

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19507 of 2016

Along with
Interlocutory Application No. 108 of 2017

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Kunti Devi @ Kunti Kumari, D/o Late Rajkumar Vishwas, Resident of Village -
Dawaragaon (Belwari), P.S. - Palasi, District - Araria.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj Department, Patna, Bihar.
2. The State Election Commission, Sone Bhawan, Veer Chand Patel Path, Patna through its Secretary.
3. The State Election Commissioner, State Election Commission, Sone Bhawan, Veer Chand Patel Path, Patna.
4. The District Election Officer-cum-District Magistrate, Araria.
5. The Returning Officer of Panchayat Raj Bhatawar Majlishpur, Palasi, Araria.
6. The Block Development Officer, Palasi, Araria.
7. Md. Galib Shahnawaz S/o Md. Shabir Ahmed R/o Village - Ram Nagar Tola Kumbhia, P.S.- Palasi, District - Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar and Mr. Raj Kumar, Advocates
For the S.E.C.	:	Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates
For the State	:	Mr. Ajay, G.A. 5 Mr. Pratik Kumar Sinha, A.C. to G.A. 5

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-01-2017

Heard Mr. Dinu Kumar, learned counsel assisted by

Mr. Raj Kumar, learned counsel for the petitioner, Mr. Amit
Shrivastava, learned counsel assisted by Mr. Girish Pandey, for the
State Election Commission and Mr. Pratik Kumar Sinha, learned
counsel assisted by Mr. Ajay, for the State.

The challenge in the present writ application is to the



order dated 10.11.2016 passed by the State Election Commissioner, Bihar, Patna in Case No. 17 of 2016, by which the election of the petitioner as member of the Panchayat Samiti of Gram Panchayat, Bhatawar Majlishpur in Palasi Block of Araria District has been set aside and direction has been issued to fill up the post in accordance with law. Subsequently, the petitioner was also elected as Pramukh of Panchayat Samiti, Palasi on 23.05.2016. In view of the order dated 10.11.2016, as a consequence of the petitioner losing her membership of the Panchayat Samiti, Palasi, her election to the post of Pramukh was also set aside by communication of the State Election Commission contained in Letter No. 7488 dated 30.12.2016, and accordingly, it has been directed to hold election to the post of Pramukh on 18.01.2017.

Learned counsel has also assailed the said communication in Interlocutory Application No. 108 of 2017. In view of the same being in continuation to the original cause of action, the Interlocutory Application stands allowed. Challenge to the communication dated 30.12.2016 shall form part of the main writ application.

Learned counsel for the petitioner submitted that due to dirty local politics an unnecessary controversy has been raised inasmuch as, the petitioner, whose actual date of birth is 01.12.1994,



due to a wrong entry made in the Matriculation certificate showing her date of birth to be 05.06.1998, the respondent no. 7 had filed a complaint before the State Election Commission, which has resulted in passing of the impugned order. Learned counsel submitted that the main complaint was based on the age of the petitioner which, in the present facts and circumstances of the case, was not an issue on which her election could have been set aside for the reason that except for the said Matriculation certificate, all other documents, including the date of birth shown in the Adhar Card, the age shown in the Voter Identity Card issued by the Election Commission of India and in the Electoral Roll disclose that she was born in the year 1994 and not 1998. He further submitted that even the doctor, who had assisted the mother of the petitioner, in giving birth to the petitioner, has given a certificate that the petitioner was born on 01.12.1994 and even the birth certificate issued by the Government of Bihar shows 01.12.1994 as her date of birth. Learned counsel submitted that the petitioner had also moved the authorities concerned with regard to correction of the date of birth in the Matriculation certificate in the year 2014 itself and, thus, no liability can be fastened on her even if, till date, the final correction has not been made. Learned counsel submitted that the order impugned relating to the date of birth is erroneous since the authority has only gone on the entry made in the



Matriculation certificate without appreciating that in all other documents, consistently the date of birth has been shown as 01.12.1994 and also that the matter has been represented before the Bihar School Examination Board (hereinafter referred to as the 'Board') for correction of the date of birth. It was further submitted that the order impugned is without reason and non speaking. As far as the date of birth recorded in the Matriculation certificate is concerned, learned counsel submitted that the same is not final and sacrosanct. For such proposition he relies upon the judgment of the Hon'ble Supreme Court in the case of **Parag Bhati (Juvenile) Thr. Legal Guardian vs. State of U.P. & Anr. in Criminal Appeal No. 486 of 2016** dated 12.05.2016. Learned counsel submitted that much prior to the election in question, in the voter list, her age was shown as 18 years in 2013 and as 21 years in 2016.

Learned counsel for the State Election Commission submitted that the order impugned was on the basis of complaint made by the respondent no. 7 and the same also contains the allegation that besides the wrong mentioning of the date of birth, which would amount to her being underage to contest the election, the petitioner had also falsely stated that her educational qualification was 8th pass whereas admittedly, she is a Matriculate. He submitted that before the authorities, there were documents in support of the



contention of the petitioner as well as the Matriculation certificate. He submitted that since under various laws, the entry made in the Matriculation certificate is taken to be the most reliable for official purposes, in the present case also, if the authorities had relied upon such entry, the same cannot be faulted. It was submitted that a clarification was sought from the Board with regard to the date of birth in the Matriculation certificate of the petitioner and it has been intimated that her date of birth is 05.06.1998, which was officially communicated by letter dated 17.09.2016. Learned counsel submitted that as far as the birth certificate is concerned, the same has been issued on 12.04.2016 i.e., much after the election being notified on 25.02.2016 and also after actual filling up of the nomination form as well as declaration of result. Learned counsel submitted that the certificate issued by the doctor with regard to the birth of the petitioner also raises *bona fide* doubt for the reason that it is by a doctor in the city of Kishanganj whereas the petitioner's mother is stated to be a resident of Palasi in the District of Araria and, thus, it is surprising as to why a person should come from Araria, which is a more developed city, as compared to the city of Kishanganj, which was highly underdeveloped in the year 1994, for the delivery of the petitioner. He submitted that the entry made in the Electoral Roll, Voter Identity Card and even Adhar Card, at best can be presumptive



in nature and are clearly rebuttable and in the present case, when the Matriculation certificate has been issued in favour of the petitioner showing her date of birth as 05.06.1998, the authorities were justified in relying on the said date of birth and holding her to be disqualified as being underage on the date of election. Learned counsel submitted that this Court in the judgment dated 20.12.2016, rendered in the case of **Lalita Kumari vs. The State of Bihar & Ors. (C.W.J.C. No. 16753 of 2016)**, after considering the relevant judgments on the point, has also come to the conclusion that where there are more than one documents relating to the date of birth available, and the authorities relying on the date recorded in the Matriculation certificate, the same is sound and cannot be faulted. He further submitted that even with regard to the issue of correction of the date of birth in the Matriculation certificate, as per the documents brought on record, though the same is addressed to the Secretary of the Board, but the endorsement is that of the Headmaster and the Incharge Headmaster, which cannot be said to be an objection before the Board as neither any despatch date or Memo number is mentioned therein. Learned counsel submitted that in this background, the communication coming from the Board that the date of birth of the petitioner is recorded as 05.06.1998 clearly indicates that neither there has been correction made in the Matriculation certificate with



regard to the date of birth recorded as 05.06.1998, nor any such application is pending, which would not only have been mentioned, for in case the same had not been yet disposed off, the petitioner would have moved before the appropriate forum/authority assailing the same.

Learned counsel for the State has adopted the submissions advanced on behalf of the State Election Commission

Having considered the rival contentions, this Court does not find any merit in the present writ application. It may be that there are various documents to indicate that the date of birth of the petitioner is 01.12.1994, but equally too is the fact that she has passed the Matriculation examination and the date of birth mentioned in the said certificate, which is based upon the entry made in the school register, is a document which, in the considered opinion of the Court, will have primacy over other documents for the sheer reason that under various statutes, the same has been accepted to be the only basis for the purposes of reckoning the date of birth of a person. In the present case, the petitioner has not challenged the fact that the entry in the Matriculation certificate is based on the entry made in the school register and, thus, such entry made at the earliest point of time, when the petitioner was still very young and had entered the school, and the same having been reiterated at the time of filling up of the



Matriculation examination form and thereafter, the Matriculation certificate also disclosing the said date of birth, which till date remains unchanged, the authorities basing their opinion on such document, no valid ground for interference is made out. The Court is equally conscious of the fact that in public life, there is requirement of total transparency, clarity and even purity has to be maintained. A person contesting an election for a public post is required to come clean before the electorate and in the present case, the conduct of the petitioner, where she has stated in the nomination paper that her educational qualification is standard 8 pass, when admittedly she is already a Matriculate, clearly amounts to stating of falsehood. The position is worse, as a patently wrong statement, to the knowledge of the petitioner, has been stated as compared to a position where the said column would have been left blank. Thus, recording of the educational qualification as standard 8 pass, in the background of the fact that had she disclosed that she was a Matriculate, it would have been incumbent upon her to annex copy of the Matriculation certificate, which would have shown her to be underage and disqualified, clearly cannot be an inadvertent omission on her part and was clearly, with a design to get over the date of birth recorded in the Matriculation certificate, which would have been an impediment in her desire to contest the election, and thus the same was not



brought before the authorities concerned or even disclosed in the nomination form. The reason for this Court to give primacy to the entry made in the Matriculation certificate has been discussed in detail in the order of **Lilita Kumari** (supra). The Court would also like to refer to the decision of the Hon’ble Supreme Court in the case of **Sri Mairembam Prithviraj @ Prithibiraj vs. Shri Pukhrem Sharatchandra Singh** in **Civil Appeal No. 2649 of 2016** and **Shri Pukhrem Sharatchandra Singh vs. Sri Mairembam Prithviraj @ Prithibiraj** in **Civil Appeal No. 2829 of 2016**, disposed off by a common order on 28.10.2016, in which the Hon’ble Supreme Court has held that all facts and information required to be disclosed by a candidate at the time of filling up of the application form is necessarily to be so done and omission to do so would vitiate the election.

In view of the discussions made hereinabove, the writ application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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