

BOARD OF SECONDARY EDUCATION OF ASSAM

A

v.

MD. SARIFUZ ZAMAN AND ORS.

DECEMBER 19, 2003

[R.C. LAHOTI AND ASHOK BHAN, JJ.]

B

Regulations for Conduct of Examinations by the Board of Secondary Examination of Assam :

Regulation 8—Correction of date of birth—Regulation providing three years period for filing an application for correction—Board declining to entertain the application as it was filed beyond the period of limitation—High Court allowed the relief—Held, three years period provided by the Regulation is a very reasonable period—The provision is neither illegal nor beyond the purview of s.24 of the Act and also cannot be called arbitrary or unreasonable—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—Judgment of High Court set aside—However, in view of the concession given on behalf of the Board, this judgment shall not have any bearing on the relief allowed to the two respondents—Constitution of India, 1950—Article 14—Assam Secondary Education Act, 1961—S.24.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10250 of 2003.

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From the Judgment and Order dated 30.8.2000 of the Gauhati High Court in W.A. No. 343 of 2000.

WITH

C.A. No. 10251 of 2003.

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P.K. Goswami, Rajiv Mehta and B. Aggarwalla for the Appellants.

Ms. K. Sarada Devi for the Respondents.

The following Order of the Court was delivered :

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A Leave granted in both the SLPs.

Common questions of law, in the backdrop of similar facts, arise for decision in these two appeals. It would suffice for our purpose to notice facts of one of the cases.

B 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 the B.Sc. examination in the year 1998. When he filed the writ
C petition, he was undergoing a course of study in computers. At that point of time, on October 12, 1999, he moved an application to the Board complaining that his date of birth was wrongly mentioned in the school records as May 30, 1974, while his actual date of birth was August 16,
D 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 realize the importance of the correct date of birth being entered into the school records, and therefore, he did not also realize the implications thereof until he was promoted in moving the application. The application moved by the respondent to the Principal of the school,
E 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
F 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.

The Board relied on Regulation 8 of the Regulations for Conduct of Examinations by the Board, (hereinafter 'the Regulations' for short),
G 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 into dismissal of the writ petition. A writ appeal was preferred by the respondent. The Division
H 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 these appeals by special leave. A

At the outset, the learned counsel for the appellant-Board submitted that the Board was not interested in nullifying the relief allowed to the two respondents herein, but it was nevertheless interested in having the legal position settled inasmuch as the view of the law taken by the Division Bench has resulted in the Board being flooded with applications seeking rectifications in the dates of birth of the applicants as recorded in the certificates issued to them consequent upon their having cleared the examinations conducted by the Board. A possibility of unscrupulous applicants taking undue advantage of the liberal view taken by the High Court may result into non-genuine cases also being cleared whereon there would be difficult to keep a check. In view of the submissions so made, we propose to examine, deal with and settle the law as to the validity of 3 years period prescribed as outer limit for seeking the correction in the date of birth by reference to Regulation 8. B C D

A perusal of the judgment of the High Court shows that mainly two reasons have prevailed with the High Court in forming an opinion against the Board and allowing relief to the writ-petitioners. The High Court has held : firstly, that Section 24 of the Act contemplates Regulations being made only for facilitating the working and functioning of the Board for the purpose of carrying out the provisions of the Act; the Regulations cannot be so framed as to deprive any applicant of the right of seeking correction of date of birth by proving a period of limitation for making the application; and secondly, any provision made in the Regulations framed with the object of carrying out the provisions of the Statute cannot extinguish any right generally available to a person to get a mistake corrected; no regulatory measure can in any case be absolute in nature. The learned counsel for the appellant has disputed the correctness of these propositions laid down by the High Court. Let us proceed to examine the same. E F G

The Board is constituted under the Assam Secondary Education Act, 1961 and derives its authority thereunder. Sub-section (1) of Section 24 empowers the Board to make Regulations generally for the purpose of H

A carrying out the provisions of the Act . Sub-section (2) of Section 24 by clauses (a) to (m) lays down specifically the subjects whereon the Board may frame Regulations without prejudice to the generality of the power conferred by sub-Section (1).

B Regulation 8 provides as under –

“8. CORRECTION OF DATE OF BIRTH. NAME, TITLE, ETC.:

(a) *Date of Birth* : Once the date of Birth is reported by the Heads of the Recognised High School High/Madrassa/Higher Secondary School to the Board in the prescribed statement of candidates along with the application for the Examination and entered in the records of the Board, it will not be altered except on grounds of wrong calculation or clerical error for which an application with the recommendation of the Head of the institute will have to be made to the Board through Inspector of Schools concerned who will verify the School records and submit report to the Board. The Secretary of the Board may pass orders for correction if he is satisfied that there was wrong report of the date of Birth due to wrong calculation or clerical error.

E Provided that the Date of birth as 30th February, 31st April, 31st June, 31st September, 31st November and also 29th February excepting that of a leap year be uniformly corrected as the last date of Month without any reference to School.

F If any inaccuracy creeps in at the stage of writing the certificate only, all other prior documents being correct in all respects, correction in the Certificate will be admissible if the application is received within 3 years from the date of issue of certificate by the Board with necessary fees.

G xxx xxx xxx xxx

Undoubtedly, the general power conferred on the Board by Section 24(1) of the Act is for the purpose of carrying out the provisions of the Act. Under Section 24(2), clause (d) provides the subject, on which H Regulations may be framed, as conducting examinations an publishing the

results. Clause (g) provides the subject as 'conditions under which candidates shall be admitted to the examinations of the Board. It is not disputed, and could not have been, that the application form of a candidate seeking to participate in an examination held by the Board has to be forwarded by the educational institution wherein he is studying. The application has to be duly, truly and fully filled in. One of the informations required to be given is the age and date of birth of the students. It is common knowledge that the certificate issued by the Board either at the matriculation examination or at the higher secondary level examination mentions the date of birth of the student. Such certificate is invariably accepted as a valuable piece of evidence in proof of the date of birth and age of the applicant throughout his career ahead. The courts of law attach a high degree of probative value to the certificate and in the absence of anything to the contrary, the date of birth, as entered in the certificate, is accepted almost as binding. On the result of the examinations conducted by the Board having been published the successful candidates are awarded certificates. The name, father's name, date of birth the institution in which the student has studied and such other particulars as are incorporated in the certificate are based on the information made available by the contents of the application form which is scrutinized, verified and forwarded by the institution, in which the student has studied. All these particulars carry with them a *prima facie* guarantee of correctness inasmuch as such particulars in the record of the institution are furnished by the applicant himself and the applicant himself fills in and subscribes to the application seeking entry in the examination conducted by the Board. It is difficult to assume that such particulars would be false or incorrect so far as the applicant is concerned. At the same time, this procedure becomes a part of the process of 'conducting examinations and publishing the results' as also the 'conditions under which the candidates shall be admitted to the examinations of the Board' the two subjects covered by clauses (d) and (g) of sub-Section (2) of Section 24 of the Act, apart from the generality of the power conferred by sub-Section (1) of Section 24. It cannot, therefore, be contended that the matter relating to certificates and as to correction of any entry made therein does not fall within the purview of the power to make Regulations conferred on the Board.

Nobody can claim a right to have corrected an entry in a certificate solemnly issued by an educational institution that too the one enjoying the

A 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.

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.

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 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 higher 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.

Three years period provided by the Regulation is a very reasonable period. On the very date of issuance of the certificate the concerned student is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The student would realize 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.

For the foregoing reasons, the appeals are allowed. The Judgment of the Division Bench of the High Court is set aside. However as already noted and in view of the very fair concession given by the learned counsel for the appellants, it is directed that this judgment shall not have any effect or bearing on the relief allowed to the two respondents herein by correcting the entries as to date of birth made in their respective certificates. No order as to the costs.

R.P.

Appeals allowed.