

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7283 of 2013

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1. Bibi Shakrin @ Shakereen Parween Daughter of Md. Javed Alam
Resident of Village Chilhania P.O. Bagnagar P.S. Mahalgaon, District
Araria

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate-cum-Chief Election Officer, Araria, District
Araria
3. The State Election Commission through Chief Election Commissioner
State Election Commission Bihar Birchand Patel Marg, Patna
4. The Chief Election Commissioner State Election Commission Bihar
Birchand Patel Marg, Patna
5. The Joint Election Commissioner State Election Commission Bihar
Birchand Patel Marg Patna
6. Mushtaq Son of Late Abdul Hamid Resident of Village Chilhania P.O.
Bagnagar P.S. Mahalgaon, District Araria
7. Md. Javed Alam Son of Late Islamuddin Resident of Village Chilhania
P.O. Bagnagar P.S. Mahalgaon, District Araria
8. Bibi Firoza Khatoon Wife of Md Javed Alam Resident of Village
Chilhania P.O. Bagnagar P.S. Mahalgaon, District Araria

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mishra, Adv. Mr. Piyush Saurav, Adv. Mr. Chandan Priyadarshi, Adv.
For the Respondent- State :		Mr. Purnendu Singh, G.P.27 Mrs. Sunita Kumari, A.C. to G.P.27
For the S.E.C.	:	Mr. Amit Shrivastava, Adv. Mr. Girish Pandey, Adv.
For the respondent No.6		Mr. Rakesh Narayan Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 09-10-2015 Heard learned counsel for the parties.

The petitioner is aggrieved by the order dated 20.3.2013
passed by the State Election Commission in Case No. 23 of 2011
whereby the election of the petitioner to the post of Mukhiya,

Gram Panchayat, Chilhania in the district of Araria has been set aside inter alia on ground that she was under age. The complainant has deceased and her legal heir has filed interlocutory application seeking liberty to plead her case.

I have heard learned counsel for the parties and I have perused the records.

It is merely on account of the fact that the documents reflecting separate educational qualification obtained by the petitioner and the date of birth entered thereunder which has resulted in an order whereunder the Election Commission has preferred to accept such of the document which shows that the petitioner was under age.

Fact of the case as reflected from the record of the proceeding is that the petitioner appeared at a Maulvi Examination in the year 2009 with the date of birth as 1.9.1992. Subsequently in the year 2010 she appeared in the matriculation examination held by the Bihar School Examination Board in which her date of birth has been mentioned as 3.7.1989. The election was held in the year 2011 and the petitioner succeeded as a Mukhiya. Her election was questioned by the deceased complainant relying upon the certificate of the Maulvi granted by the Madarsa Board and the Election Commission accepted the contention and non suited her.



It is rather surprising that even when the Election Commission has referred to several judgments giving primacy to the matriculation certificate and in spite of the report of the District Magistrate present at Annexure-3 to certify that the petitioner was a major on the date of election on the basis of the marksheet granted by the Bihar School Examination Board and even in absence of any document to prove that the marksheet issued by the Bihar School Examination Board was either forged or the date of birth mentioned therein was incorrect except for the Madarsa Board Certificate yet the Election Commission has held the petitioner to be a minor. Considering the law on the issue as well as the fact that the matter has been enquired at the instance of the Election Commission by the District Magistrate who has found no fault in the documents issued by the Bihar School Examination board and there being no other document except the Madarsa Board Certificate which shows a different date of birth, in my opinion merely because the two documents are reflecting separate date of birth with their being nothing on record to show any infirmity in the documents issued by the Examination Board, the opinion expressed by the Commission is held perverse for no reasons are assigned by the Commission to reject the certification by the Bihar School Examination Board.

In result the order passed by the State Election Commission in Case No. 23 of 2011 cannot be upheld and is set aside. The writ petition is allowed.

The interlocutory applications are disposed of.

The interim order passed on 10.04.2013 stands confirmed.

(Jyoti Saran, J)

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