

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.114

**CWP No.13293 of 2017
Date of decision : 11.08.2017**

Smt. Kherunisa @ Kherunishan

..... Petitioner

VERSUS

Smt. Sabana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. R.S. Sihota, Sr. Advocate with
Mr. B.R. Rana, Advocate
for the petitioner.

Mr. Ashok Kaushik, Advocate
for respondent No.1.

SUDHIR MITTAL, J.

Election of Gram Panchayat Hunchpuri Kalan, Tehsil Hathin, District Palwal was held on 17.01.2016. The petitioner and respondent No.4 contested this election for the post of Sarpanch. The petitioner was declared elected having been secured 454 votes against 424 secured by respondent No.4. The petitioner's election was challenged by Smt. Sabana wife of Abid (respondent No.1) by way of election petition. The election petition has been allowed and the election of the petitioner has been set aside. She has further been disqualified from contesting the fresh election for the post of Sarpanch.

The said decision of the Additional Civil Judge (Sr. Division), Hathin, has been challenged by way of the present writ petition.

In the election petition, the primary contention on behalf of respondent No.1 was that the petitioner was under age on the date of election and hence was not qualified to contest the same. Reference has been made to Section 173 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act'), which is reproduced below:-

“173. Persons qualified to vote and be elected-

(1) Every person whose name is in the list of voters shall, unless disqualified under this Act or any other law for the time being in force, be qualified to vote at the election of a Member for the electoral division to which such list pertains.

(2) Every person who has attained the age of twenty-one years and whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected from any electoral division.”

Evidence has been produced on the record by way of Ext. P-9 to show that the date of birth of the petitioner was 06.10.1994, whereas respondent No.1 has produced mark-sheet of Board of School Education, Haryana (Ext. P-5), wherein the date of birth of the petitioner, is shown as 06.05.1998. Based on this evidence, the learned Civil Court has returned a finding of fact that the date of birth of the petitioner was 06.10.1994 and, therefore, she was less than 21 years of age on the date of the election. Accordingly, her election has been set aside and she has been disqualified from contesting the fresh election.

Learned senior counsel for the petitioner contends that the maternal-uncle of the petitioner was residing in District Mathura and, therefore, her initial education was done at Sri Chhatar Singh Arya Inter College, Khanpur, Bajana (Mathura), U.P. The parents of the petitioner had

got her date of birth mentioned as 06.05.1998 in the Student's Register and Transfer Certificate Form (Ext. P-9). The petitioner had no role to play in the age entered in the aforementioned document. The parents know best regarding the date of birth of their child and the factum of the petitioner contesting the election of Sarpanch, could not have been foreseen at that particular time. Thus, the learned Civil Court has erred in rejecting Ext. P-9 and accepting Ext. P-5 with regard to date of birth of the petitioner. He has placed reliance on the oral evidence of the petitioner, wherein, according to learned senior counsel for the petitioner, there is no cross-examination on this aspect of the matter.

We have heard the learned senior counsel and perused the record carefully.

From the oral evidence of the petitioner (a copy of which has been handed over to us across the bar), it is evident that the father of the petitioner was a teacher in the Government Senior Secondary School, Jamalgarh, from which school, the petitioner has passed her Secondary School Examination. It has been admitted by the petitioner in her cross-examination that her father and mother had got her date of birth recorded at "Jamalgarh School." It clearly shows that the date of birth recorded in Ext. P-5 was at the instance of the parents of the petitioner and she has to suffer the consequences of the same. She cannot be permitted to state at this stage that her date of birth was recorded wrongly in this document. It is also settled law that the secondary school certificate is the basic document for determining the date of birth of an individual. A finding of fact has been recorded in this regard by the learned Civil Court and no perversity has been pointed out in the said finding to make us exercise our

jurisdiction under Article 226 of the Constitution of India. A finding of fact is not open to challenge under certiorari jurisdiction, unless it is shown that the record does not support such a finding or that the finding could not have been returned by any reasonable person on the basis of the evidence produced.

Accordingly, we do not find any merit in this writ petition and the same is dismissed.

(SUDHIR MITTAL)
JUDGE

(SURYA KANT)
JUDGE

August 11, 2017
Ramandeep Singh

Whether speaking / reasoned	Yes / No
Whether Reportable	Yes/ No