

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.2499 of 2022**

In the matter of an application under Articles 226 & 227 of the Constitution of India.

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**Rajkishore Patra** ..... **Petitioner**

*-versus-*

**State of Odisha & Ors.** ..... **Opposite Parties**

**For Petitioner :** Mr. N. Lenka, Advocate

**For Opp. Parties :** Mr. M.K. Balabantaray, AGA  
(Opp. Party No. 1)  
Mr. S.S. Rao, Sr. Advocate  
along with  
Mr. A.A. Mishra, Avocate  
(Opp. Party Nos. 2 to 4)  
Mr. A. Mohanty, Advocate  
(Opp. Party Nos. 5 & 6)

**PRESENT:**

**THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY**

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**Date of Hearing: 03.10.2023 and Date of Judgment: 29.11.2023**  
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***Biraja Prasanna Satapathy, J.***

The present writ petition has been filed inter alia with the following prayer:-

*“Therefore, it is prayed that this Hon'ble Court be graciously pleased to admit the writ application, issue rule NISI in the nature of writ of mandamus or any other writ/writs as deem fit and proper calling upon the opposite parties to show-cause as to why the orders vide Annexure-5 and 6 shall not be quashed and why necessary correction of the date of birth of the petitioner as 26.05.1975 instead of 26.05.1972, in the High School Certificate of the petitioner vide Annexure-2 shall not be carried out.*

*In the event of the opposite parties fail to show-cause or show insufficient cause said rule be made absolute.*

*And further be pleased to pass any order/orders direction/directions as deem fit and proper.*

*And for this act of kindness the petitioner shall as in duty bound ever pray.”*

2. It is contended that the original date of birth of the Petitioner being 26.05.1975, the said date of birth of the Petitioner was recorded while the Petitioner took admission in Sradhapur U.P. School in the year 1980. After completion of Class V in the year 1985, Petitioner took admission in Sradhapur M.E. School, where his date of birth was also recorded as 26.05.1975. Subsequently, Petitioner took admission in Class VIII in Sankhari High School, Sankhari under Bhograi Block in Balasore District.

2.1. It is contended that Petitioner though produced the school leaving certificate issued by the Headmaster, Sradhapur M.E. School on 15.07.1987 under Annexure-1 and in the said certificate date of birth of the Petitioner was mentioned as 26.05.1975, but somehow or other in the

school admission register of Sankhari High School, Sankhari the date of birth of the Petitioner was wrongly mentioned as 26.05.1972 in place of 26.05.1975. Because of such wrong recording of the date of birth of the Petitioner as 26.05.1972 in the school admission register of Sankhari High School, Sankhari, the said date of birth was also reflected in the High School Pass certificate issued by the Board of Secondary Education, Odisha on 15.12.1990 under Annexure-2.

2.2. Learned counsel for the Petitioner contended that since the Petitioner was a minor by the time he passed his HSC examination held in the year 1990 with such wrong recording of his date of birth as 26.05.1972 in place of 26.05.1975, Petitioner could not know about the same and accordingly could not take any step to correct such wrong recording of his date of birth. It is also contended that Petitioner after completing his education joined as a Junior Engineer on contractual basis vide order dtd.27.06.2018 of the Engineer-In-Chief, Water Resources, Odisha, Bhubaneswar. Only when Petitioner was regularized in his service with opening of his service book on 03.09.2019, he came to know that his date of birth has been wrongly recorded as 26.05.1972 in place of 26.05.1975 in his HSC Pass Certificate so issued under Annexure-2.

**2.3.** Petitioner on coming across such wrong recording of his date of birth immediately moved the D.E.O., Balasore for correction of the same in the school admission register of Sankhari High School, Sankhari. On receipt of such application, D.E.O., Balasore directed the Block Education Officer, Bhograi to cause an enquiry and submit a report. Accordingly, B.E.O., Bhograi caused an enquiry and after verifying the admission register of Sradhapur U.P. & M.E. School so also the admission register of Sankhari High School, submitted a report by indicating therein that the date of birth of the Petitioner though is recorded as 26.05.1975 in the school admission register of both Sradhapur U.P. & M.E. School, but in the school admission register of Sankhari High School, Sankhari, his date of birth has been wrongly recorded as 26.05.1972 in place of 26.05.1975.

**2.4.** Basing on such report of the B.E.O., Bhograi, Petitioner filed an application before the Headmaster, Sankhari High School, Sankhari- Opp. Party No. 5 to correct his date of birth as 26.05.1975 in place of 26.05.1972. When no action was taken on such claim of the Petitioner as made on 16.11.2020 under Annexure-3, Petitioner approached this Court in W.P.(C) No. 14314 of 2021. This Court vide order dtd.10.06.2021 under Annexure-4 directed the present Opp. Party No. 3 to take a

decision on the claim raised by the Petitioner in his application under Annexure-3.

**2.5.** It is contended that Opp. Party No. 3 without proper appreciation of the Petitioner's claim and the report submitted by the B.E.O., Bhograi as well as the recording of the date of birth of the Petitioner in the school admission register of Sradhapur U.P. & M.E. School, refused to correct the date of birth of the Petitioner as 26.05.1975 in place of 26.05.1972 vide the impugned communication dtd.24.11.2021 under Annexure-6 and consequential communication issued by the Opp. Party No. 5 on 14.12.2021 under Annexure-5. It is contended that such claim of the Petitioner was rejected by the Opp. Party No. 3 relying on Rule 39 of the Board's Regulation.

**2.6.** Learned counsel for the Petitioner contended that since in both the school admission register of Sradhapur U.P. & M.E. School, Petitioner's date of birth was recorded as 26.05.1975 and in school leaving certificate issued by Sradhapur M.E. School under Annexure-1, his date of birth was recorded as 26.05.1975, Petitioner should not be made to suffer because of wrong committed by the school authorities of Sankhari High School, Sankhari in recording his date of birth as 26.05.1972.

2.7. Learned counsel for the Petitioner also contended that since Petitioner prior to opening of his service book on 03.09.2019 had no occasion to know about the wrong recording of his date of birth as 26.05.1972, he had no occasion to make any application before Opp. Party No. 3 for correction of his date of birth. It is accordingly contended that the ground on which the claim of the Petitioner was rejected by the Opp. Party No. 3 is not sustainable in the eye of law. In support of his aforesaid submissions, learned counsel for the Petitioner relied on the decision of the Hon'ble Apex Court in the case of **Jigyā Yadav Vs. C.B.S.E.** (AIR 2021 SC 4775). Hon'ble Apex Court in Para 70, 79, 96, 137, 146, 150, 162 & 172 of the said Judgment has held as follows:-

*“70. It is further submitted that the respondent's claim was barred by the principle of estoppel as he was mandatorily required to submit his birth certificate in school at the time of admission as per Byelaw 6 of the Examination Byelaws, 1995 so that the school record could be in consonance with the birth certificate. Since the respondent failed to produce the same at the time of admission, it is urged, the school record carried the information voluntarily supplied in the admission form and no change can be permitted at this stage.*

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*79. As regards cases wherein the request for change of name is bona fide and there is no scope for prejudice, the decision of learned Single Judge directing such changes was held to be correct. The Court observed thus:*

*“3. On the other hand, we find that if correction has been genuinely and bona fide sought and no prejudice is*

caused, then in that event the conclusion arrived at by the learned Single Judge cannot be said to suffer from any infirmity.”

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96. Respondent No. 6 (Satish Kumar @Shrey) has filed “Note on submissions” wherein various grounds have been advanced to question the prohibitory Byelaws of the Board and support the case for permitting genuine changes in certificates. It has been submitted that the Byelaws are not statutory in nature and thus, they cannot be made as “law” within the meaning of Article 19(2) of the Constitution and cannot be the basis to deprive the students of their fundamental right to express their identity under Article 19(1)(a). Reliance has been placed upon *Kabir Jaiswal v. Union of India and Ors.* (2020 SCC OnLine All 1488 : (AIR 2021 ALL 96) to support this position.

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137. No doubt, it is true that CBSE certificates are not strictly meant to be considered as identity documents, however, the same are being relied upon for corroborative purposes in all academic and career related transactions as foundational document. In fact, the CBSE itself has conceded to this fact that their certificates are relied for all official purposes, as noted above. The date of birth in matriculation certificate, in particular, is relied upon as primary evidence of date of birth of a citizen. Therefore, as regards the information contained in a CBSE certificate, the Board must afford opportunity to the students to modify it subject to complying with requisite formalities which are reasonable in nature. If all other State agencies could allow it for the preservice of consistency and accuracy, alongside being enablers in free exercise of rights by the citizens, there is no reason for the CBSE to not uphold that right of the students. More so, it would be in the interest of CBSE’s own credibility that their records are regarded as accurate and latest records of a student worthy of being relied upon for official purposes. Therefore, this approach would serve twin purposes – enabling free exercise of rights and preservice of accuracy.

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146. Similar provision is available for “correction” in date of birth, either on the basis of school records or on the basis of order of court. The word “change” is not used for date of birth as, unlike name, there can only be one date of birth and there can only be a correction to make it consistent with school record or order of Court. It cannot be changed to replace the former with a fresh date of one’s choice. Be it noted, provisions relating to correction in date of birth and name are just and reasonable and do not impose any unreasonable restriction on permissibility of corrections. The restriction regarding limitation period shall be examined later, along with other provisions.

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150. Indisputably, the candidate would pursue further education and explore future career opportunities on the basis of school records including the CBSE Board. The CBSE maintains its official records in respect of candidate on the basis of foundational documents being the school records. Therefore, the CBSE is obliged to carry out all necessary corrections to ensure that CBSE certificate is consistent with the relevant information furnished in the school records as it existed at the relevant time and future changes thereto including after the publication of results by the CBSE. However, when it comes to recording any information in the original certificate issued by the CBSE which is not consistent with the school records, it is essential that the CBSE must insist for supporting public document which has presumptive value and in the given case declaration by a Court of law to incorporate such a change. In that regard, the CBSE can insist for additional conditions to reassure itself and safeguard its interest against any claim by a third party/body because of changes incorporated by it pursuant to application made by the candidate. In the concluding paragraph, we intend to issue directions to the CBSE Board in light of the discussion in this judgment. For the nature of uniform directions that we propose to issue so as to obviate any inconsistent approach in the cases under consideration including future cases to be dealt with by the CBSE Board, it



*is not necessary for us to dilate on the question of validity of the respective amendments in the relevant Byelaws effected from time to time.*

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*162. The next issue for consideration is whether it is proper for the High Courts to issue mandamus to the CBSE for correction of certificates in complete contravention of the Byelaws, without examining the validity of the Byelaws. For issuing such directions, reliance has been placed upon Subin Mohammed (2016 (1) KLT 340 : (AIR 2016 (NOC) 311 (KER), wherein the Court noted that the case does not involve correction of a typographical nature, as permissible in the Byelaws, but went on to uphold the right of the student to apply for changes on the basis of statutory certificate. It observed thus:*

*“35. Therefore, we have to proceed on the basis that the bye law of CBSE cannot be applied to the fact situation. But to reconcile the date of birth entry in the mark sheet with that of the entry in the statutory certificate, the candidates should not be left without any remedy. Their right to approach the Court for redressing their grievance cannot be ruled out.”*

*The court then delineated the principles for issuance of writ of mandamus and noted that in the strict sense, a mandamus would not lie but considering the damage that the student could face as regards his career prospects, the permission was granted. In paragraph 39, it noted thus:*

*“39. It is contended that the future prospects of the petitioners to study or get employment abroad, will be substantially affected if the entry of date of birth in the mark sheet does not tally with that in the birth certificate. Though a writ of mandamus cannot be issued in the strict sense, we are of the view that, failure to exercise jurisdiction may put the petitioners to serious hardship. Hence, to render justice, it is always open for the Court to pass appropriate orders, taking into account the facts and circumstances of each case. However, if disputed questions of fact arises, it will not be appropriate for this Court to entertain the matter.”*

*(emphasis supplied)*

*The law regarding the writ of mandamus is settled. The foremost requirement for issuance of mandamus is the existence of a legal right against a body which is either a public body or a nonpublic body performing a public function. In Binny Ltd. ((2005) 6 scc 657 : (AIR 2005 sc 3202)), this Court summed up the principle thus:*

*“29. Thus, it can be seen that a writ of mandamus or the remedy under [Article 226](#) is preeminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in [Article 226](#) of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p.682,*

*“1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for Private profit.”*

*There cannot be any general definition of public authority or public action. The facts of each case decide the point.”*

*In the present case, the question is not whether CBSE was amenable to writ of mandamus or not. For, we have already held the Board being a public body is performing a public function. The question is whether there was an*

*enforceable legal right in favour of students to seek such a direction and whether Byelaws have the force of law and directions can be issued by the court only in conformity thereof.*

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*172. In light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paragraphs 170 and 171, as may be applicable, until amendment of relevant Byelaws. Additionally, the CBSE shall take immediate steps to amend its relevant Byelaws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it.”*

**2.8.** Learned counsel for the Petitioner also relied on another decision of the Hon’ble Apex Court in the case of ***Tukaram Kana Joshi & Ors. Vs. Maharashtra Industrial Development Corporation & Ors.*** ((2013) 1 SCC 353). Hon’ble Apex Court in Para 14 of the said Judgment has held as follows:-

*“14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each*

*other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners.”*

**2.9.** Learned counsel for the Petitioner also relied on a decision of the Kerala High Court in the case of ***Subin Mohammed S. Vs. Union of India & Ors.*** (W.P.(C) No. 1362 of 2015). Hon’ble Kerala High Court in Para 40 & 41 of the said Judgment has held as follows:-

*“40. In all these cases, there is delay on the part of the petitioners in approaching CBSE, which cannot be lightly condoned. Taking cue from Sarifuz Zaman (supra), they have virtually slept over their rights. But failure to exercise jurisdiction will result in injustice to the petitioners. Such writ petitions can therefore be entertained only on imposing cost on the petitioners, which we fix at 5,000/-.*

*41. Hence, to meet the ends of justice, it will be appropriate for this Court to dispose the writ petitions with the following directions:*

*W.P(C) Nos.1362/15 & conn.cases*

*i) That CBSE shall correct the entries in the mark sheet of the petitioners with reference to their corresponding birth certificates issued by the statutory authority, if the request is found to be genuine.*

*(ii) Genuineness of the birth certificate can be ascertained from the respective local/statutory authority/Head of the Institution or such other method, CBSE may deem it fit.*

*(iii) CBSE can demand in advance a consolidated fee, including all expenses for processing such applications.*

*(iv) Each of the petitioners shall pay 5,000/- (Rupees Five thousand only) as cost to CBSE within a period of one month.”*

3. Mr. S.S. Rao, learned Sr. Counsel appearing for the Board along with Mr. A.A. Mishra on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party Nos. 2 to 4. Learned Sr. Counsel contended that since the Petitioner passed his HSC examination conducted by the Board in the year 1990, in terms of the provisions contained under Regulation 39 of the Regulation of Board of Secondary Education, such nature of correction of date of birth is not permissible. Rule 39 of the said Regulation prescribes as follows:-

*“39. **Date of Birth:** The date of birth once entered in the Board's records cannot be changed unless it is of the nature of clerical error or printing mistake. Application for the correction of the date of birth should be made within three years of passing the examination. No change in date of birth recorded shall be made unless the application for correction is received through the head of the institution concerned within three years of passing the examination.”*

3.1. It is further contended that since the Petitioner is making such a belated claim for change of his date of birth, it is not entertainable in view of the decision of the Hon'ble Apex Court in the case of *Union of India Vs. C. Rama Swamy* reported in (1997) 4 SCC 647. Hon'ble Apex Court in Para 25 of the said Judgment has held as follows:-

*“25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be reasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.”*

**3.2.** Learned Sr. Counsel appearing for the Board also relied on another decision of the Hon’ble Apex Court in the case of *State of Punjab Vs. S.C. Chadha* reported in (2004) 3 SCC 394. Hon’ble Apex Court in Para 14 of the said Judgment has held as follows:-

*“14. In the instant case the higher secondary examination certificate was issued on 3.6.1962 which contained information that the date of birth of the respondent was only 19.6.1944. If the said certificate disclosed a wrong date, it is not explained by the respondent as to why he did not make any move to get it corrected at that point or on any one of the occasions when he sought and obtained employment in 7/8*

*public institutions. Merely because in 1994 an opportunity was granted to the government employees to get their date of birth correct, that does not take away the effect of inaction and continued silence for more than three decades, which de hors laches on his part would seriously reflect on the bona fide nature of the claim itself. Even in the application made for employment in the year 1992-93, the date of birth was indicated, as noted above to be 19.6.1944. No contemporaneous document was produced to show that recording of the date of birth to be 19.6.1944 was wrong. Accepting the plea of the respondent would result in two public records, educational on one side and service on the other reflecting two different and conflicting dates of birth. Such anomalous situations are to be averted and not to be countenanced.”*

**3.3.** It is also contended that the decision in the case of **Jigyā Yadav** as relied on by the learned counsel for the Petitioner is not applicable to the facts of the present case in view of the finding of the Hon’ble Apex Court in Para 163 & 193 of the Judgment. It is accordingly contended that since the Petitioner is raising a claim for change of his date of birth more than 32 years of his passing the HSC examination, such a claim is not entertainable and it has been rightly rejected by the Board vide Annexure-6.

**4.** This Court taking into account the stand taken by the Petitioner that his date of birth recorded as 26.05.1975 in the school admission register of Sradhapur U.P. & M.E. School, passed an order on 13.07.2023 by directing learned counsel appearing for the Opp. Party Nos. 5 & 6 to produce the original school admission register as well as the school

leaving certificate issued in favour of the Petitioner. Pursuant to the said order learned counsel appearing for the Opp. Party Nos. 5 & 6 produced the transfer certificate issued by Sradhapur M.E. School on 15.07.1987 vide Annexure-1 and the school admission register of Sankhari High School, Sankhari.

4.1. This Court after going through the transfer certificate issued by the Sradhapur M.E. School on 15.07.1987 finds that the date of birth of the Petitioner is recorded as 26.05.1975. In the school admission register of Sankhari High School so produced by the learned counsel appearing for the Opp. Party Nos. 5 & 6, this Court finds that the date of birth of the Petitioner was recorded as 26.05.1972 and it was corrected as 26.05.1975 in presence of the D.E.O., Balasore on 07.04.2017. This Court after going through the School admission register of Opp. Party No. 5 also finds that the date of birth of the Petitioner has been corrected as 26.05.1975 in the school admission register by the B.E.O., Bhograi after due verification of the date of birth so recorded in the transfer certificate issued by Sradhapur M.E. School under Annexure-1.

5. Having heard learned counsel appearing for the parties and after going through the materials available on record, it is found that in the school admission register of Sradhapur M.E. School as well as the transfer



certificated issued in favor of the Petitioner on 15.07.1987 under Annexure-1, the date of birth of the Petitioner is recorded as 26.05.1975.. Even though in the school admission register of Sankhari High School, Sankhari, the date of birth of the Petitioner was wrongly recorded as 26.05.1972, but the same was corrected by the B.E.O., Bhograi after due enquiry in terms of the direction issued by the District Education Officer, Balasore. It is also found that even though Petitioner passed the HSC examination in the year 1990, but the service book of the Petitioner was only opened on 03.09.2019, wherein his date of birth was indicated as 26.05.1972. Petitioner after opening of his service book with wrong recording of his date of birth immediately moved the school authority of Opp. Party No. 5 to make correction of his date of birth as 26.05.1975 in place of 26.05.1972.

**5.1.** Since the said prayer was not considered, Petitioner approached this Court in W.P.(C) No. 14314 of 2021. This Court vide order dtd.10.06.2021 when directed Opp. Party No. 3 to consider the Petitioner's grievance as raised on 16.11.2020 under Annexure-3, the said prayer was rejected by the Opp. Party No. 3 relying on the provisions contained under Rule 39 of the Board's Regulation. Though as per Rule 39 of the Board's Regulation, no change of date of birth is

permissible unless the application for correction is received through the head of institution within 3 years of passing the examination, but in the present case Petitioner when came to know that his date of birth has been wrongly recorded in the service book, which was only opened on 03.09.2019 as 26.05.1972, he immediately took step for make necessary correction of his date of birth by approaching the school authority of Opp. Party No. 5 on 06.11.2020 under Annexure-3.

**5.2.** Therefore, in view of such position and the fact that in the school admission register of both Sradhapur U.P. & M.E. School the date of birth of the Petitioner is recorded as 26.05.1975 and the said fact was also enquired and admitted by the B.E.O., Bhograi with necessary correction of the date of birth in the school admission register of Opp. Party No. 5. This Court placing reliance on the decision *Jigyā Yadav* as cited *supra* is of the view that the date of birth is required to be corrected by the authorities of Board of Secondary Education, Odisha. While holding so, this Court is inclined to quash the rejection of the Petitioner's claim so issued vide letter dtd.24.11.2021 under Annexure-6. While quashing the same, this Court directs Opp. Party No. 3 to issue a fresh HSC pass certificate in favour of the Petitioner by recording his date of birth as 26.05.1975. Such an exercise shall be undertaken and completed

by Opp. Party No. 3 within a period of six (6) weeks from the date of receipt of this order.

6. The writ petition is disposed of accordingly.

**(Biraja Prasanna Satapathy)**  
**Judge**

Orissa High Court, Cuttack  
Dated the 29<sup>th</sup> of November, 2023/Sneha

