

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

FAO No. 894 of 2015 (O & M)

Date of decision: 10.05.2017

Jasbir Singh

....Petitioner(s)

Versus

Jatinder Singh and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Mohinder Kumar, Advocate,
for the appellant.

None for the respondent.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 2446-CII of 2015

In view of reasons mentioned in the application, delay of 71 days in filing the appeal is condoned.

Application is allowed.

FAO No. 894 of 2015 (O & M)

The present first appeal under Section 100 of the Punjab State Election Commission Act, 1994 is directed against the order dated 22.07.2014 whereby, the Presiding Officer, Election Tribunal, Amritsar who has dismissed the election petition of the appellant.

The argument set up by counsel for the appellant is that when the election was held on 03.07.2013, the age of respondent no. 1 was less than 21 years and he was not competent to contest the election of the Sarpanch. It is accordingly the case of the appellant that the nomination papers had been wrongly accepted as the date of birth was 26.10.1993 and,

therefore, the respondent was younger and was not eligible as such and his nomination papers had wrongly been accepted.

The defence of the respondent was of denial that he had not completed the age of 21 years at the time of filing of the nomination papers. The official respondent's reply was that the age of the respondent was more than 21 years as per the voter list supplied and duly signed by the Tehsildar, whereas, the categorical case of the present appellant was that the date of birth was 26.10.1993 as per the matriculation certificate. It is the case of the appellant that the correction was got done during the pendency of the election petition and the date of birth was shown as 26.10.1990 by the Punjab School Education Board, as per the duplicate certificate Ex.R-1. It is accordingly submitted that it is, thus, apparent that he was not eligible as such and, therefore, the Election Tribunal was in error while dismissing the election petition.

A perusal of the record would go on to show that the original date of birth certificate of the respondent wherein, his date of birth was depicted as 26.10.1990, has been produced on the record, which the Tribunal took into account and photocopy of the same has now been exhibited as Ex.R-3. The registration was done on 02.11.1990, seven days after the date of birth of the respondent which would, thus, go on to show that his date of birth actually was 26.10.1990. The subsequent correction which had been made in the educational certificate as such, thus, would not help the appellant to contend that he was not qualified as such. It is settled principle that there is a presumption of correctness in the date of birth certificate which is issued by the Registrar (Births & Deaths) and reference can be made to the judgment of the Division Bench of this Court in ***Resham***

Singh vs. Union of India and another, 2008 (1) PLR 621 wherein, it was held that the entry in the birth certificate by the Registrar of Births and Deaths would prevail except where the certificate was held to be unreliable or suspicious and appeared to be manipulated. The relevant observations read as under:-

“11. It was, thus, held that where there is a conflict, between the date of birth, recorded by the competent authority under the Births and Deaths Registration Act and the school leaving certificate, primacy was to be accorded to the birth certificate issued by the authority under the Registration of Births and Deaths. It was also held that unless upon verification, the certificate issued by the Registrar of Births and Deaths, appears to be doubtful or suspicious or the Passport authority is not satisfied as to its genuineness, then alone would the Passport authority be justified in declining to effect a correction in the date of birth and directing an applicant to seek adjudication, as to his date of birth before a civil Court.

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15. Thus, taking into consideration the aforementioned judgements, the enunciation of law, as detailed herein above, we are of the considered opinion that the Passport Authority erred by relegating the petitioner to seek a declaration before a civil Court and refusing to entertain his plea for correction of his date of birth. We would like to once again emphasise that as and when an application is filed before a Passport authority and there appears to be a conflict between entries in the birth certificate issued by the Registrar of Births and Deaths and the entry of birth in a school leaving certificate, the entry in the birth certificate

issued by the Registrar of Births and Deaths would prevail and except where the certificate is unreliable, suspicious or appears to be procured or manipulated, parties should not be relegated to civil Courts in a mechanical manner.”

Similarly, the Apex Court in **CIDCO vs. Vasudha Gorakhnath Mandevlekar, 2009 (7) SCC 283**, held to the same effect. The relevant observations read thus:-

“20. The Deaths and Births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of [Section 35](#) of the Indian Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. [See [Birad Mal Singhvi v. Anand Purohit](#) [AIR 1988 SC 1796]]”

As noticed, in the present case, the registration of the date of birth was seven days after the date of birth way back in the year 1990 and, therefore, it cannot be said that the said certificate is manipulated or fabricated and, thus, can be safely relied upon.

Resultantly, keeping in view the fact that the respondent was over 21 years at the time of elections, there is no merit in the present appeal and the same is accordingly dismissed.

10.05.2017
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(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No