

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A NO. 218 OF 2021

Nosheen Ulfat

Vs

NADRA through its Chairman, etc.

APPELLANT BY: Mr. Raz Ali Shah, Advocate.

RESPONDENTS BY: Syed Junaid Jaffer, Advocate for
respondent No.1.
Mr. Fazal-e-Rabbi, Deputy Registrar
(Legal) for respondent No.2.

DATE OF HEARING: 16.09.2021.

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BABAR SATTAR, J.- This an appeal filed against the judgment and decree dated 31.03.2021 passed by the learned Senior Civil Judge dismissing Civil Suit No. 47/2020, pursuant to which the appellant was seeking to have her date of birth changed from 01.11.1988 to 01.11.1994.

2. Briefly the facts are that the appellant claims that she was born on 01.11.1994 but her date of birth was incorrectly and inadvertently mentioned as 01.11.1988 in her CNIC. Through the suit leading to the instant appeal she sought correction in her date of birth. The learned Civil Court framed the following issues:

1. *Whether the correct date of birth of the plaintiff is 01.11.1994 instead of 01.11.1988, as such, the plaintiff is entitled to the decree as prayed for? OPP*

2. *Whether the suit of the plaintiff does not disclose any cause of action against the defendant? OPD*
3. *Whether the plaintiff is estopped by her conduct and also barred by law under Limitation? OPD*
4. *Relief.*

3. While determining the entitlement of the appellant to have a date of birth corrected the learned Civil Court found that the appellant had failed to establish her claim while seeking change in her date of birth. The appellant relied on Secondary School Certificate ("**SSC**") issued by Allama Iqbal Open University (Ex-P1), wherein her date of birth was recorded as 01.11.1994 and her madrassah leaving certificate issued on 30.04.2008 which also reflected her date of birth as 01.11.1994. The learned Civil Court did not take into consideration the madrassah leaving certificate as it was not exhibited and was produced by the appellant as Mark-PA. The learned Civil Court further disregarded the SSC as it had been issued after the issuance of her CNIC. The learned Civil Court came to the conclusion that there was no explanation as to why the appellant would seek a CNIC in 2010 on the basis that she attained the age of 18 if in fact she was born in 1994, as claimed by her in her suit, and was consequently merely 16 years of age at the time when she applied for and was issued her CNIC in 2010.

4. The learned counsel for the appellant stated that the appellant had filed an application under Order XLI Rule 27 of CPC to produce additional evidence which was a birth certificate issued by the Government of Punjab dated 02.04.2021 which reflected the date of birth of the appellant as 01.11.1994. He contended that the said birth certificate issued by the

Government of Punjab was not in the knowledge of the appellant at the time when the suit was filed and consequently the appellant ought to be afforded a right to adduce such additional evidence in the interest of justice. In this regard the learned counsel relied on **Ghulam Zohra and 8 others Vs. Nazar Hussain through legal heirs (2007 SCMR 1117)**, **Muhammad Siddique Vs Muhammad Sharif (2005 SCMR 1231)**, **Malikan/Jumla Awam Basha Thak Vs Malikan/Jumla Awam Kharanji Heti (2021 YLR 335)**, **Sher Muhammad Versus Mst. Sameeri Bibi (PLD 2021 Lahore 287)** and **Iris Communications (Pvt.) Ltd. Versus Ahmad Khalid (2019 MLD 772)**. He further submitted that SSC issued by Allama Iqbal Open University reflected the correct date of birth of the appellant as 01.11.1994 and that in view of the law laid down in **Muhammad Arshad and another Vs. Mian Noor Ahmed and another (2008 SCMR 713)** and **Malik Muhammad Faisal and another Vs. State Life Insurance Corporation (PLD 2007 Lahore 453)** the date of birth as recorded in matriculation certificate is to be given preference over that in the CNIC. He further submitted that even within the policy issued by NADRA, it was stated that in the event that an applicant is a matriculate, the date of birth reflected in the matriculation certificate would be given preference over that reflected in any other document.

5. Learned counsel for respondent No.1 stated that the impugned judgment and decree was in accordance with law and did not suffer from any infirmity. He submitted that the

appellant's CNIC was issued on the basis of particulars provided by the appellant herself, according to which her date of birth was 01.11.1988 and further that she was born in Islamabad. He further submitted that such information was consistent with the information in her birth form issued by NADRA on 22.12.2004 on the basis of particulars provided by her mother, Msrs. Rifat Sultana, and such birth form also reflected that the appellant was born on 01.11.1988 in District Islamabad. He contended that the said particulars contradicted the position taken by the appellant while seeking to adduce as additional evidence the birth registration certificate issued by the Government of Punjab, which reflected that the appellant was born on 01.11.1994 in Tehsil Sohawa, District Jhelum. His contention was that the birth form is issued by NADRA under section 9 of the National Database and Registration Authority Ordinance, 2000 (**"NADRA Ordinance"**) on the basis of particulars provided by parents of children and the CNIC is issued on the basis of particulars ascertained and verified by an applicant himself or herself at the time that they seek issuance of CNIC. And that as the particulars provided by the mother of the appellant matched the particulars verified by the appellant herself at the time of issuance of CNIC, she could not come before the court and claim that she misstated her own date of birth by six years at the time when she sought the issuance of her CNIC in 2010. He further contended that the suit was also time barred as the appellant's CNIC was issued in 2010 and attracted the limitation period as prescribed under Article 120 of the Limitation Act, 1908, which

time ran out in 2016. And that the suit in question was filed in 2020 and was thus barred by limitation.

6. Mr. Fazal-e-Rabbi, Deputy Registrar (Legal) appearing on behalf of respondent No.2 stated that the University had no mechanism to verify the age of a student and essentially recorded the date of birth as provided by the student. In relation to the appellant's SSC, he submitted that she was issued the same on the basis of her revised semester result as the date of birth initially provided by the appellant was different. And that she subsequently filed an application for correction of date of birth, which was allowed by the University and consequently the SSC was issued by the University on 14.07.2017 for Semester Autumn 2011, the result of which was declared on 20.07.2012 (i.e. after lapse of five years of the announcement of such result.)

7. The question of what sources of information ought to be given priority in considering the question of correction of date of birth came before this Court in ***RFA No. 03 of 2021 titled Samia Khan Vs. Federal Board of Intermediate and Secondary Education, Islamabad*** in which while seeking guidance from judgments of august Supreme Court reported as ***Waqas Akram Vs. Dr. Muhammad Tahirul Qadri and others (2003 SCMR 145)***, ***Razia Khatoon vs. Dr. Roshah H. Nanji and another (1991 SCMR 840)***, ***Akhtar Hussain Zaidi Vs Muhammad Yaqinuddin (1988 SCMR 753)*** and ***Abdul Khaliq and another v. Maulvi Noor Muhammad and others (PLD 2005 SC 962)***, this Court held the following:

"30. In view of the judgments of the apex Court it can be concluded that the presumption of truth attaches to entries of the National Identity Card, previously issued under the Registration Act, 1973 and now under the National Database and Registration Authority Ordinance, 2000 (**"NADRA Ordinance"**). While presumption of truth attaches to particulars reflected on a birth form or CNIC and backed by NADRA record, such record is not infallible. In Abdul Khaliq it was held that the entries in a CNIC are to be treated as more authentic and presumption of truth is attached to them, but such presumption can be rebutted and overturn by good and better evidence. It is, therefore for the learned trial court endowed with responsibility to decipher true facts of the case to determine on a case-to-case basis whether the presumption of truth that attaches to the particulars reflected in a birth form or CNIC have been rebutted by the person denying the truth and authenticity of such particulars through superior and more compelling evidence.

33. Given the object and purpose of the NADRA Ordinance it is patent that it is the intent of law that sanctity and integrity of particulars maintained in the database established and maintained by NADRA is to be preserved. When a child is born the incidence of birth is to be reported to NADRA. When he/she turns 18 he/she is obliged to seek the issuance of a CNIC. In other words, the legislature has attempted to fill the lacuna that might have existed before promulgation of NADRA Ordinance resulting in discrepancies in recorded dates of birth on identity documents versus academic transcripts. The legislative intent is clear that presumption of truth ought to attach to the particulars maintained by NADRA on the basis of which birth certificates, CNICs and passports are issued and voting rights are afforded to citizens.

34. The boards of education and universities are also established under legislative instruments. But the purpose of such educational institutions is not to verify or ascertain the particulars of citizens such as their date of birth. NADRA Ordinance is a special law promulgated for purposes of maintaining a database to record and verify and preserve the personal particulars of citizens and it is thus that

presumption of truth attaches to such particulars. As aforesaid the presumption can always be rebutted by superior and compelling evidence in individual cases. But the general rule as ascertained from the object and purpose of NADRA Ordinance and reiterated by the august Supreme Court in the judgments cited above is that presumption of truth shall attach to the particulars recorded in the CNIC or birth form issued by NADRA.”

8. In view of the facts of the instant case two documents that the appellant relied on are (i) the SSC issued by Allama Iqbal Open University on 14.07.2017, and (ii) the birth registration certificate issued by the Government of Punjab on 02.04.2021 (which reflected date of birth of the appellant as 01.11.1994). Such particulars are in conflict with the birth form issued by NADRA on 22.12.2004 on the basis of particulars provided by the appellant’s mother as well as the CNIC issued by NADRA on the basis of particulars provided and verified by the appellant herself at the time when she had already attained the age of majority.

9. The learned Civil Court has rightly relied on the date of birth as recorded in the CNIC and backed by the birth form in view of the fact that the documents being relied upon by the appellant to seek a correction in a date of birth have all been issued many years after the issuance of the birth form on 22.12.2004 and the issuance of a CNIC in 2010. It is also noteworthy that as part of the evidence adduced by the appellant before the learned trial court she did not produce either of her parents as witnesses to explain as to why her mother provided incorrect particulars at the time of issuance of

her birth form in 2004. She also adduced no evidence herself to explain as to why she verified the fact that she attained the age of 18 years when she sought the issuance of CNIC in 2010, if in fact she was only 16 years of age at that time. Under section 30(2)(a) and (f) of NADRA Ordinance anyone who furnishes false information to NADRA including his/her particulars for the issuance of CNIC is punishable with rigorous imprisonment which may extend to five years and fine of upto Rs.100,000/-. Given that furnishing false information to NADRA is an offence and the information furnished at the time of seeking a CNIC is verified by the applicant while he/she has already attained the age of majority, such information and particulars cannot be disregarded in the absence of exceptional circumstances explaining how an error crept into the data provided to NADRA and reflected in the CNIC. The information as provided by the appellant to NADRA on the basis of which her CNIC was issued cannot therefore be disregarded on the basis of SSC issued in 2017 by Allama Iqbal Open University and a birth form issued by the Government of Punjab in 2021. The appellant has failed to make out a case for recording of additional evidence. No explanation has been provided to this Court by the learned counsel for the appellant as to why the fact that she was born in Tehsil Sohawa of District Jhelum was not in the knowledge of the appellant at the time of filing of her suit or even that she could seek a birth registration certificate from the Government of Punjab. The learned counsel for the appellant has also failed to satisfy this Court as to why the appellant voluntarily verified information for issuance of a CNIC which she now claims to be false. This Court is therefore

not convinced that there is any need for recording of additional evidence in order to do complete justice in the instant case.

10. The law on the question of weightage to be given to various sources of information reflecting the date of birth of a citizen has been explained above and the information contained in the NADRA Database and reflected in a birth form or CNIC issued by NADRA can only be overridden in exceptional circumstances, which do not exist in the present case.

11. In view of the above, the appellant has failed to establish that the impugned judgment and decree suffer from any infirmity and the instant appeal is consequently **dismissed** with a cost of Rs.25,000/- payable in equal parts to respondents No. 1 and 2 within a period of 15 days from the date issuance of this judgment.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **22.09.2021.**

JUDGE