

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 107

Civil Writ Petition No.1444 of 2019 (O & M)
Date of Decision: *January 23, 2019*

Seema Rani

..... PETITIONER

VERSUS

State of Haryana & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**
 HON'BLE MR. JUSTICE HARNARESH SINGH GILL

...

PRESENT: - Mr. Sachin Mittal, Advocate, for the petitioner.

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Harnaresh Singh Gill, J

The present writ petition has been preferred by the petitioner under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing order dated 04.01.2019 (Annexure P-3) passed by the Election Tribunal –cum- Civil Judge (Junior Division), Ferozepur Jhirka (for short, 'Tribunal').

FACTS

The facts giving rise to the present lis are that Gram Panchayat, Dhamala consisted of three villages namely, Dhamala, Rangala Rajpur and Chak Rangala. Petitioner is permanent resident of village Rangala Rajpur, Tehsil Ferozepur Jhirka. Election for the post of Sarpanch

of Gram Panchayat, Dhamala, reserved for Scheduled Caste (Women), was scheduled to be held on 17.01.2016. Three candidates including petitioner – Seema Rani filed nominations and contested the election. The other two candidates were respondent No.3 – Chanderwati and respondent No.4 – Reena Kumari. Petitioner was declared as Sarpanch by a margin of 45 votes.

Respondent No.3 – Chanderwati challenged the aforesaid election before the Tribunal and sought fresh election for the post of Sarpanch. Chanderwati alleged that she is permanent resident of village Dhamala, Tehsil Ferozepur Jhirka and is qualified voter of the said Gram Sabha/Gram Panchayat and also fulfills the qualification to contest the election. The elections for the post of Sarpanch, Panch of Gram Panchayat, Member of Panchayat Samiti and Zila Parishad in Haryana are held as per Haryana Panchayati Raj Act, 1994 (for short, ‘1994 Act’) as amended upto date. As per the provisions of Act *ibid*, for the post of Sarpanch, a candidate must not be below the age of twenty one years and if he or she is found below the age of twenty one years, he or she shall be disqualified to contest or elected for the same.

Respondent No.3 alleged that in the nomination form, petitioner declared herself to be 22 years old showing her date of birth as 01.01.1993 and her educational qualification as 8th class pass from Government Middle School, Rangala Rajpur, Tehsil Ferozepur Jhirka. She got prepared the aforesaid certificate of her age and educational qualification with the ulterior motive to file the nomination to contest the election for the post of Sarpanch, in collusion and connivance of the staff of the said school. The date of birth shown by the petitioner is wrong and she has not attained the age of twenty one years.

Respondent No.3 further alleged that date of birth of petitioner is 03.06.1996 and school transfer certificate issued by the Head Master, Government Middle School, Rangala Rajpur is forged and fabricated. She alleged that Returning Officer/ARO did not consider her objections at the time of scrutiny of nominations and illegally accepted the nomination form of petitioner for the post of Sarpanch, Gram Panchayat, Dhamala and allotted the symbol to her.

The election petition filed by respondent No.3 was contested by the petitioner who denied the allegations/objections raised by respondent No.3.

From the pleadings of parties, issues were framed. Parties led their evidence in order to substantiate their claim. After hearing counsel for the parties and perusing the record, the Tribunal arrived at the conclusion that school leaving certificate (Ex.R-3) submitted by respondent No.1 alongwith her nomination form does not depict the correct date of birth of petitioner and when the birth certificate of petitioner is duly available and placed on file as Ex.P-7, primacy is to be given to the birth certificate, in which, date of birth of petitioner has been mentioned as 03.06.1996. Consequently, election petition filed by respondent No.3 was partly allowed and election for the post of Sarpanch, Gram Panchayat, Dhama, held on 17.01.2016 was set aside. Direction was issued to Deputy Commissioner/District Election Officer, District Mewat at Nuh, to conduct fresh election on the resultant vacant post of Sarpanch, Gram Panchayat Dhamala, Tehsil Ferozepur Jhirka.

ARGUMENTS

Counsel for the petitioner has vehemently contended that impugned order passed by the Tribunal is not sustainable in the eyes of law. Misappreciation and misreading of evidence has resulted in miscarriage of justice. The Tribunal has failed to appreciate the documentary evidence relied upon by the petitioner in the shape of exhibited documents. The impugned order dated 04.01.2019, passed by Tribunal being arbitrary and illegal, is liable to set aside.

CONSIDERATION

This Court has considered the aforesaid submissions made by counsel for the petitioner and gone through the record.

For proper adjudication of the matter in controversy, Section 173 of 1994 Act is reproduced hereunder for ready reference:-

“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.

(3) No person whose name is not entered in the list of voters for the villages, shall be qualified to be elected from any electoral division thereof.

(4) Subject to any disqualification of a person the list of voters shall be conclusive proof for the purpose of determining under this section whether any person is or is

not qualified to vote, or to be elected any election, as the case may be.”

As per school leaving certificate issued by the Head Master, Government Middle School, Rangala Rajpur, Tehsil Ferozepur Jhirka, age of the petitioner Seema Rani has been shown as 01.01.1993. However, perusal of the record goes to show that Birth certificate of petitioner shows her date of birth as 03.06.1996. This document has been proved on record as Ex.P7. Its registration was also done as 03.06.1996.

It is settled law that there is a presumption of correctness in Birth Certificate, which is issued by the Registrar (Births & Deaths) and reference can be made to the judgment of Division Bench of this Court in **Resham Singh vs. Union of India and another, 2008(1) R.C.R. (Civil) 131** wherein while dealing with a conflict between date of birth recorded in Birth Register and School leave certificate, it was held that entry in the Birth Certificate issued by the Registrar of Births and Deaths would prevail except where certificate was held to be unreliable, suspicious or appears to be procured or manipulated. Para 13 and 15 read as under:-

“13. A birth certificate is issued by a Registrar of Births and Deaths and reflects an entry extracted from the register maintained by the Registrar under the Registration of Births and Deaths Act, 1969. The aforementioned statute was enacted to provide for and regulate registration of Births and Deaths and for matters connected therewith. Section 7 thereof, requires a State Government to appoint a Registrar for each area comprising the area within the jurisdiction of a municipality/panchayat or the local authority or any other area or a combination of any two or more of them. Section 16 of the Act requires every Registrar to keep in the prescribed form a register of Births and Deaths for the registration of births and deaths in his area or any part

thereof in relation to which, he exercises jurisdiction. A register of Births and Deaths is, thus, a public record of births and deaths that occur within the area assigned to a Registrar. The Register being a public record, presumption of truth attaches thereto and consequently to the birth certificate, reflecting an extract from the Births and Deaths register. A matriculation certificate, on the other hand, is primary evidence of the marks obtained by a candidate in a qualifying examination and the date of birth recorded as an ancillary measure. Primacy would, therefore, have to be accorded to the date of birth reflected in the birth certificate issued by the Registrar of Births and Deaths.

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15. Thus, taking into consideration the aforementioned judgments, 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 the 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.”

This Court in **Akshita Singh vs. Central Board of Secondary Education and others, 2014(1) PLR 387** held that if there is a conflict between date of birth recorded in the Birth Register and School leaving certificate, it is always the entry in the birth certificate issued by the Registrar of Births and Deaths which would prevail.

The Hon'ble Supreme Court in **CIDCO vs. Vashudha Gorakhnath Mandevleka, 2009 (7) SCC 283** held that entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act, 1872. It would prevail over an entry made in the school register. In that case, respondent failed to examine any person including her parents on whose information her date of birth was mentioned in the school record. The documents produced by the respondent to prove her age have no evidentiary value.

The Hon'ble Supreme Court in another judgment in **Sushil Kumar vs. Rakesh Kumar, 2003(4) R.C.R. (Civil) 753** held that transfer certificate issued by a Primary school does not satisfy the requirement of Section 35 of Indian Evidence Act. Para 32 and 33 of the judgment read as under:-

“32. Under Section 35 of the Indian Evidence Act, a register maintained in terms of a statute or by statutory authority in regular course of business would be relevant fact. Had such a vital evidence been produced, it would have clinched the issue. The respondent did not choose to do so.

33. In the aforementioned backdrop the evidence brought on record are required to be considered. The Admission Register or a Transfer Certificate issued by a Primary School do not satisfy the requirements of Section 35 of the Indian Evidence Act. There is no reliable evidence on record to show that the date of birth was recorded in the school register on the basis of the statement of any responsible person.”

In the case in hand, date of birth certificate of petitioner is duly available as Ex.P7. Primacy is to be given to the birth certificate of petitioner in which her date of birth has been mentioned as 03.06.1996 and not to the school leaving certificate in which the date of birth of petitioner

has been mentioned as 01.01.1993. Thus, petitioner is not eligible/qualified to be elected from electoral division and it is held that she did not attain 21 years on the date of submission of nomination form.

ORDER

i) CWP No. 1444 of 2019 is dismissed. Impugned judgment dated 04.01.2019 rendered by the Election Tribunal, Ferozepur Jhirka is affirmed.

ii) No order as to costs.

(A.B. Chaudhari)
Judge

(Harnaresh Singh Gill)
Judge

January 23, 2019
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No