24. The question involved in the present writ petition is that whether against the order of revision passed by the Additional Commissioner dated 3.8.1987, second appeal lies before the Board of Revenue or that can be converted into revision in view of the provision contained under Section 333 of the U.P. Zamindari Abolition & Land Reforms Act, 1950. The order under challenge dated 6.9.1994. In view of the above fact, the order passed in appeal by the Settlement Officer (Consolidation) cannot be taken into account in the order which is challenged in the year 1994.

25. In view of the provisions contained under Section 331 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, the appeal cannot be converted into revision, therefore, the order passed by the Board of Revenue suffers from apparent illegality and cannot be sustained in the eyes of law. In the counter affidavit, recital has been made that against the order of the Consolidation Officer, holding that the petitioners are *Seerdars,* some amendment was incorporated in the U.P. Zamindari Abolition & Land Reforms Act to the effect that *Seerdars* shall be treated as *Bhumidars* with transferable rights. A suit under Section 229-B was filed by the petitioners, which was allowed holding the petitioners to be *Bhumidars* with non-transferable rights, against which first appeal was filed before the Commissioner, which was allowed, holding the petitioners to be *Bhumidars* with transferable rights vide judgment dated 4.3.1982.

26. Against the order passed in the first appeal, the second appeal lies before the Board of Revenue, but that was not filed by the respondents, rather a review was filed, which was dismissed on 25.1.1990 and against the order passed in the review, second appeal was filed, which was converted into revision, which is not permitted in the eyes of law, therefore, the order impugned suffers from apparent illegality and is liable to be set aside. Accordingly, the order dated 6.9.1994 is hereby set aside. The writ petition succeeds and is **allowed.**

27. No order as to costs.

(2025) 2 ILRA 635
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.02.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Special Appeal No. 459 of 2023

State of U.P. & Ors. ...Appellants
Versus
Md. Sameer Rao & Ors. ...Respondents

Counsel for the Appellants:
Kunal Ravi Singh, Rama Nand Pandey

Counsel for the Respondents:
In Person, Shreyas Srivastava

Civil Law – Constitution of India,1950 – Article 14, 19, 19(1)(a), 21 & 226 – Allahabad High Court Rules, 1952- Chapter VIII - Rule 5, - U.P. Intermediate Education Act, 1921 – Chapter – III, XII, Regulation – 7, 40, 40(b) & 40(c)- Intra Court Appeal – assailing the validity of judgment and order passed by Single Judge – Writ Petition – writ petitioner Md. Sameer Rao was earlier known as Shahnawaz – who has cleared High School & Intermediate Board in year 2013 and 2015 respectively – by means of an application in year 2020 based upon some newly issued Adhar Card & PAN card in the name of Md. Sameer Rao and also a gazette notification approached to Board to incorporate his new

name in High School & Intermediate Certificates and issue a new certificates – Board rejected his request being time barred – writ petition – single judge set aside the impugned order – instant appeal – court finds that, the learned Single Judge has held Regulation 40(c) as arbitrary, unconstitutional and violative of fundamental right guaranteed by the Constitution of India - further, various other directions have also been issued like surrender of public documents of identity like Adhar card, Ration card, Driving Licence, Passport, Voter I.D. card etc. to the competent authorities with a direction to them to 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 – and - Learned Single Judge has also issued a direction to the Secretary, Ministry of Home, Government of India and the Chief Secretary, Government of U.P., Lucknow to create appropriate legal and administrative framework to ensure that both Governments work in concert to achieve the end of making identity related identity documents removing anomalies therein — held, (i) in fact, these are policy matters exclusively in legislative/ executive domain and on factual matrix of the matter, the writ petitioner had no case on merits, - (ii) in view of specific administrative order, the jurisdiction to read down or hold any regulation as arbitrary, unconstitutional and/or violative of fundamental right guaranteed by the Constitution only vests with the division bench in appropriate cases - hence, judgment of the learned single judge cannot be sustained – Special Appeal stands allowed – writ petition dismissed, accordingly. (Para – 31, 32, 35)

Special Appeal Allowed. (E-11)

List of Cases cited:

1. A.K. Gopalan Vs St. of Madras: AIR 1950 SC 27,

2. Jigya Yadav (Minor) (Through Guardian/Father Hari Singh) Vs. Central Board of Secondary Education and others: (2021) 7 SCC 535,

3. Pooja Yadav Vs. St. of U.P. & ors.: 2023 (10) ADJ 176.

4. Anand Singh Vs U.P. Board of Secondary Education & ors,: 2014 (3) ADJ 443 (DB)

5. Subramanian Swamy & ors. Vs Raju through Member, Juvenile Justice Board & another: (2014) 8 SCC 390,

6. D.T.C. Vs Mazdoor Congress, 1991 Supp (1) SCC 600,

(Delivered by Hon'ble Arun Bhansali, C.J.
&
Hon'ble Kshitij Shailendra, J.)

1. State of U.P., U.P. Board of High School and Intermediate Education (for short the 'Board') and its Regional Secretary are in intra court appeal under Chapter VIII Rule 5 of the High Court Rules, 1952 assailing the validity of the judgment and order dated 25.05.2023 whereby the learned Single Judge, while allowing Writ-C No. 3671 of 2022 (Md Sameer Rao Vs. State of U.P. and 2 others), has set aside the order dated 24.12.2020 passed by the Regional Secretary of the Board and has also issued a writ of mandamus commanding the respondents of the writ petition to allow the application of the writ petitioner to change his name from "Shahnawaz" to "Md Sameer Rao" and, accordingly, issue fresh High School and Intermediate Certificates incorporating the said change. Learned Single Judge has also issued various other directions like surrender of public documents of identity like Adhar card, Ration card, Driving Licence, Passport, Voter I.D. card etc to the competent authorities with a direction to them to 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. Learned Single Judge has also issued a direction to the Secretary, Ministry of Home, Government of India and the Chief

Secretary, Government of U.P., Lucknow to create appropriate legal and administrative framework to ensure that both Governments work in concert to achieve the end of making identity related identity documents removing anomalies therein.

BRIEF FACTS OF THE CASE

2. Admittedly, the writ petitioner Md Sameer Rao was earlier known as Shahnawaz. He appeared in and cleared the High School and Intermediate Examinations conducted by the Board, respectively in the year 2013 and 2015 by the same name. He had all identity cards issued in his name as Shahnawaz. Copies of Adhar card and PAN card were brought on record of the proceedings. In the year 2020, based upon some newly issued Adhar card and PAN card in the name of Md. Sameer Rao and also a gazette notification published in Gazette of India bearing Gazette No. 39 New Delhi, Saturday, September 26 - October 2, 2020 (Asvina 4, 1942) Part-IV, Page 1091, he approached the Board to incorporate his new name in the High School and Intermediate Certificates and issue new certificates having his name printed as "Md. Sameer Rao". The said application was rejected by the Regional Secretary of the Board by order dated 24.12.2020 on the ground that as the case fell with the category of "time barred matter" and, as per Regulation 7 of Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921 (for short the Act, 1921), request for change cannot be considered after a period of three years. It is this order which was challenged by the writ petitioner and has been set aside by the learned Single Judge and is impugned in the instant appeal.

3. THE ORDER DATED 24.12.2020 IMPUGNED BEFORE THE LEARNED SINGLE JUDGE

"प्रेषक,

क्षेत्रीय सचिव,

माध्यमिक शिक्षा परिषद, उ०प्र०

क्षेत्रीय कार्यालय, बरेली।

सेवा में,

प्रधानाचार्य/ प्रधानाचार्या,

उमर इण्टर कालेज

जलालपुर मुरादाबाद

पत्रांकः मा०शि०प०/ हाई०/इण्टर प्रमाण-पत्र/व/ 10231-32 दिनांक 24.12.20

महोदय/ महोदया,

आपके पत्र संख्या ..... दिनांक ..... के संदर्भ में हाईस्कुल/ इण्टर परीक्षा, 2013 के निम्नांकित प्रमाण-पत्र संशोधन हस्तलेखन के पश्चात परीक्षार्थियों के हेतु भी जा रहे है। कृप्या क्रासलिस्ट में संशोधित प्रमाण-पत्र के अनुसार अंकन कर लघु हस्ताक्षर कर दें।

कृप्या प्राप्ति की सूचना तुरन्त भेजने का कष्ट करें।

अनुक्रमांक नाम परीक्षार्थी अशुद्ध विवरण शुद्ध विवरण

0819050 शाहनबाज

नोट- **प्रकरण कालवाधित की श्रेणी में है आपका प्रार्थनापत्र इस कार्यालय में दि० 26.11.2020 को प्राप्त हुआ है। परिपक्षीय नियमानुसार प्रमाण पत्र निर्गमन तिथि के तीन वर्ष बाद प्राप्त प्रकरण पर इण्टरमिडिएट शिक्षा अधिनियम 1921 के अध्याय तीन के विनियम-7 के अनुसार संशोधन पर विचार किया जाना सम्भव नहीं है। अतः प्रमाण पत्र मूल रूप मे वापस प्रेषित।**

GIST OF JUDGMENT OF LEARNED SINGLE JUDGE

4. The learned Single Judge has, with reference to some traditional and literary books and dealing with Articles 19 and 21 of the Constitution of India, held that intimacy of human life and person's name is undeniable, the right to keep a name of

choice or change the name according to personal preferences comes within the mighty sweep of the right to life guaranteed under Article 21 and restrictions contained in Regulation 40 of Chapter XII of the Regulations framed under the Act, 1921 are disproportionate and fail the test of reasonable restrictions on fundamental rights under Article 19 (1)(a) and Articles 14 and 21 of the Constitution and the same are arbitrary and infringe the fundamental rights to choose and change own's name. The learned Single Judge, by invoking the doctrine of "reading down" read down Regulation 40(π) observing that the petitioner's new name gives him a higher sense of self-worth.

ARGUMENTS OF APPELLANTS

5. Shri Rama Nand Pandey, learned Additional Chief Standing Counsel, mainly made following submissions:-

(i) Fundamental freedoms guaranteed by the Constitution of India are not absolute and the same are subject to reasonable restrictions.

(ii) Change of name recorded in High School and Intermediate Certificates issued by the Board is regulated by Regulation 40 of Chapter XII of the Act, 1921 and the same is not against any individual liberty.

(iii) Change of name after more than seven years cannot, otherwise, be accepted in view of Regulation 7 of Chapter III of the Regulations framed under the Act read with Regulations 40(b) and 40(c) of Chapter XII of the Regulations which are reasonable restrictions in the matter.

(iv) Learned Single Judge has exceeded his power of judicial review in policy matters and has transgressed the legislative functions extending the directions to the State Government which exclusively lie in the executive domain.

(v) The Supreme Court, in **A.K. Gopalan Vs. State of Madras: AIR 1950 SC 27,** held that reasonable restrictions are imposed on the enjoyment of fundamental right due to the fact that in certain circumstances, individual liberty has to be subordinated to certain other larger interest of the society.

(vi) Changing name from Shahnawaz to Md. Sameer Rao, if permitted, would create chaos and open a new pandora box with an unending process.

(vii) Issuing directions to executive authorities of the Union and State to create a legal framework amounts to violation of the federal structure of the Constitution as such rights and powers are vested with the Union Government and State Government as per the constitutional provisions, particularly under Article 245 read with 7th Schedule providing legislative competence in various matters.

(viii) The Supreme Court, in **Jigya Yadav (Minor) (Through Guardian/Father Hari Singh) Vs. Central Board of Secondary Education and others: (2021) 7 SCC 535,** has laid down broadly two categories under which change of name is permissible and in case the writ petitioner wanted to get his name changed even by choice, he could have first obtained declaration from civil court and then get publication in official gazette and then approach the Board within the prescribed period of limitation and only in that event, a right for consideration of his claim on merits could arise. In this regard, reliance was placed upon judgment of one of us (Kshitij Shailendra, J.) sitting singly in **Pooja Yadav Vs. State of U.P. and 3 others: 2023 (10) ADJ 176.**

(ix) None of the regulations framed under the Act, 1921 being under

challenge in the writ petition, or if challenged by amendment, learned Single Judge was not competent to impliedly strike down the same by applying the principle of "reading down a provision" and, hence, the judgment impugned in the appeal is without jurisdiction.

ARGUMENTS OF RESPONDENT

6. Per contra, Shri Shreyas Srivastava, learned counsel who was appointed under the order of this Court by Legal Services Authority, made following submissions:-

(i) The case of the writ petitioner is fully covered by **Jigya Yadav** (supra), para 171(b) (citing reference Manu/SC/0362/2021) [equivalent paragraph nos.194, 194.1 and 194.2 of **(2021) 7 SCC 535**], inasmuch as the writ petitioner had changed his name 'by choice' without any supporting school record but since he got few public documents issued in his new name and a gazette notification, the Board was under an obligation to allow the prayer for correcting/ changing the name in the High School and Intermediate Certificates and issue the same to the writ petitioner.

(ii) There is no need to obtain a declaration from any court as public documents and official gazette would suffice for grant of prayer.

(iii) Regulation 40 has been rightly read down by the learned Single Judge as it is in teeth of fundamental right guaranteed under Article 21 of the Constitution of India to acquire a new name.

(iv) Learned Single Judge, pragmatically interpreting the provisions of Regulation 40 of Chapter XII, Part II-B, of the regulations framed under the Intermediate Education Act, 1921, has read down the said regulation in a bid to save its constitutionality.

(v) Learned Single Judge was competent to read down the provision as the educational matters were cognizable by Single Judge Bench as per the roster designed by Chief Justice under High Court Rules, 1952.

(vi) The right to change a name has been recognised as being a fundamental right guaranteed under Article 19(1)(a) of the Constitution of India.

(vii) The reasoning behind acknowledging the right to name as a fundamental right flows from the fact that identity has been held to be an amalgam of various internal and external characteristics which includes the name of an individual, which is the principal expression of identity.

(viii) The Hon'ble Supreme Court in Paragraph No. 171(a) of **Jigya Yadav (supra)** has held that the public documents have a legal presumption operating in their favour and the CBSE cannot ignore such documents. Though the observations were made with regard to CBSE, the same apply with full vigour to the Board of High School and Intermediate Education, U.P.

(ix) The Board has absolutely no jurisdiction in curtailing the exercise of fundamental rights of an individual which have been effected to in other public/statutory documents having a presumptive value.

(x) Since no specific challenge had been made to the constitutionality of abovesaid regulation, the matter was not required to be placed before the Bench authorised to hear matters wherein constitutionality of delegated legislation had been challenged as per the roster formulated by Hon'ble The Chief Justice under Chapter 5 Rule 1 of the Allahabad High Court Rules.

DISCUSSION

7. The issue involved in the instant case is of quite significance and wider implications. Interestingly, both sides have placed reliance upon judgment of Supreme Court in **Jigya Yadav** (supra). The case of **Jigya Yadav** (supra) had arisen from a situation where the concerned candidate had applied before the Central Board of Secondary Education to carry out correction of her parent's name in the mark-sheet. According to that petitioner, name of her father Hari Singh was incorrectly recorded as Hari Singh Yadav and mother as Mamta Yadav instead of Mamta. The claim was based upon certain documents of identity of her parents. CBSE rejected the prayer and writ petition filed against the said rejection was dismissed by Delhi High Court. The Supreme Court, while dealing with permissibility of getting correction of names in educational certificates and dealing with the constitutional provisions as well as certain Bye-laws/ Rules/ Regulations, observed as under:-

"Courts need to be extra cautious and alive to the immediate factual position before permitting changes. No two requests for change of name or change in date of birth can be viewed with the same judicial eye. Sometimes, change of name could be a necessity, sometimes it could be a pure exercise of freewill without any need. As long as Bye-laws or the applicable rules permit so, there is no occasion for any court to deny such relief. But when Bye-laws do not permit for the same, the Court must be circumspect before issuing directions, that too without commenting upon the validity of the Bye-laws and without demonstrating the rights which are at stake – constitutional or legal."

8. The Hon'ble Court further observed as under:-

"162. The provision for "change" of name is far more stringent and calls for a thorough review to settle the correct position. **As per the present law, change of name is permissible upon fulfilment of two prior conditions – prior permission of the Court of law and publication of the proposed change in Official Gazette. These conditions co−exist with another condition predicating that both prior permission and publication must be done before the publication of result.** What it effectively means is that change of name would simply be impermissible after the publication of result of the candidate even if the same is permitted by a Court of law and published in Official Gazette. In other words, once the examination result of the candidate has been published, the Board would only permit corrections in name mentioned in the certificate. Further, changing the name out of freewill is simply ruled out."

9. Lastly, the Court classified such cases of seeking correction in name or other details in **two broad categories** and held as under:-

"171. 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, Aadhaar 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.

(a) 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) indicating the date on which change has been recorded and the basis thereof. In other words, the fresh certificate 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).

(b) 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."

10. The present case is not the one falling in first category, i.e., changing name from Shahnawaz to Md. Sameer Rao, which, in fact, amounts to altogether acquiring a new name. The petitioner did not approach the Board to correct his name based upon documents of identity like Adhar Card/ Birth Certificate/ Voter I.D. Card etc. pre-existing in his new name, i.e. Shahnawaz. The case falls in second category where the change is to be effected on the basis of new acquired name BY CHOICE without any supporting school record or public document. Dealing with that category, the Supreme Court has clearly observed that such a request may be entertained upon insisting 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) and upon payment of prescribed fees. The Supreme Court has also observed that fresh certificate would retain the original entry and a caption/

annotation inserted indicating the date on which it has been recorded and other details because the Board is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant.

11. Once the Supreme Court has emphasized upon "**insisting for prior permission/ declaration by a court of law**", this Court may deal with the said aspect of the matter with reference to the civil law of the land. Section 9 of the **Code of Civil Procedure, 1908** provides that the courts have jurisdiction to try all suits of a civil nature except suits of which their cognizance is either expressly or impliedly barred. Suits of different nature are provided under **Specific Relief Act, 1963**, which is divided into different Chapters. Chapter-I contains provision for suits for recovering possession of property, Chapter-II speaks of specific performance of contracts, Chapter-III relates to rectification of instruments, Chapter-IV relates to rescission of contracts, Chapter-V governs cancellation of instruments, Chapters-VII and VIII speak of injunctions. However, in the instant case, Chapter-VI of the Act of 1963 needs a mention. It contains only two provisions, i.e. Section 34 and 35, which are quoted as under:-

"**34. Discretion of court as to declaration of status or right**.— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

35. Effect of declaration.- A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees."

12. A perusal of Section 34 would show that a civil court is competent to grant a declaration of status or right which includes a legal character of any person. Acquiring a new name by choice is covered by Chapter-VI of the Act in the sense that a person seeking to acquire a new name, may obtain a decree of declaration from the civil court to the effect that, henceforth, he would be known as a person by his newly acquired name. In such event, the date of decree would be relevant and would operate from the said date, prior whereto, the plaintiff seeking declaration would be known by his previous name. Though it is true that, as per Section 35, a declaration made under Chapter-VI would be binding only on the parties to the suit, it does not affect the validity of the decree qua acquiring a new name as, in such event, the decree would operate against the world at large as a decree in rem, provided the plaintiff chooses his opponents in that manner, like public in general, Union of India, State of U.P., the Board or Department concerned etc. etc. The declaration so obtained would, then, bind every department of Union and State and also the public at large.

13. At this juncture, Section 41 of the Evidence Act, 1872 also needs reference. The said section finds place in Chapter-III, titled as "of the relevancy of facts" and reads as under:-

"**41. Relevancy of certain judgments in probate, etc., jurisdiction.-** A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, **which confers upon or takes away from any person any legal character**, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is **conclusive proof** –

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [order or decree] declares it to have accrued to that person;

……..."

14. Words "**which confers upon or takes away from any person any legal character or which declares any person to be entitled to any such character**" used in section 41 are of much significance and also of binding nature of such declaration made against the world at large. The provision speaks of **judgments in rem**. A judgment in rem is defined in English Law as "an adjudication pronounced (as its name indeed denotes) by the status, some particular subject matter by a tribunal having competent authority for that purpose". It declares, defines or otherwise determines the status of a person or of a thing, that is to say, the jural relation of the person or thing to the world generally.

15. We may also observe that one of us (Kshitij Shailendra, J.), while referring to the aforesaid paragraphs of the Supreme Court judgment in **Jigya Yadav (supra)** and Section 34 of the Specific Relief Act, 1963, held in **Pooja Yadav Vs. State of U.P. and 3 others: 2023 (10) ADJ 176** that obtaining a declaration from civil court is a pre-requisite to acquiring a new name by choice and only when such a decree is obtained and placed before the Board, request can be entertained.

16. One may visualize a situation where a person is having certain documents of identity, like Adhar card, Voter I.D. card, PAN card etc. mentioning a particular name on which basis he appeared in High School and Intermediate Examinations and got certificates. After a certain number of years, the said person wants to acquire a new name and again obtains new Adhar card, Voter I.D. card, PAN card, etc. On that basis, even if, for one reason or the other, the Board issues fresh educational testimonials incorporating his new name, then, if after some time, that person wants to acquire a third name and again obtains fresh documents of identity issued in that third new name and again approaches the Board to issue fresh testimonials incorporating his new name, such a recourse would become an endless process. Such an obligation cannot be imposed on Board particularly when it is contrary to statutory regulations.

17. We may, however, clarify that we are not examining validity of Adhar card, PAN card or any other document

subsequently obtained by the writ petitioner in the name of Md. Sameer Rao, inasmuch as the issue involved in the instant appeal is quite different. We are focused on the obligation on the part of the Board to adhere to or refuse the request of a candidate like the writ petitioner to change his name in educational records or to get new testimonials issued in the new name. Therefore, any observation made in this judgment may not be treated as validating/invalidating any document of identity obtained by the writ petitioner at any point of time.

18. As far as gazette notification published in Gazette No. 9 New Delhi, Saturday, September 26 - October 2, 2020 (Asvina 4, 1942) Part-IV, Page 1091 is concerned, the Court may refer certain important aspects in relation thereto. The gazette begins with a notice in following words:-

> "NO LEGAL RESPONSIBILITY IS ACCEPTED FOR THE PUBLICATION OF ADVERTISEMENTS/PUBLIC NOTICES IN THIS PART OF THE GAZETTE OF INDIA. PERSONS NOTIFYING THE ADVERTISEMENTS/ PUBLIC NOTICES WILL REMAIN SOLELY, RESPONSIBLE FOR THE LEGAL CONSEQUENCES AND ALSO FOR ANY OTHER MISREPRESENTATION ETC.
>
> BY ORDER
> Controller of Publication"

19. The said gazette contains information of change of names of various persons in identical language. As far as the petitioner is concerned, following is the notice:-

> "I hitherto known as SHAHNAWAZ son of MAUVEEN HUSAIN, residing at village Mehloli, Post Jalalpur Khas, Tehsil Bilari, Disstt. 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)]"

20. Words "**it is certified that I have complied with other legal requirements in this connection**" written at the end of the notice, do not amount to a certificate issued by Government of India, rather it is the certification made by the candidate himself that he has complied with other legal requirements. What are those 'legal requirements' is nowhere mentioned in the gazette, rather, when read with the notice quoted above, it would mean that the Government of India itself has made a disclaimer saving itself from any legal responsibility/ liability/ consequences or any other misrepresentation etc, which may occur pursuant to notifying a new name in the gazette.

21. In India, a Gazette Notification and a civil court decree serve different purposes and while they can complement each other, they are not interchangeable. A Gazette Notification is an official publication that announces a change in an individual's name. It is typically published after the individual has followed the necessary procedures, such as filing an affidavit and publishing the name change in local newspapers. A civil court decree, on the other hand, is a formal order passed by a court of law, which can provide a binding

declaration regarding an individual's name change. A Gazette Notification primarily serves as public notice, while a civil court decree provides a legally binding declaration, a Gazette Notification is issued by the government, whereas a civil court decree is passed by a judicial authority, a civil court decree is enforceable by law, whereas a Gazette Notification, though official, might not be sufficient to resolve disputes or establish rights. In general, a Gazette Notification cannot replace a civil court decree. In situations where a binding declaration or enforcement is required, a civil court decree is essentially necessary.

22. In the opinion of the Court, gazette publication must be preceded by fulfilment of some legal requirements and not by mere filling up a form seeking publication of such an intimation/notice regarding change of name. Such requirement can be only in the nature of a decree obtained from civil court and in no other manner, otherwise any person would get such a notice published in the official gazette and would impress the Government departments to incorporate a newly acquired name changing all the records. Even if there are certain provisions in the Evidence Act, 1872 attaching presumption in favour of gazettes, the same are referable to only admissibility of such gazettes in evidence but the contents of the gazette, in absence of any legal sanctity attached to them, cannot be treated as a conclusive proof of the very nature and character of such publication.

23. It is not the case of the writ petitioner here that prior to getting intimation of his changed name published in official gazette, he had obtained any decree from a competent civil court and, therefore, when words "**that request may be entertained upon insisting for prior permission/ declaration by a Court of law in this regard and publication in the Official Gazette**" used by the Supreme Court in paragraph No.171 (b) of **Jigya Yadav** (supra), are examined in depth and in factual matrix of the present case, we find that in absence of decree from civil court even gazette publication alone, as relied upon by the writ petitioner, would be of no consequence.

24. Since learned Single Judge read down Regulation 40(c) of the Regulations, the same first needs reproduction as under:-

"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।

(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।"

25. What we find is that the order impugned in the writ petition is referable to Regulation 7 of Chapter-III Part-II(b) of the Regulations framed under the Act, 1921. The said regulation is extracted as under:-

"विनियम-7 संशोधित स्वरूप

सचिव परिषद के ओर से सफल उम्मीदवारों को परिषद की परीक्षा में उत्तीर्ण होने का प्रमाण-पत्र विहित प्रपत्र में देगा और बाद में उसकी प्रविष्टियों में कोई शुद्धि करेगा, बशर्ते की प्रमाण-पत्र में किसी ऐसी गलत प्रविष्टि किसी अभिचारित लिपिकिय भूल या लोप के कारण या किसी ऐसी लिपिकिय भूल के कारण की गयी हो, जो असावधानी से परिषद के स्तर के या उस संस्था के जहाँ से अन्तिम बार शिक्षा प्राप्त की हों स्तर पर अभिलेख में हो गयी हों।

यह शुद्धि सचिव द्वारा उसी स्थिति में की जा सकेगी, जबकि अभ्यार्थी ने सम्बन्धित परीक्षा के प्रमाण-पत्र को परिषद द्वारा **निर्गमन की तिथि से तीन वर्ष की लिपिकीय त्रुटि** की ओर ध्यान आकृष्ट करते हुये सम्बन्धित प्रधानाचार्य/अग्रसारण अधिकारी के त्रुटि के संशोधन प्रार्थना पत्र प्रस्तुत कर दिया गया हो। और उसकी प्रति पंजीकृत डाक से सचिव परिषद को भी प्रेषित की हों।

प्रतिबन्ध यह है कि अभ्यर्थी के अंकपत्र तथा प्रमाण-पत्र में अभ्यर्थी के नाम, पिता के नाम अथवा माता के नाम में यदि कोई वर्तनी त्रुटि है, तो अभ्यर्थियों द्वारा आवेदन करने पर उसे परिषद के सम्बन्धित क्षेत्रीय कार्यालयों के क्षेत्रीय सचिवों द्वारा पुष्टित एवं प्रमाणिक साक्ष्यों के आधार पर तत्काल शुद्ध कर दिया जायेगा।"

26. As far as the limitation of 3 years provided under Regulation 7 is concerned, reference to a Division Bench judgment of this Court in **Anand Singh Vs. U.P. Board of Secondary Education and others**: 2014 (3) ADJ 443 (DB) may be made. The Division Bench, while dealing with the limitation of three years as regards correction, held that rejection for correcting the name on the ground of delay is unsustainable as the claim was found to be bona fide. However, a careful examination of the said judgment would show that the nature of correction in the light of Regulation 7 was examined by this Court and the same are confined to some **inadvertent clerical error or omission** in the name of the candidate or the name of his parents. Same is altogether different from a situation where completely new name is sought to be acquired and then request is made for issuance of new certificate incorporating said name.

27. We may also observe that the writ petition contained two prayers, one challenging the order dated 24.12.2020 passed by the officer of the Board and the other in the nature of mandamus commanding the Board to change the name of the petitioner from Shahnawaz to Md. Sameer Rao in High School and Intermediate records pertaining to years 2013 and 2015, respectively. There was no initial challenge to any of the Regulations, however, later on, an order was passed on 01.05.2023, permitting the amicus curiae to amend the writ petition. Whether the petition was amended or not, is not clear as the appeal is accompanied by a copy of the petition that does not contain a challenge to any regulation. Even if we assume that the writ petition was amended, the learned Single Judge was not justified in declaring the Regulation 40(c) as unconstitutional or arbitrary by reading down the provision. So long as the Regulations framed under U.P. Intermediate Education Act, 1921 exist in the Statute book, the same would be read as they exist and cannot be brushed aside while examining a challenge based upon applicability of a Board Regulation.

28. As far as the principle of "reading down" a provision as utilized by the learned Single Judge is concerned,

Supreme Court in **Subramanian Swamy and others Vs. Raju through Member, Juvenile Justice Board and another: (2014) 8 SCC 390** held as under:-

"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. 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."

29. In **D.T.C. vs. Mazdoor Congress, 1991 Supp (1) SCC 600**, Supreme Court succinctly summed up the position as under:

"255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible - one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only is it no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so."

30. Further, the issue of jurisdiction also arises in the instant matter. **An administrative order** of the Chief Justice passed on 01.08.2016 provides as under:-

"All cases where the vires of Central or State legislation is challenged will be cognizable by the Division Bench.

Chief Justice
01.08.2016"

31. The learned Single Judge has held Regulation 40(c) as arbitrary, unconstitutional and violative of fundamental right guaranteed by the Constitution of India. Further, various other directions have also been issued like surrender of public documents of identity like Adhar card, Ration card, Driving Licence, Passport, Voter I.D. card etc to the competent authorities with a direction to them to 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. Learned Single Judge has also issued a direction to the Secretary, Ministry of Home, Government of India and the Chief Secretary, Government of U.P., Lucknow to create appropriate legal and administrative framework to ensure that both Governments work in concert to achieve the end of making identity related identity documents removing anomalies therein. In fact, these are policy matters exclusively in legislative/ executive domain.

32. In view of specific administrative order, the jurisdiction to read down or hold any regulation as arbitrary, unconstitutional and/ or violative of fundamental right guaranteed by the Constitution only vests with the Division Bench in appropriate cases.

33. Even otherwise, as observed hereinbefore on factual matrix of the matter, the writ petitioner had no case on merits.

34. For all the aforesaid reasons, we are satisfied that the judgment of the learned single judge cannot be sustained.

35. The special appeal stands **allowed**. The judgment and order dated 25.05.2023 of the learned Single Judge passed in Writ-C No. 3671 of 2022 (Md Sameer Rao Vs. State of U.P. and 2 others) is **set aside**. The writ petition stands **dismissed**.

(2025) 2 ILRA 648
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 04.02.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ - A No. 3770 of 2023
connected with
Writ – A No. 3769 of 2023

Jai Prakash Chand & Ors. ...Petitioners
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioners:
Apoorva Tewari, Aditya Tewari

Counsel for the Respondents:
C.S.C.

(A) Service Law - Government Employment – Merger – Seniority and Promotion - Challenge to the validity of the Employees of Entertainment Tax Department (Service Cadres of Officers, Inspectors, and Other Employees) in the related Cadres of Commercial Tax Department - Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 - Rule 7 - The U.P. Government Servant Seniority Rules, 1991 - Clause 4(h) - 'substantive appointment' - Uttar Pradesh Goods and Services Tax Act, 2017 - Section 174 , Uttar Pradesh Merger Rules, 2022 - Rule 2, Rule 3(3), Rule 3(4), Rule 4(4), Rule 4(5), Rule 4(7), The Constitution of India - Article 311 - Change in chances of promotion does not violate Article 14 of the Constitution - Judicial review of government policy decisions is limited and should not interfere unless the policy is arbitrary, irrational, or unconstitutional - Merger of employees into a new department is a policy decision of the government and cannot be challenged unless it violates statutory or constitutional provisions - Seniority and promotion are subject to the new rules of the merged department. (Para - 47 to 56)

Petitioners were originally appointed as Entertainment Tax Inspectors - later promoted to higher positions - U.P. Goods and Services Tax Act repealed the U.P. Entertainment and Betting Tax Act - Entertainment Tax Department was abolished - State Government