

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.1617 of 2019 (O&M)

Date of Decision: *January 23, 2019*

Vishal Sharma

..... PETITIONER

VERSUS

State of Haryana & others

..... RESPONDENTS

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

. . .

PRESENT: - Mr. Vikram Singh, Advocate for the petitioner.

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Harnaresh Singh Gill, J

The present writ petition has been preferred by the petitioner under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the judgment dated 17.12.2018 (Annexure P-3) passed by the Election Tribunal –cum- Civil Judge (Junior Division), Shahbad, District Kurukshetra, vide which election petition filed by respondent No. 5 was allowed.

FACTS

The facts giving rise to the present lis are that respondent No. 5 filed petition under Section 176 of Haryana Panchayati Raj Act 1994 alleging therein that he had filed nomination form to contest the election of

Member, Panchayat Samiti from Ward No. 12, Block Shahbad which was accepted by the Returning Officer, Shahbad. The petitioner had also filed nomination form from the same ward. Respondents No. 6 to 11 have also contested the election of Member, Panchayat Samiti from the same ward. Elections for the posts of Sarpanch, Panch and Member Zila Prishad had taken place on 17.1.2016. The counting of the votes were done on 28.1.2016. The petitioner won the elections with a margin of 51 votes whereas respondent No. 5 remained at second position.

Respondent No.5 challenged the aforesaid election before the Tribunal and sought its setting aside mainly on the ground that the elections for the post of Sarpanch, Panch of Gram Panchayat, Member of Panchayat Samiti and Zila Parishad in Haryana are held as per the Haryana Panchayati Raj Act, 1994 (for short, '1994 Act') as amended upto date. As per the provisions of Section 175 of the Act *ibid*, for the post of Member, a candidate must not be below the age of twenty one years failing which he is disqualified to contest the panchayat elections.

Respondent No.5 alleged that in the nomination form, petitioner declared herself to be more than 21 years old showing his date of birth as 17.05.1994 which is recorded in the school record i.e. DMC of matriculation, DMC of 12th class, in the certificate of middle standard as well as 5th standard. The date of birth shown by the petitioner is wrong and he has not attained the age of twenty one years.

Respondent No.5 further alleged that petitioner was born on 08.08.1995 at village Gumti, Tehsil Shahbad, District Kurukshetra and the information regarding birth of petitioner has been recorded by the Health Department of State of Haryana under Section 17 of the Births and Deaths

Registration Act, 1969, wherein his name has been shown as Vishal, mother's name as Sunita Rani and father's name was shown as Sukhdev son of Kartar Chand. It has been alleged that petitioner has concealed the material information and wrongly mentioned his date of birth to show himself of 21 years old. Hence his nomination form was also improperly accepted.

The election petition filed by respondent No.5 was contested by all the respondents including petitioner herein. They denied the allegations/objections raised by respondent No.5.

From the pleadings of parties, issues were framed. Parties led their evidence in order to substantiate their respective claims. After hearing counsel for the parties and perusing the record, the Tribunal arrived at the conclusion that "the election in question in this case i.e. Member, Panchayat Samiti, Shahbad was required to be set aside because respondent No.1 (petitioner herein) was not qualified to contest he being below 21 years of age. Consequently, election petition filed by respondent No.5 was allowed and the authorities were directed to conduct fresh elections for the post of Member, Panchayat Samiti, Shahbad as per rules.

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 being arbitrary and illegal, is liable to set aside.

CONSIDERATION

This Court has considered the aforesaid submissions made by counsel for the petitioner and we have 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 the school certificates, age of the petitioner has been shown as 17.05.1994. However, perusal of the record goes to show that in

Birth certificate of petitioner depicts his date of birth as 08.08.1995.

It is settled law that there is a presumption of correctness to the 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 leaving certificate, it was held that entry in the Birth Certificate issued by the Registrar of Births and Deaths would prevail except where such certificate is turned to be unreliable, suspicious or appears to be procured or manipulated. It has further been held that register of birth and death is 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. 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 document produced by the respondent to prove her age has 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, primacy is to be given to the Birth certificate of petitioner in which her date of birth has been mentioned as 08.08.1995 and not to the school certificates in which the date of birth of petitioner has been mentioned as 17.05.1994. Thus, petitioner was not eligible/qualified to be elected from electoral division and it is held that he did not attain 21 years on the date of submission of nomination form.

ORDER

(i) CWP No. 1617 of 2019 is dismissed. Impugned judgment dated 17.12.2018 rendered by the Election Tribunal, Shahbad, District Kurukshetra 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