

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 07TH DAY OF SEPTEMBER 2020 / 16TH BHADRA, 1942

WA.No.1155 OF 2020

AGAINST THE JUDGMENT DATED 14,10,2019 IN WP(C) 26131/2019(N) OF HIGH COURT OF KERALA

APPELLANTS/1ST AND 2ND RESPONDENTS IN W.P.(C):

- 1 CENTRAL BOARD OF SECONDARY EDUCATION,
REP. BY ITS CHAIRMAN, HEAD OFFICE NO.2,
SISKHA KENDRA COMMUNITY CENTRE, PREET VIHAR,
NEW DELHI – 110 092.
- 2 THE REGIONAL OFFICER, CBSE REGIONAL OFFICE, BLOCK-B, 2ND
FLOOR, LIC DIVISIONAL OFFICE CAMPUS, PATTOM,
THIRUVANANTHAPURAM – 695 004.

BY ADV. SRI.NIRMAL. S

RESPONDENTS/PETITIONER & 3RD RESPONDENT IN W.P.(C):

- 1 MUHAMMED ASIF (MINOR), AGED 17 YEARS, S/O. HASHIM,
A. KAITHARAKONATH PUTHEN VEEDU, KANYAKULANGARA,
VEMBAYAM P.O., THIRUVANANTHAPURAM – 695 615, REP. BY HIS
FATHER HASHIM A.
- 2 THE PRINCIPAL, JAMA-ATH SCHOOL ENGLISH MEDIUM (CBSE),
KANNAKULANGARA, VEMBAYAM P.O., THIRUVANANTHAPURAM
P.O., THIRUVANANTHAPURAM – 695 615.

SRI. S.MOHAMMED AL RAFI FOR R1

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07.09.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 7th day of September, 2020

S.Manikumar, CJ

Instant writ appeal is filed against the judgment made in W.P. (C) No.26131 of 2019 dated 14.10.2019, by which the writ court issued the following directions:-

“In the circumstances, the writ petition is allowed and the respondents are directed to carry out the corrections requested by the petitioner, within two months from the date of receipt of a copy of the judgment.”

2. Being aggrieved by the judgment, Central Board of Secondary Education (CBSE), represented by its Chairman, Head Office No.2, Sisksha Kendra Community Centre, Preet Vihar, New Delhi, has preferred this appeal.

3. Shorts facts leading to the appeal are as under:

The name of the writ petitioner's father is Hashim A and his mother's name is Shahina Begum D.S. At the time of birth of the writ petitioner, both the father and mother of the writ petitioner were abroad. The names of petitioner's father were recorded in his birth certificate on the basis of their passports. Accordingly, in Ext.P3 birth certificate of the writ petitioner, father's name is shown as 'Hashim Abdulla' and mother's name is shown as “Shahina Duneera”. Based on Ext.P3 birth certificate, names of petitioner's parents were shown in Ext.P4 certificate dated 29.05.2018 of

Secondary School Examination, 2018. The writ petitioner has obtained Ext.P5 corrected birth certificate on 12.10.2018. Based on Ext.P5, the petitioner carried out correction of parent's name in school records and then applied for correction of parents' name through school to the 2nd respondent. The second respondent, through Ext.P6 communication dated 24.01.2019 rejected his application on the ground that the school records were not found in consonance with the desired correction in parent's name as per Rule 69.1(ii) of the Exam Bye Laws. Aggrieved by the same, the petitioner filed W.P.(C) No. 3460 of 2019 before this Court and this Court as per Ext.P7 judgment dated 06.12.2019 set aside Ext.P6 order and directed the 2nd respondent to take up, consider and pass appropriate orders taking note of Ext.P5 corrected birth certificate. Pursuant to the same, the 2nd respondent/2nd appellant issued Ext.P8 order rejecting the request of the writ petitioner. Hence this appeal.

4. According to the appellant, learned single Judge was unmindful of the fact that a reasonable prescription of the statutory body, cannot be substituted by courts which would result in individual predilections being imposed on the statutory authorities as against those prescribed in the Rules and Regulations.

5. It is the further case of the appellant that as per the examination byelaw 69.1(ii), corrections that could be carried out are only to correct typographical and other errors, to make the

certificates consistent with the school records. The correction sought by the writ petitioner does not fit in the category of typographical error as there is considerable change in the name of father of the candidate.

6. Assailing the correctness of the judgment made in W.P. (C) No.26131 of 2019 dated 14.10.2019, appellant has raised the following grounds:

"1. As per the examination bye-law 69.1(ii), the corrections that could be carried out are only to correct typographical and other errors, to make the certificates consistent with the school records.

2. The correction sought by the petitioner does not fit in the category of typographical error as there is considerable change in the name of the father of the petitioner. The change in the name of the parent, sought is not a simple typographical error. There is significant change in the name sought to be corrected. Even if, as per 69.1(i) change could be made by applying for change in name or surname, the changes should have been admitted by the court of law and notified in the Government Gazette, before publication of the result.

3. The Hon'ble Division Bench of this Court in **Subin Mohammed Vs. Union of India and others** (2016 (1) KLT 340), has clearly directed that, the board ought to correct the certificates only if the request is found to be genuine.

4. In the transfer certificate issued by the previous school the name of the father of the first respondent is recorded as Abdulla Hashim which was subsequently corrected to Hashim Abdulla. Whereas in the admission form and withdrawal register the names of the first respondent's father and mother

is recorded as Hashim Abdulla and Shahina Duneera respectively.

5. The name of the father of the candidate as shown in the school register, which were consciously given by the parents and the candidate has even given sufficient opportunity to seek correction at least before the board examination. The 1st respondent was on the very date of issuance of Exhibit-P4 certificate put to notice as to the entries made in the certificate.

6. Though the byelaws is not statutory in nature, it is enforceable as the Bye laws conditions have to be observed by every candidate who undertakes the board examination.

7. The examination bye-law permits correction subject to only reasonable restrictions. If such drastic corrections are permitted in the mark lists, the board is constrained to deviate from the stipulated bye-laws and issue corrected mark list in compliance of court direction.

8. The Board is also facing embarrassing situations and unnecessary litigations wherein the candidates concerned obtains bogus birth certificate to effect such corrections.”

7. Though Mr.Nirmal S., learned counsel for the appellant, made submissions on the above grounds, assailing the correctness of judgment of the writ court, we are not inclined to accept the said contentions for the reason that a Hon'ble Division Bench of this Court in **Subin Mohammed S. v. Union of India and Others** reported in 2016 (1) KLT 340, has considered the said contentions and rejected the same. Paragraphs 20 to 41 of the above said decision is extracted hereunder:-

"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 Board of Secondary Education of Assam v. M.D. Sarifuz Zaman and others [(2003) 12 SCC 408], 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 & 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 & 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 & Investment Corpn. v. Diamond & 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. "

8. Some of the decisions relied on by learned counsel for the petitioners therein, are worth reproduction:

"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 lose 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.”

9. Equally, contentions and decisions relied on by learned counsel for the Central Board of Secondary Education (CBSE) are reproduced hereunder:

“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."

10. It is trite law that the decision rendered by a Hon'ble Division Bench of this Court in ***Subin Mohammed's case*** (supra) is binding on a Co-ordinate Bench. On the above aspect, reference can be made to a few decisions.

"The Hon'ble Supreme Court has held that Judicial Comity is an integral part of judicial discipline and to maintain judicial discipline, corner stone of the judicial integrity requires that judgments of Coordinate Benches must be respected.

(i) In **Lily Thomas vs. Union of India**, reported in **2000 (6) SCC 244**, the Hon'ble Supreme Court, reiterated the principle that rulings of Larger Bench should be followed and those of Coordinate Bench of equal strength not to be different from and must be followed.

(ii) In fact, the Hon'ble Supreme Court has criticised the decisions of Coordinate Benches, which have not followed the earlier judgments by another Coordinate Bench. Hon'ble Supreme Court in **Official Liquidator v. Dayanand and others**, reported in **(2008) 10 SCC 1**, wherein at paragraph Nos.90 and 91, held thus:-

"90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence

developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.”

(iii) Judicial discipline envisages that a coordinate Bench

follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench. (See **Pradip Chandra Parija v. Pramod Chandra Patnaik, reported in 2003 (7) SCC 01, SCC** at paras 6 and 7; followed in **Union of India v. Hansoli Devi, reported in 2002 (7) SCC 01, SCC** at para 2.) But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. **Kalyani Stores, reported in AIR 1966 SC 1686** and **K.K. Narula, reported in AIR 1967 SC 1368**, both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority.

11. Reverting to the case on hand, in the secondary school leaving certificate, Exhibit-P2, the name of the writ petitioner's father is shown as "Hashim Abdulla" and her mother's name is shown as "Shahina Duneera". Originally, the name of the writ petitioner's father is Hashim A and his mother's name is Shahina Beegum D.S. The corrected birth certificate was later issued as per Ext.P5.

12. In view of the above variance, in W.P.(C) No.1155 of 2020, the writ petitioner has sought for a writ of certiorari to call for the records leading to Exhibit-P8, copy of copy of the Order No.CBSE/RO(Tvpm)/M&M/2110/2019 dated 20.09.2019 issued by the 2nd respondent therein/2nd appellant and the writ court after considering the rival submissions, has issued directions, as stated supra.

13. In the light of the decisions and, in particular, the binding effect of the decision in **Subin Mohammed's** case (supra),

we do not find any merit in this appeal seeking reversal of the judgment made in W.P.(C) No.26131 of 2019 dated 14.10.2019.

In the result, writ appeal is dismissed. No costs.

sd/-

**S. MANIKUMAR,
CHIEF JUSTICE.**

sd/-

**SHAJI P. CHALY,
JUDGE.**

Rv