

GAHC010060652024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1669/2024

AMIKA GURUNG
DAUGHTER OF BIRU GURUNG,
RESIDENT OF PALTAN BAZAR, SHILLONG,
DISTRICT- EAST KHASI HILLS, MEGHALAYA,
INDIA, PIN- 793001.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
HIGHER EDUCATION DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR
HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DIBRUGARH UNIVERSITY
REPRESENTED BY THE VICE CHANCELLOR

DIBRUGARH UNIVERSITY

DIBRUGARH
PIN- 786004.

4:THE CONTROLLER OF EXAMINATION
DIBRUGARH UNIVERSITY
DIBRUGARH
PIN- 786004.

5:THE DIRECTOR
BOSCO INSTITUTE
LIFE PLUS
BAGHCHUNG
JORHAT

ASSAM
PIN- 785001

Advocate for the Petitioner : MS. D GHOSH

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 02.04.2024

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel, Higher Education Department, appearing on behalf of Respondents No. 1 & 4; and Mr. Rajesh Mazumdar, learned standing counsel, Dibrugarh University, appearing on behalf of Respondents No. 3 & 4. However, none appears on behalf of Respondent No. 5.

2. As consented to by the learned counsels appearing for the parties; this writ petition is taken-up for final consideration and disposal.

3. The petitioner by way of instituting the present writ petition, has primarily raised a grievance with regard to non-consideration of her application for change of her surname in her educational certificate by the authorities of Dibrugarh University. The petitioner, in this connection, has also presented a

challenge to the offending clauses in the "Dibrugarh University Regulation for change of name/middle name/surname of Students, 2022".

4. The petitioner, herein, was born to Biru Gurung and Sabitri G. Nongkynrih. Accordingly, the petitioner was named as "Amika G. Nongkynrih". The petitioner with the said name, had pursued her educational career and after completing her graduation in Bachelor of Social Work(BSW) from the North Eastern Hill University(NEHU); the petitioner had got herself enrolled for Master of Social Work(MSW) course in Dibrugarh University. The petitioner completed her Master of Social Work(MSW) from the said Dibrugarh University in the year 2019. In all her educational certificates; the petitioner's name has been recorded as "Amika G. Nongkynrih". In the year 2017; the petitioner having desired to change her name from "Amika G. Nongkynrih" to "Amika Gurung", had approached the Judicial Magistrate, 1st Class, Shillong, praying for a direction upon the concerned authorities for issuance of a Birth Certificate in her favour in the name of "Amika Gurung". The Judicial Magistrate, 1st Class, Shillong, vide order, dated 07.04.2017, passed in C.R. Case No. 33(T)2017, on consideration of the application so made by the petitioner under Section 13 of the Registration of Birth and Death Act, 1969, *read with* Rule 10(3) of the Meghalaya Birth and Death Rule, 1973, proceeded to allow the said application, requiring the concerned authorities to issue a Birth Certificate to the petitioner in the name of "Amika Gurung". Accordingly, vide Certificate dated, 25.05.2017, the Health and Family Welfare Department, Government of Meghalaya, through the Chief Executive Officer-cum-Registrar of Death and Birth, proceeded to issue the Birth Certificate to the petitioner, in the name of "Amika Gurung". Basing on the said

Birth Certificate, and the order passed by the Judicial Magistrate, 1st Class, Shillong, the petitioner made application before the Meghalaya Board of School Education, for change of her name from "Amika G. Nongkynrih" to "Amika Gurung". The same was so allowed by the said Board vide an order, dated 21.01.2020. Thereafter, the name of the petitioner was also changed by the Board in her Higher Secondary School Leaving Certificate Examination and therein also, the same came to be recorded as "Amika Gurung". Thereafter, the petitioner approached the authorities of the North Eastern Hill University(NEHU), praying for change of her name in the records of her Bachelor of Social Work(BSW) Degree as awarded by the said University. Accordingly, the name of the petitioner in the Bachelor of Social Work(BSW) Degree records were also corrected as "Amika Gurung".

After having corrected her name in the records of her Secondary School Leaving Certificate Examination upto the records pertaining to the Bachelor of Social Work(BSW) Degree course undergone by her; the petitioner had approached the authorities of Dibrugarh University vide an application, dated 02.02.2023; praying for correction of her name in the records as maintained in the University pertaining to her Master of Social Work(MSW) course from "Amika G. Nongkynrih" to "Amika Gurung". Along with her said certificate, the petitioner had furnished to the authorities of Dibrugarh University, an affidavit in original along with the original registration card issued by the University authorities and the photocopies of all academic records wherein such change has been recorded starting from her School Leaving Certificate Examination till the records of the Bachelor of Social Work(BSW) Degree course pursued by her. The petitioner also informed the authorities of Dibrugarh University that an amount

of Rs. 500/- was deposited by her, on 04.07.2022, for correction of her name from "Amika G. Nongkynrih" to "Amika Gurung". Accordingly, the petitioner prayed before the authorities of the University to do the needful so as to effect the correction in her name in the records of her Master of Social Work(MSW) course. The said prayer of the petitioner, not having been taken to its logical conclusion; the petitioner has approached this Court by way of instituting the present proceedings.

5. Ms. Ghosh, learned counsel for the petitioner, has submitted that the provisions of the Regulation holding the field i.e. "Dibrugarh University Regulation for change of name/ middle name/surname of Students, 2022", more particularly, the provisions of Regulation 3 mandates that a person who is no longer a *bona fide* student of the University or its affiliated/ permitted/constituent colleges at the time of submission of application for change of name/middle name/ surname and/or any such person who has completed his or her study from the University or its affiliated/permitted/constituent colleges, is barred from making such application.

6. Ms. Ghosh, learned counsel for the petitioner, has also submitted that in view of the provisions of Regulation 3 of the said "Dibrugarh University Regulation for change of name/ middle name/surname of Students, 2022"; the University authorities are reluctant to effect correction in the name of the petitioner in the records of her Master of Social Work(MSW) course.

7. Ms. Ghosh, learned counsel for the petitioner, has relied upon the decision

of the Hon'ble Supreme Court in the case ***of Jigya Yadav v. Central Board of School Education & anr.***, reported in ***(2021) 7 SCC 535***; to contend that the Hon'ble Supreme Court has considered the issue as arising in the present proceedings and has directed that similar application is required to be considered by the competent authority and the correction of name is to be effected.

8. Ms. Ghosh, learned counsel for the petitioner, has also submitted that the Birth Certificate issued to the petitioner in pursuance of the directions passed by the Judicial Magistrate, 1st Class, Shillong, including the order as passed by the Judicial Magistrate, 1st Class, Shillong, in this connection, are materials sufficient for the authorities of Dibrugarh University to take into consideration for the purpose of effecting the correction in the name of the petitioner as existing in their records on the basis of the application made by the petitioner in this connection.

9. However, the same having not been done, it is contended by the learned counsel for the petitioner that the decision of the Hon'ble Supreme Court in the case of ***Jigya Yadav***(supra), has been violated by the authorities of Dibrugarh University and accordingly, appropriate direction is prayed to be issued in this connection by this Court requiring the authorities of Dibrugarh University to effect the correction in the manner as prayed for by the petitioner in her application.

10. Mr. Mazumdar, learned standing counsel, Dibrugarh University, on

instructions, has submitted that the materials as available on record; the authorities of Dibrugarh University would be in a position to effect the correction as sought for, provided the petitioner comply with the requirements as mandated in the said "Dibrugarh University Regulation for change of name/middle name/surname of Students, 2022", more particularly, Regulation 4.2 and 6 thereof.

11. Mr. Mazumdar, learned standing counsel, Dibrugarh University, has also contended that a perusal of the application as submitted by the petitioner on 02.02.2023, would go to show that the petitioner had not furnished the original copy of the Government of India Gazette Notification about the change of her name/surname along with her application and that the petitioner had only deposited an amount of Rs. 500/- whereas under Regulation 6 of the said "Dibrugarh University Regulation for change of name/middle name/surname of Students, 2022", it is mandated that the application fee for change of name/middle name/surname is Rs. 1,000/-.

12. Mr. Mazumdar, learned standing counsel, Dibrugarh University, has further contended that in the event, the petitioner complies with the said requirements as provided under Regulation 4.2 and 6 of the said "Dibrugarh University Regulation for change of name/middle name/surname of Students, 2022", the authorities of Dibrugarh University shall duly consider the application of the petitioner for effecting the change in her name in the records of her Master of Social Work(MSW) Course as maintained by the University.

13. I have heard the learned counsel for the parties and perused the materials made available on record.

14. It is an admitted position that the change of the name of the petitioner was a subsequent decision taken by her on attaining the age of majority and the petitioner in this connection, had approached the Judicial Magistrate, 1st Class, Shillong, by way of instituting C.R. Case No. 33(T)2017, praying for issuance of a Birth Certificate in her case in the name of "Ms. Amika Gurung". The said application was allowed by the Judicial Magistrate, 1st Class, Shillong, vide an order, dated 07.04.2017, and thereafter, the competent authority as empowered to issue such Birth Certificate, had vide a certificate, dated 25.05.2017, issued to the petitioner her Birth Certificate and therein, the name of the petitioner has been recorded as "Amika Gurung". Thereafter, it is seen from the records of the writ petition that the petitioner's name in her educational certificates right from the stage of Secondary School Leaving Certificate Examination till her Bachelor of Social Work(BSW) Degree course, were all corrected and the name of the petitioner which was earlier recorded as "Amika G. Nongkynrih" was changed and recorded as "Amika Gurung". Thereafter, the petitioner had approached the authorities of Dibrugarh University for correction of her name in the records of her Master of Social Work(MSW) Course, by furnishing the requisite documents and also making a payment of Rs. 500/- on 04.07.2022 and the same not having been done by the authorities of the University; the petitioner on 02.02.2023, approached the Controller of Examinations(CoE), Dibrugarh University, praying for correction of her name in the records of Master of Social Work(MSW) Course and recording it as "Amika Gurung" from "Amika G. Nongkynrih".

15. The Hon'ble Supreme Court dealing with similar issue as arising in the present proceedings, in the case of **Jigya Yadav**(supra), had laid down that such correction of name is permissible even when such correction is sought to be made later on the basis of a new acquired name. The relevant paragraphs of the decision as rendered by the Hon'ble Supreme Court in the case of **Jigya Yadav**(supra), is extracted hereinbelow:

“Conclusions and directions to CBSE:

192. *Although we have discussed the broad issues canvassed before us, in the ultimate analysis, the real dispute requiring resolution is about the nature of correction or change, as the case may be, permissible to be carried by the CBSE at the instance of the student including past student. As noted earlier, broadly, two situations would arise.*

193. *The first is where the incumbent wants “correction” in the certificate issued by the CBSE to be made consistent with the particulars mentioned in the school records.*

193.1. *As we have held, there is no reason for the CBSE to turn down such request or attach any precondition except reasonable period of limitation and keeping in mind the period for which the CBSE has to maintain its record under the extant regulations. While doing so, it can certainly insist for compliance of other conditions by the incumbent, such as, to file sworn affidavit making necessary declaration and to indemnify the CBSE from any claim against it by third party because of such correction. The CBSE would be justified in insisting for surrender/return of the original certificate(or duplicate original certificate, as the case may be) issued by it for replacing it with the fresh certificate to be issued after carrying out necessary corrections with caption/annotation against the changes carried out and the date of such correction. It may retain the original entries as it is except in respect of correction of name effected in exercise of right to be forgotten. The fresh certificate may also contain disclaimer that the CBSE cannot be held responsible for the genuineness of the school records produced by the incumbent in support of the request to record correction in the original CBSE certificate. The CBSE can also insist for reasonable prescribed fees to be paid by the incumbent in lieu of administrative expenses for issuing the certificate.*

193.2. *At the same time, the CBSE cannot impose precondition of applying for correction consistent with the school records only before publication of results. Such a condition, as we have held, would be unreasonable and excessive. We repeat that if the application for recording correction is based on the school records as it obtained at the time of publication of results and issue of certificate by the CBSE, it will be open to CBSE to provide for reasonable limitation period within which the application for recording correction in certificate issued by it may be entertained by it. However, if the request for recording change is based on changed school records post the*

publication of results and issue of certificate by the CBSE. In this situation, the candidate cannot claim that she had no knowledge about the changed recorded in the school records because such a change would occur obviously at her instance. If she makes such application for correction of the school records, she is expected to apply to the CBSE immediately after the school records are modified and which ought to be done within a reasonable time.

193.3. Indeed, it would be open to the CBSE to reject the application in the event the period for preservation of official records under the extant regulations had expired and no record of the candidate concerned is traceable or can be reconstructed. In the case if subsequent amendment of school records, that may occur due to different reasons including because of choice exercised by the candidate regarding change of name. To put it differently, request for recording of correction in the certificate issued by the CBSE to bring it in line with the school records of the incumbent need not be limited to application made prior to publication of examination results of the CBSE.

194. As regards request for 'change' of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like birth certificate, Aadhar card, election card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

194.1. Reverting to the first category, as noted earlier, there is a legal presumption in relation to the public documents as envisaged in the 1872 Act. Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administrative expenses. The CBSE may also insist for issuing public notice and publication in the Official Gazette before recording the change in the fresh certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant. The fresh certificate may contain disclaimer and caption/annotation against the original entry (except in respect of change of name effected in exercise of right to be forgotten) including the date on which change has been recorded and the basis thereof. In other words, the fresh candidate may retain original particulars while recording the change along with caption/annotation referred to above (except in respect of change of name effected in exercise of right to be forgotten).

194.2. However, in the latter situation, where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/declaration by a court of law in that regard and publication in the Official Gazette including surrender/return of original certificate (or duplicate original certificate, as the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above; retain the original entry(except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded and other

details including disclaimer of CBSE. This is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant.

195. In the light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request may be processed on the same lines and in particular the conclusion and directions recorded hitherto in paras 193 and 194, as may be applicable, until amendment of relevant bye-laws. Additionally, the CBSE shall take immediate steps to amend its relevant bye-laws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it.

196. Accordingly, we dispose of the cases before us with directions to the CBSE as noted in paras 193 to 195 above. No order as to costs.”

16. Applying the ratio of the decision in the case of ***Jigya Yadav***(supra); it is seen that the authorities of Dibrugarh University can entertain the request for recording change in the name of the petitioner in her educational certificates basing on public documents like Birth Certificate, Official Gazette, Aadhar Card, Election Card, etc., in-as-much as it was concluded in the said decision by the Hon’ble Supreme Court that the said documents being public documents, enjoy legal presumption of its correctness in terms of the explicit provisions as contained in Chapter V of the Indian Evidence Act, 1872. It was further held that the Indian Evidence Act, 1872, extends such presumption in terms of Section 76 *read with* Section 79 and 82, to such public documents as in the case of an official gazette under Section 81 of the said Act. The Hon’ble Supreme Court further in paragraph 194 of the above-referred case, has laid down that in the event, the change is sought for basing on public documents, there being a legal presumption in relation to such public documents as envisaged in the Act of 1872, the same cannot be ignored by the concerned authorities and it was provided that such application be entertained, in the event, it is so based on public documents.

17. In view of the directions as passed by the Hon'ble Supreme Court in the case of ***Jigyasa Yadav***(supra); it is seen that the University authorities had not considered the application of the petitioner for change of her name in the records of her Master of Social Work(MSW) Course as submitted by the petitioner in its proper perspective. The name of the petitioner having been changed in her Birth Certificate and also in her educational certificates upto the Bachelor of Social Work(BSW) Degree course undergone by her and such documents being public documents; the University authorities ought to have considered the prayer of the petitioner for change of her name in the records of her Master of Social Work(MSW) Course also.

18. Considering the submissions made by Mr. Mazumdar, learned standing counsel, Dibrugarh University that in the event, the petitioner complies with the provisions of Regulation 4.2 and 6 of the said "Dibrugarh University Regulation for change of name/middle name/surname of Students, 2022", the application as submitted by her for change of her name from "Amika G. Nongkynrih" to "Amika Gurung" in the records of the Master of Social Work(MSW) Course, would be duly considered by the authorities of Dibrugarh University and also the decision of the Hon'ble Supreme Court in the case of ***Jigyasa Yadav***(supra), the following directions are hereby issued:

- (i).** The petitioner shall submit an application enclosing therewith the copy of the order as passed by the Judicial Magistrate, 1st Class, Shillong, in C.R. Case No. 33(T)2017 along with a copy of the Birth Certificate as issued to her, dated 25.05.2017, along with the copies of her Aadhar Card

as well as the PAN Card, if available, all self-attested, along with the original receipt of payment of Rs. 500/- as made to the authorities of Dibrugarh University on 04.07.2022.

(ii). The petitioner shall also deposit a further amount of Rs. 500/- in compliance with the provisions of Regulation 6 of the said "Dibrugarh University Regulation for change of name/middle name/surname of Students, 2022".

(iii). On receipt of the application as mandated to be now submitted by the petitioner by this Court vide the direction as made in paragraph(i) above, along with the enclosures so required to be provided; the authorities of Dibrugarh University shall process the same and effect correction of the name of the petitioner as maintained in its records as "Amika G. Nongkynrih" to "Amika Gurung" and issue to the petitioner, a fresh Certificate pertaining to the Master of Social Work(MSW) Course undergone by her in the said University.

(iv). The said Certificate shall be issued to the petitioner without any further delay within an outer limit of 1(one) month from the date, the petitioner submits the said application and makes the further payment of Rs. 500/- to comply with the provisions of Regulation 6 of the said "Dibrugarh University Regulation for change of name/middle name/surname of Students, 2022".

19. With the above directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant