

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15510 of 2014

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1. Kumari Mamta wife of Sri Saju Kumar Resident of village- Itwarpur Sisaula, P.O. Manikpur Pakari, P.S. Lalganj, District- Vaishali at Hajipur, presently Mukhiya of Gram Panchayat Raj, Itwarpur Sisaula, Block- Lalganj, District- Vaishali at Hajipur

.... Petitioner/s

Versus

1. The State Election Commission (Panchayat), through the State Election Commissioner, Sone Bhawan, Birchand Patel Path, Patna
2. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna
3. The Secretary, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna
4. Nirmala Kumari Devi wife of Sri Dinesh Paswan Resident of village and P.O. Manikpur Pakari, P.S. Lalganj, District- Vaishali at Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.

For the Respondent/s : Mr. Sanjeev Nikesh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-09-2015

Heard Mr. S.B.K. Mangalam, learned counsel for the petitioner and Mr. Sanjeev Nikesh, learned counsel for the State Election Commission.

Though served but the private respondent who was the complainant before the Commission has not chosen to appear.

This writ petition was initially filed questioning the initiation of proceedings bearing Case No. 145 of 2011 by the State Election Commission, Patna as against the petitioner for unseating her from the post of Mukhiya, Gram Panchayat Raj, Itwarpur Sisaula in the district of Vaishali inter alia on grounds that she was under age and thus disqualified to contest the election. While the matter remained pending that final orders have been passed on 10.9.2014 and which has been impugned at Annexure-6 to the interlocutory application bearing

I.A.No.7392 of 2014. Considering that the order impugned in the Interlocutory application is consequential to the original relief, the prayer made by the petitioner to question the same is allowed and the petitioner is permitted to question the final order in the present proceedings.

As I have observed hereinbefore, the limited issue on which the petitioner has been unseated by the Commission vide order passed on 10.9.2014 which forms part of the ordersheet present at Annexure-6 is on grounds that she was below 21 years.

Mr. Mangalam learned counsel appearing on behalf of the petitioner while contesting the impugned order has submitted that it is following the complaint made before the Commission by the private respondent alleging the petitioner to be under age for contesting election that an enquiry was directed and in first of such enquiry, the report of the Block Development Officer was submitted who is the Returning Officer for the Panchayat Election and who admitted that the nomination form of the petitioner was accepted upon verification of the records. It is contended that the Commission not being satisfied desired a second enquiry into the age of the petitioner. A three men Committee after enquiry submitted its report through the Deputy Development Commissioner, Vaishali present at Annexure-4.

Mr. Mangalam submits that except that having set the ball rolling by filing of the complaint, the complainant did not pursue the same inasmuch as she did not bother to appear before the committee so constituted to verify the age of the petitioner as is manifest from the report present at Annexure-4. The Committee consisting of the District Education Officer, the District Panchayat Officer and the Deputy Development Commissioner submitted its report on 17.4.2012 certifying the date of birth of the petitioner as 16.1.1989 on the basis of the date of birth



certificate bearing No. C-123420 dated 20.1.1989 issued by the Panchayat Secretary, Vishwanath Thakur who also admitted to the issuance of the certificate. It was also certified that the petitioner who is the daughter of the Jagarnath Paswan studied in Bhola Rai Navinji High School, Subhai, District Vaishali upto Class 8th and the school record certifies her Registration No. 3 of 1989 and also certifies her date of birth as 16.1.1989. According to Mr. Mangalam although this report was never contested by the complainant but yet the Commission doubted the same and asked for a third report.

He submits that in view of the directions of the Commission the District Magistrate constituted a Committee under the Chairmanship of the Director, District Rural Development Agency, a Senior Deputy Collector two officials of the Education Department and the District Welfare Officer. The District Magistrate in consideration of the report so submitted by the Committee concluded that the petitioner and Mamta Kumari are one and the same person and is the daughter of Ram Naresh Paswan. The District Magistrate has referred to the statement given by the Panchayat Secretary Vishwanath Thakur, who this time retracted from his earlier statement approving the date of birth certificate issued in the name of the petitioner as 16.1.1989. The District Education Officer while refusing to comment on the date of birth certificate issued by Vishwanath Thakur certifying the date of birth as 16.1.1989 in absence of the photograph, has approved the date of birth of the petitioner as 16.1.1991.

It is argued by Mr. Mangalam that even when the earlier reports confirmed the date of birth as 16.1.1989 but since the third report was in tune with the complaint made, that the Election Commission even while expressing suspicion on the matter, has proceeded to hold the date of birth of the petitioner as 16.1.1991 on the basis of Matriculation certificate issued in the name of Mamta

Kumari daughter of Ram Naresh Paswan by the Bihar School Examination Board for the Annual Examination of 2006 and unsuited the petitioner.

Mr. Mangalam while concluding his arguments submitted that even when the evidence was lacking to prove that the matriculation certificate so relied upon by the Commission belonged to the petitioner yet the Commission has relied thereupon to unsuit the petitioner which is wholly unsustainable because the onus was on the complainant to prove that the certificate belonged to the petitioner, which onus has not been discharged.

Although the complainant has been served but she has not chosen to respond to the notice.

The argument of Mr. Mangalam has been contested by Mr. Nikesh appearing for the Commission to support the reasons assigned by the Commission for non-suiting the petitioner.

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

The facts have already been discussed and amply reflects that while two enquires supported the date of birth of the petitioner as 16.1.1989 which was entered in school records as well as in the date of birth certificate issued by the Panchayat Secretary on 20.1.1989 but the Commission has ignored these relevant piece of evidence to side with the opinion expressed by the District Magistrate on the basis of a report submitted by a team of officials, the reference of which is made in Annexure-5 to the interlocutory application which is a letter dated 20.11.2013 of the District Magistrate addressed to the State Election Commission expressing his opinion.

The complaint is placed at Annexure-1 and does not refer to any document for questioning the eligibility of the petitioner on age grounds except making a sweeping allegation that she was under age. In fact a plain reading of the



complaint present at Annexure-1 would show that it is more of an election dispute on the issue of irregularities in counting than a complaint on disqualification. The complaint though charges the petitioner of being underage to contest the election but is not accompanied with any document to support the allegation. In fact, a complaint of such kind which does not contain any enclosure to support the charge that the writ petitioner was under age on the date of filing nomination, should have been rejected at the very threshold. I say so because there is no foundation for the complaint. The complainant initiated a roving enquiry into the age of the writ petitioner and the Election Commission has complied to her satisfaction. The infirmities do not stop here rather are perpetuated when the two earlier reports, confirming the date of birth of the petitioner as 16.1.1989 are disbelieved by the Commission without assigning any reason. The report of the three Member Committee submitted by the Deputy Development Commissioner vide his letter dated 17.4.2012 present at Annexure-4 which has been taken note of by the Commission in the order impugned was not even contested by the complainant. In these circumstances, in my opinion there was no occasion for the Election Commission to continue the proceeding by asking a third enquiry by the District Magistrate who has submitted his opinion on 3.9.2013 to the Commission vide Annexure-5. Although the report of the District Magistrate merely raises suspicion as to the accompanying circumstances and refers to a matriculation certificate issued by the Bihar School Examination Board which is in the name of Mamta Kumari daughter of Ram Naresh Paswan with the date of birth as 16.1.1991. On the basis of the opinion given by the District Magistrate that the Commission has proceeded to hold as such:

- (a) that the certificate issued by the Bihar School Examination Board belongs to the writ petitioner;

(b) Kumari Mamta and Mamta Kumari are one and the same person; and

(c) The writ petitioner i.e. Kumar Mamta is the daughter of Ram Naresh Paswan.

The Commission thereafter by mechanically applying the judgment of the Supreme Court rendered in the case of **Shah Nawaz Vs. State of Uttar Pradesh & Ors.** since reported in **(2011) 13 SCC 751** has non-suited the petitioner.

The records suggests that the petitioner disowned the certificate and thus the onus fell upon the complainant to prove that the petitioner is the daughter of Ram Naresh Paswan; is the same person as the Mamta Kumari and that the matriculation certificate belonged to her. Undisputedly, no such evidence was led by her rather it is the Commission who has collated evidence for the complainant. In fact except for the report of the District Magistrate, Vaishali there is no evidence to drive home such conclusion. On the contrary, the opinion given by the three member committee as communicated by the Deputy Development Commissioner present at Annexure-4 discusses the foundation for the opinion and which is completely lacking in the report of the District Magistrate relied upon by the Commission. I am rather surprised that even when the order of the Commission takes notice of; (a) the report of the Deputy Development Commissioner dated 17.4.2012; (b) the statement made by the concerned Panchayat Secretary Vishwanath Thakur; (c) the statement of Ram Naresh Paswan who categorically states that the writ petitioner is the daughter of his brother; (d) the statement of Jagdish who also endorses the opinion but yet has relied upon the opinion of the District Magistrate to hold that Mamata Kumari and Kumari Mamta is the same person and is the daughter of Ram Naresh Paswan whose date of birth is 16.1.1991 as per the Matriculation certificate.

The opinion of the Commission relying upon the opinion of the District



Magistrate is absolutely conjectural because a mere presence of such a certificate in absence of any evidence confirming that it belongs to the petitioner, would not be a ground to non-suit the petitioner. In my opinion, even when Section 136(2) of the Bihar Panchayat Raj Act (hereinafter referred to as 'the Act') vests jurisdiction in the Commission to enquire into any complaint or petition seeking disqualification of a returned candidate on the issues enumerated in Sub section (1) thereof, the jurisdiction gets circumscribed the moment the enquiry involves disputed issues of fact which would require adducing, appreciation and evaluation of the evidence. In other words, where a complainant seeking a disqualification of any Member of a Panchayat under Section 136(2) of 'the Act' on any of the grounds mentioned in Section 136(1), relies on undisputed and unimpeachable piece of evidence which cannot be disputed by the returned candidate on its veracity and which would not require any further examination to confirm the allegation, then the Commission would be within its jurisdiction to adjudicate but the moment the allegation is disputed; the document relied upon are confronted and the contest takes shape of a full fledged trial then such contentious issues sails out of the jurisdiction of the Commission and the appropriate remedy in such cases is available under Section 137(1) and (2) of 'the Act'.

My opinion above rests on the foundation that the result of a democratically elected candidate should not be interfered with lightly and in a casual routine manner unless there are unimpeachable documents to support that the returned candidate was disqualified and ineligible to contest the election. Although the power vested in the Commission under Section 136(2) of 'the Act' is to express its opinion on the charge of disqualification against a returned member of a Panchayat but its effect is of setting aside his election. It is in consideration of the statutory provisions and the judgments rendered by this Court

on the extent of jurisdiction vested in the Commission to hold enquiry into the contentious issue that the Division Bench of this Court while examining a similar matter since reported in **AIR 2015 Patna 154 (Neelam Devi Vs. The State of Bihar & Ors.)** has opined as such in paragraph 19;

“The question as to whether an election candidate was within the stipulated 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 Ss.136 and 137(1), this much, however, can be said that the Commission can declare an election 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 provision to S. 137(2) gets attracted, and the Commission has to hold its hands back”

Having discussed the facts available on record and the extent to which an enquiry initiated by the Commission under section 136(2) of ‘the Act’ can be stretched, it is to be seen whether the opinion expressed by the Commission is sustainable. In my considered opinion, the conclusion drawn by the Commission to hold that: (a) the petitioner and Mamta Kumari are the same person; (b) the petitioner is the daughter of Ram Naresh Paswan; and (c) that the certificate issued by the Bihar School Examination Board in respect of Mamta Kumari daughter of Ram Naresh Paswan belongs to the writ petitioner, is a conjectural finding of the Commission based on surmises, since there is absolute lack of evidence to confirm this conclusion. In other words, the opinion of the Commission is perverse and thus cannot be allowed to stand.

For the reasons so assigned above the order dated 10.9.2014 passed by the State Election Commission, Patna in Case No. 145 of 2011 (Nirmala Kumari Devi Vs. Mamta Kumari) cannot be upheld and is accordingly set aside.

The writ petition is allowed. The consequences shall follow.

Let the records so produced by Mr. Sanjeev Nikesh learned counsel for the
State Election Commission for consideration be returned.

(Jyoti Saran, J.)

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