

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-9254-2018
Decided on : 06.12.2019

Chandravati @ Chanda

..... Petitioner

Versus

State of Haryana & ors.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Vikas Bahl, Sr. Advocate with
Ms. Priyanka Kansal, Advocate
for the petitioner.

Mr. S.S.Pannu, DAG, Haryana.

Mr. S.S.Nara, Advocate
for respondents No.3 and 4.

Mr. Sanjay Panghal, Advocate for
Mr. Naveen Jaglan, Advocate for respondent No.5.

Manjari Nehru Kaul, J.

Challenge in the instant writ petition filed under Article 226/227 of the Constitution of India is to the orders dated 03.04.2018 (Annexure P-5) and 06.03.2018 (Annexure P-3) vide which the election petition filed by the respondents was allowed.

2. Election Commission of Haryana issued a notification dated 08.09.2015 (Annexure P-12) for elections to Panchayati Raj Institutions i.e. Panches, Sarpanch, Members of Panchayat Samitis and Zila Parishads, and the date of filing of nomination for the said election was from 23.12.2015 to 29.12.2015. The minimum age for contesting the said election was 21

years. The petitioner filed her nomination for the post of Sarpanch of Gram Panchayat Bhojpur, Tehsil Jagadhri District Yamuna Nagar as the same was reserved for women of General Category. The petitioner annexed copies of her High School Certificate and Aadhar Card along with the nomination form. Respondents No.3 and 4 along with other contesting respondents objected to her candidature for the post of Sarpanch as she did not fulfill the requisite minimum age criteria and the qualification required for the said post. Hence, respondents No.3 and 4 while supplying the certified copies of the matriculation certificate and the Aadhar Card of the petitioner requested the officer to look into and decide the objections but to no avail. It was alleged that in fact the petitioner had filed a false document issued by the Gram Panchayat, Raal, District Mathura (UP) wherein her date of birth was mentioned as 13.07.1993. It was further pleaded by the private respondents that in fact the petitioner had supplied a forged document bearing Registration No.3 with date of registration as 19.09.2015. The said birth certificate was issued by the Gram Panchayat Raal, District Mathura (UP) on 22.09.2015. It was further alleged that the petitioner had tried to play a fraud upon the voters by way of misrepresentation as different dates of birth were mentioned in her matriculation certificate and in her birth certificate i.e. 13.07.1995 and 13.07.1993 respectively. It was pleaded by respondents No.3 and 4 that a forged certificate had been prepared by the petitioner so as to make her eligible to contest the election and the same had not been rejected by the Returning Officer despite being objected to by them. It was further averred that even after filing of the nomination form, private respondents demanded relevant documents of the petitioner i.e. copies of

the ration card, Aadhar Card, High School Certificate and Birth Certificate but the same were deliberately not provided to them. The said documents were not supplied to respondent No.4 – Sunita Rani even under the Right to Information Act, 2005.

3. The averments of the private respondents herein were denied by the petitioner by way of written statement before the court below. It was submitted that since she was 21 years of age at the time of filing of the nomination form, she was eligible to contest the elections for the post of Sarpanch. In support of her date of birth, she placed reliance on the Birth Certificate issued by the competent authority i.e. Gram Panchayat Raal, District Mathura (UP). She further claimed that while filing her nomination form, she had attached the requisite papers regarding her date of birth and qualifications. She asserted that the documents so annexed with her nomination form were true and genuine and no illegality or forgery was committed in obtaining the said Birth Certificate.

4. From the pleadings of the parties, following issues were framed by learned Civil Judge (Jr. Division):

1. Whether the election of Sarpanch of Gram Panchayat, Bhojpur is liable to be set aside as prayed for? OPP
2. Whether the petitioner is entitled to the decree for declaration as prayed for? OPP
3. Whether the petitioner is entitled to the decree for permanent injunction as prayed for? OPD
4. Whether the present petition is not maintainable in the present form? OPR

5. Relief.

5. On an analysis of the evidence and other material available on record, learned Civil Judge set aside the election of the petitioner herein on the ground that she had not got the necessary corrections qua the date of birth carried out in the High School Certificate for four years i.e. from 2011 to 2015, and grave violation of rules and regulations had been committed by the Gram Panchayat Raal, District Mathura (UP) while issuing the said birth certificate. Aggrieved, the petitioner filed an appeal before the Appellate Court, which also met with the same fate vide order dated 03.04.2018. Hence, the present writ petition has been filed.

6. Learned counsel for the petitioner has primarily challenged the impugned orders on the ground that failure to get the necessary corrections carried out qua the date of birth in the High School Certificate from 2011 to 2015 cannot be a ground to set aside her election. Moreover, no evidence whatsoever was adduced before the learned court below to prove that the said certificate submitted by the petitioner was forged. It was vehemently argued that the Birth Certificate in which date of birth of the petitioner was reflected as 13.07.1993 was issued by the competent authority and the same had not been cancelled or rejected by any competent court of law or by any competent authority. Thus, the Courts erred in going beyond the evidence. Learned counsel for the petitioner drew the attention of this Court to the voter card of the petitioner, which was issued in the year 2011 wherein her year of birth was also recorded as 1993 and hence, strenuously pleaded that in this factual background it could not be inferred that a forgery had been committed by the petitioner. More so, the Birth Certificate had been issued

under Section 12/17 of the Registration of Births and Deaths Act, 1969 and Rule 8/13 of the Uttar Pradesh Registration of Births and Deaths Rules by the competent authority of the Government of Uttar Pradesh. Learned counsel for the petitioner strenuously urged that as per the settled law it is the Birth Certificate of a person, which shall hold primacy over the High School Certificate and in the instant case, the Birth Certificate which had been issued by the Gram Panchayat Raal, District Mathura (UP) clearly depicted the date of birth of the petitioner as 13.07.1993. Learned counsel for the petitioner also urged that it was not only the Birth Certificate in which the date of birth was mentioned as 13.07.1993 but also other relevant documents i.e. Aadhar Card and Voter Card had the same date of birth as the Birth Certificate.

7. The question, which thus, arises in the instant writ petition is which out of the two i.e. the Birth Certificate on the one hand and the High School Certificate on the other, would hold primacy?

8. Before adjudicating on the issue, it would be apposite to reproduce Section 13 of Registration of Birth and Death Act, 1969 (for short 'the Act'), which is as under:

“13. Delayed registration of births and deaths:-

(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefore, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after 30 days but within one year

of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action.”

Sub Section 3 of Section 13 of the Act leaves no manner doubt that if a birth is registered after more than one year of its occurrence, it can only be done on an order made by a Magistrate of the First Class or on an order by a Presidency Magistrate. There is nothing to suggest that such a course was adopted before the Birth Certificate was issued by the Gram Panchayat Raal, District Mathura (UP). It may be noted that while the Birth Certificate issued by the said gram panchayat shows the date of birth as 13.07.1993, it was actually issued on 22.09.2015 with date of registration as 19.09.2015. Thus, the Birth Certificate (Annexure P-6) was issued by the Gram Panchayat in violation of Section 13(3) of the Act and cannot be relied upon. In the circumstances, the Birth Certificate issued by the Gram

Panchayat loses its primacy over the High School Certificate, and it is the latter, which has rightly been treated as authentic by the authorities below.

9. Further, reliance placed by the petitioner on the Aadhar Card and the Voter Card issued to her to show that her date of birth is 13.07.1993 is also totally misplaced and raises doubts precisely for the reason that there is nothing forthcoming as to what proof she gave at the time of applying for Aadhar Card and Voter Card because she only at that point of time had her matriculation certificate in which her Date of Birth was 13.07.1995.

10. In *Ambika Kaul vs. Central Board of Secondary Education and others, 2015(3) SCT 350*, it has been held that it is mandatory to produce the Birth Certificate issued by the Registrar of Births and Deaths whenever and wherever proof of date of birth is required and in case the Birth Certificate issued by the Registrar at the time of his/her admission to a school is not provided then the person would do so at his own peril. It was further held that if a person fails to disclose his date of birth as per the Birth Certificate on completion of his education, he would be estopped from relying upon the Birth Certificate issued by the Registrar, Births and Deaths at a later stage of life.

In the instant case, from 2011 to 2015, for the reasons best known to the petitioner, she did not seek any correction in the actual date of birth on the basis of the Birth Certificate purportedly issued by the Gram Panchayat Raal, District Mathura (UP). In fact, this certificate should have been issued on an order by the Magistrate of the Ist Class and which has admittedly not been done. Therefore, the certificate issued by the Gram

Panchayat cannot be looked at. What is intriguing is that the said certificate was issued about three days short of the last date of filing nomination, and within days of the issuance of the notification for elections.

11. As a sequel to the above discussion, we do not find any ground to interfere in the impugned judgment dated 14.09.2017 passed by the court below, which is well reasoned one.

Consequently, the present petition being devoid of any merit stands dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

06.12.2019
sonia

Whether speaking/non-speaking:
Whether reportable :

Yes/No
Yes/No