Neutral Citation No. - 2023:AHC:121065

Court No. - 35

Case :- WRIT - C No. - 3671 of 2022
Petitioner :- Md Sameer Rao
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- In Person
Counsel for Respondent :- C.S.C.,Gaurav Mahajan,Rajesh Tripathi

With
Case :- WRIT - C No. - 14043 of 2023
Petitioner :- Shyam Kumar Harijan
Respondent :- State of U.P.
Counsel for Petitioner :- Archana Srivastava,Mukesh Kumar
Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot,J.

1. The judgement is being structured in the following conceptual framework to facilitate the discussion**:**

I	Introduction
II	Facts
III	Submissions of learned counsels
IV	Concept of names and constitutional perspectives: **A.** Fundamental Right to a name **B.** Restrictions on the fundamental right to a name
V	Impugned order and statutory provisions : Analysis
VI	Conclusions and Directions

2. Both writ petitions arise out of same issue and are being decided by a common judgement.

I. Introduction:

3. By the impugned order dated 24.12.2020 the Regional Secretary, Madhyamik Shiksha Parishad, Regional Office, Bareilly, U.P. has rejected the application of the petitioner for

change of his name in the High School and Intermediate certificates.

II. Facts:

4. Brief facts are these. Name of the petitioner was recorded as "Shahnawaz" in the Board of High School Examination certificate, and the Intermediate Examination certificate by the Madhyamik Shiksha Parishad issued in 2013 and 2015 respectively.

5. The petitioner publicly disclosed the change of his name by causing the following notification to be published in the Gazette of India bearing Gazette No. 39 New Delhi, Saturday, September 26 — October 2, 2020 (Asvina 4, 1942) Part-IV, Page 1091:

> " I hitherto known as SHAHNAWAZ son of MAUVEEN HUSAIN, residing at village Mehloli, Pot Jalalpur Khs, Tehsil Bilari, Disst. Moradabad, Uttar Pradesh-244411, have changed my name and shall hereafter be known as MD. SAMEER RAO.
> It is certified that I have complied with other legal requirements in this connection.
>
> SHAHNAWAZ
> [Signature (in existing old name)]"

6. A similar notification was also published in a local daily newspaper "Hindustan" having wide circulation in the area.

7. The petitioner made an application for change of his name from "Shahnawaz" to "Md Sameer Rao" to the respondent Board in the year 2020. The said application was declined by the impugned order.

III. Submissions of learned counsels

8. The petitioner was present in Court and expressed his inability to engage a counsel due to paucity of funds. A request

was made by the Court to the members of the Bar at large to represent the petitioner pro bono. Shri Hritudhwaj Pratap Sahi, learned counsel volunteered to represent the petitioner and assist the Court in high traditions of the legal profession. Shri Rajesh Tripathi, learned counsel for the Union of India is present.

9. Shri Hritudhwaj Pratap Sahi, learned counsel for the petitioner/amicus curiae submitted as under:

(A). The rejection of the name change application by the respondent authorities is arbitrary and contrary to the statutory provisions holding the field.

(B). The right to keep name is relatable to fundamental rights of a citizen guaranteed under Articles 19(1)(a) and 21 of the Constitution of India.

(C). The relevant Regulations have to be interpreted in light of the holdings of the constitutional courts to uphold the fundamental rights of the petitioner. The offending provisions of Regulation 40 (ग) are liable to be read down.

(D). The authority erred in law by rejecting the application on the grounds of limitation by invoking Regulation 7 framed under the Intermediate Education Act, 1921, which is inapplicable to applications for change of name.

10. (I). Shri I. P. Srivastava, learned Additional Chief Standing Counsel submits that the change of name is not an absolute right and subject to various restrictions imposed by law. The

application for change of name was rightly rejected since it was barred by limitation.

(II). Citation of wrong provision will not void the impugned order since power is vested in the authority by virtue of Regulation 40 of the U.P. Intermediate Education Act, 1921.

(III). The claim of the petitioner for change of name is in the teeth of the said provision. The proposed name falls in the prohibited category since it discloses the religion of the applicant.

(IV). Regulation 40 (ग) are not liable to be read down and are reasonable restrictions on fundamental rights.

IV. Concept of names and constitutional perspectives:

A. Fundamental Right to a name

11. The most ancient stirrings of human thought evidenced in the Rigveda exalted keeping of names as a primal act of human life[1]:

> "....प्रारम्भिक दशा में पदार्थो के नाम रखे गए है। यह ज्ञान का पहला चरण है"

12. Western scholars opine that usage of name became prevalent in the earliest specimens of humankind which are kindred with our own. "The primitive human speech was probably a very scanty collection of names, and may have been eked out with gestures and signs.[2]" The first recorded evidences of human thought and transactions discovered in the remnants of the ancient Mesopotamian civilization contain references to the name of a person[3].

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1 Quoted by **Hriday Narayan Dikshit** in "भारतीय ज्ञान परंपरा का पुनर्जीवन"

2 **A Short History of the World ~** by H. G. Wells

3 **Sapiens ~** by Yuval Noah Harari **[*"The earliest messages our ancestors have left us read, for example, '29,086 measures barley 37 months Kushim'. If Kushim was indeed a person, he may be the first individual in history whose name is***

13. "These are the names of the sons of Israel who went down into Egypt….as Reuben and Simeon they descended [into Egypt] and as Reuben and Simeon they went out".

— Shemot 1:1 (Exodus)

This passage from Torah's Shemot shows the importance of names in ancient Jewish customs.

14. "What is a name….?[4] asked a forlorn Juliet. But name was all. The lovers met their tragic fate only because Romeo took the name of his ancestors. General MacArthur's mother cautioned him of how honour was a facet of name and urged him to "remember the world will be quick with its blame if shadow or shame ever darken your name". Nearer home the bard Maithli Saran Gupt invoked the power of name as a summon and spur to action "...जग में रह कर कुछ नाम करो, कुछ काम करो, कुछ काम करो[5]..."

15. Virtues of name are celebrated in verse and prose, in spiritual literature and secular texts. The importance of an individual's name is experienced in all aspects of life including social interfaces and commercial transactions. Power and glory of the human name transcends time and is not fenced by boundaries.

16. The invention of the "name" played a significant role in the development of human societies, and even changed the course of human evolution. The idea of giving a name to each individual added to human skills to adapt to the needs of social

known to us.]

4 **Rome & Juliet** ~ by William Shakespeare

5 **नर हो, न निराश करो मन को** ~ मैथिलीशरण गुप्त

living, and enhanced the capacity of humankind to survive and progress as a species. The human name is an inalienable part of an individual's life, and an indispensable tool for the human race to enter into social groups and thrive as a race. Name imparts a unique identity to each human being. Every person finds fulfillment of life in their[6] name.

17. Tradition and sources of human names are many and varied. Naming traditions are derived from the cultural deposit, historic memories, value systems, inspiring personalities, religious beliefs of a society and things that bring joy. Names are chosen to cherish the human life that newly comes into being. Similarly change of name too has its roots in ancient customs of various societies. Sannyasa order and the priestly class in different religious persuasions make it imperative for the seeker to drop the birth name symbolizing renouncement of past associations, and take a new name manifesting the quest for a higher cause.

18. The inextricable connection between an individual's name and the person's life inevitably becomes a subject matter of constitutional law discourse.

19. The discussion will be taken forward with assistance of authorities in point.

20. This Court in **Sumpurnanand vs. State of U.P. and others**[7] while examining the scope of Article 21 of the

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6 **"their"** is being used as a gender inclusive Pronoun in place of "his" or "her" (**see Time Magazine**)

7 **2018 (11) ADJ 550**

Constitution of India in light of various landmarks in constitutional law observed:

> “29. The simple words of Article 21 of the Constitution of India, had profound significance in development of constitutional law in India.
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> 30. The resolve to create the Constitution was the collective will of the people of India. The promise of the Constitution is to every individual citizen of India. Part III of the Constitution is anchored in the individual and revolves around the individual citizens. The simple word "life" in Article 21 of the Constitution of India presented a complex jurisprudential problem to the Courts. The simple word "life" did not disguise for long the profound intent of the constitution framers. The approach of the Courts to the provision in the Constitution progressed from tentative to visionary, the interpretation of provision advanced from literal to prophetic.
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> 31. What was the meaning of life for the people of India on the morrow of our independence? If life meant physical existence and mere survival, Indian people had shown remarkable resilience to live through the vicissitudes of history. The people of India have lived in servitude, survived famines, lived in an iniquitous social order often dominated by prejudice, penury and illiteracy. Trackless centuries are filled with the record of survival of the people of India. Surely life of the Indian people could not remain the same after the dawn of independence of India. Surely the meaning of life for the people of India had to change after the advent of the Republic of India. The founding fathers, had the audacity to dream of transforming the meaning of life for the people of India. The Courts in India had the vision and the courage to make the dreams a reality. Life had to embrace all the attributes which made life meaningful and all the pursuits which made life worth living.
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> 32. The probe into the purpose of life has traditionally been the province of the philosophers. The framers of the constitution, brought the word "life" in the ambit of the constitution. Constitutional law put the meaning of life in the domain of the Courts. "Life" is very much the concern of the Courts. The search for the meaning of life is the business of the Courts. Indeed, the discovery of the meaning of life is central to realizing the fundamental rights guaranteed under the Constitution.
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> 34. The Courts in India, knew early on that understanding the significance of life was the key to providing the security of justice. While interpreting Article 21 of the Constitution of India, the Hon'ble Supreme Court, embraced life in all its breadth and profundity and eschewed a narrow interpretation.”

21. A defining moment came in the constitutional history when the Supreme Court liberated life from the fetters of physical existence and found that the sweep of the right to life conferred by Article 21 of the Constitution of India is wide and far-reaching. **Olga Tellis v. Bombay Municipal Corpn**[8]

8 **1985 (3) SCC 545**

endorsed the holding in **Munn v. Illinois**[9] that life was "something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed".

22. Article 21 was set on a career of constantly expanding boundaries and the ambit of life was progressively enlarged.

23. The intimacy of human life and a person's name is undeniable. The right to keep a name of choice or change the name according to personal preference comes within the mighty sweep of the right to life guaranteed under Article 21 of the Constitution of India.

24. Kerala High Court in **Kashish Gupta Vs. Central Board of Secondary Education and others**[10], brought the right to a name within the scope of Article 19(1)(a) and Article 21 of the Constitution of India by holding:

> "8. Name is something very personal to an individual. Name is an expression of one's individuality, one's identity and one's uniqueness. Name is the manner in which an individual expresses himself to the world at large. It is the foundation on which he moves around in a civil society. In a democracy, free expression of one's name in the manner he prefers is a facet of individual right. In Our Country, to have a name and to express the same in the manner he wishes, is certainly a part of right to freedom of speech and expression under Article 19 (1) (a) as well as a part of the right to liberty under Article 21 of the Constitution of India. State or its instrumentalities cannot stand in the way of use of any name preferred by an individual or for any change of name into one of his choice except to the extent prescribed under Article 19(2) or by a law which is just, fair and reasonable. Subject to the limited grounds of control and regulation of fraudulent or criminal activities or other valid causes, a bonafide claim for change of name in the records maintained by the Authorities ought to be allowed without hesitation."

25. Similarly Delhi High Court in **Rayaan Chawla Vs. University of Delhi and another**[11] set its face against

9 **1877 (94) US 113**
10 **2020 SCC OnLine Ker 1590**
11 **2020 SCC OnLine Del 1413**

adopting a technical approach to the issue of change of name and expounded the law as under:

> "14. Hence, the aforesaid judgment has clearly stated that to have a name and to express the same in the manner he wishes, is a part of the right to freedom of speech and expression under Article 19(1) (a) as well as right to liberty under Article 21 of the Constitution of India. It cannot be denied that the right to change a name is a protected right and the petitioner would normally be not denied the said right on technical issues."

26. The Supreme Court in **Jigya Yadav Vs. CBSE[12],** held that "name is an intrinsic element of identity". The nexus of name and identity, and the freedom to express one's identity in the manner of one's preference was thus expounded in **Jigya Yadav (Supra)**:

> **"125.** Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely "for all times". Such control would inevitably include the aspiration of an individual to be recognised by a different name for a just cause. Article 19(1)(*a*) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of *Navtej Singh Johar* [*Navtej Singh Johar* v. *Union of India*, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] , this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.
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> **126.** Having recognised the existence of this right, the essential question pertains to the rights that flow due to the change of name. The question becomes vital because identity, as stated above, is a combination of diverse set of elements. *Navtej Singh Johar* [*Navtej Singh Johar* v. *Union of India*, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] dealt with "natural identity" and here we are dealing with name, which can only be perceived as an "acquired identity". Therefore, the precise scope of right and extent of restrictions could only be determined upon deeper examination.
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> **127.** To begin with, it is important to explain what we understand by this right to change of name as a constituent element of freedom of expression of identity. Any change in identity of an individual has to go through multiple steps and it cannot be regarded as complete without proper fulfilment of those steps. An individual may self-identify oneself with any title or epithet at any point of time. But the change of identity would not be regarded as formally or legally complete until and unless the State and its agencies take note thereof in their records. Afterall, in social sphere, an individual is not only recognised by how an individual identifies oneself but also by how his/her official records

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12 **2021 (7) SCC 535**

identify him/her. For, in every public transaction of an individual, official records introduce the person by his/her name and other relevant particulars."

27. Bhatia, J. in **Rashmi Srivastava Vs. State of U.P. and another**[13] reaffirmed the right to change the name as a facet of the fundamental right guaranteed under Article 19(1)(a) of the Constitution of India.

28. The United Nations Human Rights Committee in **Coeriel and Aurik v. The Netherlands**[14] acknowledged that name is an indispensable component of a person's identity and it falls within the realm of right to privacy by holding thus:

"10.2….The Committee is of the view that a person's surname constitutes an important component of one's identity and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one's own name………The question arises whether the refusal of the authorities to recognize a change of surname is also beyond the threshold of permissible interference within the meaning of article 17.
10.5. In the present case, the authors' request for recognition of the change of their first names to Hindu names in order to pursue their religious studies had been granted in 1986. The State party based its refusal of the request also to change their surnames on the grounds that the authors had not shown that the changes sought were essential to pursue their studies, that the names had religious connotations and that they were not 'Dutch sounding'. The Committee finds the grounds for so limiting the authors' rights under article 17 not to be reasonable. In the circumstances of the instant case the refusal of the authors' request was therefore arbitrary within the meaning of article 17, paragraph 1, of the Covenant."

29. A similar view was taken by the United Nations Human Rights Committee in **Raihman v. Latvia**[15], and by the Court of Justice of the European Community in **Standesamt Stadt Niebüll**[16].

30. International jurisprudence has increasingly recognized "the growing importance of human rights in international law,

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13 **2022 (9) ADJ 696**
14 **Communication No. 453/1991**
15 **Communication No. 1621/2007;**
16 **2006 EUEJ C-96/04A**

of the obligation to recognize and respect individual identity, as well as the generality of certain human rights standards such as the prohibition of discrimination, the right to private life, and the right to a name[17]"

31. Various international instruments[18i] also vest the right to a name in every person.

32. Clearly the importance of a name is an universal human value and a cherished right across jurisdictions. Commonality of human values and consensus of judicial authorities often becomes the basis of universal human rights.

IV. B. Restrictions on the fundamental right to a name

33. The fundamental right to keep or change a name is vested in every citizen by virtue of Article 19(1)(a) and Article 21 of the Constitution of India. But it is not an absolute right and is subject to various reasonable restrictions as may be prescribed by law.

34. The limitations or restrictions imposed by law on fundamental rights have to be fair, just and reasonable. Reference can be profitably made to the following holdings of the Supreme Court in **K. S. Puttaswamy Vs. Union of India**[19]:

> 24…..The jurisprudential foundation which held the field sixty three years ago in M P Sharma and fifty five years ago in Kharak Singh has given way to what is now a settled position in constitutional law. Firstly, the fundamental rights emanate from basic notions of liberty and dignity and the enumeration of some facets of liberty as distinctly protected rights under Article 19 does not denude Article 21 of its expansive ambit. Secondly, **the validity of a law which infringes the fundamental rights has to be tested not with reference to the object of state action but on**

17 **Human Rights and a Person's Name: Legal Trends and Challenges ~ by Fernand de Varennes** and **Elzbieta Kuzborska**

18 Article 24(2) of International Covenant on Civil and Political Rights adopted on December 16, 1966; Article 8 of Convention on the Rights of the Child, adopted on November 20, 1989; Article 18(2) of Convention on the Rights of Persons with Disabilities, adopted on December 13, 2006; Article 18 of American Convention on Human Rights, signed on November 22, 1969; Article 6(1) of 1999 African Charter on the Rights and Welfare of the Child [**relevant provisions reproduced in Appendix1]**

19 **2017 (10) SCC 1**

the basis of its effect on the guarantees of freedom. Thirdly, the requirement of Article 14 that state action must not be arbitrary and must fulfil the requirement of reasonableness, imparts meaning to the constitutional guarantees in Part III

(emphasis supplied)

260. The impact of the decision in Cooper [Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248] is to establish a link between the fundamental rights guaranteed by Part III of the Constitution. The immediate consequence of the decision is that a law which restricts the personal liberties contained in Article 19 must meet the test of permissible restrictions contemplated by clauses (2) to (6) in relation to the fundamental freedom which is infringed. Moreover, since the fundamental rights are interrelated, Article 21 is no longer to be construed as a residue of rights which are not specifically enumerated in Article 19. **Both sets of rights overlap and hence a law which affects one of the personal freedoms under Article 19 would, in addition to the requirement of meeting the permissible restrictions contemplated in clauses (2) to (6), have to meet the parameters of a valid "procedure established by law" under Article 21 where it impacts on life or personal liberty. The law would be assessed not with reference to its object but on the basis of its effect and impact on the fundamental rights.** Coupled with the breakdown of the theory that the fundamental rights are watertight compartments, the post-Maneka [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] jurisprudence infused the test of fairness and reasonableness in determining whether the "procedure established by law" passes muster under Article 21. At a substantive level, the constitutional values underlying each article in the Chapter on Fundamental Rights animate the meaning of the others. This development of the law has followed a natural evolution. The basis of this development after all is that every aspect of the diverse guarantees of fundamental rights deals with human beings. Every element together with others contributes in the composition of the human personality. In the very nature of things, no element can be read in a manner disjunctive from the composite whole. The close relationship between each of the fundamental rights has led to the recognition of constitutional entitlements and interests. Some of them may straddle more than one, and on occasion several, fundamental rights. Yet others may reflect the core value upon which the fundamental rights are founded. *(emphasis supplied)*

"294…….**The inter-relationship between the guarantee against arbitrariness and the protection of life and personal liberty operates in a multi-faceted plane. First, it ensures that the procedure for deprivation must be fair, just and reasonable. Second, Article 14 impacts both the procedure and the expression "law". A law within the meaning of Article 21 must be consistent with the norms of fairness which originate in Article 14. As a matter of principle, once Article 14 has a connect with Article 21, norms of fairness and reasonableness would apply not only to the procedure but to the law as well.**

(emphasis supplied)

35. Scope of reasonableness of restrictions on fundamental rights was further elaborated in **Puttaswamy (supra)** as follows:

"310…Three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based

> mandate of Article 21. **The first requirement that there must be a law in existence** to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. **Second, the requirement of a need, in terms of a legitimate state aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary state action.** The pursuit of a legitimate state aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not re-appreciate or second guess the value judgment of the legislature but is for deciding **whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness**. **The third requirement ensures that the means which are adopted by the legislature are proportional** to the object and needs sought to be fulfilled by the law. **Proportionality is an essential facet of the guarantee against arbitrary state action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.** Hence, the three-fold requirement for a valid law arises out of the mutual inter-dependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms."
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> (emphasis supplied)

36. Tests of reasonableness on restrictions stated in **Jeeja Ghosh Vs. Union of India**[20] will be applicable to the facts of this case:

> "The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; **third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right**."
>
> *(emphasis supplied)*

37. The position of law in respect of limits on fundamental rights was also clarified in **Madhyamam Broadcasting Limited vs. Union of India**[21]:

> "48. Rights are not absolute in a constitutional democracy. The jurisprudence that has emanated from this Court is that rights can be limited but such a limitation must be justified on the ground of reasonableness. Though, only Article 19 of the constitution expressly prescribes that the limitation must be reasonable, after the judgments of this Court in RC Cooper(supra) and Maneka Gandhi (supra) it is conclusive that the thread of reasonableness runs

20 **2016 (7) SCC 761** – This passage has been quoted in Jeeja Ghosh (supra) from Human Dignity—The Constitutional Value and the Constitutional Right (Cambridge University Press, 2015)

21 Civil Appeal No. 8129, 8130 and 8131 of 2022; April 05, 2023 **MANU/SC/0333/2023**

through the entire chapter on fundamental rights guiding the exercise of procedural and substantive limitations. That leaves us to answer the question of the standard used to assess the 'reasonableness' of the limitation. The text of the Constitution does not prescribe a standard of review. Much ink has flowed from this Court in laying down the varying standards to test reasonability: rationality, Wednesbury unreasonableness, proportionality, and strict scrutiny.

49. Reasonableness is a normative concept that is identified by an evaluation of the relevant considerations and balancing them in accordance with their weight. It is value oriented and not purpose oriented. That is why the courts have been more than open in identifying that the action is unreasonable rather than identifying if the action is reasonable. This is also why the courts while assessing the reasonableness of limitations on fundamental rights have adopted a higher standard of scrutiny in the form of proportionality. The link between reasonableness and proportionality and the necessity of using the proportionality standard to test the limitation on fundamental rights has been captured by Justice Jackson in the course of the Canadian Supreme Court's judgment in R v. Oakes:

> "To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be "of" sufficient importance to warrant overriding a constitutionally protected right or freedom...Second … the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality test." (emphasis supplied)

50 The proportionality analysis assesses both the object and the means utilised, which are pertinent requirements while testing an infringement of fundamental rights. This Court has held that the proportionality standard can be used to assess the validity of administrative action infringing upon fundamental freedoms. However, the courts have till date used the proportionality standard to only test the infringement of a substantive right such as the right to privacy protected under Article 21, and the freedoms protected under Article19."

V. Impugned order and statutory provisions : Analysis

38. The impugned order dated 24.12.2020 references Regulation 7 of Chapter III of the Uttar Pradesh Intermediate Education Act, 1921, while invalidating the claim of the petitioner on the ground of delay and bar of limitation.

39. Regulation 7 of Chapter III of the Uttar Pradesh Intermediate Education Act, 1921 pertains to correction of clerical errors in the name or the other particulars of a candidate entered in the High School or Intermediate certificates issued by the Board. The aforesaid provision is

clearly not applicable in cases of change of name. However, it is trite that citing a wrong provision shall not vitiate the order if the authority is possessed of powers to pass such orders.

40. Application seeking change of name recorded in the High School or Intermediate certificates issued by the Board are regulated by Regulation 40 of Chapter XII of the Uttar Pradesh Intermediate Education Act, 1921 and relevant parts thereof are extracted hereinunder for ease of reference:

> "40. प्रमाण पत्र में नाम परिवर्तन परिषद् सफल उम्मीदवारों द्वारा विहित प्रक्रियानुसार आवेदन पत्र देने तथा इस अध्याय के विनियम 22 (13) में निर्धारित शुल्क देने पर प्रमाण पत्र में निम्नांकित प्रतिबन्धों के अधीन नाम परिवर्तन कर सकती है--
>
> (क) आवेदन पत्र उचित सारणी द्वारा दिया जायेगा तथा जिस वर्ष में परीक्षा हुई थी. उसकी 31 मार्च से तीन वर्ष के भीतर परिषद के सचिव के कार्यालय में पहुँचजाना चाहिए। आवेदक को एक टिकट लगे हुए कागज पर शपथ-पत्र देना होगा, जो प्रथम श्रेणी के मजिस्ट्रेट अथवा नोटरी द्वारा यथाविधि प्रमाणित होना चाहिए. जिसमें नाम में परिवर्तन के वैध कारण दिये होंगे तथा जो एक राजपत्रित अधिकारी द्वारा यथा विधि प्रमाणित होगा और परीक्षार्थी जहाँ वह निवास करता है, वहाँ के स्थानीय दैनिक पत्र की तीन विभिन्न तिथियों के संस्करणों में अपने नाम के परिवर्तन को विज्ञापित करेगा, इससे पूर्व कि उसे परिवर्तित नाम का नया प्रमाण-पत्र प्राप्त हो । सम्बन्धित तिथियों के समाचार पत्रों की प्रतियाँ आवेदन पत्र के साथ संलग्न करना अनिवार्य है।
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> (ख) परिषद् द्वारा नाम परिवर्तन के आवेदन-पत्र निम्नलिखित को छोड़कर अन्य किन्हीं कारणों से स्वीकार नहीं किये जायेंगे।
>
> नाम में भद्दापन हो अथवा नाम से अपशब्द की ध्वनि निकलती हो अथवा नाम असम्मान प्रतीत होता हो अथवा अन्य ऐसी स्थिति होने पर।
>
> (ग) परीक्षार्थियों द्वारा नाम के पहले या बाद में उपनाम जोड़ने धर्म अथवा जाति सूचक शब्दों के जोड़ने अथवा सम्मानजनक शब्द या उपाधि जोड़ने जैसे किसी भी प्रकार के आवेदन पत्रों को स्वीकार्य नहीं किया जायेगा। इसी प्रकार धर्म अथवा जाति परिवर्तन के आधार पर अथवा विवाहित छात्र / छात्राओं के नाम में भी विवाह के फलस्वरूप नाम परिवर्तित हो जाने पर परिषद द्वारा नाम में परिवर्तन नहीं किया जायेगा।"

41. The provisions have to be interpreted in a permissive manner to realize the fundamental rights of the petitioner. The scope of the provision cannot be constricted by a pedantic construction which will undermine the fundamental rights.

42. Regulation 40 (क) contemplates that an application for change of name has to be filed within three years from 31st of

March of the year when the candidate appeared in the examination. Admittedly in this case, the application was made 7 years and 5 months after the petitioner sat for the High School and Intermediate examinations respectively.

43. A similar limitation of three years provided in the CBSE bye-laws relating to name change was questioned in **Jigya Yadav (supra)** and was found wanting in reasonableness. A narrow approach or a rigid construction of the limitation period in Regulation 40 (ग) will inroad upon the fundamental rights of the petitioner vested by Article 19(1)(a) and Article 21 of the Constitution of India. The said limitation of three years in Regulation 40 (ग) cannot be held to be mandatory and can be relaxed in the facts and circumstances of a case.

44. In the facts and circumstances of this case, the delay was liable to be condoned.

45. In this wake, rejection of the application for change of name on the ground of delay is arbitrary and transgresses the fundamental rights of the petitioner vested by virtue of Article 19(1)(a) and Article 21 of the Constitution of India.

46. The next question is whether the application is in the teeth of restrictions as regards change of name contained in the Regulation 40 of Chapter XII of the Uttar Pradesh Intermediate Education Act, 1921 as quoted above.

47. Regulation 40(ख) and 40 (ग) respectively contain the reasons for which the application can be accepted, and the causes on which the same can be declined.

48. Under Regulation 40(ख), the application for change of name shall be entertained only if the name is gross or sounds offensive, or appears to be derogatory and the like situations. The provision has to be read on the construction canon of "*ejusdem generis*". The three categories for change of name which have been described cannot be read in isolation. When a general phrase follows a list of specific instances, the general phrase will be interpreted to include items of the same class or in the likeness of those already listed.

49. The deduction from a reading of the provision is that a name which lowers a person's self esteem may be dropped. Alternatively any name that enhances a person's self worth may be adopted.

50. Regulation 40 (ग) provides that applications seeking to adopt nick names, names disclosing a person's religion or caste or use of honorific word or a title will not be accepted. Similarly name change application pursuant to religious conversion or change of caste or change of name after marriage are not liable to be entertained.

51. It is noteworthy that law does not prevent giving the said names at birth. The names given at christening can also be taken later in life. If the former are not prohibited it stands to reason that the latter cannot be proscribed. At times change of name pursuant to change of caste or religion is part of rituals which precede the same. Prohibitions of this nature infringe the fundamental right to profess and practice a religion of one's choice guaranteed under Article 25 of the Constitution of India.

Likewise the bar on name change after marriage will interfere in the fundamental right of a person to express one's identity. **[**Also See **Jigya Yadav (supra)]**.

52. For the purpose of change of name, the students appearing in different Boards across the country comprise one class. The CBSE bye-laws do not contain any restrictions as are imposed in the Regulations of the U.P. Intermediate Education Act, 1921, discussed above. The students who appear in the UP Board are treated deferentially and discriminated against the candidates who appear in the CBSE Board, as regards their right to change of name. This constitutes violation of right to equality under Article 14 of the Constitution of India.

53. The restrictions contained in Regulation 40 (ग) are disproportionate and in nature of prohibitions and fail the test of reasonable restrictions on fundamental rights under Article 19(1)(a) and Article 21 and Article 14 of the Constitution of India. The restrictions in Regulation 40 (ग) are arbitrary and infringe the fundamental right to choose and change own's name vested by virtue of Article 19(1)(a), Article 21 and Article 14 of the Constitution of India.

54. Situation of unconstitutionality can be saved by invoking the doctrine of 'reading down'. The concept of 'reading down' was reiterated by the Supreme Court in ***Subramanian Swamy v. Raju***[22] holding:

> "61. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the "reading down" doctrine can be

22 **2014 (8) SCC 390**

> summarised as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality."

(Also see : **DTC Vs. Mazdoor Congress**[23])

55. Regulation 40 (ग) is accordingly read down.

56. Clearly the petitioner's new name gives him a higher sense of self worth, and is within the scope Regulation 40(ख).

VI. Conclusions and Directions:

57. The authorities arbitrarily rejected the application for change of name and misdirected themselves in law. The action of the authorities violates the fundamental rights of the petitioner guaranteed under Article 19(1)(a), Article 21 and Article 14 of the Constitution of India and is in the teeth of relevant regulations under the Uttar Pradesh Intermediate Education Act, 1921.

58. The impugned order dated 24.12.2020 the Regional Secretary, Madhyamik Shiksha Parishad, Regional Office, Bareilly, U.P. is liable to be set aside and is set aside.

59. A writ in the nature of mandamus is issued commanding the respondents to allow the application of the petitioner to change his name from "Shahnawaz" to "Md Sameer Rao" and accordingly issue fresh High School and Intermediate certificates incorporating the said change.

60. The petitioner is directed to surrender all his public documents of identity like Aadhar card, Ration card, Driving

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23 **1991 Supp (1) SCC 600**

Licence, Passport, Voter I.D. card, etc. to the competent authorities. The authorities shall register the change of name, dispose off or destroy the earlier identity documents as per law, and issue fresh documents consistent with his changed name in accordance with law. The petitioner has already surrendered his earlier PAN card and the I.T. Department has issued a new one.

61. Before parting some observations. Changes in name made in the High School or Intermediate education certificates issued by the educational Boards have to be simultaneously incorporated in all documents of identity issued by various authorities like Aadhar card, PAN card, Ration card, Driving Licence, Passport, Voter I.D. card, etc. Further earlier documents have to be surrendered to the authorities for destruction or any other appropriate disposal.

62. Congruency in all identity related documents is an essential requirement of public interest and national security. In case a person is allowed to carry identification documents with separate names it would lead to confusion in identity and possibility of mischief. The State has to proactively prevent any such possibility of mischief or misuse.

63. Some of the documents are issued by authorities of the Government of India like PAN card and Passport. Hence there has to be full coordination between the State authorities and the authorities of the Government of India.

64. Secretary, Ministry of Home, Government of India and the Chief Secretary, Government of Uttar Pradesh, Lucknow, shall create appropriate legal and administrative frameworks to ensure that both Governments work in concert to achieve the end of making identity related identity documents consistent and removing anomalies therein.

65. The writ petition is allowed.

66. A copy of this order be placed before the Chief Secretary, Government of Uttar Pradesh, Lucknow and before the Secretary, Ministry of Home, Government of India by the respective counsels for the State and the Union.

Order Date :- 25.05.2023
Dhananjai Sharma

i **Appendix**

Article 24(2) of International Covenant on Civil and Political Rights adopted on December 16, 1966

2. Every child shall be registered immediately after birth and shall have a name.

Article 8 of Convention on the Rights of the Child, adopted on November 20, 1989

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 18(2) of Convention on the Rights of Persons with Disabilities, adopted on December 13, 2006;

18(2). Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Article 18 of American Convention on Human Rights, signed on November 22, 1969;

Article 18. RIGHT TO A NAME. - Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 6(1) of 1999 African Charter on the Rights and Welfare of the Child

1. Every child shall have the right from his birth to a name

Order Date :- 25.05.2023
Dhananjai Sharma

Digitally signed by :-
DHANANJAI
High Court of Judicature at Allahabad