

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 30TH DAY OF APRIL, 2020/10TH VAISAKHA,
1942

W.P(C) NO. 7489 OF 2020

PETITIONER:

KASHISH GUPTA, AGED 17,
D/O. PRAKASH GUPTA,
MINOR
REPRESENTED BY HER MOTHER AND NATURAL GUARDIAN
VARSHA GUPTA, AGED 48,
W/O.PRAKASH GUPTA,
8/1384,MOORTHI NIVAS,
TD EAST ROAD, MATTANCHERRY P.O,
ERNAKULAM PIN 682 002

BY ADV. K.R VINOD

RESPONDENTS:

1. THE CENTRAL BOARD OF SECONDARY EDUCATION
REPRESENTED BY ITS SECRETARY,
HAVING ITS HEAD OFFICE AT
SHIKSHA KENDRA, 2, COMMUNITY CENTRE,
PREET VIHAR, DELHI - 110092.
2. THE REGIONAL OFFICER,
REGIONAL OFFICE, CBSE,
BLOCK B, 2ND FLOOR,
LIC DIVISIONAL OFFICE CAMPUS,
PATTOM, THIRUVANANTHAPURAM-PIN 695001
3. THE PRINCIPAL
CHINMAYA VIDYALAYA,
KATTIPRAMABU-KALATHARA ROAD
KANNAMALI P.O, KOCHI-682008

R1-2 BY S.NIRMAL

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON
30.04.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

JUDGMENT

"What's in a name"?

Four centuries ago, when, William Shakespeare wrote the classic "Romeo and Juliet," he felt that name did not matter much. In the present times, if one is asked the same question "What's in a name?", the answer would be:

" Its everything".

1. In this writ petition, this Court is confronted with an instance where a young girl, who wished for a change of name, stumbled upon an obstacle in the form of CBSE who turned down her request for incorporating the change of name on a hyper- technicality.
2. Young Miss Dinky Gupta, on attaining a reasonable level of maturity, for reasons purely personal to her, decided to change her name to Kashish Gupta. State of Kerala accepted petitioner's wish to change her name and effected a Gazette notification in 2017 to that effect, as is seen from Ext. P1. It mentions the details of her birth certificate, her Passport

number, Adhaar Card number, thereby giving sufficient details as to the identity of the petitioner. Pursuant to the Gazette notification, change of name was carried out in the birth certificate of the petitioner as is revealed from Ext. P2. A "one and the same" certificate was also issued by the village officer stating that the two differing names of the petitioner refer to the same person itself.

3. It is seen that, by the time the aforesaid processes were completed, petitioner had written her All India Secondary School Examination in 2018. Certificate issued by the CBSE, which is produced as Ext. P4 contains petitioner's former name, since obviously, it was based on the records available with the school. However, the School authorities on the basis of the certificates produced before it, recorded the change of name. At the request of the parents of the Petitioner, the Principal of the School submitted Ext. P6 application to the 2nd respondent, requesting to carry out the change of name in the CBSE certificates and records. Surprisingly, an e-mail communication is seen sent to the school, which is produced as Ext. P7, wherein an information is given that "*The desired*

change in Candidate's name cannot be considered in the light of CBSE notification dated 01-02-2018 as per rule No. 69.1 (i) duly incorporated in the Examination Bye Laws. Therefore, your request for the said change in Candidate's name has been rejected by the Board." Inspite of the above e-mail communication, Petitioner was issued with the admit card for the main examination of CBSE for the year 2020, with the name 'Kashish Gupta' and it is submitted that she has in fact appeared for two of the examinations that were held prior to the declaration of the nationwide lockdown. Since an anomaly of far-reaching consequences may result if the variance in the name of the petitioner is not corrected, petitioner has approached this Court, seeking a writ of mandamus, to the CBSE to correct her name in the mark sheet of All India Secondary School Examination 2018, as well as in all other records maintained by them.

4. It is seen that within a fortnight of filing the writ petition, the lockdown was declared and the writ petition could not be considered by this Court. On account of the urgency of the matter involved, the case was brought up at the instance of

the petitioner, during the vacation sitting of this Court and with the consent of both sides, the matter was heard through videoconferencing.

5. I have heard the learned counsel Sri.K.R.Vinod for the petitioner, as well as the learned Standing Counsel, Sri.S. Nirmal for the CBSE.
6. In his vehement objections, Sri Nirmal submits that, even though there is no dispute as to the identity or the bonafides of the change in name, it is difficult for CBSE to incorporate the change of name after publication of the results on account of various technicalities that they face. He referred to clause 69.1(i) of the amended CBSE bye laws and canvassed that change of name can be effected only if it is done before publication of the results. He also submitted that pursuant to the decision in **Subin Muhammed S. v. Union of India (2016 (1) KLT 340)**, CBSE is flooded with applications for changes to be incorporated, and hence they have preferred a Special Leave Petition before the Supreme Court in another matter, which is pending consideration and that directions for

change of name may be considered only after the Supreme Court passes an order in the said case.

7. After hearing both counsel, I find it difficult to accept the stand of CBSE, especially since it relates to a student who is on the verge of completing her 12th standard and for whom the world is about to open up. If delay occurs, Petitioner could be subjected to immense hardships. Hence I proceed to dispose of the case on merits.
8. Name is something very personal to an individual. Name is an expression of one's individuality, one's identity and one's uniqueness. Name is the manner in which an individual expresses himself to the world at large. It is the foundation on which he moves around in a civil society. In a democracy, free expression of one's name in the manner he prefers is a facet of individual right. In Our Country, to have a name and to express the same in the manner he wishes, is certainly a part of right to freedom of speech and expression under Article 19 (1) (a) as well as a part of the right to liberty under Article 21 of the Constitution of India. State or its instrumentalities cannot stand in the way of use of any name preferred by an individual

or for any change of name into one of his choice except to the extent prescribed under Article 19(2) or by a law which is just, fair and reasonable. Subject to the limited grounds of control and regulation of fraudulent or criminal activities or other valid causes, a bonafide claim for change of name in the records maintained by the Authorities ought to be allowed without hesitation.

9. With the aforesaid principle in mind, I find that contention of the CBSE that Rule 69 (1)(i) of CBSE, Examination Bye-laws stands in the way of correcting the change of name in the records is unsustainable. For easy reference Rule 69 (1)(i) of CBSE, Examination Bye-laws, is extracted as below.

"Applications regarding changes in name or surnames of candidates will be considered, provided the changes have been admitted by the court of law and notified in the Government Gazette before the publication of the result of the candidate. In cases of change in documents after the court orders caption will be mentioned on the document "change allowed in name/father's name/mother's name/guardian's name from to on (dated) as per court order No..... dated.....""

10. According to me, clause 69 (1)(i) of the CBSE bye laws extracted above, contemplates two situations. First situation is where the change of name arises before publication of the result of the candidate and the second is where the Court

directs. The word "and" in the sentence 'Court of Law and notified in the Government Gazette before the publication of the results of the candidate; if used as a conjunctive does not make any sense. If the word "and" in the above referred sentence is used as a conjunctive it will convey a meaning that even after a Court of Law accepts a change of name, the same to attain validity, must be notified in the Government Gazette. That will be an absurdity. There is no prescription under any law for the time being in force that once a Court of law accepts a name, the same to attain validity must be published in the Government Gazette. Admission by a Court of law as regards a change of name is undoubtedly an order *in rem* declaring to the world that the name of a person has been changed. Notification of change of name by publication in the Government Gazette is another method to convey to the world that there is a change of name. Both are different methods and not supplementary to each other.

11. The context in which the word "and" appearing in Rule 69 (1)
 - (i) of the CBSE bye laws is required to be interpreted by this Court so as to avoid the absurdity mentioned above. Normally

the word “and” is to be given its literal meaning as a conjunctive. However, if the use of the word “and” conjunctively, produces an unintelligible or absurd result, then the court has the power to read the word “and” as “or” or vice versa, so as to give effect to the intention of the framers of the rule.

12. Power of interpretation available to this Court to correct errors committed by the draftsman is quite wide. When the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. The above mentioned principle has been restated in the decisions in **Pentiah vs Mudalla Veeramallappa, (AIR 1961 SC 1107), Eera Vs. State (Govt. of NCT of Delhi) and Another (2017) 15 SCC 133**, and also by a Full Bench of this Court in

Viswambaran P.N vs. T.P Sanu & others (2018 (2) KLT 947).

13. Applying the principles of interpretation mentioned above, it is necessary to interpret the word "AND" occurring in Rule 69 (1)(i) of the CBSE Examination bye laws as meaning 'OR'. When such an interpretation is adopted, it is clear that two methods are available for the CBSE to change the name of a candidate in its records. It can be done either when a Court of Law admits the change of name or when it is published in the Government Gazette. However, when it comes to publication in the Government Gazette, the change would be reflected in its records only when the change was notified in the Government Gazette before publication of the result of the candidate.
14. In the instant case, it is evident that publication of change of name of the petitioner in the Government Gazette was on 12-12-2017, as can be seen from Ext. P1 while publication of the result of the petitioner for her All India Secondary School Examination was on 29-5-2018. Thus, on account of the publication of change of name of the petitioner in the

Government Gazette as per Ext. P1 having been carried out prior to publication of her results, CBSE was liable to correct the change of name in Ext.P4, immediately on receipt of application from the school.

15. It can also be seen from rule 69.1(ii) of the bylaws that application for correction of name of the candidate will be considered within 5 years of the date of declaration of results provided the application is forwarded by the Head of the institution. It can be seen from Ext. P6 that the Head of the institution had forwarded the application for change of name of the petitioner within a period of 16 months from the date of publication of the results. In such a view of the matter also, the 2nd respondent was bound to carry out the change of name of the petitioner in the records maintained with the CBSE.

16. The decision in **Subin Muhammed.S. v. Union of India (2016 (1) KLT 340)**, has no applicability at this instant case, since the issue involved therein related to correction of date of birth in the school records and the same stands on a totally different footing. The said decision of course comes

handy towards the last part of this judgment as regards a different aspect.

17. Even though I find that the claim of the petitioner for change of name is wholly justified and that she has been wrongly denied such a change of name from being incorporated in her school records, the relief that has been claimed in the writ petition is only for a direction to correct her name in Ext. P4 and all other records maintained with the 1st and 2nd respondent's. Since by Ext. P7, 2nd respondent had already conveyed the rejection of the request for change of name, it was incumbent on the petitioner to have challenged the said communication, also. In the absence of such a relief, technically this Court ought to have relegated the petitioner to appropriate proceedings.
18. However, after having found the genuineness of the claim of the petitioner and after realising that she has been subjected to unfair treatment by the 2nd respondent, I feel that interests of justice warrant the exercise of extraordinary jurisdiction under Article 226, to render justice to the petitioner by directing the incorporation of change of name in the school

records and in Ext. P4, after ignoring Ext. P7 communication. If such a process is not adopted, petitioner who is already in the midst of her 12th standard examinations may lose out on her career prospects, especially since contradictory names will be reflected in her records. I am fortified in this proposition by the decision reported in **Subin Muhammed S Vs. Union of India and others (2016 (1) KLT 340)**. In the said decision, this Court held that in order to render justice and when the failure to exercise jurisdiction may put the petitioner to serious hardships, it is always open for the Court to pass appropriate orders.

19. In view of the above, I direct the second respondent - Regional Officer, CBSE, Thiruvananthapuram to correct the name of the petitioner from Dinky Gupta to Kashish Gupta in Ext.P4 certificate within a period of six weeks. It is needless to say that once such a correction is incorporated in Ext.P4, all future records will contain the corrected name. On account of the prevailing pandemic, learned counsel Sri.S.Nirmal is directed to communicate this order to the second respondent forthwith, so that the period of six weeks

shall commence from tomorrow. This is only to enable the petitioner to submit applications for the Entrance examination for this year itself.

This Writ Petition is allowed as above.

**BECHU KURIAN THOMAS
JUDGE**

csl

APPENDIX

PETITIONERS EXTS:

EXHIBIT P1: THE COPY OF THE GAZETTE NOTIFICATION REGARDING THE CHANGE OF NAME OF THE PETITIONER DATED 03.11.2017 .

EXHIBIT P2: THE COPY OF THE BIRTH CERTIFICATE OF THE PETITIONER IN THE CHANGED NAMED AS KASHISH GUPTA.

EXHIBIT P3: THE COPY OF THE ONE AND SAME CERTIFICATE ISSUED BY THE VILLAGE OFFICER, MATTANCHEERY WITH RESPECT TO THE NAME OF THE PETITIONER

EXHIBIT P4: THE COPY OF THE MARK SHEET OF THE PETITIONER IN ALL INDIA SECONDARY SCHOOL EXAMINATION, 2018 DATED 29.05.2018.

EXHIBIT P5: THE COPY OF THE NAME CHANGE OF THE PETITIONER AS KASHISH GUPTA IN THE ADMISSION REGISTER OF THE CHIMAYA VIDYALAYA.

EXHIBIT P6: THE COPY OF THE REQUEST SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT DATED 12.09.2019

EXHIBIT P7: THE COPY OF THE EMAIL COMMUNICATION DATED 09.10.2019 SENT BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT

EXHIBIT P8: THE COPY OF THE NOTIFICATION OF CBSE DATED 01.02.2018

EXHIBIT P9: THE COPY OF THE ADMIT CARD ISSUED BY THE CBSE IN THE CHANGED NAME OF THE PETITIONER AS KASHISH GUPTA