

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 05.03.2020

%

Judgement pronounced on 20.03.2020

+

W.P.(C) 7146/2016

DEEPAK AND ANR

..... Petitioners

Through Mr. Arvind K. Gupta and Mr.
Prashant Bhardawaj, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ORS.

..... Respondents

Through Mr. Atul Kumar, Advocate for R-
1/CBSE.

+

W.P.(C) 7147/2016

SADDAM AND ANR

..... Petitioners

Through Mr. Arvind K. Gupta and Mr.
Prashant Bhardawaj, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ORS.

..... Respondents

Through Mr. Atul Kumar, Advocate for R-
1/CBSE.

+

W.P.(C) 7148/2016

SHUCHITA SINGH AND ANR

..... Petitioners

Through Mr. Arvind K. Gupta and Mr.
Prashant Bhardawaj, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ORS.

..... Respondents

Through Mr. Atul Kumar, Advocate for R-

1/CBSE.

+ **W.P.(C) 7149/2016**
REKHA SAHU AND ANR Petitioners
Through Mr. Arvind K. Gupta and Mr.
Prashant Bhardawaj, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ORS.
..... Respondents

Through Mr. Atul Kumar, Advocate for R-
1/CBSE.

+ **W.P.(C) 7150/2016**
KANCHAN PAL AND ANR Petitioners
Through Mr. Arvind K. Gupta and Mr.
Prashant Bhardawaj, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ORS.
..... Respondents

Through Mr. Atul Kumar, Advocate for R-
1/CBSE.

+ **W.P.(C) 7160/2016**
SALMA AND ANR Petitioners
Through Mr. Arvind K. Gupta and Mr.
Prashant Bhardawaj, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ORS.
..... Respondents

Through Mr. Atul Kumar, Advocate for R-
1/CBSE.

+ **W.P.(C) 7164/2016**
NAZIR AND ANR Petitioner
Through Mr. Arvind K. Gupta and Mr.

Prashant Bhardawaj, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ORS.

..... Respondents

Through Mr. Atul Kumar, Advocate for R-1/CBSE.

+ **W.P.(C) 7165/2016**
RITA AND ANR

..... Petitioners

Through Mr. Arvind K. Gupta and Mr. Prashant Bhardawaj, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION AND ORS.

..... Respondents

Through Mr. Atul Kumar, Advocate for R-1/CBSE.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Prefatory facts

1. The petitioners before me are young persons who were aged between 19 years to 22 years when they first approached the court. At birth, they were abandoned and forsaken. They were children of “lesser God”. Their fate, or call it a chance, allowed them to be housed in a safe and secure environment provided by Udayan Care Home, *albeit, via* an established process of law. They were received and, thus, housed in the Udayan Care Home under the directions issued by a statutory body i.e. the Child Welfare Committee [in short “CWC”].

2. The petitioners, with the help and assistance of the Managing Trustee and/or other personnel of Udayan Care Home, were provided avenues for education, inasmuch as, each of them was admitted to regular schools located in various parts of Delhi.

3. The petitioners clasped the opportunity given to them to be educated, literally with both hands. They displayed their resolve to overcome adverse circumstances by clearing the grade-X and grade-XII examination.

3.1. The schools in which the petitioners were admitted were affiliated to the Central Board of Secondary Education [in short "CBSE"].

4. Call it their misfortune or lack of good advice, the petitioners, at the time, when their admission forms were filled up used as their surname the name of the Home in which they were housed i.e. "Udayan". The petitioners having matured with age and, perhaps, properly advised, sought to reclaim their identity by approaching the CBSE to delete the word "Udayan" from their respective names. Letters in that behalf were written on 01.07.2016.

4.1. Since the CBSE did not oblige, the petitioners were spurred to move this Court by way of the captioned writ petitions.

5. Upon notice being issued, the CBSE filed its counter-affidavit.

6. In the counter affidavit, the CBSE has taken the usual defenses which can be, broadly, paraphrased as follows:

(i) The change and/or correction in name of a candidate can be brought about only in terms of bye-law 69.1 (i) and (ii) of the Examination Bye-Law, 1995 [as amended from time to time] framed by the CBSE [hereafter referred to as "Examination bye-laws"].

(ii) In the instant cases, since the request for correction was made beyond the period of one (1) year, commencing from the date of declaration of their

respective results, the request made by the petitioners could not be entertained.

6.1. Based on the aforesaid assertions made in the counter-affidavit(s), the consequential averment made by the CBSE is that the captioned writ petitions have no merit and, therefore, deserve to be dismissed.

7. Given this backdrop, arguments on behalf of petitioners were advanced by Mr. Arvind Kumar Gupta, Advocate, while submissions on behalf of the CBSE were made by Mr. Atul Kumar, Advocate.

7.1. The concerned schools, even though arrayed as parties, neither chose to file their counter-affidavits nor did they have themselves represented at the time of the hearing.

8. Thus, the plea made by the petitioners that the word “Udayan” should be dropped from their respective names is the core issue which arises for consideration before this Court. The issue, although, narrow in its scope, is placed in unfamiliar terrain. The reason that I allude to the expression “unfamiliar terrain” is that the CBSE’s Examination bye-laws did not, it appears, factor in a situation where the change in name is sought by an abandoned or an orphaned child. The Examination bye-laws, facially, seem to cater to only those children who are born and raised in regular homes.

9. The CBSE’s stand, in effect, is that, while the petitioners have a right to seek a change in their respective names, they had lost the opportunity as they had not taken remedial steps in time, an assertion which would be apposite *qua* an applicant who is born and brought in a regular home.

9.1. This apart the stand of the CBSE is both pedantic and, to say the least, prosaic. A little imagination, zeal, and proactiveness by the concerned officials of the CBSE would have led them to the provisions of The United

Nations Convention on the Rights of the Child [in short “CRC”] and helped them find an answer to the present quandary.

9.2. The fact that the CBSE has chosen to take a more unimaginative path is rather befuddling given the fact that it is one of the premier bodies in the country that is mandated by law to work in the best interest of children.

9.3. While one cannot quibble with the fact that the Examination bye-laws, as they stand today, do not take into account the situation which has arisen in the instant cases, a brief perusal of the provisions of Article 7 and 8 of the CRC would have, to my mind, provided a clue that every child has a right to bear a name and *via* her or his name preserve her or his identity and individuality. The expression “parents” in Article 7(1) of the CRC, in the context of the circumstances in which the petitioners are placed, could only mean “*parens patriae*”. The expression “*parens patriae*”, in the given situation, would fit the CBSE (an instrumentality of the State) and, in this case, where the CBSE has failed to act, it would imply the court.

“Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. *Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*

(emphasis is mine)

9.4. Thus, if full-play is given to provisions of Article 7 and 8 of the CRC, in my view, the CBSE could have accorded the necessary relief to the petitioners *dehors* the Examination bye-laws given the fact that cases involving abandoned (or even orphaned children) are not dealt with under the Examination bye-laws.

9.5. The aforementioned provisions of the CRC are not contrary to any municipal law and, therefore, in my opinion, can be given a full-play [See: *Jolly George Varghese vs. Bank of Cochin*, (1980) 2 SCC 360; and *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241]. As indicated above, the petitioners before me are children who were abandoned by their biological parents.

9.6. Although the names of the biological parents are known and are recorded in their respective grade-X and grade-XII certificates, in each of the cases, as alluded to hereinabove, the family name is shown as “Udayan”. This error, which occurred at the time when admission forms of the petitioners had to be filled up, perhaps, had to do more with the practicality than any *mala fide* intent.

10. Thus, I am of the view that this Court, while exercising powers under Article 226 of the Constitution, is duty-bound to correct the wrong done to the petitioners. The petitioners, in my view, are entitled to reclaim their individuality and identity by insisting on inclusion in their grade-X and grade-XII certificates, the name by which they wish to be known.

11. In the captioned cases, the petitioners have expressed a view that the word “Udayan” should be dropped from their respective names. I am inclined to grant the prayer made by each of the petitioners in this behalf.

12. Accordingly, the captioned writ petitions are allowed. The CBSE will delete the suffix “Udayan” included against the name of each of the petitioners as appearing in their grade-X and grade-XII certificates, as also, in the mark sheets generated *qua* the said grades.

13. The petitioners, to facilitate this exercise, will surrender their grade-X and grade-XII certificates along with their respective mark sheets within three (3) weeks from the date of receipt of a copy of the judgment.

13.1. The CBSE will, thereafter, issue fresh grade-X and grade-XII certificates and also mark sheets *qua* the said grades within three (3) weeks of such a request being received from the petitioners.

14. There shall, however, be no order as to costs.

RAJIV SHAKDHER, J.

MARCH 20, 2020