

**Court No. - 29**

**Case :-** SPECIAL APPEAL No. - 459 of 2023

**Appellant :-** State Of U.P. And 2 Others

**Respondent :-** Md. Sameer Rao And 3 Others

**Counsel for Appellant :-** Kunal Ravi Singh, Rama Nand Pandey

**Hon'ble Mrs. Sunita Agarwal, J.**

**Hon'ble Anish Kumar Gupta, J.**

Heard Sri Kunal Ravi Singh, learned Chief Standing Counsel assisted by Sri Rama Nand Pandey and Sri Tanmay Agarwal, learned Additional Chief Standing Counsels appearing for the appellants and Md. Sameer Rao, the respondent/writ petitioner appearing in person.

The challenge in this intra-Court appeal is to the judgment and order dated 25.05.2023 passed by the learned Single Judge, wherein the issue pertaining to change of name in the High School and Intermediate marksheets and certificates issued by UP Intermediate Board has been decided. The learned Single Judge having gone through the provisions of Regulation 40 of Chapter XII of the regulations framed under the UP Intermediate Education Act, 1921 (in short, 'the Act, 1921'), which regulate the disposal of applications seeking change of name recorded in High School or Intermediate certificates issued by the Board, has come to the conclusion that a purposive or positive interpretation of the said provision in a permissive manner, to realise the fundamental rights of the writ petitioner to change his name, would make the order of rejection of application for change of name on the ground of delay, as arbitrary. It was held that the order of rejection transgresses fundamental rights of the petitioner granted by virtue of Article 19(1)(a) and Article 21 of the Constitution.

It is argued that in **Jigya Yadav Thru Her Father vs. C.B.S.E.; 2021 (7) SCC 535**, it was held by the Apex Court that the restrictions in the CBSE Bye-laws relating to name change therein were unreasonable while noticing that though fundamental right to change name is vested with a person by virtue of Article 19(1)(a) and Article (21) of the Constitution, but the said right is not an absolute right and is subject to various reasonable restrictions, as may be prescribed by law, however, the limitations or restrictions in those bye-laws on fundamental rights have to be just and reasonable. In light of the abovenoted observations of the Apex Court in **Jigya Yadav (supra)**, it was held by the learned Single Judge that the

restrictions imposed by the Regulation 40 of the Act, 1921 on the fundamental rights vested by Article 19(1)(a) and Article (21) of the Constitution, cannot be said to be reasonable. It was observed that narrow approach or a rigid construction of the said regulations is the reason for rejection of the application of the writ petitioner.

Md. Sameer Rao, the respondent/writ petitioner appearing in person, on the other hand, would submit that by an amendment application, he has amended the relief sought in the writ petition to challenge the validity of the Regulation 40 in Chapter XII. The change of name in High School and Intermediate certificates was sought by the writ petitioner after completing the necessary formalities, in exercise of his fundamental right guaranteed under the Constitution. The contention is that with the change of name in the Adhar Card, Pan card and other relevant documents such as driving licence etc., there cannot be a plausible objection about the change of name in the High School and Intermediate certificates, that too when the change has been notified in the official gazette.

Considering all these arguments of the rival parties, we are of the concerned opinion that a deeper scrutiny is required in the matter. The reasoning given by the learned Single Judge in reading down the provisions of Regulation 40 as contained in Chapter XII of the Regulations framed under the U.P. Intermediate Education Act, 1921, are required to be examined.

On a query made by the Court, the respondent/writ petitioner submits that he cannot argue on legal principles.

In order to provide a chance to the respondent-writ petitioner to have an effective representation in the matter from his side, we provide a senior counsel along with an assisting counsel to the respondent/writ petitioner- Md. Sameer Rao (having contact number- 9359899900) through the High Court Legal Services Committee, as the writ petitioner cannot afford to engage a counsel on his own.

This order be intimated to O.S.D. (Officer on Special Duty), High Court Legal Services Committee, who shall take appropriate steps for nomination of the counsels with whom the petitioner may have a consultation.

Let this matter be posted on 25.07.2023 in the additional cause list.

By the next date fixed, a reply to the affidavit accompanying the interim application shall be filed by the respondent/writ

petitioner.

Till the next date of listing, the effect and operation of the judgment and order dated 25.05.2023 passed by the learned Single Judge shall be kept in abeyance.

**Order Date :- 13.7.2023**

P Kesari