

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.957 of 2014

IN

Civil Writ Jurisdiction Case No. 17516 of 2013

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1. Smt. Sudha Kumari W/o Sri Ram Ratan Ram resident of Mohalla - Jai Nagar,
Lali Pahari, P.O., P.S. AND District - Lakhisarai.

.... Appellant/s

Versus

1. The State Election Commission, Bihar through its Commissioner, Sone Bhawan,
Birchand Patel Path, Patna - 1.
2. The Secretary, State Election Commission, Bihar, Sone Bhawan, Birchand Patel
Path, Patna - 1.
3. The Additional Secretary, State Election Commission, Bihar, Sone Bhawan,
Birchand Patel Path, Patna - 1.
4. The District Magistrate-cum-District Election Officer, Municipality, Lakhisarai,
District - Lakhisarai.
5. The Senior Deputy Collector, Lakhisarai.
6. The Sub-Divisional Officer, Lakhisarai.
7. The Sub-Divisional Officer, Nawada.
8. The Block Development Officer, Pakri Barwan, Nawada.
9. The Head Master, Middle School, Pakribarwan, Nawada.
10. Rekha Devi W/o Sri Sanjay Rajak resident of Mohalla - Jai Nagar, Lali Pahari,
P.O., P.S. AND District - Lakhisarai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kumar Roy
For the Respondent/s : Mr. Ajay Bihari Sinha, SC-19
For Respondent No.10 : Mr. S.B.K. Mangalam
For Election Commission : Mr. Amit Srivastava

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 27-08-2015

An order passed by learned Single Judge in C.W.J.C. No. 17516 of 2013, dated 15/05/2014, is being assailed in the present *intra* Court Appeal under Clause - 10 of the Letters Patent of this Court.

2. The appellant herein, who was impleaded as respondent No. 10 in the said writ proceeding, by filing an application before the State Election Commission, Bihar (hereinafter referred to as the “Commission”), giving rise to Case No. 16 of 2013, had challenged the election of respondent No. 10 herein, as Councillor of Ward No. 33, Nagar Parishad, Lakhisarai, on the ground that her age was less than minimum required age of 21 years as on the date of filing of her nomination for election to the said post. She had sought for declaration from the Commission that respondent No. 10, being under age, was disqualified to contest the election. The Commission sustained the objection raised by the appellant over election of respondent No. 10 as the Ward Councillor for Ward No. 33 and by an order, dated 02/08/2013, the Commission declared the election of respondent No. 10 to be invalid in terms of Section 18 (1) (b) and Section 18 (2) of the Bihar Municipal Act, 2007 (*hereinafter referred to as the “Act”*).



3. Aggrieved by the said order, dated 02/08/2013, the respondent No. 10 had preferred a writ application before this Court, under Article 226 of the Constitution of India, giving rise to C.W.J.C. No. 17516 of 2013. This Court by the order under appeal, dated 15/05/2014, set aside the order, dated 02/08/2013, passed by the Commission in Case No. 16 of 2013. This is how the present appeal has been preferred by the appellant, aggrieved by the order passed by the learned Single Judge of this Court.

4. Certain facts are not in dispute. Having contested the election for the post of Ward Councillor, Ward No. 33, Lakhisarai Nagar Parishad, and having scored the highest numbers of valid votes, respondent No. 10 was declared elected as Ward Councillor from the said Constituency. There was no objection raised at the time of filing of her nomination papers for contesting election.

5. The appellant challenged the election of respondent No. 10 by filing an application, on 11/06/2012, before the Commission on various grounds including the ground that the date of birth, furnished by respondent No. 10 at the time of filing of nomination papers, did not have any basis and her age appeared to be less than 21 years, which was a matter for enquiry. As regards ineligibility of respondent No. 10 to contest the

election, following statement, and nothing else, was made in the application, dated 11/06/2012, filed by the appellant:-

“अभ्यर्थी रेखा देवी द्वारा चुनाव के प्रक्रिया को तो दुषित किया ही गया साथ साथ ऐसा लगता है कि उनके द्वारा नाम निर्देशन पत्र में जो जन्म तिथि अंकित किया गया है उसका उनके पास कोई आधार नहीं है। इनकी उम्र 21 वर्ष से कम का प्रतीत होता है जो एक जांच का विषय है। ”

6. The Secretary of the Commission, through a communication, dated 03/06/2012, addressed to the appellant, intimated that all disputes, other than the dispute of respondent No. 10 being under age could be raised only by filing election petition. So far as the dispute over the age of respondent No. 10 is concerned, the appellant was asked by the Commission to produce definite evidence to the Commission, in this regard, for the purpose of taking final decision.

7. Responding to the communication from the Commission, the appellant produced before the Commission a School Leaving Certificate, issued by the Headmistress of upgraded Middle School, Pakri Barawan, Nawada, wherein the age of respondent No. 10 was entered as 20/01/1996. The Commission called for a report from the District Magistrate-Cum-District Returning Officer, Lakhisarai, who, in turn, asked the Block Development Officer of Pakdi Barawan Block to hold enquiry and submit a report. The Block Development Officer



submitted his report doubting, in the light of the documents/records maintained in the school and the explanation furnished by the Headmistress of the school, the authenticity of the School Leaving Certificate as furnished by the appellant for challenging election of the respondent No. 10. The District Magistrate, Lakhisarai, forwarded the report of the Block Development Officer to the Commission. The Commission, however, was not satisfied with the said report and asked for another enquiry and submission of report by the District Magistrate, Lakhisarai.

8. This time, responding to the missive of the Commission, an enquiry was held by the Senior Deputy Collector, who submitted his report, on 02/03/2013, to the effect that in the school records of the concerned Middle School, the date of birth of respondent No. 10 was recorded as 20/01/1996. On receipt of the report from the District Magistrate, Lakhisarai, the Commission issued a show cause notice, dated 17/05/2013, to respondent No. 10 seeking her response. Alongwith the said notice, dated 17/05/2013, the petition filed by the appellant and the reports submitted by the District Magistrate, Lakhisarai, through letters, dated 21/09/2012 and 25/04/2013, were enclosed. The respondent No. 10, thereafter, filed her reply denying the



allegations and asserted that she fulfilled the eligibility criterion, in terms of age, as on the date of filing of her nomination. She asserted that she had not studied in any school and, therefore, there could not have been any question of issuance of School Leaving Certificate. She asserted that the said School Leaving Certificate, allegedly issued in her name, was forged and fabricated. She further asserted that the dispute over her date of birth is a disputed question of fact, which could be decided only by a Civil Court of competent jurisdiction and the Commission could not have decided the dispute.

9. Relying solely upon the subsequent report sent by the District Magistrate-Cum-Election Officer through his letter, dated 25.04.2013, which was based on an enquiry held by the Senior Deputy Collector of the district, the State Election Commission, by the impugned order, dated 02.08.2013, held invoking its jurisdiction under Section 18 (1) (b) read with Section 18 (2) of the Act, respondent No. 10 to be disqualified for election for the post of Ward Councillor as according to the Commission on the ground that she was less than 21 years of age, her date of birth having been entered in the said School leaving certificate as 20.01.1996.

10. The said decision of the Commission was

questioned by respondent No. 10 by filing aforesaid writ application before this Court under Article 226 of the Constitution of India, giving rise to CWJC No. 17516 of 2013, on various grounds including the ground that the Commission erroneously proceeded, solely on the basis of School Leaving Certificate as furnished by the appellant, showing her date of birth to be 20.01.1996, which was, admittedly, not issued to respondent No.10 at her request. It was also a plea taken on behalf of respondent No. 10 herein, before the learned Single Judge, that respondent No. 10 had disputed very entry of date of birth in the admission register of the School as a fraudulent act done at the instance of the appellant inasmuch as the Headmistress of the School, in her letter, dated 16.08.2012, addressed to the Block Development Officer (Annexure-5 to the writ application) had specifically mentioned that no date of birth was mentioned in the admission register at the time of admission and the said date of birth i.e., 20.01.1996 was entered in the admission register on 04.07.2012, at the request of one Sanjay Kumar, claiming himself to be the husband of respondent No. 10 and he was the one, who had come to obtain a School Leaving Certificate. It was his specific case that the said entry of date of birth in the admission register could have been taken into account



by the State Election Commission for the purpose of exercising jurisdiction under Section 18 (1) (b) read with Section 18 (2) of the Act only after adducing evidence that the parents or any one having personal and special knowledge about her date of birth had disclosed it at the time of taking admission in the school. A plea was also taken that respondent No. 10 had contested the Municipal Election held in the year 2007 without there being any objection or dispute from any corner with respect to her age. The appellant, on the other hand, took a plea in the writ proceeding that the Commission rightly proceeded on second report sent by the District Magistrate, on the basis of enquiry held by Senior Deputy Collector, based on the entry of date of birth mentioned in the admission register and the School Leaving Certificate. It was her contention that there being no case of respondent No. 10 that the School leaving certificate issued by the Headmaster of the concerned School, the Commission rightly held the respondent No. 10 to be disqualified for election as Ward Councillor as she was under age not only on the date of filing of her nomination, but also on subsequent date, when the Election Commission passed the order, dated 02.08.2013.

11. Learned Single Judge took into account the pleadings and material on record and came to a conclusion that

since respondent No.10 had seriously disputed her age as recorded in the School Leaving Certificate and had taken a plea that she had never studied in the School, it was incumbent upon the Commission to permit the parties to adduce evidence in support of their respective claims.

12. Relying upon Supreme Court's decision in the case of *Birbad Mal Singhvi Vs. Anand Purohit (1998 (Suppl) SCC 604) and Sushil Kumar Vs. Rakesh Kumar (AIR 2004 SC 230)*, learned single Judge held that in the absence of any reliable material available on record to show that date of birth was recorded in the School register on the basis of statement of any responsible person and such an entry of date of birth, in the School admission register or in the educational certificate, should not have been accepted as conclusive proof of age. Learned Single Judge accepted the contention raised on behalf of respondent No. 10 that there being no evidence before the Commission to demonstrate that the said entry in the School register was made at the instance of any responsible person having personal knowledge about the date of birth of the respondent, the Commission ought not to have held respondent No. 10 disqualified for election to the post of Ward Councillor. On the basis of these reasonings, learned Single Judge allowed

the writ application by the order, under appeal, dated 02.08.2013.

13. We have heard Mr. Jitendra Kumar Roy, learned counsel for the appellant, Mr. S.B.K. Mangalam, learned counsel, representing respondent No. 10, Mr. Amit Srivastava, learned counsel, representing the State Election Commission as well as Mr. Ajay Behari Sinha, learned Standing Counsel No.19, appearing on behalf of the State.

14. Mr. Amit Srivastava, learned counsel, representing the State Election Commission, Bihar, has submitted that the jurisdiction of the State Election Commission to examine the dispute of the present nature cannot be questioned as Section 18(1) (b) read with Section 18 (2) of the Act confers upon the Commission wide powers to hold a person, elected to the post, in question, as disqualified if it is found that he/she is disqualified by any law, for the time being in force, for the purpose of election to the Legislative Assembly of a State. It is also his submission that for the purpose of deciding a dispute as to whether a person is disqualified for holding the post as a Member of Municipality or not, upon a complaint received by it or *suo motu*, can ask any appropriate authority to enquire into the allegation of disqualification and can proceed on the basis of findings of such enquiry. This submission he has made, in order

to defend the action of the Commission in unseating the respondent No. 10 from the post of Ward Councillor on the basis of report sent by the District Magistrate-cum- District Election Officer, Municipality, Lakhisarai, based on an enquiry held by Senior Deputy Collector of Lakhisarai. He has placed reliance certain Division Bench unreported decision of this Court, which are as follows:-

- i. *“LPA No. 1271 of 2012 (Jahedi Begum Vs. State of Bihar & others)*
- ii. *L.P.A. No. 267 of 2013 (B. Rani Devi Vs. State Election Commission and others)*
- iii. *LPA No. 1158 of 2012 (Sushila Devi Vs. State of Bihar and ors)*
- iv. *LPA No. 27 of 2014 (Annu Kumari Vs. State of Bihar and ors)*
- v. *LPA No. 1657 of 2014 (Bibi Sabnam Vs. State Election Commission and ors.)*
- vi. *LPA No. 964 of 2014 (Neelam Devi Vs. State of Bihar & ors.)”*

15. We need not go into the submission made on behalf of the Commission in this regard, in the facts and circumstances of the present case, where the decision of the Commission is based on the entry made in the admission register of the School and the School Leaving Certificate, furnished by the appellant, before the State Election Commission. The only question, which requires consideration in the present appeal, as to

whether, without adducing any evidence before the State Election Commission, the Commission could have arrived at the conclusion that the age of respondent No. 10 was, as entered in the admission register or in the School Leaving Certificate, and whether the learned Single Judge correctly assigned the reasons that in the absence of any evidence adduced before the Commission, the decision of the Commission, exercising quasi-judicial function, as vulnerable and bad in law.

16. Mr. Jitendra Kumar Roy, learned counsel appearing on behalf of the appellant, has contended that the Commission correctly relied upon the second report sent by the District Magistrate on the basis of enquiry held by the Senior Deputy Collector into the dispute as regards the date of birth of respondent No. 10. He has contended that in the absence of any material to show that the said School Leaving Certificate was forged and fabricated, the State Election Commission rightly arrived at the conclusion that the date of birth of respondent No. 10 was 20.01.1996 and, therefore, as on the date of filing of her nomination, on 18.04.2012, her age was 16 years two months and 28 days, which was apparently much less than 21 years. He has drawn our attention to Annexure-9 of the writ application dated 02.03.2013, which is the report submitted by the Deputy



Collector and the basis for the Commission to hold that respondent No. 10 was under age on the date of filing of her nomination. He has referred to statement of Gilani Rajak, father of the respondent No.10, wherein he is said to have stated that he had six daughters and name of third and fourth daughter is Rekha Devi. He has contended that the statement of father of respondent No. 10 appeared to be incorrect. He, referring to the said report, has submitted that the Senior Deputy Collector, in view of conflicting stand of the father of respondent No. 10, rightly, on the basis of the entry made in the admission register, submitted his report to the effect that respondent No.10 was not eligible to contest the election in question, her date of birth being 20.01.1996.

17. Mr. S.B.K. Mangalam, learned counsel appearing on behalf of Respondent No. 10, on the other hand, reiterated the stand taken on behalf of the respondent No.10 in the writ application and has relied upon a Division Bench decision of this Court, dated 06.05.2015 passed ***in LPA No. 964 of 2013 (Neelam Devi Vs. State of Bihar and others)***, relevant portion whereof reads thus:-

“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.”

18. After having given our anxious consideration to the submissions made on behalf of the parties and the pleadings on record, we find that the order of the State Election Commission, impugned in the writ proceeding before learned Single Judge, was based solely on the entry made in the School Leaving Certificate issued by Headmistress of Middle School, Pakri Barwan, Nawada, and entry of date of birth as made in the admission register of the School showing date of birth one Rekha Kumari to be 20.01.1996.

19. We have carefully perused the second report sent by the District Magistrate to the Election Commission based upon an enquiry report, dated 02.03.2013, of the Senior Deputy Collector, Lakhisarai. From the report of the Senior Deputy Collector, we find that the finding that date of birth of respondent No. 10 is 20.01.1996 is based on the said entry made in the admission register and the School Leaving Certificate. This is a fact, which is not in dispute. It is the plea of respondent No. 10 that she had contested Municipal election in 2007 also and no objection, as

regards her age, was raised by any one and her nomination papers were accepted in the year 2007. Had the date of birth of respondent No.10 been 20.01.1996, she would have been 11 years of age in the year 2007, when she had contested, indisputably, the Municipal election. Secondly, we find that the appellant had requested for cancellation of election of respondent No. 10, on 11.06.2012, on various grounds which could have been decided only by way of election petition. She made a vague statement in her application, which has been quoted hereinabove, that there was no basis for the date of birth as given by her in her nomination papers and her age, appeared to be less than 21 years which was a matter for enquiry. She did not have any specific case as on 11.06.2012 that the date of birth of respondent No.10 was 20.01.1996. We find from Annexure-3 of the writ application that the Commission, through its letter, dated 3.7.2012 (there appears to be typographical error as in place of 3rd July, 2012, 3rd June, 2012, has been mentioned in the said letter) asked the appellant to produce definite evidence in support of the dispute raised by her as regards age of respondent No. 10. From Annexure-5 of the writ application, we find that the Headmistress of the School in her letter, dated 16.08.2012, addressed to the Block Development Officer, mentioned specifically that the said



date of birth of respondent No. 10 i.e., 20.01.1996, was not entered in the admission register at the time of her admission and the said entry was made by an Assistant Teacher of the School on 04.07.2012, when someone, claiming to be the husband of respondent No. 10, had come to the School seeking issuance of School Leaving Certificate. Further, the Block Development Officer in his report dated 17.08.2012 (Annexure-5/1 of the writ application) specifically mentioned that at the relevant page of the admission register of the School, out of 19 students, dates of birth of only 17 students were mentioned. As regards two other students, dates of birth were not entered at the time of their admission; rather, it was entered subsequently in different handwriting.

20. The manner in which, the appellant obtained the copy of the School Leaving Certificate purportedly of respondent No. 10 raises serious issue over her *bona fide*, more particularly, in view of the fact that there were evidence/material to show that the date of birth of respondent No. 10 was entered in the admission register subsequently and after the Commission had issued the said letter, dated 03.07.2012, asking the appellant to produce before it concrete proof in order to establish her case that respondent No. 10 was under age as on the date of filing her

nomination papers.

21. In view of the discussion as above, we do not find any reason to interfere with the order under appeal inasmuch as the Commission had failed to carry out any exercise to determine conclusively the age of respondent No. 10. In the absence of a conclusive finding after due enquiry and evidence adduced in course of such enquiry in exercising its jurisdiction vested in Section 18 (1) (b) read with Section 18 (2) of the Act, the commission ought not to have held respondent No.11 disqualified for election.

22. Our attention has also been drawn to a supplementary affidavit filed on behalf of respondent No. 10 in the writ proceeding. The Commission by impugned order, dated 02.08.2013, had directed for institution of the First Information Report against the respondent No. 10 for wrongly furnishing her age at the time of filing of her nomination papers. Accordingly, Kawaiya P.S. Case No. 339 of 2013 was lodged. Upon a direction of the Superintendent of Police, Lakhisarai, a Medical Board was constituted to determine the age of respondent No. 10. The Medical Board, so constituted, recorded its opinion as regards the age of respondent No. 10, as on 18.12.2015, to be between 26 years and 30 years. The Police have, accordingly, submitted final

form holding the accusation against respondent No. 10 to be a mistake of fact.

23. In view of the above, we do not find any infirmity in the order under appeal passed by the learned Single Judge.

24. This appeal is accordingly dismissed.

23. There shall, however, be no order as to costs.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

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