

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7173 of 2016

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1. Farzana Naz, daughter of Aabaq Alam and wife of Gul Mohammad, Resident of Mohalla-Majhiyan Sat Vetta, Ward No. 34, P.O and P.S. Kishanganj, District-Kishanganj.

.... Petitioner/s

Versus

1. The State Election Commission (Municipality) , Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
4. The District Magistrate-cum- District Election Officer (Municipality), Kishanganj, District- Kishanganj.
5. Narju Begum, wife of Sri Badre Alam, Resident of Mohalla- Munshi Tola, Majhiyan, Ward No.4, P.O. and P.S. Kishanganj, District- Kishanganj.

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. S.B.K. Manglam, Advocate. Mrs. Anita Kumari, Advocate
For the Respondent- State Election Commission	: Mr. Amit Shrivastava
For the Respondent no.5	: Mr. Firoz Ahmad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
CAV JUDGMENT

Date: 20-09-2016

Kishanganj Nagar Parishad (for short 'the Parishad')

went to polls wherein the petitioner contested for the post of Ward Councillor. There being no objection filed to her nomination, the same was accepted by the Returning Officer and she contested the election and was declared elected. The respondent no.5 filed an application before the respondent- State Election Commission (for short 'the SEC') under Section 18(2) of the Bihar Municipal Act, 2007 (for short 'the Act') alleging , inter alia, that the writ petitioner



was disqualified or ineligible under Section 18(1) of the Act and requested the SEC to set aside her election. According to the respondent, the petitioner was less than 21 years of age when she contested the election. In the Focania pass certificate which is equivalent to Matric her date of birth is recorded as 28.11.1993. The writ petitioner got admission in Government Girls High School, Kishanganj where also in the Admission Register her date of birth is recorded as 20.09.1994. The application filed by respondent no.5 is at Annexure-1. The SEC registered case no. 08/2013 and issued notice to the petitioner on 13.03.2013 (Annexure-2) for her appearance and filing of show cause. The petitioner, pursuant to the notice, appeared and filed her show cause/written statement claiming her date of birth as 07.11.1987. It was stated that she was admitted in Madarsa Gulsane Rasool for her elementary education in which her date of birth was recorded as 07.11.1987. She also enclosed the Transfer Certificate of the Madarsa. For some reason(s) her study was discontinued. She was again admitted in Madarsa Islahiya Khagra Bilayati Bari wherein her father got her date of birth recorded as 28.11.1993. The show cause/written statement filed by the petitioner is present at Annexure-3. An affidavit affirmed by her father indicating her date of birth as 07.11.1987 was also filed. The hearing of the case, however, prolonged. An order was passed on 09.09.2015



by this Court on the writ petition filed by the respondent no.5. The case pending on the file of the SEC was directed to be disposed of within 06 months. On 18.3.2016, the matter was taken up by the SEC and notice dated 18.3.2016 (Annexure-4) was issued to the petitioner for her appearance in the case on 30.03.2016 with a view to disposal of the case. The petitioner, in response to the said notice, appeared before the SEC on 30.03.2016 and the hearing of the case was postponed to 31.3.2016. On the next date fixed both parties appeared. A request for adjournment was made on behalf of the petitioner which was denied and the hearing of the case concluded and the SEC passed the order on 31.03.2016 (Annexure-5) declaring the writ petitioner disqualified for the post. The present application is directed against the said order dated 31.03.2016.

I have heard Mr. S.B.K. Manglam representing the writ petitioner, Mr. Amit Srivastava who has appeared on behalf of the respondent SEC as also Mr. Firoz Ahmad appearing for the respondent no.5, the complainant.

Section 18(2) of the Act confers jurisdiction on the SEC to decide such dispute. The jurisdiction of the SEC to entertain such application and pass order has not been disputed before me. Section 18(1) of the Act provides disqualification for election or after election for holding the post as Member of the Municipality. Any



contestant who has not attained the age of 21 years at the time when he or she contested the election is disqualified to hold the post. It has been urged on behalf of the petitioner that the impugned order suffers from non-providing of adequate opportunity to the petitioner as the prayer for adjournment was declined by the SEC. The SEC erred in deciding the disputed question in a summary manner without permitting the parties to adduce evidence. It also fell in error in accepting the matriculation or equivalent certificate issued by the statutory authority as the conclusive proof of age. The relevant documents produced by the petitioner were not considered. The petitioner had enclosed her voter ID and the transfer certificate besides the affidavit of her father which were either ignored or not appropriately appreciated. The Court may notice, at this stage, that during hearing of the case, the SEC, in order to satisfy itself, had called for an enquiry report with regard to the age of the petitioner. The communication dated 29.8.2012 issued by the Block Panchayat Raj Officer (for short 'the BPRO') addressed to the Block Development Officer, Kishanganj is enclosed in order to submit that a report was submitted to the SEC wherein on the basis of the enquiry made it was found that the writ petitioner was above 21 years of age when she contested the election. Along with the supplementary affidavit, an enquiry report dated 22.10.2013 (Annexure-6) submitted



by the Sub Divisional Officer, Kishanganj has been enclosed wherein it was reported that on verification from the School records and the Educational Certificate(s) of the writ petitioner, she had not attained 21 years of age when she contested the election. The writ petitioner had set out her date of birth as per the Voter list and not as per the Focania/ Matriculation Certificate. The Sub Divisional Officer in his report to the SEC further found and reported that there was sharp discrepancies in the date of birth of the petitioner in the Madarsa records and the Government School Records. In order to fortify his submissions, the petitioner has relied on various judgments of this Court as well as the Hon'ble Supreme Court which shall be referred little later.

Per contra, Mr. Srivastava, has supported the impugned order. It is contended that such dispute can always be resolved by the SEC on the basis of convincing materials placed before it. It is incorrect to say that for resolving such dispute the SEC has to permit the parties to adduce oral evidence. There is no such provision in the Act. The respondent no.5 had produced the Focania/ Matriculation certificate issued by the Statutory authority who is legally obliged to maintain such records. As against this, the writ petitioner produced the transfer certificate issued by the Madarsa. However, in the Migration certificate issued by the Bihar State



Madarsa Education Board (for short 'the Board') which is a statutory body, her date of birth is recorded as 28.11.1993 detailing her registration number etc. Neither the Focania/ Matriculation Certificate issued by the Board nor the Migration Certificate issued by the Board was ever challenged by the petitioner or any attempt was made to get her date of birth corrected in those certificate(s). The SEC, however, with a view to assure itself, called for an enquiry report which was later submitted by the Sub Divisional Officer (Annexure-6). The Sub Divisional Officer after issuing notice to both the parties and affording them an opportunity to produce paper(s)/record(s), reported that in the School records of Government Girls High School, Kishanganj as well as in the Admission Register of Rajkiya Government Girls High School her date of birth was recorded as 20.09.1994. It was so recorded on the basis of the transfer certificate of Class- VIII issued by Sardar Gopal Singh Middle School, Dharmganj, Kishanganj, and produced by the petitioner or her father. Even in the pass certificate issued by the Madarsa Board the date of birth of the writ petitioner was entered as 28.11.1993. The Sub Divisional Officer before submitting the report also verified from the concerned Madarsa and perused the records produced by the Head Maulvi wherein the date of birth of the writ petitioner was recorded as 28.11.1993. In the face of these convincing materials



placed before the SEC, it was found, and rightly so, that the writ petitioner suffered statutory disqualification. Rebutting the submission of the petitioner made on the basis of the affidavit of her father and the observation in the report of the BPRO that the physical appearance of the petitioner also suggests that she is above 24 years of age, it has been urged that the affidavit was affirmed by the father on the last day of filing of the nomination papers with a view to get her nomination papers accepted. Such affidavit shall have no relevance in resolving the dispute. It is also urged with utmost caution that it is wholly unacceptable to the reason that a young Pardanasin Muslim lady would expose herself to the BPRO for appraisal of her physical appearance to assess her age. It is in the discretion of the authority to call for the report from the higher authority if the report submitted by the BPRO was found not convincing. The discretion so exercised cannot be challenged by the petitioner. He further argued that no reliance can be placed on the voter list or the voter ID for the purpose of ascertaining the date of birth of the elector. The entries in the electoral roll is only a conclusive proof of the fact that he or she is a voter of the constituency. He has also relied on **2014 (4) PLJR 667 (Annu Kumari @ Annu Sharma vs. The State Election Commission, Bihar, through its Commission, Patna & Ors.)** in support of his submission.

I have considered the submissions of the parties and perused the materials on record.

One of the contentions of the petitioner is that the order of SEC suffers from the vice of non providing sufficient opportunity to the petitioner before deciding the case. From the order sheet of case No. 08/2013 it appears the case was considered by the SEC on various dates in presence of the parties inasmuch as the objection of the petitioner to the enquiry report submitted by the Sub Divisional Officer was also considered. The hearing of the case had concluded and the date of order was fixed. However, the same could not be passed for one reason or the another. In the meantime, it was brought to the notice of the SEC that CWJC No. 1403 of 2013 was filed challenging the proceeding of the SEC. The SEC, thus, deferred disposal of the case. On 09.09.2015, a Bench of this Court disposed of the writ petition filed by the respondent no.5 whereby a direction was issued to the SEC to dispose of the case within 06 months. Copy of the said order is present at Annexure-B to the counter affidavit of respondent no.5. The notice was thereafter issued to the petitioner on 18th March, 2016 for her appearance with a view to disposal of the case whereafter she appeared and the case was heard on 31.3.2016 in presence of both the parties. A prayer for adjournment was made which was declined. The SEC, was under legal obligation to dispose



of the application within the time granted by the Court. On previous occasion, the hearing had already concluded as would appear from the record. On 31.03.2016 the hearing was made in presence of the parties whereafter the order was passed. In not adjourning the case on the request of the petitioner, in these factual background, would not tantamount to non-grant of adequate opportunity. The Court does not find any merit in the contention of the petitioner.

It has been submitted that the lis before the SEC could not have been decided in a summary manner without providing any opportunity to adduce evidence. If the law obligates the authority to decide such dispute and there being no provision for permitting the parties to adduce oral evidence, I am unable to find much substance in the said contention of the petitioner. If Section 18(1) obligates the SEC to consider such objection or claim with respect to eligibility of the candidate then the SEC is required to consider and resolve such dispute on the basis of materials placed before it. It has been argued that Matriculation certificate is not always the conclusive proof of age. It will depend upon the facts of the case. In the case of **Brij Mohan Singh v. Priya Brat Narain Sinha & Ors. AIR 1965 SC 282** the election of the returned candidate was challenged on amongst others that he was disqualified under Section 7(d) of the Representation of People Act. On other grounds also the election was



challenged. The Election Tribunal negated the case of the challenger. On appeal, the High Court interfered with the judgment and order of the Election Tribunal and set aside the election of the returned candidate. Aggrieved thereby, the case was preferred before the Hon'ble Apex Court. The Hon'ble Apex Court surveying the evidence brought on record by the parties found that the oral testimony adduced on either side would not lead to any decisive conclusion on the question of age. The Apex Court, considered the hath -chitha maintained by the Chowkidar of the village in which the entry purporting to show the date of birth was recorded. Upon perusal whereof and on finding that said hath-chitha was produced by the Chowkidar, on notice, and the hath -chitha book was also produced, the same was relied upon as the Chowkidar was legally obliged to maintain such records. In this context, the Hon'ble Supreme Court, while not placing reliance on the Matriculation Certificate observed that the Court cannot ignore the position that in actual life a fictitious date of birth is entered in the School register to secure an advantage in getting public job. In the case of **Sulekha Devi vs. The State Election Commission (Panchayat), Patna, through the State Election Commissioner & Ors. 2014(3) PLJR 217** on which reliance is placed this Court set aside the order of the SEC, wherein, the date of birth of the party was ascertained relying on the provisions of the



Juvenile Justice Act, 2000. The Court also noticed that a Medical Board was constituted to assess the age of the elected candidate, the medical opinion of the Board could not have been brushed aside easily. The Court, thus, relied on the scientific assessment of age made by the Medical Board. The petitioner has also relied **on Md. Javed Vs. The State Election Commission (Panchayat) through the State Election Commissioner & Ors. 2015(3)PLJR 144** in order to fortify her case. The SEC relying on the Class-VIII pass certificate issued by the Madarsa Board passed order against the elected candidate. The Court, noticed that the SEC has only recorded his suspicion as regard the age of the elected candidate. It also failed to notice that an application was already filed for correction of the date of birth before the Madarsa Board. In these factual background, the order passed by the SEC was interfered with. This is not the case at hand. The SEC, on the basis of the convincing materials placed before it, was convinced that the election petitioner was below 21 years of age when she contested the election and, thus, suffered statutory disqualification. The Court may notice, at this juncture, the observations made by a Division Bench of this Court in LPA No. 812 of 2014. In para-9 it has been observed that under Section 18 of the Act, the SEC is required to make an enquiry which is summary in nature. If indisputable materials are produced the SEC can pass an



order disqualifying the candidate after putting him/her on notice. Adverting to the case at hand, it is found that in face of the transfer certificate produced by the petitioner and the affidavit of her father the respondent produced materials which were convincing. Be it further noted that the Focania /matriculation certificate was issued by the authority in discharge of statutory duty. On the basis of transfer certificate produced by the candidate or her father, the date of birth was registered in the admission register of the Government School which was produced for perusal by the Sub Divisional Officer. The Sub Divisional Officer made the enquiries to ascertain the age of the petitioner after providing opportunity to both the parties. The affidavit of the father on which much reliance is placed by the petitioner was produced on the last date of filing of the nomination papers. The purpose was to get her nomination papers accepted. Such affidavit cannot be considered as a reliable material/evidence to decide the age. It was self serving document. On the other hand, the respondents produced certificate(s) issued by the statutory authority in discharge of statutory obligation. If the SEC has preferred to rely on those certificates/transfer certificates as against the affidavit of the father and the transfer certificate issued by the Madarsa, the Court would not find any patent illegality in such consideration of the evidence/materials on record.

The petitioner has submitted that voter list of the petitioner records her year of birth as 1987. The copy of the voter ID has been enclosed. I have already observed that such entry in the voter list may be a conclusive proof of the fact that the person so recorded is a voter of the constituency but it cannot be considered as a conclusive proof of the age or the date of birth. For this reason in the voter ID only the year of birth is recorded and not the complete date of birth.

In the light of discussions made above, I am unable to find any illegality or perversity in the consideration of the matter by the respondent-SEC in allowing case no. 08 of 2013.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

Shyam/-

AFR/NAFR	NAFR
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