

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12849 of 2017

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Dolly Kumari, Wife of Sri Rupesh Kumar, Resident of Village & P.O.- Manik Chowk, P.S.- Runnisaidpur, District- Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Panchayati Raj Department, Govt. of Bihar, Patna.
3. The State Election Commission, Bihar, Patna through its Commissioner.
4. The State Election Commissioner, the State Election Commission, Bihar, Patna.
5. The Joint Secretary, the State Election Commission, Bihar, Patna.
6. The District Magistrate-cum-District Election Officer (Panchayat), Sitamarhi.
7. Ram Shreshth Bhagat, Son of Sakhi Chandra Bhagat @ Jogendra Bhagat, Resident of Mohalla- Runni Saidpur, Manikchowk, North Constituency No.4 Block & P.S.- Runnisaidpur, District- Sitamarhi.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Advocate Mr. Hans Lal Kumar, Advocate
For SEC	:	Mr. Amit Shrivastava, Advocate
For the State	:	Mr. Kumar Alok, SC-7
For private respondent	:	MD. M. Mazumdar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-07-2018

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the State Election Commission.

2. The present writ petition has been filed by the



petitioner for setting aside the order dated 18.08.2017 passed by respondent no. 4 in Case No. 04 of 2017 whereby and whereunder the petitioner has been declared disqualified after election for holding the post of Mukhiya of Gram Panchayat, Manik Chowk and the seat of Mukhiya has been declared vacant.

3. Learned counsel for the petitioner submitted that the impugned order dated 18.08.2017 passed by the State Election Commissioner, Bihar is bad in law and the same cannot be sustained. He submitted that as a matter of fact, the date of birth of the petitioner is 26.06.1993, but erroneously the State Election Commissioner has held her date of birth to be 23.06.1995 and disqualified her from holding the post of Mukhiya on the ground that she had not attained the age of 21 years on the date of election. He submitted that several contemporaneous documents submitted by the petitioner were not considered by the State Election Commissioner and merely on the basis of date of birth entered into her matriculation certificate a wrong finding of fact has been recorded in the impugned order.

4. *Per contra*, learned counsel appearing for the State Election Commission submitted that when a complaint was received in respect of date of birth of the petitioner, the State Election Commissioner got the same inquired by the District



Magistrate-cum-District Election Officer (Panchayat), Sitamarhi and on the basis of the report it transpired that the petitioner had suppressed her original date of birth and made a wrong entry of date of birth in her nomination paper. He submitted that petitioner was given ample opportunity of hearing and the findings of fact arrived at by the State Election Commissioner are neither perverse nor incorrect. The petitioner has not denied the fact that the date of birth recorded in her matriculation certificate is 23.06.1995. He submitted that prior to receipt of complaint by the State Election Commissioner, no effort was made by the petitioner for getting her date of birth entered into matriculation certificate corrected and only after the complaint was received, all sorts of efforts were made by her in order to get her date of birth entered into matriculation certificate changed.

5. I have heard learned counsel for the parties and carefully perused the record.

6. Section 136(1)(b) of the Bihar Panchayat Raj Act, 2006 (for short 'the Act') provides that a person shall be disqualified for election or after election for holding the post as Mukhiya, member of Gram Panchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad, if he is so disqualified by or under any law for the



time being in force for the purposes of elections to the Legislature of the State. It further provides that no person shall be disqualified on the ground that he is less than 25 years of age, if he has attained the age of 21 years.

7. The facts of the case, in brief are that the petitioner contested the election in the year 2016 for the post of Mukhiya of Manik Chowk North Gram Panchayat. After counting of votes, she was declared elected on 03.06.2016. Respondent no. 7, Ram Shreshth Bhagat filed a complaint before the State Election Commissioner, Bihar, Patna against the election of the petitioner alleging that the date of birth of the petitioner is 23.06.1995 and the matriculation certificate shows the age of the petitioner on the date of nomination was below 21 years. The said petition was registered as Case No. 4 of 2017 and notices were issued to the concerned parties and a report was called for from the District Magistrate-cum-District Election Officer (Panchayat), Sitamarhi in respect of the complaint made by respondent no. 7. After receipt of the report sent by the District Magistrate-cum-District Election Officer vide letter no. 29/GP dated 16.01.2017, the concerned parties were heard by the State Election Commissioner, Bihar, Patna and after hearing both the parties and perusing the relevant documents submitted by them, the State Election Commissioner found the date of birth of



the petitioner in the mark-sheet of Secondary Education Examination 2011 issued by the Bihar School Examination Board, Patna to be 23.06.1995. It also came to the notice of the District Magistrate in course of inquiry that the petitioner had sent a representation before the Secretary, Bihar School Examination Board on 06.08.2017 for correction in her date of birth recorded in the matriculation certificate. Since the petitioner failed to explain as to how the date of birth was wrongly recorded in the matriculation certificate and why she took no step for correction of same till the filing of the complaint by respondent no. 7, the State Election Commissioner disqualified her for holding the post of Mukhiya on the ground that she was less than 21 years of age on the date of election.

8. The contention of the petitioner that the contemporaneous documents submitted by her were not looked into by the State Election Commissioner is not correct. The State Election Commissioner had not only considered the documents produced by the petitioner but also assigned cogent reasons for not accepting the same.

9. Apparently, the petitioner has not denied the fact that in the matriculation certificate her date of birth is recorded as 23.06.1995. She had passed her matriculation in the year 2011 and



since then no effort was made by her to get entry of her date of birth in the matriculation certificate corrected. A complaint was filed by respondent no. 7 before the State Election Commissioner and only after receipt of notice on the said complaint, the petitioner filed a representation before the Bihar School Examination Board on 16.08.2017 for correction in her date of birth and claimed that her date of birth is 26.06.1993. The representation filed for correction in the date of birth is apparently an afterthought in order to justify the wrong committed by the petitioner by mentioning a wrong date of birth in her nomination paper for contesting the election of Mukhiya.

10. Since the petitioner had not attained the age of 21 years as per her matriculation certificate on the date of election for the post of Mukhiya, she has rightly been disqualified by the State Election Commissioner in compliance with the provisions provided under Section 136(1)(b) of the Act. Thus, no error can be found with the order impugned. Accordingly, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2018
Transmission Date	NA

