

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.964 of 2014

IN

Civil Writ Jurisdiction Case No. 14321 of 2013

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Neelam Devi, wife of Anil Kumar, Resident of village- Sahebpur Kamal (West),
Police Station- Sahebpur Kamal, District- Begusarai

.... Respondent No.11-Appellant

Versus

1. The State of Bihar
2. The Bihar State Election Commission, Patna through the State Election Commissioner, Bihar, Patna
3. The State Election Commissioner, Bihar, Patna
4. The Deputy Secretary, State Election Commission, Bihar, Patna
5. The District Magistrate, Begusarai
6. The S.D.O., Balia, District- Begusarai
7. The Block Education Officer, Sahebpur Kamal, District- Begusarai
8. The Chairman, Bihar State Madarsa Education Board, Patna 5- Vidyapati Marg, P.S.- Kotwali, District- Patna.
9. The Secretary, Bihar State Madarsa Education Board, Patna 5- Vidyapati Marg, P.S.- Kotwali, District- Patna.
10. The Controller of Examination, Bihar State Madarsa Education Board, Patna 5- Vidyapati Marg, P.S.- Kotwali, District- Patna.

.... Respondents-Respondents

11. Shagufta Tarannum, wife of Md. Parwez, Resident of village- Sahebpur Kamal (West), P.O. and Police Station- Sahebpur Kamal, District- Begusarai

.... Petitioner-Respondent

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Appearance :

For the Appellant/s : Mr. S.B.K. Manglam, Adv.
Mr. Ravi Ranjan, Adv.
Mr. Chandan, Adv.

For the Respondent/s : Mr. Amit Shrivastava, Adv.
Md. Rashid Alam, Adv.
Mr. Y.V. Giri (Sr. Adv.)
Md. Najmul Hoda (Adv.)
Mr. Vivek Anand Amritesh, AC to GP-21

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-05-2015

In this Letters Patent Appeal, the judgment

dated 23.4.2014, rendered in C.W.J.C. No.13143/13, by the Learned Single Judge is challenged. The appellant is the 11th respondent in the writ petition.

Election to the Panchayats in the State of Bihar were held in March, 2011. The appellant, the 11th respondent (for short the respondent) i.e. the writ petitioner, and certain others filed nominations for the office of Mukhiya of Sahebpur Kamal Panchayat of Begusarai District. The respondent was declared elected. No election petition was filed by anyone challenging the election.

The appellant filed a petition before the Bihar State Election Commission, the 2nd respondent herein (for short the Commission), in November, 2011 with a prayer to declare the election of the respondent to the office of Mukhiya of Gram Panchayat in question, as void. The only reason pleaded by her was that the respondent was below the age of 21 years, as on the date of filing of nominations. She pleaded that the respondent studied Bastania course in a Madarsa and, according to a certificate and mark-sheet issued by the Bihar State Madarsa Education Board, her date of birth is 12.4.1992 and, if the same is taken into account, the age of the respondent, by the year



2011 would be just 19 years. The respondent opposed the petition by raising several objections including those, as to maintainability. On merits, she pleaded that though at one stage, her date of birth was wrongly mentioned as 12.4.1992 in the certificates, it was later on corrected as 12.4.1982, and the certificates obtained by the appellant are not the correct ones. At one stage, she filed C.W.J.C. No.13824/12, challenging the proceeding before the Commission, but the same was rejected directing that the respondent shall participate in the proceedings.

The Commission directed the Special Officer, Balia to conduct an enquiry as to the controversy. A report is said to have been submitted to the effect that the respondent was below the age of 21 years as on the date of filing of nominations. Taking that into account, and after undertaking extensive discussion, the Commission passed the order dated 17.7.2013 holding that the respondent is disqualified for holding the post of Mukhiya. Directions were also issued to the officers of the concerned Department, to conduct fresh election under Section-136 of the Bihar Panchayat Raj Act, 2006 (for short the Act).



Challenging the order dated 17.7.2013, the respondent filed C.W.J.C. No.14321/13. She pleaded that the finding recorded by the Commission is factually incorrect and that the adjudication undertaken by the Commission is contrary to the letter and spirit of the provisions of the Act. The writ petition was opposed by the appellant herein as well as the Commission. Learned Single Judge allowed the writ petition through judgment dated 23.4.2014. Hence, this Appeal.

Shri S.B.K. Manglam, learned counsel for the appellant, submits that the Commission has recorded a clear finding to the effect that the age of the respondent was below 21 years as on the date of filing of nomination and the Learned Single Judge has set aside that finding as though it is a court of regular appeal. He contends that the institution where the respondent studied Bastania course, issued certificates which are to the effect that her date of birth was 12.4.1992 and in the enquiry ordered by the Commission also, the same was affirmed; and the Learned Single Judge ignored the same. He contends that the Commission is vested with ample power to decide the factual aspect also, and the mere fact that the name of the respondent was entered in the successive voters' lists does



not alter the situation. He placed reliance upon the judgment of the Supreme Court in Sushil Kumar Vs. Rakesh Kumar¹ and certain judgments of this Court; in support of his other contentions. Ultimately, he urged that the order passed in the writ petition cannot be sustained either on facts or in law.

Shri Y.V. Giri, learned senior counsel for the respondent, submits that law attaches utmost importance to the mandate of electorate and the same can be set at naught, only when the limited grounds mentioned in the concerned provisions of law are established beyond any pale of doubt. He submits that Section-137 of the Act clearly mandates that the result of an election cannot be challenged except by way of filing an election petition and, in the instant case, neither the appellant has raised an objection at the stage of nominations, nor did she file any election petition. He contends that though the power of the Commission under Section-136 of the Act is wide enough, a petition under that provision cannot be an avenue for adjudication of a dispute which genuinely constitutes the subject-matter of an election petition, that too, when the proceedings are initiated long after the

1. (2003) 8 SCC 673

expiry of limitation stipulated for filing the election petition.

On merits, learned Senior Counsel submits that the Election Commission can pronounce upon the disqualification of a candidate whether before or after the election, if only there is no dispute about the facts pleaded, and not when serious controversy about the fact constituting disqualification, exists. He submits that the very entrustment of enquiry into a serious disputed fact regarding date of birth to a special officer is clearly out of the scope of enquiry under Section-136 of the Act. He further submits that the respondent not only has disputed the plea of the appellant, but also has placed relevant certificates from the Madarsa Board, the Kazi and other authorities and has even offered to undergo medical examination for certification of age; and still the Commission has acted in a patently illegal manner and has set aside the election. He submits that the Learned Single Judge has taken the correct view of the matter and no interference is warranted with the same.

Shri Amit Shrivastava, learned counsel for the Commission, submits that the power of the Commission under Section-136 is virtually unbridled and in the



process of arriving at the conclusion on the matter before it, the Commission can take assistance of the various authorities. He submits that the District Magistrate and other subordinate officers are placed under obligation to extend their aid and assistance to the Commission and, viewed from that angle, conclusions arrived at by the Commission are perfect. He made an attempt to address arguments on merits also and when it was pointed out that he cannot take sides, in a bilateral, he submitted that once the Election Commission is made a party to the proceedings, he is entitled to sustain the order and advance arguments in that behalf.

Before we address the merits of the case, we intend to clarify one aspect. The Commission is a quasi judicial authority, particularly when it decides the disputes between two parties regarding disqualification of an elected candidate. For all practical purposes, it can be compared to a court wherein the adjudication about the rights of the parties are determined. The only difference is that it does not have all the trappings of a court.

In a writ petition or other proceedings in which the order passed by Election Commission on an application filed under Section-136 of the Act is



challenged, strictly speaking, there is no necessity to implead the Commission as a party. If it is shown as one of the parties on account of the fact that it is not a regular court. The purpose is to enable this Court to call for records or to get any information in the course of hearing of the writ petition or other proceedings.

The mere inclusion of Commission as a party in the writ petition does not entitle it to address the arguments as though it is one of the contesting parties. If such a course is permitted, it has to support one party or the other, on merits. That is not contemplated in the field of administrative law. Once it adjudicates the matter, the Commission must leave it to the parties to pursue the remedies, and it must maintain utmost neutrality. It is only when the High Court calls for any response or record, that it can comply with the same. In the absence of such directions, the Commission would be well advised to remain silent and thereby, maintain its neutrality.

Coming to the merits of the matter, the respondent was declared elected as Mukhiya and the appellant was an unsuccessful candidate. Normally, the objections as to the age of the candidates is raised at the stage of filing of nominations. If, for any reason, such



objection could not be taken, an election petition can be filed within the stipulated period of limitation. The purpose of prescribing limitations for election petitions is to remove uncertainty in the matter. If no election petition is filed within that period, the elected candidate can devote his full attention to the duties attached to the office. Section-137 mandates that the election to any office of Panchayat shall not be called in question, except by an election petition, as prescribed. Rule-106 of Bihar Panchayat Election Rules, 2006 (for short the Rules) prescribes the period of 30 days from the date of declaration of results as 'limitation' for filing election petition.

It is only in the month of November, 2011 that the appellant filed a petition before the Commission with a prayer to declare the election of the respondent as void. Serious doubt arises as to the very permissibility of such prayer. The reason is that Section-136 of the Act empowers the Commission only to disqualify a candidate, but not to declare an election as void. It is only a Tribunal or a Court which decides an election petition, that can declare an election, as void. This, however, is a different aspect.

For better understanding of the scope of Section-136, it is important to take note of the same. It reads:

Disqualification for Membership –

(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhiya, member of the Gram Panchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad, if such person—

- (a) is not a citizen of India ;
- (b) is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State :

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty one years;

- (c) is in the service of Central or State Government or any local authority ;
- (d) is in service of any such institution receiving aid from Central or State Government or any local authority;
- (e) has been adjudged by a competent court to be of unsound mind;
- (f) has been dismissed from the service of Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;
- (g) has been sentenced by a criminal court whether within or out of India to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for good behavior under section 109 or section 110 of the Code of Criminal Procedure 1973 (Act 2, 1974) and such sentence or order not having subsequently been reversed;
- (h) has under any law for the time being in force become ineligible to be a member of any local authority;
- (i) holds any salaried office or office of profit under the Panchayat;
- (j) has been found guilty of corrupt practices, Provided that on being found guilty of corrupt practices, the disqualification shall cease after six

years of general election.

(2) If any question arises as to whether a Member of a Panchayat at any level or Mukhiya of Gram Panchayat or Sarpanch of Gram Katchahri was before election or has become after election subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of State Election Commissioner. The matter of disqualification may be brought to the notice of State Election Commission in the form of a complaint, application or information by any person or authority. The State Election Commission may also take suo-motu cognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard.

Provided that the State Election Commission shall not be entitled to entertain any complaint or petition subject matter of which is purely an election dispute such as corrupt practice, wrongful rejection of nomination etc. in accordance with Article-243-O of the Constitution of India read with Section-137 of the Act.” (Sub-section-3 & 4 omitted as not necessary for the purpose of this case).

The Legislature was conscious of the fact that there is every likelihood that a particular issue pertaining to the election can be the subject matter of verification by the Commission, on the one hand, and the subject-matter of an election petition, on the other hand. Obviously, for this reason a note of caution was added in Proviso to Sub-section-(2) of Section 136 of the Act. The emphasis was to ensure that the Commission does not embark upon the enquiring into serious dispute, which can be decided only on the basis of evidence, and through interpretation of the provisions of law. The power



conferred upon the Commission to pronounce upon the disqualification is mostly in relation to the exercise that precedes the conduct of election. This includes the rejection of nomination or the examination of the contention of the parties relating to those aspects. The Section takes in its hold, the disqualification that may arise after the election also. It is here that the matter needs to be examined carefully.

The instances of disqualification of this nature include the cases where an elected candidate a) is found to be in the service of the State or Central Governments; b) has been adjudged by a competent court of law as a person of unsound mind; c) attached disqualification by any competent authority; d) found to be not a citizen of India; e) was found guilty of corrupt practices by the court of law; and the like. In all such cases, the declaration or pronouncement, as the case may be, is given or made by the concerned authorities and the Commission has only to take follow up action in the form of disqualification of the candidate. None of these aspects can be determined for the first time by the Commission.

Section-136(1)(b) makes the entire set of disqualifications stipulated for the elections to the



Legislature of the State; applicable to the Panchayat elections also. The only exception is that the minimum age limits for a candidate for Panchayat elections is mentioned as 21 years, as against 25 years in case of State Legislatures. Section-136(1)(b) is nothing but reproduction of Clause-243-F of the Constitution of India (it is felt that the proviso could have been worded differently).

The question as to whether an elected candidate was within the stipulated age limits, is a pure question of fact. There can be a semblance of exception where the date of birth was reflected in an authenticated certificate or unimpeachable document, such as Matriculation certificate, or where the elected candidate did not dispute the record which reflected the date of birth. Though it cannot be said that the plea as to disqualification on the basis of age cannot be the subject-matter of a petition under Section-136 and 137(1), this much, however, can be said that the Commission can declare an elected candidate as disqualified on this ground, if only the matter placed before it does not need any further verification or enquiry. Once there is serious dispute between the parties about the contention, the

proviso to Section-137(2) gets attracted, and the Commission has to hold its hands back.

The appellants relied upon a certificate and mark-sheet issued by the Madarsa Board wherein the date of birth was mentioned as 12.4.1992. Though the respondent approached this Court soon after receiving notice in the petition from the Commission, she was required to participate therein. After entering appearance before the Commission, the respondent pleaded that her date of birth is 12.4.1982 and that it was wrongly mentioned as 12.4.1992. In proof of her contention, she has filed a certificate issued by the Controller of Examination dated 4.11.2008. In addition to that, she stated that her marriage took place on 19.1.1999 and in support thereof, she filed a certificate issued by the Kazi. Her further contention was that her name was included in the electoral rolls of the village for the first time in 2003 and ever since then, as many as five revisions were effected, by the time the election was held in the year 2011.

Admittedly, the certificate relied upon by the appellant was not even issued by any statutory Board which is conferred with the power to certify the date of



birth. The Madarsa Board is said to have issued two certificates in the year 2011 showing the date of birth of respondent as 12.4.1992. The same authority is said to have issued certificate to the respondent in 2008 reflecting the date of birth as 12.4.1982. In this scenario, the Commission ought to have desisted from taking any further steps, at least till an authenticated and undisputed version emerged from a competent court of law or the concerned authority.

Even if an election petition were to have been filed, disputing the age of the respondent, it was obligatory on part of the appellant to have examined the officials who issued the certificate, particularly when the same officials are said to have issued certificates with conflicting versions. However, no effort was made in that behalf before the Commission also. The unverified and unspoken to versions ruled the roost before the Commission. The Commission felt it appropriate to call for a report from the Special Officer, and not from the Madarsa Board. The said officer, in turn, proceeded as though it is conferred with the power to record finding.

Even when there is no authenticated proof in the form of certificates, regarding the age of a person, the



best course is to subject the concerned person to medical examination, by competent medical board. The respondent offered herself for examination by a board. That, however, did not find favour, either with the Commission or with the officer appointed by it for enquiring into the matter. When there exists serious doubt as to whether the Commission can record the evidence of any witnesses at all, as part of its statutory function, the question of its authorizing someone to record finding in its behalf does not arise. The Commission cannot do indirectly, what it cannot do directly.

Placing reliance upon some of the provisions of the Act wherein the authorities of Revenue Department, such as District Magistrate, are placed under obligation to assist the Commission, it is argued that the calling for a report from the Special Officer was within the powers of the Commission. In this regard, it needs to be observed that the obligation placed upon the authorities of the Revenue Department was in the context of conducting of holding elections and not for the purpose of assisting the Commission in the adjudicatory process.

Reliance is placed by the learned counsel for the appellant on the judgments of this Court in L.P.A.



No.1158 of 2012, L.P.A. No.1271 of 2012 and L.P.A. No.1657 of 2014. The subject-matter in those cases was the genuineness or otherwise of the caste certificate. It is not in dispute that the authorities of the Revenue Department are vested with the power to grant or cancel the caste certificate. Therefore, the Commission was very much justified in seeking assistance of those authorities and to pass the orders based on its reports. In the instant case, the controversy is about the age of the respondent.

In Annu Kumari's case (supra), the Election Commission took note of the date which was reflected in the Matriculation certificate. This Court took note of the judgment of the Supreme Court in the State of M.P. Vs. Mohanlal Sharma¹ and, affirmed, the view expressed from the Commission. In the case on hand, the certificate was issued by the Madarsa Board and, even there, conflicting versions were forthcoming.

It is true that the age mentioned in the voters' list cannot constitute the basis for determination of the date of birth of a candidate, particularly when the age is reflected in the other material, such as school certificates. The Hon'ble Supreme Court expressed this view in Nawal

1. (2002) 7 SCC 719



Singh Vs. State of U.P. & Anr.¹. One practical aspect which needs to be taken note of here is that the name of a person is included in the voters' list only when he/she is found to have crossed 18 years of age. Even if the age mentioned in the voters' list cannot be taken as accurate, the concerned voter is said to have crossed 18 years of age, unless the otherwise is proved. Whatever may be the binding nature of such a presumption on other authorities, it gains considerable acceptability, at least against the Commission which included the name of the persons in the voters' list. The occasion for the Supreme Court in not taking the age mentioned in the voters' list into account in that case was that the candidate was required to be at least 25 years of age by the time the nomination is filed, whereas the inclusion of his name in the voters' list can be on attaining the age of 18 years, and from that angle, the age mentioned in the voters' list cannot be treated as authenticated. In the instant case, the stipulated limit is 21 years and the name of the respondent was included for the first time in the year 2003. Even if she was to be treated as aged 18 years in the year 2003, her age in 2011 would be at least 26

1. (2003) 8 SCC 117

years, as against required age limit of 21 years.

It is fairly well settled that it is only when the grounds mentioned in law for setting aside the election of a validly elected candidate are proved as required under law, that the popular mandate can be reversed. It is not at all safe to set at naught, the verdict of voters just on the basis of assumptions. Such a course would dilute, if not destroy, the very spirit of democracy.

The Learned Single Judge has taken the correct view of the matter.

We do not find any basis to interfere with the judgment under appeal. Writ appeal is dismissed.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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