

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21697 of 2018

Nikki Devi Wife of Amit Kumar Singh Resident of Village and P.O. Rakiya,
Gram Panchayat -Rakiya, P.S. Bihra, Block, Sattar Kataiya, District- Saharsa.

... .. Petitioner

Versus

1. The State Election Commission Panchayat and Ors
2. The District Election Officer Panchayat, Saharsa, District- Saharsa.
3. The District Panchayat Raj Officer, Saharsa, District- Saharsa.
4. The Block Development Officer, Sattar Kataiya Block, District- Saharsa.
5. Chanda Devi Wife of Arbind Prasad Singh Resident of Village and P.O. Rakiya, Gram Panchayat, Rakiya, P.S. Bihra, Block- Sattar Kataiya, District- Saharsa.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. S.B. K. Manglam, Advocate Mr. Ravi Ranjan, Advocate
For the State	:	Mr. Ashok Kumar Gupta, AC to GP-10
For the Election Commission:		Mr. Sanjeev Nikesh, Advocate
For the Respondent No. 5:		Mr. Satish Kumar Singh, Advocate Mr. Dinesh Mohan, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 28-01-2019

The petitioner contested the election for the post of Mukhiya of Gram Panchayat Raj, Rakiya in the district of Saharsa. Her nomination was accepted by the Returning Officer, there was no objection whatsoever at the time of scrutiny of the nomination papers but once she was declared elected and was granted the certificate of election, the private respondent no. 5 challenged the election of this petitioner vide Election Petition No. 10 of 2016 on grounds inter alia that the petitioner had in her affidavit submitted under Section 125-A of the Bihar Gram Panchayat Raj Act, 2006 (hereinafter referred to as 'the



Act of 2006') gave a wrong declaration with respect to her date of birth and her educational qualification.

The learned court of Munsif, Civil Court, Saharsa being the Panchayat Election Tribunal tried the Election Petition and allowed the same by cancelling the election of the present petitioner to the post of Mukhiya, Gram Panchayat- Rakiya, Prakhanda-Sattarkattaiya, Nirvachan Kshetra Sankhya-2, Saharsa. The District Election Officer, Saharsa has been directed to conduct re-election for the post of Mukhiya.

Being aggrieved by the order dated 11.10.2018 passed by the learned court of Munsif, in Election Petition No. 10 of 2016, the petitioner has moved this Court for the following reliefs:-

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the judgment and order dated 11.10.2018 passed by the learned Munsif, Civil Court, Saharsa in Election Petition No. 10 of 2016, whereby and where under the learned Munsif has been pleased to set aside the election of petitioner as the Mukhiya of Gram Panchayat Raj, Rakiya under Sattar



Kataiya Block of Saharsa District on misconceived interpretation and application of the principles laid down by the Hon'ble Supreme Court in the case of Sri Mai Rembam Prithvi Raj Vs. Pukhrem Sharat Chandra Singh.

(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for reinstatement of the writ petitioner to the post which she was holding on the date when the impugned judgment came to be passed by the learned Munsif, Saharsa.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case."

Mr. S. B. K. Manglam, learned counsel representing the petitioner submits that the Election Petitioner had, apart from raising the issue of wrong and false information with regard to the date of birth and



educational qualification, also raised an issue with regard to the change of name of the petitioner but so far as the issue with regard to change of name is concerned, has been set at rest the same by holding that there was no serious case for doubt regarding change in the name of the present petitioner in the nomination Form for election to the post of Mukhiya in the year 2016 could be made out.

Learned Munsif also took a view that if there was any mistake or wrong done in the election of year 2011 which was rectified in the election of the year 2016 then wrong name given in the year 2011 cannot be challenged by present Election Petition.

Mr. Mangalam submits that the learned Munsif, however, seriously erred in appreciating the two remaining issues which were about the wrong date of birth declared by the petitioner in her Bio-Data and the wrong educational qualification declared under Section 125-A (1) of the Act, 2006. Learned Munsif proceeded to consider these two issues in the light of the provision as contained under Sections 139 and 141 of the Act 2006 particularly in clause (ii) of Section 141 of the Act, 2006 which provides the meaning of the



words 'undue influence' as defined in Sub-Section (2) of Section 139 of the Act, 2006.

Learned counsel submits that it was the case of the petitioner that in the date of birth column, she had mentioned the estimated date of birth as mentioned in the voter list of the year 2011 and in case the respondent no. 5 had any objection as regards the date of birth of the petitioner in the year 2011 then respondent no. 5 should have raised her objection in the year 2011 itself but such objection cannot be raised in the year 2016. Learned counsel submits that about her educational qualification also she had correctly stated that she was a matriculate. It is, thus, submitted that learned Munsif had not correctly appreciated the judgment of the Hon'ble Supreme Court rendered in the case of **Sri Mairembam Prithviraj @ Prithviraj Singh Vs. Shri Pukhrem Sharatchandra Singh** reported in (2017) 2 SCC 487.

On the other hand, learned counsel representing the respondent no. 5 submits that the petitioner had made a false declaration with regard to her date of birth and her educational qualification in her Bio-Data and as such the affidavit in support thereof was a false affidavit. The writ



petitioner had, thus, indulged in corrupt practice for succeeding in the election. It is submitted that in terms of Clause (b) of Sub-Section 1 of Section 139 of the Act, 2006, where it is found that a Returned Candidate has committed any corrupt practice and the result of the election, insofar as it concerned the Returned Candidate, has been materially affected by any corrupt practice committed in the interests of Returned Candidate and the result of the elected candidate has materially affected by the improper acceptance of any nomination, the election of the Returned Candidate would be liable to be cancelled.

It is submitted that in course of trial as many as 10 issues were framed. Issue no. V was as follows:-

“Whether the respondent no. 1 have illegally filed her nomination paper and affidavit in wrong name and concealed her correct name, date of birth and details of assets.”

This issue has been partially decided in favour of the Election petitioner. Further issue no. IX reads as under:-

“Whether the Election of Respondent no. 1 to the post of



Mukhiya can be declared illegal and against the principle of law and is liable to be set aside ?”

The issue no. IX has been completely decided in favour of the Election Petitioner.

It is stated that in course of trial three witnesses were produced on behalf of the Election Petitioner (respondent no. 5) who apart from the oral evidences also adduced Exhibit-1 to Exhibit-8. Exhibit 1 and Exhibit 1/A are the two nomination Forms of the petitioner which were filed in the year 2011 and 2016 respectively. In Exhibit-1 she disclosed her date of birth 26.10.1987 whereas in Exhibit 1/A the date of birth was shown as 01.01.1986. Again, with regard to her educational qualification, in the year 2011 she disclosed herself Intermediate whereas in the year 2016 she disclosed her education as Matric. It is further pointed out that respondent no. 5 had placed documentary evidence to show that the date of birth of the petitioner was 12.10.1986. In response the petitioner produced a policy bond which was proved by L.I.C. Agent as Ext. C on behalf of the opposite party-writ petitioner which showed that the date of birth



mentioned on the policy document was 12.11.1989. It means there were four date of birth of the petitioner which were placed before the learned Election Tribunal.

With regard to the educational qualification, the writ petitioner, it is submitted, failed to give any valid reason for providing a wrong and false affidavit. It is, thus, submitted that on record it is an admitted position that the writ petitioner had made a wrong and false statement with regard to her date of birth and educational qualification. In such circumstance it is submitted that the ratio of the judgment of the Hon'ble Apex Court in the case of **Sri Mairembam Prithviraj @ Prithviraj Singh** (supra) shall be fully applicable.

Having heard learned counsel for the petitioner who was opposite party no. 1 before the learned Munsif Court/Election Tribunal and learned counsel representing the respondent no. 5 who was the Election Petitioner as also learned counsel representing the Bihar State Election Commission and after going through the materials available on the record, this Court is of the considered opinion that the Election Tribunal has arrived on a correct finding of fact as also has correctly applied the law laid down by the Hon'ble



Apex Court in the case of **Sri Mairembam Prithviraj @ Prithviraj Singh** (Supra).

A perusal of the pleading in form of the election petition and it's reply available as Annexure-P-2 and P-3 respectively show that in the Election Petition, the respondent no. 5 had specifically stated in her petition that in the year 2011 election, the O. P. No. 1-petitioner had disclosed her date of birth as 26.10.1987 and the educational qualification is Inter- pass whereas in the year 2016 election the opposite party no. 1-the petitioner declared her date of birth as 01.01.1986 and educational qualification as Matric pass. Learned Munsif has taken note of the oral as well as the documentary evidences adduced on behalf of the parties. It appears from the impugned order that despite an opportunity given to her the opposite party no. 1 neither specifically controverted the allegations of mentioning of a wrong and false date of birth and the educational qualification nor in course of her evidence she could produce any documentary evidence to prove that her date of birth was 01.01.1986 and that she was a matriculate.

In her written statement she has not at all made



any statement with regard to the examination and the Board which yielded her the matriculation certificate. She had only plea that her date of birth was disclosed as per the voter list. The learned Munsif has dealt with all the exhibits produced on behalf of the opposite party no.1- the petitioner.

Learned Munsif rejected the contention of the Election Petitioner with regard to change in name of O. P. No.1, therefore, in the present case this Court is not required to go in that issue. The election petitioner-respondent no. 5 has accepted the findings of the learned Munsif/Election Tribunal on the point of change of name of O. P. No. 1 because that finding has not been challenged by the election petitioner in any duly constituted application before this Court.

In the opinion of this Court, the Election Tribunal rightly held that the acceptance of nomination Form with wrong declaration in affidavit of opposite party no.1-the petitioner, comes in the category of improper acceptance of nomination and then proceeded to consider as to whether the said acceptance of nomination has materially affected the election of Returned Candidate.



In order to decide the issue as to whether improper acceptance of nomination of a Returned Candidate has materially affected the election of the Returned Candidate, learned Munsif referred the judgment of the Hon'ble Apex Court rendered in the case of **Sri Mairembam Prithviraj @ Prithviraj Singh** (supra) and relied on paragraph 23 of the said judgment. Paragraph 23 of the aforesaid judgment of the Hon'ble Apex Court reads as follows:-

23.“It is clear from the above judgment in *Durai Muthuswami*² that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the



election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected"

In view of the law laid down by the Hon'ble Apex



Court in the case of **Sri Mairembam Prithviraj @ Prithviraj Singh** (supra), learned Munsif has rightly come to a conclusion that the improper acceptance of nomination Form in the present case had materially affected the result of the election because the improper acceptance of nomination was that of the Returned Candidate. He has rightly observed that in terms of Section 125-A of the Act, 2006, a candidate is obliged to furnish in his nomination papers, information on affidavit on the given aspects. A reading of Section 125-A of the Act, 2006 shows that the educational qualification of a candidate is one of the informations which a candidate is required to furnish on affidavit.

It has now been settled by judicial pronouncements in the case of **Jagjit Singh Vs. Dharmpal Singh** reported in **1995 (Suppl) (1) SCC 422**, **Union of India Vs. Association for Democratic Reforms** reported in **(2002) 5 SCC 294**, **The People's Union for Civil Liberties (PUCL) Vs. Union of India** reported in **(2003) 4 SCC 399**, **Kisan Shankar Kathore Vs. Arun Dattaray Sawant** reported in **(2014) 14 SCC 162** and **Resurgence India Vs. Election Commission of India and Anr.** reported in **(2014) 14 SCC 189** that a voter has a right to know



about the educational qualification of the candidate and any false or mis-declaration would result in rejection of nomination of the candidate. In the case of **Harikrishna Lal Vs. Babu Lal Marandi** reported in **(2003) 8 SCC 613** it has been held that false declaration relating to the educational qualification of a candidate is a defect of substantial character.

In the present case the opposite party no. 1-the petitioner has failed to place any evidence on the record to show that she was either Intermediate pass or Matric pass and that her declaration in the year 2011 and 2016 elections were correct. As stated above, the opposite party no.1- the petitioner had an opportunity to bring materials in support of her declaration and the affidavit as regards date of birth and educational qualification. This Court, therefore, does not find any reason to interfere with the findings recorded by the learned Election Tribunal. Once it is found that the petitioner had furnished a false information and had submitted a mis-declaration, it would result in rejection of her nomination.

Thus, in the given facts and circumstances of the case learned Munsif has rightly allowed the Election Petition.



No fault may be found with the impugned judgment.

In result, this writ application would fail. It is
dismissed accordingly. There will no order as to cost.

(Rajeev Ranjan Prasad, J)

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CAV DATE	21.01.2019
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