the basis thereof. In other words, the fresh certificate may retain original particulars while recording the change along with caption/annotation referred to above (except in respect of change of name effected in exercise of right to be forgotten).

(b) However, in the **latter situation** where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/declaration by a Court of law in

that regard and publication in the Official Gazette including surrender/return of original certificate (or duplicate original certificate, as the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above, retain the original entry (except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded and other details including disclaimer of CBSE. This is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant.

172. In light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paragraphs 170 and 171, as may be applicable, until amendment of relevant Byelaws. Additionally, the CBSE shall

take immediate steps to amend its relevant Byelaws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it.

173. Accordingly, we dispose of the cases before us with directions to the CBSE as noted in paragraphs 170 to 172 above. No order as to costs.

.....J.
(A.M. KHANWILKAR)

.....J.
(B.R. GAVAI)

.....J.
(KRISHNA MURARI)

New Delhi;
June 03, 2021.