IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16471 of 2021

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Nida Amina Ahmad,

... ... Petitioner

Versus

1. The Union of India through the Secretary Ministry of Home Affairs, Govt. of India, New Delhi.
2. The Secretary Ministry of Home Affairs, Govt. of India, New Delhi.
3. The Secretary, Ministry of External Affairs, Govt. of India, New Delhi.
4. The Regional Passport Officer Patna, Maurya Lok, P.S.-Kotwali, District-Patna.
5. Imtiaz Ahmad,

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Amit Shrivastava, Sr. Advocate.
Mr. Arif Daula Sidduqui, Advocate.
Mr. Girish Pandey, Advocate.
For the Respondent/s : Dr. Krishna Nandan Singh, Sr. Advocate (A.S.G.)
Mr. Ram Tujabh Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT
Date : 21-02-2023

Heard Mr. Amit Shrivastava, learned counsel along with Mr. Arif Daula Siddiqui, learned counsel for the petitioner and Dr. Krishna Nandan Singh, learned Additional Solicitor General assisted by Mr. Ram Tujabh Singh, learned counsel for the Union of India.

2. The present writ petition has been filed by the petitioner for the following reliefs:

> [A] For issuance of an appropriate writ order or direction setting aside the letter dated 13-10- 2017 (Annexure-8) issued by the Regional Passport Officer Patna informing the petitioner regarding closure of Passport application bearing

File No. PA 107344039013 because denial of a citizens right to go abroad is violation of Fundamental Rights guaranteed under Article 14, 19 & 21 of the Constitution of India as has been settled by the Constitution Bench of Supreme Court of India in the case of Satwant Singh Sawhney versus D. Ramarathnam. Assistant Passport Officer, New Delhi and others reported in AIR 1967 SC 1836 and thereafter commanding the respondents to reopen the File No. PA 107344039013 and issue fresh passport in the name of petitioner containing date of Birth as 05-08-1994, by exercising the power contained in Circular No.VI/401/2/5/2001 dated 26th November 2015.

[B] For issuance of an appropriate writ order or direction commanding the respondents to take final decision by issuing a fresh Passport to the petitioner in view of the aforesaid case as well as seven judges judgment in Smt. Maneka Gandhi versus Union of India & others reported in AIR 1978 SC 597.

[C] For issuance of an appropriate writ in the nature of Mandamus or any other writ be issued to the petitioner holding that if due to any inadvertance on the part of the petitioner's father, an excusable error was committed in her date of birth when she was minor and now when she has attained the age of majority and is in a position to apprise the authority with respect to her correct date of birth which is recorded in her school, college certificates and obstinate instance taken by the Passport authority that such correction cannot be done amounts to denial of her Fundamental rights not only to go abroad but to achieve and improve her educational qualifications. The Hon'ble Court should appreciate and hold that the mistake is such an "ipsi diksit" that her father has given the date of birth inadvertently at the time of first grant of Passport as 05-08-1993 and not 05-08-1994.

[D] For issuance of an appropriate writ order or direction commanding the respondents for taking final decision on the application/petition of petitioner dated 20-01-2017 & 12-03-2021 and finally dispose off said application/petition by reasoned and speaking order that too after hearing the petitioner.

3. The main issue involved in the present case is as to whether the date of birth recorded in matriculation certificate as 05.08.1994 will be held to be the correct date of birth of the

petitioner or the date of birth recorded as 05.08.1993 in the Passport No. which was issued on 29.05.1998.

4. The case of the petitioner is that earlier Passport No. which was issued on 29.05.1998 in the name of the petitioner was expired on 28.05.2008. The petitioner was minor at that time and the said passport was applied by her father. The petitioner after expiry of the said passport had applied for issuance of fresh passport in the office of Regional Passport Officer, Patna on 30.10.2013. In the said application, according to the petitioner, she has given her correct name and correct date of birth as recorded in her matriculation certificate duly granted to her by the Central Board of Secondary Education (CBSE), New Delhi. The Regional Passport Officer, Patna after scrutinizing the application of the petitioner had made a communication dated 17.02.2014 by which the petitioner was asked to furnish an order of Judicial Magistrate, First Class, Patna for correction of date of birth from 05.08.1993 to 05.08.1994. Pursuant to the said demand, the petitioner filed Misc. Case No. 1074(M)/2014 under the Indian Passport Act, 1967 and the Rules framed thereunder in the court of learned Chief Judicial Magistrate, Patna. The said miscellaneous case was permitted to be withdrawn with a liberty to file a declaratory suit. Thereafter, the petitioner filed a Title Suit No.

5745 of 2014 for change of her date of birth as well as change of her name. The Title Suit was partially allowed by holding that the petitioner is entitled for change of name only and not in change of date of birth. Thereafter, the petitioner filed Title Appeal No. 14 of 2017 which was dismissed on 18.11.2017 and the judgment and decree dated 30.09.2016 and 24.10.2016 respectively passed in Title Suit No. 5745 of 2014 by the learned Munsif-III, Patna was upheld. The petitioner had filed an application for issuance of fresh passport on 28.06.2017 before passing of the order in Appeal without disclosing the facts of previous passport as well as with regard to the passport application filed in the year 2013. The petitioner was penalized and file of year 2013 was closed on 13.10.2017. Thereafter, she again moved to the court of District Judge, Patna in Title Appeal No. 14 of 2017 which was rejected vide order dated 18.11.2017 by upholding the order passed by the Munsif-III, Patna. Since the appeal was dismissed, the passport was not issued with changed date of birth. Hence, the present writ petition.

5. Learned senior counsel appearing on behalf of the petitioner submitted that the father of the petitioner had applied mentioning her date of birth as 05.08.1993 and the same was recorded in Passport No. which was issued on 29.05.1998. The petitioner was admitted in one of the premier

schools of Patna, St. Joseph Convent High School, Bankipore, Patna, on the basis of the school leaving certificate issued by her earlier school Infant Jesus School, Patna and on that basis, her date of birth was recorded as 05.08.1994 in the year 2003 (Annexure-1). He further submitted that learned Judicial Magistrate First Class, Patna in Misc. Case No. 1074(M)/2014 had sought a report from the Principal of the School and a report was submitted in the Court of Judicial Magistrate First Class, Patna vide Letter dated 17.06.2014 by the Principal of St. Joseph Convent High School, Patna whereby the school informed that the date of birth of the petitioner as per the records has been recorded as 05.08.1994 and her name as Nida Amina Ahmad. The trial court in Title Suit No. 5745 of 2014 amongst other issues had framed issue nos. (vii) and (viii) which, *inter alia*, is reproduced as follows:

> VII. Whether the correct date of birth of the plaintiff no-2 is 05.08.94?
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> VIII. Whether for all practical purpose the name of plaintiff no-2 is Nida Amina Ahmad instead of Nida Ahmad?

6. The Suit was contested by the respondent, but the same was partially allowed by holding that the petitioner is not entitled for change of birth in the passport, however, allowed the change of name only. The petitioner, thereafter, filed Title Appeal No. 14 of 2017 which was dismissed on contest. The

petitioner had applied for issuance of fresh passport vide File No. PA1061199361017 dated 28.06.2017 in light of the Circular No. VI/401/2/5/2001 dated 26.11.2015 issued by the Ministry of External Affairs, Government of India by which fresh guidelines have been issued with regard to change / correction of date of birth entries in the passport of an applicant already held by him/her. It is the specific case of the petitioner that Clause 4 (iii) of the said Circular is very specific and goes to indicate that the Passport Officer has been authorized to take final decision in case of application filed with respect to change/correction of date of birth entries in the passport of an applicant already held by him/her and it is in this background that the petitioner had filed a petition dated 20.01.2017 addressed to the Regional Passport Officer, Patna with reference to File No. PA107344039013 in which entire factual details were incorporated along with the relevant and supporting documents for issuance of fresh passport recording date of birth as 05.08.1994. It is further case of the petitioner that the respondents have stated in their counter affidavit which is on record that the petitioner has suppressed the facts of the previous passport as well as passport application made in the year 2013 for which she was imposed penalty of Rs.1000/- and file of year 2013 was closed on 13.10.2017, will not amount to

any suppression of fact as the said file which was opened in the year 2013 as per their own admission was closed on 13.10.2017. Learned counsel further submitted that due to inadvertence on the part of the father of the petitioner**,** an excusable error was committed in her date of birth when she was minor and now when she has attained the age of majority and is in a position to apprise the authority with respect to her correct date of birth which is recorded in her school, college certificates and stubborn instance taken by the passport authority that such correction cannot be done solely on the ground that learned trial court had rejected the claim of the petitioner for change of her date of birth and upheld by the appellate court. It is further submitted that the simple ground for not entertaining the application of the petitioner on the ground that there is order of a competent civil court. The petitioner having conscious of the said fact urged before this Court to add Article 227 of the Constitution and vide order dated 18.01.2023, the cause title of the present writ petition was permitted to be read as an application filed under Article 226 read with Article 227 of the Constitution for setting aside the judgment passed by the trial court and the appellant court.

7. Learned counsel, in these background, submitted that the denial of the petitioner’s right for recording her correct

date of birth as per the matriculation certificate issued by the Central Board of Secondary Education, New Delhi is violation of fundamental right granted under Articles 14, 19 and 21 of the Constitution of India. He further relied upon following judgments in support of his argument that in view of the subsequent Circular the Passport Officer can entertain to change the date of birth and the earlier order will not bar on the ground of *res judicata*. and in this regard, learned counsel has relied upon the following judgments:

1. AIR 1967 SC 1836
2. AIR 1971 SC 2355
3. AIR 1986 SC 180
4. AIR 1991 SC 993
5. AIR 2013 SC 553.
6. AIR 2018 SC 3395

8. Learned counsel further submitted that the judgment and decree passed in Title Suit No. 5745 of 2014 and Title Appeal No. 14 of 2017 are fit to be rejected to protect her fundamental right and also in light of several notifications issued by the Ministry of External Affairs, Government of India contained in Circular No. VI/401/2/5/2001 dated 26.11.2015 and Circular No. VI/402/02/01/2016 dated 08.02.2017 which supports the case of the petitioner that all pending cases of change of date of birth be processed as per the Ministry's instruction contained in Circular dated 22.09.2016 and Circular dated 26.11.2015.

9. Referring to Circular dated 26.11.2015, learned counsel submitted that if an applicant applies for the change of date of birth in the passport within a reasonable period of time i.e. within a span of five (5) years from the date of issue of passport having the alleged wrong date of birth, the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority, if the applicant is able to provide the date of birth issued by the Registrar of Births and Deaths and further states that date of birth recorded in the passport was based on the entries mentioned in the documents other than the Birth Certificate.

10. Learned counsel for the petitioner fairly submitted that the petitioner had made a request to the Municipal Authority to issue her birth certificate as per Matriculation Certificate but the same was denied and taking such stand in the counter affidavit by the respondent in view of the extant Rules mentioned in Para 6.4.2 of Chapter 8 of the Passport Manual, 2020 which allows an applicant for correction of date of birth in the passport on the basis of a fresh or corrected Birth Certificate which was submitted earlier for issuance of fresh passport is not permissible in the admitted position of the case. The following procedure is required to be followed:

(a) In case of furnishing of a new amended BC with the same date of issue and registration number of the old BC by the same authority, application for change in DOB be processed subject to physical verification of the new BC.

(b) In case of furnishing of a new BC by a different authority in replacement of old BC by another authority, the PIA shall insist on cancellation of the old BC and after physical verification of the cancellation certificate and the fresh BC from issuing authorities, application for change in DOB be processed.

(c) In case of furnishing of a new Be where the first passport was obtained using other documents like educational school certificates etc., application for change in DOB be processed subject to physical verification of the new Be and other supplementary documents (if required);

11. Therefore, the ground for rejection that the trial court had directed that the petitioner is not entitled for change of date of birth in passport, which was affirmed vide order dated 18.11.2017 by the appellant Court must not come in a way when the petitioner had produced valid certificate granted by the Central Board of Secondary Education in which her date of birth has been recorded as 05.08.1994. Learned counsel for the petitioner in these background submitted that the judgment and decree dated 30.09.2016 and 24.10.2016 passed in Title Suit No.

5745 of 2014 and judgment and decree dated 18.11.2017 passed in Title Appeal No. 14 of 2017 are fit to be set aside and a direction be issued to the Regional Passport Officer for recording date of birth of the petitioner as 05.08.1994 and issue a fresh passport. The petitioner further prays that the Municipal Authority be also directed to record correct date of birth in their record to safeguard the fundamental rights of the petitioner.

12. Learned senior counsel appearing on behalf of the respondent submitted that unless and until the Judgment and decree dated 30.09.2016 and 24.10.2016 passed in Title Suit No. 5745 of 2014 and judgment dated 18.11.2017 passed in Title Appeal No. 14 of 2017 are set aside, the passport authority as on date is required to obey the judgment passed by the competent court of law. He further submitted that in the Judgment and decree dated 30.09.2016 and 24.10.2016 passed in Title Suit No. 5745 of 2014 and judgment dated 18.11.2017 passed in Title Appeal No. 14 of 2017, relief for change of date of birth in passport has been denied.

13. Heard the parties.

14. The core issues involved in determining the present case is as to whether in the facts and circumstances of the case, the petitioner is entitled for change in her date of birth from 05.08.1993 to 05.08.1994. The rejection by the Passport

Officer is on the ground that the competent court of civil jurisdiction has held that the petitioner is not entitled for her change of date of birth and this Court under Articles 226 and 227 has jurisdiction to set aside the judgment and decree passed by the trial court and the appellate court.

15. The issue regarding determining the correct date of birth based on several documents came before the Apex Court from time to time. In **Brij Mohan Singh v. Priya Brat Narain Sinha and others,** reported in **AIR 1965 SC 282,** the five Judges Bench of the Hon'ble Supreme Court while considering a case in which the election of a candidate was challenged *inter alia* on the ground that on the date of nomination, the appellant was below 25 years of age. The petitioner in the election petition, the candidate who lost, had produced three documents; being the admission register of a school, an application made by the respondent for employment and the certificate issued by the School Examination Board of Bihar, all of which showed him to be below 25 years of age. Negativing the reliance placed on such documents, it was held so:

> "The appellant's case is that once this wrong entry was made in the admission register it was necessarily carried forward to the Matriculation Certificate and was also adhered to in the application for the post of a Sub-Inspector of Police. This explanation was accepted by the Election Tribunal but was rejected by the High Court as

> untrustworthy. However much one may condemn such an act of making a false statement of age with a view to secure an advantage in getting public service, a judge of facts cannot ignore the position that in actual life this happens not infrequently. We find it impossible to say that the Election Tribunal was wrong in accepting the appellant's explanation. Taking all the circumstances into consideration, we are of the opinion that the explanation may very well be true and so it will not be proper for the court to base any conclusion about the appellant's age on the entries in these three documents, viz., Ex.2, Ex.8 and Ext.18".

16. In the case of **Umesh Chandra v. State of Rajasthan** reported in **(1982) 2 SCC 202,** it was held that oral evidence in respect of age has no value which could necessarily be proved only through documentary evidence. The court herein disbelieved a horoscope and relied upon the records maintained by the school.

17. In the case of **Birad Mal Singhvi v. Anand Purohit** reported in AIR 1988 SC 1796, the Hon'ble Supreme Court has held that "production of a certificate issued by the School Authorities would alone not prove the truth." It was held as under:

> "If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. Merely because the documents Exs.8, 9, 10, 11 and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exts.8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents.
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> XXX XXX XXX
>
> To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must

> be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded".
>
> Hence, the production of a certificate issued by the school authorities would not by that alone prove the truth of the declaration based on which the entries are made."

18. In **Dayachand v. Sahib Singh and anr,** reported in **(1991) 2 SCC 379,** the Hon'ble Supreme Court held that although the tendency of many to have lesser age recorded in school is well known and can be easily appreciated but cannot be accepted as the same was clearly in conflict with the medical evidence. Thus, in the said case medical evidence which observes the physical developments especially with regard to the bone structure formation opine a certain age which trumped the records in the school register.

19. In the case of **Vishnu @ Undrya v. State of Maharashtra,** in Crl. A. No. 001112-001113/1999 the Hon'ble Apex Court has chosen to believe the date of birth as indicated in the birth register maintained by the Municipal Corporation and disregarded the date of birth as recorded by the school register. The reasoning to do so has been that the best evidence with regard to the age of the child is that of the parents of the child. It has further held that credence-worthy documentary evidence will prevail over expert witness of a doctor and even

ossification test.

20. In the case of **Pradeep Kumar v. State of U.P.,** reported in **1995 Supp (4) SCC 419** the court has relied upon the School certificate as well as the age indicated by medical examination as both of them were consistent and indicated the same age.

21. In **Ashwani Kumar Saxena v. State of M.P.** reported in **(2012) 9 SCC, 750** the court relied on the admission register of the school as clinching evidence. The reasoning that the parents would have given a wrong date of birth was taken to be a specious plea and disbelieved. It is well settled that the issue of the juvenility could be raised at any point in time or at any stage of the proceedings. A similar view regarding age depends on case and the documents which are on record and credence worthy.

22. In **Mukarrab & others v. State of U.P.** reported in **(2017) 2 SCC 210** the court observed that in the absence of a birth certificate issued by the authority concerned the determination of age becomes a very difficult task providing a lot of discretion to the judges to pick and choose evidence. It was held that if two views were possible, the court should lean in favour of taking a beneficial approach.

23. Now, the procedure to arrive at the age in case

of conflicting documents on record, a preferential regime where the school certificate or matriculation certificate has been accorded the highest preference.

24. The Ministry of External Affairs, Government of India from time to time issued guidelines regarding change / correction of Date of Birth and in this regard relevant Circular needs a careful consideration in deciding the claim of the petitioner. One such guidelines contained in Circular No. VI/401/2/5/2001 dated 18.04.2001 as amended on 29.10.2007 and 15.01.2008 was the subject matter before the Kerala High Court in case of **Jayakumar v. The Regional Transport Officer and Others (W.P. No. 7073 of 2015 (H)**. In the said case, for change of date of birth, reliance was placed on SSLC certificates, transfer register of the school, election identity card etc. The Hon'ble Court relying on several judgments made following observation in Paragraph Nos. 17, 19 and 20 and finally made its observation in Para-22 as follows:

> 17. The admissibility of the Record of Deaths and Births, maintained by the statutory authorities under Section 35 of the Evidence Act, 1872, was upheld by the Hon'ble Supreme Court in CIDCO vs. Vasudha Gorakhnath Mandevlekhar [JT 2009 (8) 495 = LAWS (SC) 2009-5-79]. That was a case in which an employee while entering the service of a Corporation disclosed her date of birth to be 02.10.1950. However, relying on a memo submitted by the employee subsequent to her appointment, wherein the year of birth was interpolated as "1950" after scoring of the year "1948", the employee was found liable for superannuation taking her date of birth as 1948. The employee produced Birth Certificate indicating the date of birth to be 02.10.1950, which certificate was dated 02.04.2000. The Hon'ble Supreme Court found that but for the interpolation in a solitary memo, all the

service records show the year of date of birth to be 1950. The employee's claim was upheld on two grounds; one that the Births & Deaths Register maintained by the statutory authority raises a presumption of correctness and that the Corporation is bound by its own records. That was a case in which the date of birth disclosed in the Register of Deaths and Births tallied with the consistent declaration of the employee as was revealed from the records of the corporation. Herein, no explanation is offered as to why a false declaration was made, despite the correct date of birth being entered in the Register of Births and Deaths. The fact that such wrong declaration has been acted upon by many, restricts the grant of relief to the petitioner.

19. Apposite also would be a reference to Satwant Singh v. A.P.O., New Delhi [AIR 1967 SC 1836]:-

> "A passport, whether in England or in the United States of America serves diverse purposes; it is a "request for protection", it is a document of identity, it is a prima facie evidence of nationality; in modern times it not only control exit from the State to which one belongs, but without it, with a few exceptions, it is not possible to enter another State. It has become a condition for free travel".

20. The Passport hence, is a political document issued by the sovereign of a country to its citizen, giving him the protection due to a citizen of that country, in his travels and residence abroad. The citizen who travels abroad and resides abroad and gets himself employed abroad, however, traces his roots and his citizenry status to the country of his origin on the basis of his Passport, which is the basic document on which such travel, residence and employment is facilitated. The declarations made in the Passport and the stamp of approval by his/her sovereign State reveals the details of the identity of the citizen to all and sundry outside the country in his travels. The details entered therein are taken by any person/agency, of the outside country, in which he/she travels and resides as the authenticated details of his existence as a citizen of his/her country of origin. These details are acted upon in dealing with him, employing him and allowing him to travel and reside in the foreign countries.

22. The Passport issued by the sovereign State is the property of the State under Section 17 of the Passports Act, 1967. The details entered therein cannot be lightly interfered with, that too after very many years without any sustainable cause and without any explanation as to why initially such a wrong declaration was made and why now a change is sought; that too based on a document which was available with the applicant when the original declaration was made. It is not proper for this court to sit lightly in this jurisdiction and issue orders without proper satisfaction of an illegality or injustice having been occasioned. The consequence if any suffered by the petitioners are all their own making, which they never sought to rectify in all these years when they declared themselves to be of a particular age, by showing their Passports as the

authenticated identity of their citizenship in India.

25. The observation made by the Kerala High Court was deliberated by the Ministry of External Affairs, Government of India and revised guidelines contained in **Circular No. VI/401/2/5/2001 dated 26.11.2015** was issued by the Ministry of External Affairs, Government of India is reproduced as under:

No. VI/401/2/5/2001
Ministry of External Affairs
CPV Division PV-I Section

Patiala House Annexe, New Delhi
the 26th November, 2015

OFFICE MEMORANDUM

Subject: Guidelines with regard to change/correction of dates of birth entries in the passport of an applicant already held by him/her.Reg.

It may be mentioned that the necessary provisions with regard to change/correction of dates of birth in the passports are contained in the Passports Manual, 2010 and from time to time number of circulars have been issued by the Ministry on this issue.

2. It is pertinent to mention that recently, the High Court of Kerala while hearing the WP No. 9073 of 2015 (Jayakumar Vs UOI & others) has delivered a land-mark judgment on the issue of correction/change of entries regarding date/place of birth in the passport. During the course of arguments, the Court has elaborated upon the fact that the details entered in the Passport cannot be lightly interfered with, that too after many years without any sustainable cause and without any explanation as to why initially such a wrong declaration was made and why now a change is sought that too based on a document which was available with the applicant when the original declaration was made.

The High Court has further observed that the difference in dates of birth whether two years or twenty years, the power should be one to correct bonafide mistake and that too within a reasonable time. Even a Civil Court declaration after many number of years would lead to the applicant having possibly perpetrated a fraud on many other who

acted upon the authenticated declaration of sovereign state as to the age status of its Citizen.

3. The Court, therefore, while dismissing the petition of the applicant petitioner has directed that the authorities would do well to introspect on the observation made herein to make suitable amendments to the circular. It has also been directed that there would be no scope for leaving any liberty on the petitioners to approach a Civil Court too on the reasoning adopted by this Court and the delay occasioned in seeking the correction.

4. Hence, the core principle of the judgment of the High Court of Kerala is that only the bonafide claims of the applicants for the change/correction of the date of birth in the passport should be accepted and that too if the same are submitted by them within a reasonable time limit after the issuance of passport. In pursuance of the directions of the High Court, it has been decided that henceforth, all the PIA shall follow the following instructions/guidelines in order to consider the claims/request the applicant for the change/correction of entries regarding of date of birth in their passports:

(i) **Where an applicant claims clerical/technical mistake in the entry relating to birth/place of birth in the passport and asks for rectification/correction:**

In all such cases, the documents produced earlier as proof of date of birth/place of birth at the time of issue of passport may be perused (if not already destroyed) by PIA. In case, It is a clerical mistake either by the applicant or the PIA, date/place of birth correction may be allowed by issue of fresh booklet; in the former case by charging fee for fresh passport and in the latter ‘gratis’ (same as mentioned in Ministry's Circular No. VI/401/2/5/2001, dated 29/10/2007).

(ii) If an applicant applies for the change of date of birth in the passport within a reasonable period of time **i.e. within a span of five (5) years from the date of issue of passport having the alleged wrong date of birth,** with the birth certificate issued by the Registrar of Births & Deaths stating that the date of birth recorded in the passport was based on the entries mentioned documents other than the Birth Certificate, the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority. However, before the issuance of passport with changed date of birth, the Passport Authority shall also levy appropriate penalty on the applicant for obtaining passport on previous occasion by providing wrong information regarding his/her date of birth.

(iii) The cases where the applicant comes to PIA for change/correction with regard to date of birth in the

Passport after a period of five years from the date of issue of passport with alleged wrong date of birth, **no such request shall be entertained/accepted by the PIA and be rejected out rightly.**

However, an exemption in this regard may be given to an applicant who was minor at the time when passport with alleged wrong date of birth was issued to him. As and when such an applicant after attaining the age of majority applies for the passport with the request to change the date of birth in the passport issued to when he was minor, the PIA irrespective of the duration of the issuance of passport may accept his case for consideration and if is satisfied with the claim and document(s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty. (emphasis supplied)

(iv) In no way, the Passport Authority will relegate the applicant to obtain the declaratory court order to carry out changes with regard to date of birth in the passport, as the Passport Authority subject to the condition that the case has been submitted by the applicant within the stipulated limit of 5 years from the date of issuance of passport (except the cases of minor passport holder as detailed in para 5(ii) above) would now be eligible to accept the genuine cases irrespective of the difference of dates of birth.

5. In view of the above, all the Passport Issuing Authorities are hereby requested to follow the above guidelines scrupulously to consider the requests of applicants for change/correction of dates of birth entries in the passports. Provisions contained in Chapter ‘4 and 8' of the Passport Manual, 2010 stand revised to the extent as stipulated above.

(Muktesh K. Pardeshi)
Joint Secretary (PSP & CPO) &
the Chief Passport Officer
All PIAs in India/Abroad.

26. Thereafter, the above Circular dated 26.11.2015 was clarified vide **Circular No. VI/401/2/5/2001 dated 22.09.2016** issued by the Ministry of External Affairs, Government of India which is reproduced as under:

No. VI/401/2/5/2001
Government of India

Ministry of External Affairs
CPV Division

Patiala House Annexe, New Delhi,
Dated the 22 September, 2016

OFFICE MEMORANDUM

Guidelines with regard to change/correction of entries of date of birth in the existing passport of an applicant

Ministry has issued O.M. of even number dated 26.11.2015 and 13.01.2016 on the above subject. The instructions contained therein are reiterated below:

i. Only bonafide claims of the applicants for a change/correction of the date of birth in the passport should be accepted. All the PIAs shall follow the instructions/guidelines given below in order to consider the claim/request of the applicant for change/correction of entries regarding date of birth in their passports.

ii. Where an applicant claims that a clerical mistake has been made in the entry relating to the Date of Birth (DOB)/Place of Birth (POB) in the passport and asks for rectification/correction, the documents produced earlier having proof of DOB/POB at the time of issue of passport may be perused (if not already destroyed) by the PIA. In case it is a clerical mistake either by the applicant or by the PIA, the DOB/POB correction may be rectified by the issuance of a new passport booklet by levying fees in case of the former and on 'gratis' basis in case of the latter.

iii. If an applicant applies for the change of DOB within five years of the date of issue of passport having the alleged DOB, the request of such an applicant irrespective of the difference in the DOB may be considered by the PIA if the applicant is able to provide the Birth Certificate issued by the Registrar of Births and Deaths and further states that the DOB recorded in the passport was based on entries mentioned in documents other than the Birth Certificate. However, before the issue of passport with changed DOB, the PIA shall also levy appropriate penalty on the applicant for obtaining the earlier passport by providing wrong information regarding his/her DOB.

iv. The cases where the applicant comes to PIA for change/correction with regard to DOB in the passport after a period of five years from the date of issue of passport with alleged wrong DOB shall not be entertained/accepted by the PIA. **However, an exception in this regard may be given to an applicant who was a minor at the time when the passport with the alleged wrong DOB was issued to him/her, as and when such applicant after attaining the age of major, applies for the passport with the request of change of DOB in the passport issued to him/her when he or she was a minor, the PIA irrespective of the period of issuance of passport may accept his/her case for consideration, and if the PIA is satisfied with the claim and with the document (submitted by the applicant), the PIA may accept his/her request for change of**

DOB without imposition of any penalty. Under no circumstances, the PIA will relegate the applicant to obtain the declaratory court order to carry out changes with regard to DOB in the passport and take necessary action as per the above instructions. **(emphasis supplied)**

2. Following judicial pronouncements made after the issue of the OM dated 26.11.2015 and 13.01.2016, the following are the additional guidelines for PIA on the above subject:

i. The PIA shall consider the explanation of each applicant seeking change in the DOB to find the genuineness of the claim even though more than five years have elapsed after the issue of the passport.

ii. The PIA need not entertain any application in a routine manner for correction of DOB unless such application is filed along with a genuine explanation explaining the delay in approaching the PIA. If such an application is filed, the PIA shall consider the same and take appropriate decision as per the instructions contained in the circulars dated 26.11.2015 and 13.01.2016.

iii. The PIA shall entertain all applicants for correction of DOB, if such holder of the passport produces a court decree filed in a suit initiated prior to issuance of O.M. dated 26.11.2015 wherein a direction is given to the PIA to correct the DOB notwithstanding the direction in the O.M.

iv. If any application for change in DOB is filed for correction prior to issuance of the O.M. dated 26.11.2015, the same shall be considered in accordance with the relevant regulations prevailing prior to the date of the O.M.

3. All PIAs are requested to take note of the above instructions and ensure that these guidelines are followed scrupulously to consider the request of change/correction of entries of Date of Birth in the passports. The provisions contained in Passport Manual 2010 stands revised accordingly.

(Arun Kumar Chatterjee),
Joint Secretary (PSP) &
Chief Passport Officer.

All the Passport Issuing Authorities in India/Abroad

27. These guidelines came up for interpretation before the High Court of Delhi in WP(C) No. 10839 of 2015, **Sunita Sawhney Versus Union of India and others**, decided on 03.12.2015. After extensive review of case law, the High Court of Delhi held that the passport authorities cannot refuse to correct the date of birth on passport on production of Birth

Certificate.

28. A Division Bench of P & H High Court in **Resham Singh versus Union of India and others**, 2008 (1) RCR (Civil)131, had an occasion to consider the primacy of Birth Certificate vis-a-vis School Leaving Certificate. It was held as under:-

> "13. A birth certificate is issued by a Registrar of Births and Deaths and reflects an entry extracted from the register maintained by the Registrar under the Registration of Births and Deaths Act, 1969. The aforementioned statute was enacted to provide for and regulate registration of Births and Deaths and for matters connected therewith. Section 7 thereof, requires a State Government to appoint a Registrar for each area comprising the area within the jurisdiction of a municipality/panchayat or the local authority or any other area or a combination of any two or more of them. Section 16 of the Act requires every Registrar to keep in the prescribed form a register of Births and Deaths for the registration of births and deaths in his area or any part thereof in relation to which, he exercises jurisdiction. A register of Births and Deaths is, thus, a public record of births and deaths that occur within the area assigned to a Registrar. The Register being a public record, presumption of truth attaches thereto and consequently to the birth certificate, reflecting an extract from the Births and Deaths register. A matriculation certificate, on the other hand, is primary evidence of the marks obtained by a candidate in a qualifying examination and the date of birth recorded as an ancillary measure. Primacy would, therefore, have to be accorded to the date of birth reflected in the birth certificate issued by the Registrar of Births and Deaths."
>
> 14. xxxx xxxx xxxx
>
> 15. Thus, taking into consideration the aforementioned judgements, the enunciation of law, as detailed herein above, we are of the considered opinion that the Passport Authority erred by relegating the petitioner to seek a declaration before a civil Court and refusing to entertain his plea for correction of his date of birth. We would like to once

> again emphasise that as and when an application is filed before a Passport authority and there appears to be a conflict between entries in the birth certificate issued by the Registrar of Births and Deaths and the entry of birth in a school leaving certificate, the entry in the birth certificate issued by the Registrar of Births and Deaths would prevail and except where the certificate is unreliable, suspicious or appears to be procured or manipulated, parties should not be relegated to civil Courts in a mechanical manner."

29. Recently Hon'ble Madhya Pradesh High Court in case of **Arooshi Budholia v. Union of India and others (W.P. No. 19675 of 2022)** relying upon the above judgments directed the Passport Officer to consider the application of the petitioner for re- issuance of a fresh passport holding that the case of the petitioner falls under Para 4 (iii) of the 2015 guidelines contained in Circular No. VI/401/2/5/2001 dated 26.11.2015.

30. Aforesaid conclusion is fortified by the judgment of Hon'ble Supreme Court in the case of **Jigya Yadav (Minor) (Through Guardian/Father Hari Singh) v. Central Board of Secondary Education and Others, reported in (2021) 7 SCC 535**, wherein following conclusion and directions, *inter alia,* in following paragraphs were issued:-

> "**193.** 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.
> **193.1.** 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.

193.2. 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.

193.3. 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.

194. 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.

194.1. 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).
>
> **194.2.** 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."

31. Now the point of consideration which falls for determination is as to whether in exercise of power under Articles 226 and 227 this Court can interfere with the judgment passed by the trial court and set aside the the judgment and decree dated 30.09.2016 and 24.10.2016 respectively passed in Title Suit No. 5745 of 2014 and judgment and decree dated 18.11.2017 passed in Title Appeal No. 14 of 2017.

32. Articles 226 and 227 are the parts of the

constitution which define the powers of the High Court. The history of the High Court Supervisory jurisdiction and how it evolved into its current form under Article 227 of the Constitution has been accurately tracked in the judgment of **Waryam Singh and Anr. Vs. Amarnath and Anr**. reported in **AIR 1954 SC 215**.

33. The Hon'ble Supreme Court, in the case of ***Surya Devi Rai vs. Ram Chander Rai,*** reported in ***(2003) 6 SCC 675***, relied on several Judgments of the Hon'ble Supreme Court, one of which was ***Umaji Keshao Meshram and Ors. vs. Smt. Radhikabai, widow of Anandrao Banapukkar and Anr,*** reported in **1986 Supp Supreme Court Cases 401** which laid down scope, power and differences between Article 226 and Article 227.

34. The Apex Court in ***Surya Dev Rai vs. Ram Chander Rai (supra)*** laid down the following differences:

> i. Firstly, the writ of certiorari is an exercise of its original jurisdiction (Article 226) by the High Court; exercise of supervisory jurisdiction (Article 227) is not an original jurisdiction and in this regard, it is akin to appellate revisional or corrective jurisdiction.
>
> ii. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more (Art 226). In exercise of supervisory jurisdiction (Art 227) the High Court

> may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute the impugned decision with a decision of its own, as the inferior court or tribunal should have made.
>
> iii. The jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved but the power conferred under Article 227 viz the supervisory jurisdiction is capable of being exercised suo moto as well.

35. The court concluded that under Article 226 of the Constitution, writ is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted:

> "(i) without jurisdiction, by assuming jurisdiction where there exists none, or
> (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or
> (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice."

36. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate court has assumed a jurisdiction which it does not have, or has failed to exercise a jurisdiction which it does have, or the

jurisdiction though available is being exercised by the court in a manner not permitted by law, and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

37. The Hon'ble Supreme Court, through this judgment, brought all the subordinate Judicial bodies under the ambit of Article 226 of the Constitution of India, curtailing the alternate remedy of Appeal available to the aggrieved, which directly or indirectly made no difference in the powers of Article 226 and 227 of the Constitution of India.

38. In **Radhey Shyam & Anr. Vs. Chhabi Nath & Ors.** reported in **(2015) 5 SCC 423,** the three Judges Bench of the Hon'ble Supreme Court considered the correctness of the law laid down in **Surya Dev Rai (supra)** case. The Apex Court observed that:

> "This Court unfortunately discerns (with *Surya Devi Rai vs. Ram Chander Rai*) that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also, in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases, the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals, writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

> We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed, it has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.
>
> Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226."

39. The Hon'ble Supreme Court upheld the difference laid down between Article 226 and 227 in Surya Dev (supra) but at the same time it curtailed few powers in the hands of the Hon'ble High Courts regarding exercising the powers under Article 226 by entertaining the petitions not affecting the Fundamental rights of the individual. And hence, overruled the judgment of *Surya Devi Rai vs. Ram Chander Rai.*

40. The jurisdiction of 226 and 227 is vast and has to be exercised sparingly. It can be exercised to correct errors of jurisdiction, but not to upset pure findings of the fact, which is within the domain of an appellate court only. This is where the power of revision comes into picture. The purpose of revision is to enable the revision court to satisfy itself as to the correctness,

legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the inferior criminal court. The jurisdiction of Article 226 cannot be used as a Revision or Appeal court as the rejection of the order by the subordinate court does not arise the question of violation of fundamental right when the alternate remedy of appeal is available to the aggrieved.

41. Recently the Hon'ble Apex Court in the case of **M/s Garment Craft Vs. Prakash Chand Goel** reported in **(2022) 4 SCC 181** in Paragraph Nos. 15, 16 and 17 held as under:

> **"15.** Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel* v. *Garment Craft*, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [*Celina Coelho Pereira* v. *Ulhas Mahabaleshwar Kholkar*, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.
>
> **16.** Explaining the scope of jurisdiction under Article 227,

this Court in *Estralla Rubber* v. *Dass Estate (P) Ltd.* [*Estralla Rubber* v. *Dass Estate (P) Ltd.*, (2001) 8 SCC 97] has observed : (SCC pp. 101-102, para 6)

"*6*. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

17. The factum that the counsel for the appellant had applied for the certified copy would show that the counsel for the appellant was aware that the ex parte decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex parte decree and therefore the submission that the appellant came to know of the ex parte decree only on release from jail on 6-5-2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6-10-2015 to 6-5-2017. If it was felt that the application for setting aside the ex parte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as

> grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution."

42. It is critical to emphasize that the High Court must not intervene to correct a simple factual error or to reverse a sub ordinate court decision within its jurisdiction. The High Court can intervene under Article 227 of the Constitution if the finding is perverse in such a way that no reasonable man with if the assessment is not based on any provable facts, understanding of the law might of led to such a conclusion, if error so committed results in manifest injustice or there is mistake of law.

43. The facts reveal that the petitioner was admitted in St. Joseph Convent High School on 17.04.2003. The Principal of the School vide Annexure-2 to the writ petition had informed the Judicial Magistrate First Class, Patna as per the school records the date of birth of the petitioner is 05.08.1994. The Certificate issued by the Central Board of Secondary Education also records the date of birth of the petitioner as same.

44. The date of birth was recorded on the passport bearing No. dated 29.05.1998 on the basis of passport application duly signed by her father and the birth certificate attested by Head of the Department of History, Patna

University, Patna.

45. The Clause 4(iii) of the Memorandum being Circular No. VI/401/2/5/2001 dated 26.11.2015 is very specific and goes to indicate that passport officer has been authorized to take final decision in case of applications filed with request to change/correction of date of birth entries in the passport of an applicant held by him/her.

46. The Clause 4 (iii) of the Circular No. VI/401/2/5/2001 dated 26.11.2015 provides for such cases where the applicant comes to PIA for change/correction with regard to date of birth in the passport after a period of five years from the date of issue of passport with alleged wrong date of birth, no such request shall be entertained/accepted by the PIA and be rejected out rightly. The Clause 4(iii) of the Memorandum being Circular No. VI/401/2/5/2001 dated 26.11.2015 is reproduced as under:

> "(iii) The cases where the applicant comes to PIA for change/correction with regard to date of birth in the Passport after a period of five years from the date of issue of passport with alleged wrong date of birth, **no such request shall be entertained/accepted by the PIA and be rejected out rightly.**
>
> **However, an exemption in this regard may be given to an applicant who was minor at the time when passport with alleged wrong date of birth was issued to him. As and when such an applicant after attaining the age of majority applies for the passport with the request to change the date of birth in the passport issued to when he was minor, the PIA irrespective of the duration of the issuance of passport may accept his case for consideration and if is satisfied with the claim and**

document(s) submitted by the applicant, may accept his request for change of date of birth in the passport without imposition of any penalty.” (emphasis supplied)

47. In the present case, Passport Officer has failed to consider the case of the petitioner by rejecting merely on the ground that the trial court and the appellate court have held that the petitioner is not entitled to change the date of birth in passport. Passport Officer was required to consider their own circular in which special concession has been made in case of minors. Further the Passport Officer failed to appreciate the fact that the petitioner was minor on the date when first passport was issued to her. In view of aforementioned Circulars, exemption should be given to the petitioner who was minor at the time when passport with alleged incorrect date of birth was issued to her. As and when she applied after attaining the age of majority, the PIA irrespective of the duration of the issuance of passport was required to accept her case for consideration and if is satisfied with the claim and document (s) submitted by the applicant, may accept her request for change of date in the passport without imposition of any penalty.

48. This Court finds a grave injustice has been caused to the petitioner in so far as the trial court holding that the petitioner is not entitled for change of date of birth in passport. In view of the settled principles of law, it two views

are possible, the Court should lean in favour of a beneficial approach and in the present case the Matriculation certificate granted by the CBSE on the basis of the records of St. Joseph Convent High School and date of birth mentioned therein must be accorded highest preference. The date of birth recorded in the first passport is on the basis of the father of petitioner, when she was child (minor) at the time of filing of the first application for passport. The Trial court has, in fact, not relied upon the impeccable piece of evidence, the certificate issued by the Central Board of Secondary Education which is a public document. This Court will not refrain from setting aside the orders passed by the trial court as well as the appellate court.

49. Underscoring the relevance of inalienable right of free movement, he further relied upon in the case of **Mrs. Maneka Gandhi Vs. Union of India and Anr.** reported in (1978) 1 SCC 248 referring to Paragraph Nos. 73 and 74 as under:

> "**73.** From the point of view of comparative law too, the position is well established. For, one of the essential attributes of citizenship, says Prof Schwartz, is freedom of movement. The right of free movement is a vital element of personal liberty. The right of free movement includes the right to travel abroad. So much is simple textbook teaching in Indian, as in Anglo-American law. Passport legality, affecting as it does, freedoms that are "delicate and vulnerable, as well as supremely precious in our society", cannot but excite judicial vigilance to obviate fragile dependency for exercise of fundamental rights upon executive clemency. So important is this subject that the watershed between a police State and a Government by the people may partly turn on the prevailing passport policy.

Conscious, though I am, that such prolix elaboration of environmental aspects is otiose, the Emergency provisions of our Constitution, the extremes of rigour the nation has experienced (or may) and the proneness of power to stoop to conquer make necessitous the hammering home of vital values expressed in terse constitutional vocabulary.

74. Among the great guaranteed rights, life and liberty are the first among equals, carrying a universal connotation cardinal to a decent human order and protected by constitutional armour. Truncate liberty in Article 21 traumatically and the several other freedoms fade out automatically. Justice Douglas, that most distinguished and perhaps most travelled judge in the world, has in poetic prose and with imaginative realism projected the functional essentiality of the right to travel as part of liberty. I may quote for emphasis, what is a wee bit repetitive

"The right to travel is a part of 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment . . . . In Anglo-Saxon law that right was emerging at least as early as the Magna Carta . . . . Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values."

Freedom of movement also has large social values. As Chafee put it:

"Foreign correspondents and lecturers on public affairs need firsthand information. Scientists and scholars gain greatly from consultations with colleagues in other countries. Students equip themselves for more fruitful careers in the United States by instruction in foreign universities. Then there are reasons close to the core of personal life—marriage, reuniting families, spending hours with old friends. Finally travel abroad enables American citizens to understand that people like themselves live in Europe and helps them to be well-informed on public issues. An American who has crossed the ocean is not obliged to form his opinions about our foreign policy merely from what he is told by officials of our Government or by a few correspondents of American newspapers. Moreover, his views on domestic questions are enriched by seeing how foreigners are trying to solve similar problems. In many different ways direct contact with other countries contributes to sounder decisions at home . . . . .Freedom to travel is, indeed, an important aspect of the citizen's 'liberty'. [*Kent* v. *Dulles*, 357 US 116 : 2 L Ed 2nd 1204 (1958)]

Freedom of movement at home and abroad, is important for job and business opportunities—for cultural, political, and social activities— for all the commingling which gregarious man enjoys. Those with the right of free movement use it at

> times for mischievous purposes. But that is true of many liberties we enjoy. We nevertheless place our faith in them and against restraint, knowing that the risk of abusing liberty so as to give right to punishable conduct is part of the price we pay for this free society. [*Aptheker* v. *Secretary of State*, 378 US 500 : 12 L Ed 2d 992 (1964)] ”
>
> Judge Wyzanski has said:
>
> “This travel does not differ from any other exercise of the manifold freedoms of expression . . . . from the right to speak, to write, to use the mails, to public, to assemble, to petition. [Wyzanski Freedom to Travel, Atlantic Monthly, Oct. 1952, p. 66 at 68] ”

50. Considering the totality of aforesaid facts and circumstances and in view of the guidelines of the Ministry of External Affairs contained in Circular No. VI/401/2/5/2001 dated 26.11.2015, the judgment and decree dated 30.09.2016 and 24.10.2016 respectively passed in Title Suit No. 5745 of 2014 and judgment dated 18.11.2017 passed in Title Appeal No. 14 of 2017 are being hereby set aside by this Court. The Regional Passport Officer, Patna is directed to consider the application of the petitioner for issuance of fresh passport and correct her date of birth on the basis of the birth certificate issued by the Central Board of Secondary Education expeditiously within a period of four weeks from the date of receipt of a copy of this order.

51. Accordingly, the Municipal Authority is also directed to record the correct date of birth of the petitioner in their records.

52. Indubitably, in view of Judgment of Hon’ble

Supreme Court in case of Jigya Yadav (supra), all such public authorities are expected to process other pending applications and future applications seeking change / correction expeditiously to avoid hardship and unnecessary litigation.

53. The writ petition is allowed in the aforesaid terms with no order as to costs.

(Purnendu Singh, J)

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CAV DATE	24.01.2023
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