

Updesh Kumar, Etc. Etc vs Prithvi Singh & Ors., Etc. Etc on 19 January, 2001

Equivalent citations: AIR 2001 SUPREME COURT 703, 2001 (2) SCC 524, 2001 AIR SCW 347, 2001 SCC(CRI) 1300, 2001 (1) SCALE 239, 2001 (2) LRI 992, (2001) 2 JT 308 (SC), 2001 (2) SRJ 304, 2001 (2) ALL CJ 1194, 2001 ALL CJ 2 1194, 2001 (2) JT 308, (2001) 1 RECCIVR 637, 2001 SCC (L&S) 1063, (2002) 93 FACLR 117, (2001) 2 SCJ 66, (2001) 1 SUPREME 233, (2001) 1 SCALE 239, (2001) 1 UC 345, (2002) 46 ALL LR 616, (2001) 3 BOM CR 118

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Bench: S.R.Babu, K.G. Balakrishnan

CASE NO.:

Appeal (civil) 722 of 2001	
Special Leave Petition (civil) 4217	of 2000
Appeal (civil) 723 of 2001	
Special Leave Petition (civil) 4767	of 2000
Appeal (civil) 724 of 2001	
Special Leave Petition (civil) 5283	of 2000

PETITIONER:

UPDESH KUMAR, ETC. ETC.

Vs.

RESPONDENT:

PRITHVI SINGH & ORS., ETC. ETC.

DATE OF JUDGMENT: 19/01/2001

BENCH:

S.R.Babu, K.G.Balakrishna

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....T..J K.G. BALAKRISHNAN, J.

Leave granted.

These three appeals, filed by Updesh Kumar, Indian Oil Corporation Limited and Prithvi Singh respectively, arise out of a common judgment passed in R.S.A. No. 632 of 1999 and R.S.A. No. 3268 of 1999 by the High Court of Punjab & Haryana at Chandigarh. The dispute in all these appeals relates to the allotment of a retail outlet dealership by the Indian Oil Corporation Limited.

The facts of the case, in brief, are thus. Indian Oil Corporation Limited, on 21.1.1987, invited applications from physically handicapped persons/Govt. employees, who became disabled while on duty (excluding Defence personnel), for allotment of a retail outlet dealership in Faridabad district. One of the conditions of eligibility was that the applicant should not be less than 21 years and more than 50 years of age as on the date of application. The Oil Selection Board conducted interviews of the eligible candidates. Prithvi Singh (appellant in the civil appeal arising out of SLP(C) No. 5283 /2000), was found eligible for allotment of the retail outlet. The second eligible candidate was one Mamta Rani while Updesh Kumar, the appellant in the civil appeal arising out of S.L.P. (Civil) No. 4217 of 2000, was the third eligible candidate. The letter of intent was issued by the Indian Oil Corporation in favour of Prithvi Singh on 23.11.1987. Mamta Rani filed a representation alleging that as Prithvi Singh had not completed 21 years of age as on the date of his application, the letter of intent issued in his favour was liable to be cancelled. Pursuant to this, the letter of intent granted in favour of Prithvi Singh was cancelled on 7.3.1988. Prithvi Singh, in turn, filed a writ petition before the High Court of Delhi challenging the cancellation of the letter of intent issued in his favour. The High Court set aside the cancellation order and directed the Oil Selection Board to re-consider the matter afresh after hearing Prithvi Singh and the complainant, Mamta Rani. Accordingly, in pursuance of the directions of the Delhi High Court, the Oil Selection Board considered the matter afresh and held that Prithvi Singh was more than 21 years old as on the date of his application. The letter of intent issued earlier was thus revived and Prithvi Singh then took appropriate steps to start the retail outlet.

However, Mamta Rani again challenged the order passed by the Oil Selection Board before the Delhi High Court. She also filed a civil suit before the District & Sessions Judge at Chandigarh challenging the findings of the Oil Selection Board and prayed for injunction against allotment of the retail outlet in question to Prithvi Singh. The writ petition filed by her was disposed of by the High Court with the observation that she could pursue the matter in the civil suit filed by her. In the meantime, the third eligible candidate, Updesh Kumar also filed a civil suit before the Addl. Sr. Sub Judge, Palwal. The suit filed by Mamta Rani was transferred to the Palwal court and both the suits were tried together. During the pendency of the suits, Mamta Rani passed away and the suit filed by her abated. The suit filed by Updesh Kumar was tried and dismissed by the Addl. Sr. Sub Judge, Palwal. Aggrieved thereby, Updesh Kumar filed an appeal before the Addl. District Judge, Faridabad. The appellate court held that the correction of the date of birth of Prithvi Singh from 3.10.1969 to 26.12.1965 in his Matriculation Certificate was illegal, null and void and was not binding on the appellant, Updesh Kumar and consequently the Indian Oil Corporation Ltd. was restrained from allotting the disputed retail outlet to Prithvi Singh. This judgment was challenged by Prithvi Singh before the High Court of Punjab & Haryana, but the High Court declined to interfere with the judgment of the Addl. District Judge, Faridabad. It was further directed by the High Court that the Oil Selection Board should conduct a fresh selection. This finding of the learned Single Judge is challenged before us.

We heard the learned counsel for the parties and also Mr. Harish N. Salve, learned Solicitor General for the Indian Oil Corporation.

Prithvi Singh had submitted an application for allotment of a retail outlet claiming that he had completed 21 years of age as on the date of application. According to Prithvi Singh, his date of birth is 26.12.1965 and not 3.10.1969 as originally entered in his Matriculation certificate.

It may be noted that Prithvi Singh, as early as in 1986, had obtained Ex. PW-2/B (Date of Birth Certificate) from the Chief Medical Officer, Faridabad, wherein his date of birth was recorded as 26.12.1965. Based on this certificate, he later submitted an application for correcting his age in the Matriculation certificate and accordingly his date of birth was corrected in the Matriculation certificate from 3.10.1969 to 26.12.1965. All these certificates were produced by Prithvi Singh before the Oil Selection Board and after hearing both Prithvi Singh and Mamta Rani, the Oil Selection Board held that Prithvi Singh had attained 21 years of age as on the date of his application for allotment of the retail outlet.

In the suit filed by Updesh Kumar, he had challenged the letter of intent granted in favour of Prithvi Singh and he had also contended that the correction in the date of birth of Prithvi Singh by the Haryana School Education Board was illegal as it was done without any notice to him. Before the trial court, Prithvi Singh produced several documents to prove that his correct date of birth was 26.12.1965. The main documents on which he relied were Ex. PW-2/B (Date of Birth Certificate); Matriculation Examination certificate; Exh. P-X (copy of the application submitted for obtaining copy of the Birth Certificate); and Ex. P-Y (Copy of the Challan to show that he had paid Rs.4/- for obtaining copy of the certificate). The trial court elaborately considered the question and held that Ex. PW-2/B (Birth Certificate) was a genuine document issued by the competent authority and that the correction of date of birth in the Matriculation Examination certificate was properly done and that the date of birth of Prithvi Singh must, in all probability, be 26.12.1965 and held that the decision of the Oil Selection Board in allotting the retail outlet to Prithvi Singh was just and proper.

Learned counsel appearing on behalf of Updesh Kumar, strenuously contended before us that Ex. PW-2/B certificate was not issued by the Chief Medical Officer and that it was a forged document and that the appellate court had accepted this contention and the same was upheld by the learned Single Judge.

It is important to note that Ex. PW-2/B certificate was issued at an undisputed point of time. The advertisement inviting applications for retail outlet was itself issued on 21.1.1987. Copy of the birth certificate was obtained by Prithvi Singh in 1986. Exh. P-X is the copy of the application submitted by Prithvi Singh and Ex. P-Y is the challan form by which he had paid Rs.4/- as fee for obtaining a copy of the certificate. Prithvi Singh had also given a very valid and reasonable explanation as to why he had obtained such a certificate in 1986. He deposed that in 1986, both he and his brother had to appear in public examination. From their dates of birth entered in the school record, it was, however, noticed that there was only three months' difference between those two dates of birth. Prithvi Singh was, therefore, asked to obtain a birth certificate from the Chief Medical Officer in order to avoid any risk of his application for the said examination being rejected. Prithvi Singh thus

applied for the certificate and obtained the same on 17.2.1986 and as per that certificate his date of birth was 26.12.1965. Thereafter, he submitted an application for correction of his date of birth in the Matriculation Certificate. The Haryana School Education Board then corrected his date of birth accordingly to 26.12.1965.

Serious challenge was made to Ex. PW-2/B birth certificate, mainly for the reason that the Dy. Chief Medical Officer, Smt. M.K. Bhatia, [PW-3], who had allegedly issued the certificate, had denied her signature thereon. However, it is pertinent to note that she had admitted her signature in Ex. PW-2/D, PW-2/E and PW-2/F certificates, which are the birth certificates issued to the siblings of Prithvi Singh. All these documents were sent for the report of a handwriting expert and he opined that in all probability, the signature found on Ex. PW-2/B must be that of PW-3, Smt. M.K. Bhatia. The expert, Mr. K.K. Khandelwal was examined as a witness and the Trial Judge, after considering the evidence and his report, held that Ex. PW-2/B bore the signature of Smt. M.K. Bhatia. The appellate court did not consider all these aspects and was simply carried away by the fact that Smt. Bhatia had denied the signature and therefore, the birth certificate must have been forged and fabricated by Prithvi Singh. The finding of the lower appellate court, which was affirmed by the learned Single Judge is without any basis.

Prithvi Singh obtained the birth certificate in February, 1986 and his date of birth shown in that certificate is 26.12.1965. This very much tallied vis-a-vis the dates of birth of his siblings. Prithvi Singh submitted an application for correction of his date of birth in the Matriculation Certificate and the Haryana School Education Board corrected his date of birth in the school certificate issued to him. The correction of date of birth in the certificate is an official act and it must be presumed to have been done in accordance with law. Updesh Kumar could not produce any evidence to show that there was any irregularity in the process of correcting the date of birth of Prithvi Singh in the school record. Strangely, the appellate court has observed that Updesh Kumar was not given notice or heard when the correction in the date of birth of Prithvi Singh was done in the school records and hence there is violation of the principles of natural justice. It was not necessary for the authorities to issue any notice to Updesh kumar in the matter of correction of the date of birth of Prithvi Singh. There was no violation of the principles of natural justice on that score. The denial of signature by PW-3, Smt. Bhatia on Ex. PW-2/B certificate is also of not much consequence. She must have deposed so because the original records kept in the office of the Chief Medical Officer were found tampered with. The pages had been found torn and replaced. It was noticed by the trial Judge that the entries in the register for the year 1965-66 were in Urdu script while those on the relevant pages were in Hindi. The corresponding leaf of the sheet containing entries 74 to 85 in the register was found removed and another paper was pasted. As the original register was found tampered with, PW-3 Smt. Bhatia had no other go but to deny her signature on Ex. PW- 2/B certificate issued from her office. This aspect was not carefully taken note of by the appellate court. It may also be noticed that in the electoral roll published on 1.1.1986, the name of Prithvi Singh had been entered as he had attained more than 21 years of age as on 1.1.1986. The Oil Selection Board considered all these aspects and held that the date of birth of Prithvi Singh must be 26.12.1965 and that as on the date of application for allotment of the retail outlet he had attained the age of more than 21 years.

There is overwhelming evidence to prove that Prithvi Singh had attained the age of 21 years as on the date of his application for allotment of the retail outlet and the appellate court was not justified in reversing the decision of the trial court. The learned Single Judge also did not advert to these points while confirming the decision of the appellate court. In the result, we set aside the judgment of the appellate court and that of the learned Single Judge and hold that the suit filed by Updesh Kumar shall stand dismissed. Consequently, the appeals filed by Prithvi Singh and the Indian Oil Cororation Limited are allowed. The appeal filed by Updesh Kumar shall stand dismissed and he being a physically handicapped person, we make no order as to costs. All the parties shall bear their respective costs.