

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13178 of 2017

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Sudhanshu Kumar, Son of Sri Kaushal Kishore Rai, Resident of Village and P.O. Rajaura, P.S. Begusarai Muffasil, District- Begusarai.

... .. Petitioner/s

Versus

1. The State Election Commission, Sone Bhawan Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, The State Election Commission, Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, the State Election Commission, Sone Bhawan Birchand Patel Path, Patna.
4. The District Magistrate-cum-District Election Officer (Panchayat), Begusarai, District- Begusarai.
5. Geeta Devi, Wife of Sri Tuntun Rai, Resident of Village and P.O. Rajaura, P.S. Begusarai Muffasil, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. S B K Manglam, Advocate with Ms. Anita Kumari, Advocate
For the State	:	Mr. Manish Kumar, AC to AAG 6
For the Respondent SEC :		Mr. Amit Shrivastava with Mr. Sanjeev Nikesh, Advocates
For Respondent No. 5	:	Mr. Rajeev Ranjan, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 13-02-2020

Heard learned counsel for the petitioner; learned AC to AAG 6 for the State; learned counsel for the State Election Commission (hereinafter referred to as the 'Commission') and learned counsel for the respondent no. 5.

2. The petitioner has moved the Court for the following reliefs:



*“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the order dated 22.08.2017 passed by the Respondent no. 2 in Case No. 47 of 2016 (Geeta Devi Vs. Sudhanshu Kumar) communicate to the petitioner under memo no. 3758 dated 24.08.2017 whereby and where under the Respondent no. 2 has been pleased to disqualify the petitioner to hold the post of Mukhiya of Gram Panchayat Raj, Rajaura on the ground that on the date of his election since he had not attained the age of 21 years, in view of his date of birth as recorded in his Matriculation Certificate, in view of the provisions contained under Section 136(1)(b) of the Bihar Panchayat Raj Act, 2006, he is disqualified to hold the post of Mukhiya.*

(II) For a declaration that if the Bihar Panchayat Raj Act, 2006 does not contemplate that date of birth recorded in the Matriculation Certificate would be the only conclusive proof about the age of the returned candidate and no other document can be considered in support of the age, the Respondent no.2 was not justified to disqualify the petitioner to hold the post on the ground that he had not attained the age of 21 years, if number of documents were produced by the petitioner in support of his case that he had attained the age of 21 years on the date of election.

(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.”

3. The brief facts of the case are as under:

The petitioner was elected to the post of Mukhiya of Gram Panchayat Raj, Rajaura in the district of Begusarai. Subsequently, the respondent no. 5 filed an application before the



Commission against the petitioner that at the time of election, he had not attained the age of 21 years as was required and, thus, not fulfilling the eligibility criteria, he may be removed from his post. In terms thereof, Case No. 47 of 2016 was instituted by the Commission and ultimately, the petitioner has been removed from the post of Mukhiya by order contained in Memo No. 3758 dated 24.08.2017 passed by the Commissioner of the Commission.

4. Learned counsel for the petitioner submitted that the order has been passed solely based on the fact that in the matriculation certificate issued in favour of the petitioner, his date of birth was recorded as 26.01.1996. It was submitted that this was an inadvertent mistake for the reason that his actual date of birth is 26.01.1993, which is reflected from the entries made in the Election Photo Identity Card issued by the Election Commission of India; in the voter list of Begusarai State Assembly Constituency in the year 2015 where his name appeared at serial no. 223 and his age is shown as 22 years; his Aadhar Card where also date of birth is recorded as 26.01.1993 as also horoscope showing that he was born on 26.01.1993. It was submitted that by ignoring such documents, the Commission has proceeded to rely solely on the matriculation certificate entry against which the



petitioner had moved before the Bihar School Examination Board itself for correction on the ground that it was an inadvertent error.

5. Learned counsel submitted that earlier in CWJC No. 3265 of 2017 in **Rajani Kumari vs. The State Election Commission and Others**, under similar circumstances, this Court by order dated 16.03.2017 had dismissed the writ petition on the ground that the date of birth recorded at the time of enrolling as voter discloses that the writ petitioner had not attained the minimum age for contesting the election. It was submitted that against the order, LPA No. 566 of 2017 was filed which was referred to a Full Bench and in the order passed by the Full Bench in **Rajani Kumari vs. State Election Commission** reported as **2019 (4) PLJR 673**, after deciding the points formulated, the matter was remanded to the Division Bench for decision. It was submitted that by order dated 22.10.2019 passed in LPA No. 566 of 2017 in **Rajani Kumari (supra)**, the Court after setting aside the order impugned of the Commissioner of the Commission by which she was removed from her post, the matter was remanded to the Commission for re-consideration. Learned counsel submitted that pursuant to such remand the Commissioner of the Commission by order contained in Memo No. 2244 dated 06.12.2019 had passed an order in favour of Rajani Kumari.



Learned counsel submitted that in such background, when Rajani Kumari had also been removed on the ground that the age disclosed by her based on the school first attended and other documents showing her to be underage and, thus, not eligible to contest the election and she having produced before the authorities certificate Sanskrit Shiksha Board showing her to be above the minimum age required to contest the election, the Commissioner of the Commission, by the aforesaid order and taking into account the decision of the Full Bench in **Rajani Kumari** (*supra*), that if there is no unimpeachable material before the Commission it should not interfere in the matter and relegate the parties to the Civil Court, the matter before the Commission has been closed and Rajani Kumari has been retained on the post. It was submitted that in other similar cases also, the Commission has revised its earlier order in similar terms.

6. Learned counsel for the Commission submitted that the petitioner, after by-election being notified, had contested the election and lost the same and respondent no. 5 has now been elected. It was submitted that once the petitioner having contested and lost, the Court may not remand the matter as the petitioner has to face the consequences.



7. Learned counsel for the respondent no. 5 adopted the arguments of learned counsel for the Commission. However, he further added that the application filed by the petitioner before the Bihar School Examination Board for making correction in the date of birth recorded in her matriculation certificate has already been rejected on the basis of Admission Register and all the documents produced by the petitioner are of post election period.

8. Learned counsel for the petitioner, by way of reply, submitted that on 21.06.2018, the Court had recorded that if the election for the post of Mukhiya Gram Panchayat Raj, Rajaura was held, the result of the same shall be subject of final outcome of the writ petition. Learned counsel submitted that in such background, obviously the election of respondent no. 5 has to go. He further referred to the Division Bench order in **Nikki Devi vs. State Election Commission (Panchayat)** reported as **2019 (3) PLJR 856**, the relevant being at paragraph no. 40, for the proposition that once the orders against the petitioner are set aside, the consequential election also stands annulled, especially in view of such indication in the order passed in the said case prior to the elections. He further relied upon the decision of a Bench of this Court in **Sharda Devi vs. State of Bihar** reported as **2019 (3) PLJR 534**.



9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, without going into the merits of the matter, the Court finds that in view of similar matters having been remanded to the Commission for fresh consideration and the present case being identical in nature to such cases, in view of the ratio of the judgments relied upon by learned counsel for the petitioner, including the Full Bench, it would be appropriate to remand the matter to the Commission.

10. Accordingly, the application is allowed. The order impugned dated 22.08.2017 passed by the Commissioner of the Commission in Case No. 47 of 2016, as contained in Memo No. 3758 dated 24.08.2017, stands set aside. The matter is remanded for fresh consideration, in accordance with law, taking into consideration the law settled by the Court in cases which may be referred to and relied upon by the parties before the Commission, including that of the aforesaid Full Bench.

11. Having passed the order, though, the Court would have set aside the election of the respondent no. 5, but is inclined to indicate that for the time being the respondent no. 5 shall not be disturbed from the post on which she has been elected. Depending upon the order, which shall be passed by the Commission, the consequences shall follow, inasmuch as, if the Commission



upholds the action and reiterates its earlier order against the petitioner, the respondent no. 5 shall continue on the post but if the Commission decides in favour of the petitioner, the petitioner shall stand reinstated to the post of Mukhiya of Gram Panchayat Raj, Rajaura and the respondent no. 5 shall automatically stand removed from the post.

12. As the matter has been pending for long since the year 2016, for the ends of justice, let the Commission decide the matter expeditiously. Taking into consideration the submissions of learned counsel for the petitioner and the Commission that the present Commissioner of the Commission is to demit office by the end of March, 2020, the Court would request him to ensure that final orders are passed by him so that the matter does not unnecessarily linger indefinitely.

13. To facilitate matters, let the parties appear before the Commissioner of the Commission on 24th February, 2020 at 4:30 P.M., as has been suggested by learned counsel for the Commission.

14. The Court would only indicate that the Commissioner of the Commission shall give reasonable opportunity of hearing to all concerned and after considering all points raised by the parties, shall pass a reasoned order. It is further



indicated that the Court has not expressed any opinion on the merits of the matter and, thus, it shall be open to the Commission to take an independent view, in accordance with law based on the facts and materials before it which may be produced by the parties.

(Ahsanuddin Amanullah, J)

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