

S. Subin Mohammed Vs. Union of India, represented by Secretary, Ministry of Human Resources Development New Delhi and Others

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Court : Kerala

Decided On : Dec-23-2015

Judge : The Honourable Chief Justice Mr. Ashok Bhushan & A.M. Shaffique

Appeal No. : W.P. (C) Nos. 1362, 2320, 5295, 5370, 7041, 7136, 8554, 9386, 10597, 10764, 10784, 10920, 11158, 13413, 15381, 16080, 16430, 16606, 17020, 17747, 17974, 17982, 18301, 18449, 18649, 18716, 18795 & 18868 of 2015

Appellant : S. Subin Mohammed

Respondent : Union of India, represented by Secretary, Ministry of Human Resources Development New Delhi and Others

Judgement :

Shaffique, J.

1. All these writ petitions have been referred to this Court by a common reference order dated 6/8/2015 wherein the learned Single Judge having considered the matter in detail and answering certain issues, expressed doubt regarding the power of Central Board of Secondary Education (for short 'CBSE') to reduce the limitation period for correcting the date of birth in the mark sheet by one year, by observing that the period of five years have been specified based on a concession made before a Division Bench of this Court.

2. All these writ petitions were filed by separate writ petitioners claiming that the CBSE and the respective Principals/Headmasters of the school should be directed to correct the date of birth in the mark sheet and the registers maintained by the said authorities, as the date of birth appearing in the Register maintained by the local authority is different.

3. The short facts in WP(C) No.1362/2015 are: The petitioner was born at Abudhabi, United Arab Emirates on 2/3/1992. Ext.P1 is the Birth Certificate issued by the Ministry. His particulars were added to his mother's passport wherein also the date of birth is shown as 2/3/1992. He completed his Class X school education under the CBSE scheme and Ext.P3 is the mark sheet. It is alleged that on account of an inadvertent error on the part of his parents and school authorities, his date of birth is entered in the school records as 3/2/1992. On noticing the mistake, he made an application in 2014 for correction of the date of birth and the same was rejected by CBSE placing reliance on Rules 69.2(i) and (iv) of the Examination Rules. It is indicated that date of birth corrections shall be considered only in accordance with school records, and that as per the bye law of the CBSE, the request for correction in date of birth will be entertained within five years from the date of declaration of results of last examination. According to the petitioner, the entry of date of birth in the school records was an apparent mistake, which should have been corrected by the CBSE.

4. It would be useful to refer to the facts in WP(C) No. 5295/2015 also as it is similar to other cases: Ext.P1 is the Birth Certificate issued by the Panchayat showing her date of birth as 28/4/1989. She completed her Class X school education under the CBSE scheme in the year 2006 and Ext.P2 is the mark sheet. Her date of birth is entered in the school records as 28/2/1990. On noticing the mistake, which according to the petitioner was inadvertent, she made an application in 2014, for correction of the date of birth and the same was rejected by CBSE on similar grounds as stated in W.P.(C) No.1362/2015. WP(C) Nos. 7041, 9386, 10597, 10764, 13413, 16080, 16606, 17020, 18449, 18649, 18716 and 18868 of 2015 were filed on similar set of facts. In WP(C) No.16080/2015, Ext.P8, an office order, dated 16.2.2015 is produced, wherein, it is indicated that no correction in the date of birth shall be made after one year from the date of

issue of the qualifying certificate. In W.P.(C) No. 16606/2015, the fourth respondent has filed counter affidavit stating that the petitioner joined school in the Ist standard showing the date of birth as 20/4/1995 as evident from the application produced as Ext.R4(a). It is stated that the petitioner while continuing in the IInd standard left the school and, therefore, no changes could be made in the entries in the school records contrary to Government Order dated 6/11/2009. In WP(C) No. 17020/2015, written submission was made on behalf of CBSE. It is stated that correction in the date of birth of a student is not permissible, if request for any such correction is made after one year of the date of issue of the qualifying certificate. It is stated that examination bye laws of CBSE permitted correction in date of birth within two years and later within five years, which has undergone a change after 16/2/2015.

5. In WP(C) No. 2320/2015, it is contended that though the petitioner had submitted application for correction of the date of birth in the school register and mark list, the same was not entertained by CBSE relying upon bye law clause 69.2(iv), which prescribes a time limit of two years from the date of declaration of the result of Class X Examination. It is contended that the regulation in the bye law is only directory and necessary correction has to be made based on the extract of certificate of birth issued by the competent authority. Other petitioners in WP (C) Nos. 5370 7136, 8554, 10784, 10920, 11158, 15381, 17747, 17974, 17982, 18301 and 18795 of 2015 have also raised similar contentions.

6. The common contention of the petitioners is that the date of birth given in the school records which had been incorporated in their mark sheets does not tally with their correct date of birth as reflected in the extract of birth certificate obtained from the local authority. The date of birth of each of the petitioners as reflected in the extract of birth register and the school records is as shown hereunder;

Sl. No.	W.P.(C) No.	Date of Birth in the extract of birth register	Date of Birth in the school records/mark sheet

1	1362/2015	02/03/92	03/02/92
2	2320/2015	26/01/94	29/01/95
3	5295/2015	28/04/89	28/02/90
4	5370/2015	19/03/90	20/05/89
5	7041/2015	10/07/91	10/07/92
6	7136/2015	01/09/88	01/09/89
7	8554/2015	28/04/90	28/05/91
8	9386/2015	16/11/90	15/03/91
9	10597/2015	02/09/91	02/09/92
10	10764/2015	05/09/93	25/05/95
11	10784/2015	28/07/88	20/05/89
12	10920/2015	17/03/92	17/03/93
13	11158/2015	05/02/92	05/02/93
14	13413/2015	21/12/88	21/12/89
15	15381/2015	15/02/93	15/02/94
16	16080/2015	16/07/90	16/05/92
17	16430/2015	01/04/90	30/05/91
18	16606/2015	10/08/94	20/04/95
19	17020/2015	22/10/90	22/10/91
20	17747/2015	26/10/89	26/10/90
21	17974/2015	11/03/94	11/07/94
22	17982/2015	11/03/94	11/07/94
23	18301/2015	03/04/91	12/05/93
24	18449/2015	03/11/90	03/11/91
25	18649/2015	20/11/91	20/05/92
26	18716/2015	13/02/91	13/02/92
27	18795/2015	17/03/88	17/03/89
28	18868/2015	13/12/92	31/05/94

7. CBSE took a contention that as per the Regulation framed by them, the correction of date of birth can be done only if there is a mistake in making the entry in the mark sheet compared to the entry in the school records. In other words, if there was no mistake in the entry in the school record with reference to the mark

sheet, no correction can be made by the CBSE. It is also contended that any such correction could be effected only if the candidate approaches CBSE within a period of five years from the date of receiving the mark sheet, which period is now amended with effect from 16/2/2015 as one year.

8. The learned Single Judge formulated the issues as under:

"1. Whether the correction referred to in the regulations and the bye-laws would take in a change of date of birth based on the birth certificate, issued by the Local Self Government Institution.

2. Whether the amendment reducing the period within which such correction is sought to one year would be applicable in the instant cases.

3. What exactly is the point from which the correction permitted should be presumed to commence.

4. Whether the prescription of an outer limit for correction, itself can be sustained."

After evaluating the factual and legal issues, it was observed from paragraph 15 onwards as under:

"15. Having answered the issues as perceived by me, it is to be noticed that the Hon'ble Supreme Court has in MD. Sarifuz Zaman (supra) categorically held that the period as prescribed by the regulations of the Board has to be scrupulously followed and the same is mandatory. The change brought about herein; was on the specific direction of a Division Bench of this Court, wherein the regulation itself was amended to provide a larger period of 5 years. Whether the CBSE could, without any further study or reference to a committee, reduce the limitation period and whether the same would run contrary to the concession made before the Division Bench of this Court, assumes relevance.

16. It is also to be noticed that the CBSE urges before this Court that the reduction has been made, only by reason of instances having been disclosed wherein fraud was perpetrated by many; in effecting correction to the mark lists. The point urged is that many have obtained bogus birth certificates to effect such correction which

has placed even the Board in embarrassing situations and unnecessary litigations. This Court all the same, is unable to comprehend as to how the reduction in period, could put a stop to such bogus birth certificates being produced. More rigor could be provided, as to the documents required, with the CBSE even insisting on their Regional Offices making a verification, with the Local Self Government Institutions as to the veracity of the birth certificates produced. The reduction in the period effected would only, axiomatically result in, burning the house to kill the rat. The CBSE could also levy more fees for the effort taken to conduct such verification.

17. As to the applications filed beyond five years, this Court is unable to agree with the judgments in 2010 (1) KLT 960 and 2013 (2) KLT 430. This Court is also bound by the decisions of the Hon'ble Supreme Court and this Court; wherein it has been categorically held that a reasonable prescription of a statutory body cannot be substituted by Courts with a more reasonable one, which would result in individual predilections being imposed on statutory authorities; as against those prescribed in rules and regulations.

For the reasons stated in the paragraphs 15 and 16, this Court is of the opinion that the matter be referred to a Division Bench for consideration. Registry shall place the above writ petitions before the Hon'ble the Chief Justice for orders as to whether these writ petitions can be posted before a Division Bench."

9. Heard the learned counsel for the petitioners, Sri.Devan Ramachandran, learned standing counsel for CBSE and the learned counsel for respondents. The learned counsel for the petitioners submitted that the extract of birth register maintained by the local authority clearly proves the actual date of birth and when it is evident that a wrong date of birth is incorporated in the school register and mark sheet, it requires to be corrected, failing which the applicants will loose their opportunity for further studies abroad. They also relied upon the Division Bench judgment dated 5/8/2009 of this Court in WA No.1948/2008 (CBSE v. Rahul) and connected cases, Manoj Kumar v. Government of NCT of Delhi [(2010) 11 SCC 702], Arun v. Central Board of Secondary Education (2010 (1) KLT 960) and Sreeraj R.Nath v. Central Board of Secondary Education (2013 (2) KLT 430) to

substantiate their contention that the CBSE can be directed to correct the date of birth in the mark sheet despite the limitation of time. Reference is also made to the judgment in *Cidco v. Vasudha Gorakhnath Mandevlekar* [(2009) 7 SCC 283], for the proposition that the Deaths and Births Register maintained by the statutory authorities raises a presumption of correctness which would prevail over an entry made in the school register especially when there is no evidence to show that the same was recorded at the instance of the guardian of the minor. Reliance is placed on *Birad Mal Singhvi v. Anand Purohit* (AIR 1988 SC 1796) for the proposition that the entry of date of birth in the school admission register is not conclusive. Further reference has been made to the judgment in *Municipal Corporation of Delhi v. Gurnam Kaur* [(1989) 1 SCC 101] and *State of U.P and another v. Synthetics and Chemicals Ltd. and another* [(1991) 4 SCC 139], to contend that the judgment in *Board of Secondary Education of Assam v. M.D. Sarifuz Zaman and others* [(2003) 12 SCC 408], does not lay down a precedent to be followed.

10. In *Rahul* (supra), a Division Bench of this Court while considering a batch of appeals having referred to the judgment of the Apex Court in *Sarifuz Zaman* (supra), closed the writ appeals taking into account the affidavit filed by CBSE in which it was indicated that a Committee has been constituted to take appropriate action for correction of date of birth, after 2 years and to correct the entries based on birth certificate issued by the statutory body. It was also mentioned that the Committee has recommended to obtain the birth certificate issued by the Municipal authority at the time of admission of a student in the school.

11. In *Manoj Kumar* (supra), the Apex Court had occasion to consider the case of a candidate who was terminated from service alleging that he had given a wrong date of birth. His actual date of birth was 8/9/1988, whereas in the matriculation certificate, the date was shown as 8/11/1989. He had approached the school authorities for necessary correction and while the application was pending, he got appointment in Delhi Police as Constable (Executive). He also filed a suit for correcting his date of birth. He also got appointment. Later, he was faced with a show cause notice by the employer calling upon him to show cause why his service should not be terminated for showing his date of birth wrongly as 8/9/1988

instead of 8/11/1989. He gave a reply stating the circumstances under which he had given the date of birth. The suit was decreed directing the Board of School Education to effect necessary correction in his date of birth. In the meantime, he was terminated from service and he applied for reinstatement in service. He approached the Central Administrative Tribunal challenging the termination, which came to be dismissed. He filed writ petition, which again was dismissed. The Apex Court having considered the above issue set aside the order of termination after forming an opinion that the records of the school where he studied in the 6th standard showed his date of birth as 8/9/1988 and it was in the matriculation certificate that his date of birth is shown differently. This was apparently an erroneous entry which was corrected by the directions issued by the Court. Taking into consideration the said facts and circumstances, the order of termination was set aside. It was further held that while the matriculation certificate is a strong material, other equally relevant material cannot be ignored, particularly when the matriculation certificate has been corrected. It is also held that the case of a person seeking correction of date of birth should not be equated with cases of Government servants at the tail end of their service trying to get extension of service by alleging wrong entry in the date of birth. This case has no application to the facts of the case, since the Apex Court was considering the case based on a decree passed by the Civil Court and on a finding that the entry in the school records was an apparent mistake.

12. In Arun (supra), a learned Single Judge of this Court while considering a similar issue, having relied upon the Division Bench judgment in WA. No. 1948/2008, held that the two year period of limitation provided under the bye law is only for administrative convenience and cannot bar the remedy. That was a case in which the applicant had requested for correction of date of birth after four years from the date of passing 10th standard.

13. In Sreeraj R. Nath (supra), the learned Single Judge also observed that the bar of two years specified under the bye law will not stand in the way of causing the date of birth to be corrected in genuine cases.

14. In *Birad Mal Singhvi* (supra), the Apex Court was considering an election case by which the election of the appellant to the State Legislative Assembly was set aside by the High Court. The nomination papers of two candidates were rejected by the returning officer on the ground that they had not attained the age of 25 years at the time of filing nomination paper. It was held that if the entry in the school register regarding date of birth is made on the basis of information given by the parents, the entry would have evidentiary value, but if it is given by a stranger or by someone else, who had no means of knowledge of the date of birth, such an entry will have no evidentiary value.

15. In *Synthetics and Chemicals Ltd* (supra), the Supreme Court was considering the correctness of a decision of the High Court by which purchase tax levied on industrial alcohol was declared to be null and void. The Apex Court while considering the scope and effect of an earlier judgment reported in *Synthetics and Chemicals Ltd. v. State of U.P* [(1990) 1 SCC 109], observed that conclusion in the said judgment was not preceded by any discussion and no reason or rationale could be found in the order. The Apex Court therefore held as under in paragraphs 40 and 41:

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (*Young v. Bristol Aeroplane Co. Ltd.*). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu v. Rajdewan Dubey* this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have

carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur*. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

16. In *Gurnam Kaur* (supra), the Apex Court had occasion to consider as to what is a valid precedent and it is held at paragraphs 10, 11 and 12 as under;

"10. It is axiomatic that when a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because

without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das case could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das case was made not only with the consent of the parties but there was an interplay of various factors and the court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. The court no doubt made incidental observation to the Directive Principles of State Policy enshrined in Article 38(2) of the Constitution and said:

Article 38(2) of the Constitution mandates the State to strive to minimise, amongst others, the inequalities in facilities and opportunities amongst individuals. One who tries to survive by one's own labour has to be encouraged because for want of opportunity destitution may disturb the conscience of the society. Here are persons carrying on some paltry trade in an open space in the scorching heat of Delhi sun freezing cold or torrential rain. They are being denied continuance at that place under the specious plea that they constitute an obstruction to easy access to hospitals. A little more space in the access to the hospital may be welcomed but not at the cost of someone being deprived of his very source of livelihood so as to swell the rank of the fast growing unemployed. As far as possible this should be avoided which we propose to do by this short order. This indeed was a very noble sentiment but incapable of being implemented in a fast growing city like the Metropolitan City of Delhi where public streets are overcrowded and the pavement squatters create a hazard to the vehicular traffic and cause obstruction to the pedestrians on the pavement.

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court

because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the *Salmond on Jurisprudence*, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. In *Gerard v. Worth of Paris Ltd. (k)*., the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.*, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents

sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

17. In *Cidco* (supra), Supreme Court was considering the question relating to date of birth of an employee of the Corporation. She disclosed her date of birth as 2/10/1950. She joined service in 1971. In 1975, in response to a memo, she submitted a form giving details of the date of birth and other particulars wherein the date of birth was typed as 2/10/1948. The year was corrected in handwriting as 1950, by way of interpolation. Later, she was called upon to produce the school leaving certificate. By 2005, when repeatedly she was asked to produce the required documents, she produced a birth certificate showing date of birth as 2/10/1950. The Corporation took a decision holding that the date of birth was 2/10/1948. The matter came to be challenged before the High Court and the High Court allowed the writ petition filed by the employee. In this matter, the Apex Court after relevant considerations held at paragraph 19 as under;

"19. The Deaths and Births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. [See *Birad Mal Singhi v. Anand Purohit* [JT 1988(3) SC 389: Air 1988 SC 1796]"

18. The learned counsel for CBSE, while supporting the stand taken by CBSE contended that none of these cases relate to a correction of date of birth in the mark sheet. In all these cases, the mark sheets reflected the date of birth as shown in the school registers, which were consciously given by the parents and the applicants had sufficient opportunity to seek correction at least before the Board Examinations, by giving genuine reasons. He also relied upon *Ashwani*

Kumar Saxena v. State of Madhya Pradesh [(2012) 9 SCC 750] and Shah Nawaz v. State of U.P and another [(2011) 13 SCC 751]. In Ashwani Kumar Saxena (supra), the Supreme Court was considering the scope and effect of the statutory provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder. The issue had arisen in a case charge sheeted under Section 302 of the Penal Code, 1860 and certain provisions of the Arms Act, 1959. It was held that an age determination inquiry as contemplated under Section 7A of the Act read with Rule 12, enables the Court to seek evidence and in that process, the Court can obtain the matriculation or equivalent certificates and only in the absence of matriculation or equivalent certificates, the Court needs to obtain the date of birth certificate from the school first attended. Further, it is held at paragraph 34 as under:

"34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination."

19. In Shah Nawaz (supra), the Supreme Court held that entry relating to date of birth entered in the mark sheet is valid evidence for determination of age of an accused person. This case also has been decided in the light of Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder. Paragraphs 11 and 12 are relevant, which read as under;

"11. In Rajinder Chandra v. State of Chhattisgarh this Court once again considered the entry relating to the date of birth in the marksheet and concluded as under:

(SCC pp. 289-90, para 5)

"5. It is true that the age of the accused is just on the border of sixteen years and on the date of the offence and his arrest he was less than 16 years by a few months only. In *Arnit Das v. State of Bihar* this Court has, on a review of judicial opinion, held that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. The law, so laid down by this Court, squarely applies to the facts of the present case."

12. In *Arnit Das v. State of Bihar* this Court held that while dealing with the question of determination of the age of an accused, for the purpose of finding out whether he is a juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views may be possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases."

20. The first question to be considered in these batch of writ petitions is with reference to the authority of CBSE to reject an application for correction date of birth in the mark sheets on the ground of limitation.

21. This issue has been substantially dealt by the Apex Court in *Sarifuz Zaman* (supra), the facts of which are extracted in paragraphs 3 and 4, which read as under:

"3. One of the respondents, a student, having taken his education in Government Boys Higher Secondary School, passed the matriculation examination conducted by the Board of Secondary Education, Assam, in the year 1991. Thereafter, he passed higher secondary examination and then BSc examination in the year 1998. When he filed the writ petition, he was undergoing a course of study in computers. At that point of time, on 12-10-1999, he moved an application to the Board

complaining that his date of birth was wrongly mentioned in the school records as 30-5-1974, while his actual date of birth was 16-8-1975. The mistaken date of birth, as forwarded by the school, had crept into the admit card issued by the Board. The writ petitioner student pleaded that he did not realise the importance of the correct date of birth being entered into the school records, and therefore, he did not also realise the implications thereof until he was prompted in moving the application. The application moved by the respondent to the Principal of the school, was forwarded by the latter to the Board. The Principal indicated that the age of the respondent was entered as 16-8-1975 in the admission register and other school records, but it was by mistake that while filling the form of the Board examination, the date of birth was wrongly entered as 30-5-1974. The Principal described the mistake as "clerical" and recommended for its correction. As the Board did not take any decision on the application, the respondent filed a writ petition in the High Court.

4. The Board relied on Regulation 8 of the Regulations for Conduct of Examinations by the Board (hereinafter "the Regulations" for short), framed in exercise of the powers conferred by Section 24 of the Assam Secondary Education Act, 1961 (hereinafter "the Act" for short) and submitted that an application moved beyond three years from the date of issuance of certificate by the Board was not liable to be entertained. The plea found favour with the High Court resulting in dismissal of the writ petition. A writ appeal was preferred by the respondent. The Division Bench has allowed the appeal, set aside the judgment of the learned Single Judge and allowed the relief sought for by the respondent by issuing a writ of mandamus to the Board. Feeling aggrieved, the Board has filed these appeals by special leave."

Though the Supreme Court did not interfere with the decision to effect necessary correction as directed by the High Court, the question of law was decided as under:

"10. Nobody can claim a right to have an entry corrected in a certificate solemnly issued by an educational institution, that too the one enjoying the status of a statutory Board under the Act. The right of the applicant to have an error or

mistake corrected is accompanied by a duty or obligation on the part of the Board to correct its records and the certificate issued by it. Not only it is a corresponding duty or obligation, it has also to be perceived as a power exercisable by the Board to correct an entry appearing in the certificate issued by it. People, institutions and government departments, etc. -- all attach a very high degree of reliability, near finality, to the entries made in the certificates issued by the Board. The frequent exercise of power to correct entries in certificates and that too without any limitation on exercise of such power would render the power itself arbitrary and may result in eroding the credibility of certificates issued by the Board. We, therefore, find it difficult to uphold the contention that the applicants seeking correction of entries in such certificates have any such right or vested right.

11. Lastly, the submission cannot also be countenanced that the regulatory measure engrafted into the Regulations on the subject of correction of errors in the certificates is "absolute" in nature. The Regulation permits correction but subject only to reasonable restrictions.

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

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

22. The CBSE functions under the overall supervision of the Controlling Authority which is vested with the Secretary (School Education and Literacy), Ministry of Human Resource Development, Government of India. The Governing Body of the Board is constituted as per its rules and regulations. The recommendations of all the Committees are placed for approval before the Governing Body of the Board. The Controller of Examinations is assigned with all matters concerning conduct of examinations and all matters connected therewith. Examination rules thus formulated are for the proper conduct of the examination and publication of results. Therefore, every student who writes the examination is bound to comply with the Examination Rules as well.

23. Rule 69.2, which is relevant, reads as under:

"69.2. No change in the date of birth once recorded in the Board's records shall be made. However, corrections to correct typographical and other errors to make the certificate consistent with the school records can be made provided that corrections in the school records should not have been made after the submission of application form for the admission to Examination to the Board.

(ii) Such correction in Date of birth of a candidate in case of genuine clerical error will be made under orders of the Chairman where it is established to the satisfaction of the Chairman that the wrong entry was made erroneously in the list of candidates/application form of the candidate for the examination.

(iii) Request for correction in Date of Birth shall be forwarded by the Head of the School along with attested Photostat copies of:

(a) Application for admission of the candidate to the School:

(b) Portion of the page of admission and withdrawal register where entry in date of birth has been made along with attested copy of the certificate issued by the Municipal Authority, if available, as proof of Date of Birth submitted at the time of seeking admission; and

(c) The School Leaving Certificate of the previous school submitted at the time of admission.

(iv) The application for correction in the date of birth duly forwarded by the Head of school along with documents mentioned in byelaws 69.2(iii) shall be entertained by the Board only within five years of the date of declaration of result. No correction whatsoever, shall be made on application submitted after the said period of five years."

The period mentioned in sub clause (iv) has now been amended as under;

"The application for correction in date of birth duly forwarded by the Head of school along with documents mentioned in bye laws 69.2 (iii) shall be entertained by the Board only within one year of the date of declaration of result. No correction

whatsoever, shall be made on application submitted after the said period of one year."

24. It is rather clear from the arguments raised by the learned counsel for the petitioners and as rightly observed by the learned Single Judge that the discrepancy in the date of birth as revealed in the mark sheet and the birth certificate would result in a prejudice to the candidate concerned especially when employment is sought in India or abroad and especially so when abroad studies are undertaken by such candidates. In such an event, the foreign University or the foreign Embassy will verify the date of birth as available in the passport along with the mark sheet and other credentials of the candidate to identify the person. Under such circumstances, if there is any discrepancy in the date of birth as seen in the mark sheet and in the passport of the candidate, they may suffer substantial prejudice.

25. Learned Single Judge has answered the issues as follows:

"1. The correction referred to in the regulations and bye-laws would take in a change of date of birth based on the Birth Certificate since that is the contemporaneous understanding all through the years in which the regulation has been in operation.

2. The amendment brought in now would only be applicable prospectively and the question of sustainability of such amendment would have to be decided in an appropriate challenge made.

3. The period, to determine the limitation of five years, should commence from the date of attaining majority as per the birth certificate.

4. The prescription of limitation of five years, commencing from the date of attaining majority has to be sustained."

26. The issue would be to what extent this Court will be justified in directing correction of date of birth in the mark sheet based on an extract of birth certificate. The condition imposed in the bye laws is not statutory in nature. But still, it is enforceable as the bye law conditions have to be observed by every candidate

who undertakes the Board Examinations. Such conditions cannot be totally ignored or given a go by and every candidate will have to comply with such conditions.

27. The evidentiary value of date of birth appearing in the mark sheet of a candidate is not disputed. In fact, even before the Registration of Births and Deaths Act, 1969 coming into force, the primary document relied upon for the purpose of understanding the date of birth of a candidate is the school records. It is either the extract of school admission register maintained by the school or the school leaving certificate, transfer certificate etc., which were relied upon as proof of age.

28. Rules have been framed by the State Government under Section 30 of the Registration of Births And Deaths Act, 1969 in supersession of the Kerala Registration of Births and Deaths Rules, 1970 as the Kerala Registration of Births and Deaths Rules, 1999. By virtue of the 1969 Act, it was made obligatory to inform the Registrar about the birth and death in a household, in hospital, health centre, nursing home or the like institution and the Registrar was under obligation to maintain appropriate register with respect to the same. Necessary rules have also been framed by the State Government to give effect to the statutory provisions. No doubt, once an entry is made in the register maintained by competent authority in accordance with the statutory provision, it raises a presumption of correctness to the date of birth entry.

29. But, in these batch of cases, we are not concerned with the correctness of the actual date of birth of the candidate. Here is an instance where while admitting the candidate to the school, the parents or guardian, as the case may be, had given a particular date of birth whereas in the register maintained by the statutory authority, the date of birth is different. This can arise under different circumstances. One may be a deliberate act, as the parent or guardian with full knowledge of the actual date of birth gives a different date of birth in the school for some advantage at the relevant time. Fraud may be practised, or it can also be an instance of mistake or on account of negligence or carelessness. But it is relevant to note that when a student studies in a school upto 10th standard or 10+2, the

parent/guardian and even the student gets opportunity to verify the entry of date of birth in the school records. May be the child may not be aware of the actual date of birth in the register maintained by the competent authority during the relevant time or they may not have noticed the said fact at the relevant time. Therefore, it is apparent that two different date of births are available for a particular candidate, one in the register maintained by the school and second in the register maintained by the Registrar. For all practical purposes, there could only be one date of birth for a person and either of it would be the correct date of birth. But we are not concerned with an issue relating to the correctness of the date of birth and no such enquiry is being conducted by the school or CBSE. The only factor to be looked into is whether this Court can issue a mandamus to the CBSE to effect the correction de hors the restrictions imposed by them in their bye laws.

30. In *Rahul* (supra), the Division Bench of this Court did not decide any issue at all, whereas in *Arun* (supra), learned Single Judge of this Court held that the bye law condition is only directory. Even in *Sreeraj R.Nath* (supra), the validity of the bye law has not been considered. As already indicated, though the bye law has no statutory force, it is binding on the candidate concerned. In *Sarifuz Zaman* (supra), the Supreme Court was concerned with a regulation framed under a statute. The present bye law conditions is not framed under a particular statute nor any material has been produced to come to such a conclusion. Therefore, the said bye law condition can only be treated as a regulation to be followed by the parties who undertake the studies in institutions affiliated to CBSE and participates in CBSE Examinations. In such circumstances, CBSE is entitled to contend that they will not make any corrections after the period specified in the bye laws. CBSE is apparently not concerned with the correctness of the date of birth with reference to the birth certificate obtained from the local authority. In fact, such a provision has been made by way of an amendment which is reflected in the judgment in *Rahul* (supra). Therefore, with effect from the date on which such amendments had been made, it is apparent that CBSE insists for birth certificate from statutory authority, before giving an admission to a candidate in CBSE schools. That was not the position earlier when the petitioners have studied in those schools. But the fact remains that when a specified time limit has been prescribed by CBSE, all concerned are bound by the same.

31. It is pointed out that the applications cannot be considered as the bye law has been amended and the five year period has been reduced to one year. But the said amendment applies only prospectively. This issue has already been answered by the learned Single Judge and we do not think that a different view should be taken in the matter.

32. Going by the bye law condition, corrections are permissible only to correct typographical and other errors to make the mark sheet consistent with the school records. That apart, genuine clerical error will be corrected under orders of the Chairman, if it is established that the wrong entry was made erroneously. In other words, there is no obligation on the part of CBSE to correct the date of birth of a candidate in the school records merely for the reason that a different date of birth is shown in the extract of birth certificate produced by them at a later stage. In the said circumstances, it is purely within the realm of jurisdiction of CBSE to consider whether in a particular instance, a correction to the date of birth could be entertained or not.

33. In *Rahul* (supra), CBSE has only placed relevant materials before Court and had undertaken to consider the claim of students. The said judgment cannot be termed as a binding precedent to disable CBSE to frame their own norms, rules or regulations and even if a lesser period of limitation is prescribed, it remains binding unless a successful challenge is made in an appropriate proceedings.

34. Now coming to the cases on hand, going by the bye law conditions, we do not think that any of these cases fall under the category of clerical or typographical error, in comparison with the school records. In WP(C) No.1362/2015, it appears to be a genuine mistake as the date of birth is entered as 3/2/1992 instead of 2/3/1992. As rightly contended by the learned counsel, this mistake would have happened in the process of translation from Arabic. In some cases, the date and month are correct, but the year differs. In other words, a situation as envisaged, that is for reconciling the school records with the birth certificate from statutory authority, was not contemplated by CBSE in their bye laws.

35. Therefore, we have to proceed on the basis that the bye law of CBSE cannot be applied to the fact situation. But to reconcile the date of birth entry in the mark

sheet with that of the entry in the statutory certificate, the candidates should not be left without any remedy. Their right to approach the Court for redressing their grievance cannot be ruled out.

36. Next question is whether the Writ Court should exercise the power to direct correction of the entries in the mark sheet taking into account the entry in the birth certificate maintained by the statutory authority. It is a well settled principle of law that writ of mandamus can be issued only if an aggrieved party has an enforceable legal right under a statute or rule. A mandamus cannot be issued to an authority to do something. [Renu v. District and Sessions Judge (2014) 15 SCC 731]. The writ petitioner must establish a legal right in himself and a corresponding legal duty in the State. [Food Corpn. of India v. Ashis Kumar Ganguly (2009) 7 SCC 734]. Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ in the nature of mandamus. [State of M.P. v. Sanjay Kumar Pathak (2008) 1 SCC 456]. In Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd., [(2013) 5 SCC 470], it is held as under:

"The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justitiae*). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, *inter alia*, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said

writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand."

37. As held by the Apex Court in *Cidco* (supra), entry of date of birth in the statutory register raises a presumption of correctness and it prevails over an entry in the school register. Same is the position as well as registers maintained by the school are concerned as held in *Sarifuz Zaman* (supra), *Ashwani Kumar* (supra) and *Shah Nawaz* (supra). The presumption, of course, is always rebuttable and it depends on the facts of each case. No such controversy has arisen in these cases.

38. In *Sarifuz Zaman* (supra), the request made was to correct the date of birth in the mark sheet, on the basis that at the time of admission a clerical error occurred in making an entry in the school records. Hence, this judgment cannot be applied to the facts of the present case. As held in *Synthetics Ltd.* (supra) and *Gurnam Kaur* (supra), for treating a judgment as a precedent, the facts on which the law has been laid down requires to be analysed. But, present are cases where the petitioners admit that their parents have given a wrong date of birth entry in the school records and seeks to reconcile it with the birth certificate. That apart, the Apex Court was considering a statutory regulation.

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

40. In all these cases, there is delay on the part of the petitioners in approaching CBSE, which cannot be lightly condoned. Taking cue from Sarifuz Zaman (supra), they have virtually slept over their rights. But failure to exercise jurisdiction will result in injustice to the petitioners. Such writ petitions can therefore be entertained only on imposing cost on the petitioners, which we fix at Rs.5,000/- .

41. Hence, to meet the ends of justice, it will be appropriate for this Court to dispose the writ petitions with the following directions:

i) That CBSE shall correct the entries in the mark sheet of the petitioners with reference to their corresponding birth certificates issued by the statutory authority, if the request is found to be genuine.

(ii) Genuineness of the birth certificate can be ascertained from the respective local/statutory authority/Head of the Institution or such other method, CBSE may deem it fit.

(iii) CBSE can demand in advance a consolidated fee, including all expenses for processing such applications.

(iv) Each of the petitioners shall pay Rs.5,000/- (Rupees Five thousand only) as cost to CBSE within a period of one month.

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