

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6349 of 2019**

Manisha Kumari, Wife of Sri Deepak Kumar Rai, resident of Village-  
Kishunpur Narwara, P.O. Narwara, P.S.- Tariyani, District- Sheohar.

... .. Petitioner

Versus

1. The State Election Commission ( Panchayat ), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Joint Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The District Magistrate-cum-District Election Officer (Panchayat), Sheohar, District- Sheohar.
5. The District Panchayat Raj Officer, Sheohar, District- Sheohar.
6. The Block Development Officer, Tariyani, District- Sheohar.
7. Manoj Kumar, Son of Bharat Rai, Resident of Village and P.O. Chhotki Narwara, P.S., Tariyani, District- Sheohar.

... .. Respondent/s

**Appearance :**

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|----------------------|---|-------------------------------------|
| For the Petitioner/s | : | Mr. S. B. K. Manglam, Advocate      |
| For Res. No. 1 to 3  | : | Mr. Amit Kumar Srivastava, Advocate |
|                      |   | Mr. Girish Pandey, Advocate         |
| For the State        | : | Mr. Pratik Kr. Sinha, AC to GA 5    |
| For Pvt. Res.        | : | Mr. R. S. Pradhan, Sr. Advocate     |
|                      |   | Mr. Ranjeeet Choubey, Advocate      |
|                      |   | Mr. Jitendra Pradhan, Advocate      |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**C.A.V. JUDGMENT**

**Date : 29-07-2019**

The petitioner in the present case is seeking to challenge the order dated 01.03.2019 passed by the State Election Commissioner, State Election Commission (Panchayat) (respondent no. 2) in Case No. 31 of 2018 which has been communicated to the petitioner vide Memo No. 523 dated



06.03.2019 as contained in Annexure 'P-10' to the writ application.

By the impugned order the respondent no. 2 has disqualified the petitioner to hold the post of Mukhiya, Gram Panchayat Raj, Narwara under Tariyani Block of Sheohar District. The ground for disqualification is that on the date of her election the writ petitioner had not attained the age of 21 years. The petitioner has also prayed for a declaration that in view of Article 243 F (2) and Article 243 (O) of the Constitution of India read with Section 136 (2) and Section 137 of the Gram Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act of 2006') the State Election Commission (hereinafter referred to as the 'Commission') had no jurisdiction to disqualify an elected representative to hold the post on the ground that on the date of election he/she was disqualified to contest.

**Brief Facts of the Case**

After the declaration of the Panchayat Election, 2016, the petitioner filed her nomination to contest for the post of Mukhiya in the aforesaid Gram Panchayat. In the nomination paper she declared to have completed 25 years of age. Form-6 which contains the Bio-Data in terms of Schedule iv (ख) provides column no. 5 requiring declaration of date of birth. In her



declaration instead of giving her date of birth she declared her age '25'. In support of her declaration she had sworn affidavit in accordance with schedule (iii).

It is the case of the petitioner that there was no disqualification in the candidature of the petitioner, no objection was filed against her nomination, therefore, her nomination was accepted by the Returning Officer. She was allowed to contest the election and after counting of votes she was declared elected for the post of Mukhiya.

After the declaration of the petitioner as returned candidate, one of the candidates contesting the election against the petitioner, namely, Kusum Devi filed an Election Petition in the court of learned Munsif, Sheohar (hereinafter referred to as the 'Tribunal') and challenged the election of the petitioner on the ground that on the date of election she had not attained the age of 21 years.

The Election Petitioner set up a case stating that the petitioner had pursued her studies from Nationalised Manorma High School, Jamalabad and according to the Admission Register of the said school, the date of birth of the petitioner was 09.06.1997. The Election Petition filed by said Kusum Devi being Election Petition No. 07 of 2016 went in trial and ultimately the



learned Tribunal dismissed the Election Petition vide it's judgment and order dated 30.05.2018 (Annexure 'P-2'). In it's ultimate analysis the Tribunal took a view that the dispute relating to the age is not an election dispute and therefore, Section 137 of the Act of 2006 does not permit that such dispute may be raised before the Tribunal. Further the Tribunal recorded that because in the Voter List the age of the petitioner was shown as 25 years, the entry made in the voter list would be definitely an evidence that the returned candidate was eligible to contest the election, therefore, the Election Petition was dismissed.

It is stated that thereafter, one Manoj Kumar who is the employee of Kusum Devi filed a complaint petition before the respondent no. 2 to declare the writ petitioner disqualified to hold the post of Mukhiya on the ground that on the date of her election, she had not 21 years of age. Before the Commission, the certificate of Bihar Sanskrit Shiksha Board in which the name of the candidate is Manisha Kumari daughter of Randhir Rai showing her date of birth as 09.06.1997 was produced. The contention of the petitioner is that the complainant had not even whispered in his petition that Manisha Kumari daughter of Randhir Rai and the writ petitioner are the same and one person. He has placed on record the certificate of the Bihar Sanskrit Shiksha Board as Annexure



‘P-4’ to submit that it shows the father’s name as Randhir Rai and there is no address mentioned thereon.

It is submitted that after the aforesaid complaint was filed, the respondent no. 2 entered into roving and fishing inquiry, called upon the District Election Officer (respondent no. 4) to submit a report. Respondent no. 4 did not conduct any inquiry on his own rather directed the District Panchayat Raj Officer to hold inquiry and submit a report. The District Panchayat Raj Officer again did not conduct any inquiry and asked the Block Development Officer, Tariyani vide letter no. 118 dated 24.02.2018 to hold an inquiry and submit a report. No information was given regarding all these developments to the petitioner at any point of time. The inquiry was conducted by respondent no. 6 behind the back of the petitioner. He submitted a report to the District Panchayat Raj Officer vide his letter no. 569 dated 20.04.2018 (Annexure ‘P-5’).

It is specifically stated that even before submission of the report respondent no. ‘6’ had neither issued any notice to the petitioner nor she was provided with any opportunity of hearing. Thereafter, the report was forwarded its destination i.e. the office of the Commission vide Annexure ‘P-6’ and thereafter, a date of



hearing was fixed calling upon the petitioner to participate on 30.05.2018.

The writ petitioner claims that she appeared and filed her counter affidavit raising a number of issues including that the Commission has no jurisdiction under Section 136 (2) of the Act of 2006 to go into this issue. It was contended that the certificate of the Bihar Sanskrit Shiksha Board cannot be linked with the petitioner for determination of her age. It was also submitted that no report was called for from the Bihar Sanskrit Shiksha Board about the genuineness of the certificate and the whole inquiry was an ex-parte inquiry. Lastly it was contended before the Commission that the issue with regard to jurisdiction of the State Election Commission under Section 136 (2) of the Act of 2006 is pending consideration before the Hon'ble Full Bench of the Patna High Court, therefore, the outcome of this case should await the judgment of the Full Bench which would have a bearing upon the case.

The petitioner has assailed the finding recorded in the impugned order that the petitioner had not contested or opposed against the certificate of the Bihar Sanskrit Shiksha Board. In this regard the petitioner has relied on statement made in paragraph '10' of the counter affidavit filed before the Commission in which



she had categorically stated that the certificate produced by the complainant does not relate to the petitioner.

A counter affidavit has been filed in this case in which the impugned order has been defended. It is stated in the counter affidavit that the petitioner is the daughter of Randhir Ray, she had appeared in the Madhyama Examination conducted by the Bihar Sanskrit Shiksha Board in the year 2016 and was declared successful in first division. Her date of birth mentioned therein is 09.06.1997. Further the petitioner also opened her Account in the Indian Bank, Narwara Panchayat on 14.01.2016 wherein the husband of the petitioner namely, Deepak Kumar Ray was introducer and it would be evident from perusal of the opening form that the date of birth has been specifically mentioned 09.06.1997. In support of identity proof the petitioner had enclosed copy of Aadhar Card bearing No. 6534-9600-7786 and in support of address proof the identity card issued by Mukhiya was enclosed wherein her date of birth is specifically mentioned as 09.06.1997.

It is further contended that the Commission had called for a report from the District Magistrate-cum-District Election officer (Panchayat), Sheohar and in pursuance thereof he got the matter inquired into through the Block Development Officer. The



Block Development Officer, Tariyani inquired into the matter relating to allegation against the petitioner to be under age at the time of filing of nomination for the election and collected various evidence which disclosed that the date of birth of the petitioner is 09.06.1997. It is submitted that it is not in dispute that the petitioner had passed Madhyama Examination in the year 2016 which is equivalent to matriculation examination wherein her date of birth has been recorded as 09.06.1997. Therefore, the date of birth given in the matriculation certificate carries more evidentiary value and the same cannot be ignored. Reliance in this regard has been placed on the judgment of the Hon'ble Division Bench of this Court in the case of **Annu Kumari Vs. The State Election Commission & Ors.** reported in **2014 (4) PLJR 667**.

It is further contended that the State Election Commission is fully competent to consider and decide the issue of disqualification under Section 136(2) of the Act of 2006. It is submitted that pendency of the matter before the Hon'ble Full Bench of this Court would not come in the way of passing of the order by the Commission because there was no stay of further proceeding and the Commission was not restrained from passing any order. It is further contended that the Election Petition No. 07



of 2006 was dismissed on 30.05.2018 whereas the instant complaint was filed on 07.11.2017.

A judgment of this Court passed on 18.07.2018 in C.W.J.C. No. 12849 of 2017 (Dolly Kumari Vs. The State of Bihar & Ors.) has been brought on record on behalf of the complainant-respondent no. 7 to submit that in a similar circumstance, a learned co-ordinate Bench of this Court had upheld the decision of the State Election Commissioner.

### **CONSIDERATION**

Having heard learned counsel for the petitioner and learned counsel representing the private respondent as also the State, this Court finds that there are certain facts in this case which are not in dispute. The complaint petition in this case was filed after presentation of the Election dispute before the Election Tribunal in which the election of the petitioner was sought to be declared void on identical grounds. The judgment in the Election Petition No. 07 of 2016 came on 20.05.2018 in which the learned Tribunal took a view that once there is an entry in the voter list showing the age of the writ petitioner as 25 years, she was eligible to contest the election. Learned Tribunal did not accept the various documentary evidences for the reasons stated therein. It appears that during pendency of the Election Petition the Commission had



also proceeded with the complaint petition filed by the private respondent no. 7 in this case. An inquiry was sought to be conducted. The Commission sent the matter to be inquired into at the end of the District Election officer (respondent no. 4) who passed it on to District Panchayat Raj officer (respondent no. 5) and then respondent no. 5 sent it to the Block Development officer (respondent no. 6). The petitioner has asserted in the writ application that neither during the inquiry nor before submission of the report, the Block Development officer gave any notice to the petitioner and that the whole inquiry has been made ex-parte. The fact that in course of inquiry no notice was given to the petitioner against whom the inquiry was being made has not been denied in the counter affidavit filed on behalf of private respondent no. 7.

A perusal of the impugned order would show that it nowhere records that the petitioner was given any opportunity to participate in course of inquiry. Further it appears from the impugned order that the petitioner had brought on record the judgment of the Tribunal in Election Case No. 07 of 2016 passed on 30.05.2018 and had contended that the similar grounds raised before the Tribunal by one Smt. Kusum Devi has been rejected. This Court finds that the Commission has not at all looked into the judgment of the Tribunal and proceeded to pass the impugned



order on the basis of the inquiry report of the Block Development Officer.

In the impugned order it has been recorded that the petitioner had not contested the certificate of the Bihar Sanskrit Shiksha Board but it has been specifically stated in the writ application and not denied by the private respondent that in paragraph '10' of her counter affidavit filed before the Commission the petitioner had raised an objection saying that the certificate produced by the complainant does not relate to the petitioner. This is coupled with the fact that the petitioner had contended that no verification of the certificate has been done with the concerned Board. The Commission has apparently committed an error in recording the finding that the petitioner had not contended against the said certificate.

This Court finds from the judgment of the Tribunal that the Tribunal had recorded certain findings with regard to depositions made by the witnesses who were produced to support the certificate. The Tribunal has recorded a finding that the Admission Register of the School was exhibited through a Peon who had identified the writing of one Madan Kumar Singh in the Admission Register but in his cross-examination he admitted that the register was not filled up in his presence. In like manner after



noticing the statement of witnesses the Tribunal held that these documents have no conclusive proof of the fact, therefore, those facts could not be proved against the returned candidate-petitioner. Thereafter, the Tribunal has further recorded that because the voter list contained the age of the petitioner as 25 years, therefore, she was eligible to contest the election. What has transpired in the election dispute case are being taken note of to keep in mind the nature of evidence and the value attached to that by the Tribunal.

In the opinion of this Court, the fact that the voter list recorded the age of the petitioner 25 years is not in dispute. In these circumstances one of the issues which would arise for consideration in this case is as to whether on the face of the entry made in the voter list which has attained finality and the same not being under challenge, the Commission could have taken upon itself to adjudicate and decide the issue of date of birth of the petitioner post election. In other words, in spite of entry in the electoral roll / voter list, is it open to the Commission to see whether the person was really disqualified from contesting the election being under age and thereby indirectly nullify the entry existing in the voter list. This has to be considered keeping in



mind that a finality has been given to the decision of the officer preparing the voter list and there is no challenge to the voter list.

The other issue which would call for consideration in the kind of present case is as to whether it is a case of disqualification as envisaged in sub-section (2) of Section 136 or it is a case of dispute as to 'qualification' as envisaged under Section 135 of the Act of 2006. Sections 135 and 136 (2) of the Act of 2006 are quoted hereunder for a ready reference\:

**“135. Qualification for Membership-** Every person whose name is in the list of voters of any Panchayat constituency shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected as a member or office bearer of the Panchayat :

Provided that in the case of seats reserved for Scheduled Castes or Scheduled Tribes or Backward Classes or Women, no person who is not a member of any of the Schedule Castes or Scheduled Tribes or Backward Classes or is not a woman, as the case may be, shall be qualified to be elected to such seat.

**136.** <sup>2</sup>[(2). If any question arises as to whether Member of Panchayat at any level including Mukhiya of Gram Panchayat, Pramukh of Panchayat Samiti or Adhyaksh of Zila Parishad or Sarpanch of Gram Kutchahry or Panch of Gram kutchahry was disqualified before election or has incurred disqualification after election as provided in Article 243-F of Constitution of India and subject to any disqualification mentioned in Section 135 or sub-Section (1) of Section 136, the question shall be referred for the decision of State Election Commissioner. The matter of disqualification before or after election may be brought to the notice of Stat Election Commission in the form of

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2. Deleted by Amdt. Act, 5 of 2016.



complaint, application or information by any person or authority. The State Election Commission may also take *suo motu* cognizance of such disqualification and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard:

Provided that the State Election Commission shall not be entitled to entertain any complaint or petition subject matter of which is purely an election dispute such as corrupt practice, wrongful rejection of nomination etc. in accordance with Article 243-O of the Constitution of India read with Section 137 of the Act.]”

It is apparent from a reading of Section 135 of the Act of 2006 that every person whose name is in the list of voters of any panchayat constituency shall be qualified to be elected as a member or office bearer of the Panchayat unless disqualified under the Act or any other law for the time being in force. The ‘qualification’ thus, is that the name of the person should be there in the voter list. Section 136 (1) (b) only says that a person shall be disqualified for election or after election for holding the post if such person is so ‘disqualified’ by or under any law for the time being in force for the purposes of election to the Legislature of the State, therefore as it appears even if the name of the person who has attained the age of 18 years is entered in the voter list, he shall be taken as ‘disqualified’ for election to the post of Mukhiya if he has not attained the age of 25 years which is prescribed as a condition for election to the Legislature of the State but then by way



of proviso it is stated 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.

Thus, to this Court, it appears that that if the name of a person is there in the voter list and he is not disqualified in terms of Clause (b) of sub-section (1) of Section 136, his election cannot be declared void on the ground of his being less than 25 years of age but the candidate seeking election must have attained the age of 21 years.

This leads to a question whether the Commission could have taken upon itself to record a finding as to the age of the petitioner in the manner it has been done in the present case. Since the issue of jurisdiction of the Commission as envisaged under sub-section (2) of Section 136 of the Act of 2006 is subject matter of consideration before the Hon'ble Full Bench of this Court, this Court would restrain itself from going into the question of jurisdiction and is examining only the manner in which and the procedure which have been followed by the Commission in the matter of determination of age of the petitioner.

This Court comes to a conclusion that the procedures followed for determination of the age of the petitioner cannot be approved. The declaration of an elected candidate's election as null



and void is a serious matter, therefore, it cannot be dealt with by simply endorsing letters to various authorities as have been done in the present case. The District Election Officer seems to have acted as a post office in forwarding the letters of the Commission to the District Panchayat Raj Officer and then the inquiry report of the Block Development Officer has been sent back to the Commission.

Since there is no denial of the fact that during inquiry no notice was given to the petitioner, the report of the Block Development Officer cannot be attached any evidentiary value. The moment it is found that the said report was prepared without giving any opportunity to the petitioner to participate in the inquiry it cannot be allowed to be used against the petitioner. It was all the more necessary because the said inquiry report has been made basis by the Commission for interfering with the election of the petitioner. It is well settled in law that any inquiry held in the matter behind the back of the parties suffers from violation of principle of natural justice. In the case of **A.K. Kraipak & Ors. vs. Union of India & Ors.** reported in **AIR 1970 Supreme Court 150** the Hon'ble Supreme Court has held that there is no difference in the matter of observance of principle of natural justice in a judicial, quasi judicial or administrative decision. The



Hon'ble Supreme Court said that there is a thin line between the judicial, quasi judicial and administrative orders and even that thin line is obliterating over the period . The Commission could not appreciate that whatever findings have been recorded by the Block Development Officer are based on certain documents which were not proved by adopting a minimum level of observance of principle of natural justice. There is no denial of the fact that the Block Development officer did not verify the facts relevant to conclude a pria-facie view that the Certificate is that of the petitioner.

So far as the judgment of the learned co-ordinate Bench of this Court in the case of **Dolly Kumari** (Supra) is concerned, it is apparent from a reading of the same that the facts of the said case were quite different and distinct. In the said case the date of birth certificate of the returned candidate issued by the Bihar School Examination Board contained her date of birth as 23.06.1995. She had sent her representation before the Secretary, Bihar School Examination Board on 06.08.2017 for correction in her date of birth recorded in the matriculation certificate, therefore, it was apparent from the admitted facts of the case that she had not attained 21 years of age as per her matriculation



certificate on the date of her election. The facts of the present case are quite different and distinct.

This Court would rather relied upon the judgment of the learned co-ordinate Bench placed on record as Annexure 'P-12' on behalf of the petitioner in the case of **Sharda Devi Vs. The State of Bihar & Ors.** (C.W.J.C. No. 7884 of 2018) decided on 05.04.2019 reported in **2019 (3) BLJ 295 (PHC)**. In the said case also the State Election Commissioner had disqualified the petitioner of the said case on the ground that she had not completed her age of 21 years. After noticing the facts of the case and the various judgments particularly that of the judgment of the Hon'le Supreme Court in the case of **Birad Mal Singhvi Vs. Anand Purohit** reported in **(1998) Supp. 2 S.C.R. 1**, learned co-ordinate Bench came to a conclusion that the entire approach of the State Election Commission in considering the question of date of birth of the petitioner for declaring her disqualified under Section 18 (2) of the Municipal Act, 2007, was wholly misconceived. The learned co-ordinate Bench also relied upon the judgment of the Hon'ble Supreme Court in the case of **Brij Mohan Singh vs. Priya Brat Narain Sinha** reported in **1965 (3) SCR 861** wherein a question had arisen whether the returned candidate has attained the age of 25 years on the date of his



nomination. The Hon'ble High Court had been pleased to set aside the election of returned candidate on the ground that he was below the age of 25 years on the date of filing of the nomination but the Hon'ble Supreme Court was pleased to set aside the order of the Hon'ble High Court upholding the election of the returned candidate on the ground that the burden of proof that the returned candidate had not attained the age of 25 years on the date of nomination was on the election petitioner and he failed to prove that, the election of the returned candidate could not be set aside. In that case the Hon'ble Supreme Court held that entry made in an official records maintained by the illiterate Chowkidar or by somebody else at his request does not come within Section 35 of the Evidence Act.

This Court finds that the burden of proof to prove that the writ petitioner was below 21 years of age on the date of her nomination lies on the complainant (respondent no. 7) which he had failed to prove. Neither in course of inquiry nor before the State Election Commission she was examined and no notice was given to this petitioner to participate in course of inquiry.

To this Court, thus it appears that the entries made in the voter list showing the petitioner's age as 25 years cannot be nullified in the manner it has been sought to be done in the present



case. The extent of power and jurisdiction of the State Election Commissioner under Section 136 (2) of the Act of 2006 is under consideration before the Hon'ble Full Bench of this Court, therefore, the issue of jurisdiction is left open.

In the opinion of this Court the impugned order as contained in Annexure 'P-10' passed by the State Election Commissioner cannot be allowed to sustain. Annexure 'P-10' is therefore, set aside and the matter is remitted to the State Election Commissioner for a fresh consideration in accordance with law.

In result, the writ application is allowed to the extent indicated hereinabove.

**(Rajeev Ranjan Prasad, J)**

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