

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6191 of 2022

Mamta Kumari, Wife of Srikant Kumar Ravi, Resident of Village Amarpura,
P.S. Rafiganj, District Aurangabad (824122), Ex Mukhiya, Kajpa Gram
Panchayat, Block Rafiganj, District Aurangabad.

... .. Petitioner

Versus

1. The State of Bihar through the District Magistrate-cum-District Election Officer (Panchayat), Aurangabad, District-Aurangabad.
2. The Sub-Divisional Officer, Sadar, District-Aurangabad.
3. The District Panchayat Raj Officer, Aurangabad.
4. The Block Development Officer, Block Rafiganj, District Aurangabad.
5. The State Election Commissioner, the State Election Commission, Bihar, 3rd Floor, Sone Bhawan, Veerchand Patel Path, Patna.
6. The Secretary, the State Election Commission, Bihar, 3rd Floor, Sone Bhawan, Veerchand Patel Path, Patna.
7. Vineeta Devi, Wife of Ajay Kumar, Resident of Village Kajpa, P.S. Rafiganj, District Aurangabad.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Y.V.Giri, Senior Advocate Mr. Ranjeet Choubey, Advocate
For the Respondent State:		Mr. Ajay, GA- 5
For the Respondent SEC :		Mr. Sanjeev Nikesh, Advocate Mr. Girish Pandey, Advocate
For the Respondent No.7:		Mr. Sajid Salim Khan, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 10-08-2022

Exercising jurisdiction vested under Section 136(2) of
the Bihar Panchayat Raj Act, 2006 (in short 'the Act'), the State
Election Commission, Bihar, (in short 'the SEC') by its order
dated 05.04.2022 passed in Case No. 1/2022 (Vineeta Kumari Vs.
Mamta Kumar), has declared that the petitioner suffers from



disqualification to hold the post of Mukhiya in terms of Section 136(1)(b) of the Act and has accordingly, by the said order, relieved the petitioner from the post of Mukhiya of Kajpa Gram Panchayat of Rafiganj Block in the district of Aurangabad.

2. The said order dated 05.04.2022, issued vide memo No.1/2022/1380 dated 06.04.2022, is under challenge in the present writ application.

3. We have heard Mr. Y.V. Giri, learned Senior Counsel for the petitioner, Mr. Sanjeev Nikesh, learned counsel for the State Election Commission, Mr. Ajay, learned G.A.-5 for the State of Bihar and Mr. Sajid Salim Khan, learned counsel appearing for the private respondent No.7.

4. Before considering the facts asserted in the writ petition to assail the impugned order, we have considered it apposite to shortly narrate certain relevant admitted facts. The petitioner and respondent no. 7 had contested the election for the post of Mukhiya of the aforesaid Kajpa Gram Panchayat. The petitioner having secured highest number of votes was declared as the returned candidate for the said post. The election was held on 20.10.2021 and the result was declared on 22.10.2021. Respondent No. 7 made an application before the SEC under Section 136(2) of the Act asserting therein that the petitioner had not attained the age



of 21 years as on the date of election and, therefore, she was disqualified to hold the post of Mukhiya by operation of Section 136 of the Act. Respondent No. 7 claimed that the date of birth of the petitioner as recorded in the school and college is 17.02.2001, whereas she had wrongly entered her date of birth as 17.01.1996 in her nomination form. Without referring to further details as disclosed in the complaint filed by respondent No. 7, we must notice, at this stage, that the date of birth of the petitioner as entered in her matriculation certificate is indisputably 17.02.2001. This factual position is not at all in dispute. Before passing of the impugned order, the petitioner was given opportunity of hearing by the SEC. From the impugned order, it transpires that the petitioner relied on an admission register maintained by the Madhya Vidyalaya, Salaiya to make out a case that her actual date of birth was 17.02.2000, which was inadvertently recorded as 17.02.2001 for matriculation examination and accordingly 17.02.2001 was entered as her date of birth in the matriculation certificate. She also placed reliance before the SEC, on an application filed by her before the Bihar School Examination Board for correction in the date of birth, which is still pending. She took a plea that the complaint filed before the SEC by respondent No. 7 deserved to be rejected as the dispute related to the



petitioner's age, which could not be determined without adducement of evidence and the matriculation certificate could not be treated to be an unimpeachable evidence for the purpose of determining the issue of disqualification on the ground of age. The SEC has filed a counter affidavit justifying its decision as contained in the impugned order, which is based on various documents including the documents maintained by the Bihar School Examination Board of the matriculation examination indicating petitioner's date of birth as 17.02.2001.

5. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner has submitted that after filing of the complaint by respondent No. 7, the SEC had sought a report from the District Election Officer (Panchayat)-cum-District Magistrate, Aurangabad. According to him, a report was submitted by the District Magistrate with a clear finding that the date of birth of the petitioner was 17.01.1996 with a recommendation that for better ascertainment of age, medical examination could be done. The said report dated 22.02.2022 has been brought on record by way of Annexure-P/2 of the writ petition.

6. From Annexure-P/2 to the writ application, it appears that the date of birth of the petitioner as recorded in the PAN Card, Aadhar Card and Electoral Photo Identity Card (EPIC) is



17.1.1996. In the birth certificate issued by the Registrar (Births and Deaths), the date of birth of the petitioner is recorded as 17.01.1996. Evidently, the said report at Annexure-P/2 did not take note of the petitioner's date of birth as recorded in the matriculation certificate.

7. Mr. Giri, learned Senior Counsel, has submitted that the petitioner had raised a preliminary objection over the maintainability of the complaint filed by respondent No. 7 before the SEC in the light of the law laid down by a Full Bench of this Court in case of *Rajni Kumar vs. State Election Commission*, reported in **2019(4) PLJR 673**, wherein it has been categorically held that issue of qualification cannot be raised before the SEC and an issue pertaining to facts cannot be gone into at all by the SEC. He has submitted that the date of birth of the petitioner as entered in the petitioner's matriculation certificate is wrong and reliance could not be placed upon such entry, the same having been disputed by the petitioner particularly in view of the fact that though necessary steps for correction has already been taken, the matter is still pending before the Board. He has further submitted that in the supplementary affidavit filed by the petitioner before the SEC, she had produced the admission register wherein her date of birth is recorded as 17.02.2000 and had asserted by mistake, her



date of birth was recorded as 17.02.2001 at the time of admission in the high school from the middle school and accordingly a wrong date of birth came to be mentioned in the matriculation certificate. He has submitted that without looking into the evidence brought on record before the SEC, the SEC has passed the impugned order. He has vehemently argued that disqualification on the ground of age is a disputed question of fact which could not have been gone into by the SEC in a summary proceeding under Section 136(2) of the Act, relying on Supreme Court's decision in case of ***Birad Mal Singhvi v. Anand Purohit***, reported in (1988) Supp SCC 604 and a Single Bench decision of this Court in case of ***Sharda Devi vs. The State of Bihar and others***, reported in 2019(3) PLJR 534. He has submitted that based merely on the date of birth as mentioned in the matriculation certificate ignoring other documents in the nature of EPIC, Aadhar Card etc. and without recording any evidence, the SEC ought not to have held the petitioner's date of birth to be 17.02.2011 and thereby disqualified her to hold the post of Mukhiya.

8. The substance of the submission made by Mr. Y.V.Giri, learned Senior Counsel is that the SEC ought not to have exercised its jurisdiction under Section 136(2) of the Act on the basis of the complaint made by respondent No.7 to determine a



complex question of fact relating to correct age of the petitioner. In any event, the SEC ought not to have recorded its conclusion regarding the petitioner's disqualification without permitting the parties to adduce evidence. Further, in any event, the SEC ought not to have determined the petitioner's age solely on the basis of matriculation certificate/registers maintained by the Bihar School Examination Board, according to Mr. Giri.

9. Mr. Sajid Salim Khan, learned counsel appearing on behalf of private respondent No.7 has, on the other hand, placing reliance on a co-ordinate Bench decision of this Court rendered in similar circumstance in case of *Annu Kumari @ Annu Sharma vs. The State Election Commission and Others*, reported in **2014(4) PLJR 667**, has submitted that date of birth recorded in a matriculation certificate granted by a competent authority carries far greater evidentiary value than evidentiary value which can be attributed to a certificate given by Headmaster of a school. He has submitted that matriculation certificate issued by the Bihar School Examination Board in favour of the petitioner is an unimpeachable document. Her date of birth as entered in the said certificate cannot be disputed by the petitioner merely on the basis that she has taken steps for change of the date of birth. Relying on the same decision in case of *Annu Kumari @ Annu Sharma* (supra), he has



submitted that the SEC cannot be said to have acted beyond its jurisdiction while passing the impugned order in view of the admitted facts that were available before it. He has also relied on two unreported decisions of this Court (i) dated 27.02.2013 rendered in L.P.A. No. 200 of 2013 (*Smt. Babita Kumari vs. The State of Bihar and Others*) and (ii) 06.03.2013 rendered in L.P.A. No. 267 of 2013 (*Rani Devi vs. The State Election Commission and Others*), to contend that exercising jurisdiction of judicial review under Article 226 of the Constitution of India, this Court is primarily to be confined to the errors in the decision making process. He has submitted that the finding recorded by the SEC cannot be said to be perverse, i.e., without evidence or contrary to the relevant evidence available before the SEC.

10. We have considered the pleadings on record with the assistance of learned counsel representing the parties in this case, in the background of their respective rival submissions noted above.

11. It can be easily culled out from what has been asserted in the writ petition that the petitioner had entered 17.01.1996 as her date of birth while filing the nomination paper. She has asserted in the writ petition that her original date of birth is 17.01.1996, which has been correctly recorded in her PAN Card,



EPIC, Aadhar Card and the birth certificate. Copies of Aadhar Card, EPIC, PAN Card and Birth Certificate have been brought on record by way of Annexure-4 series to the writ petition.

12. On the one hand, the petitioner has asserted that her date of birth is 17.01.1996, she has placed reliance on her representation said to have been forwarded by the In-charge Principal of Government Middle School, Salaiya, Nabinagar, on 21.03.2022. In her representation, she has claimed her correct date of birth to be 17.02.2000 instead of 17.01.2001. The said representation has apparently been filed after filing of complaint before the SEC by respondent No.7.

13. As has been noted above, the petitioner has placed heavy reliance on EPIC, Aadhar Card and PAN Card. The Division Bench of this Court in case of **Rani Devi** (supra), relying on the Supreme Court's decision in case of **Brijendralal Gupta v. Jwalaprasad** (AIR 1960 SC 1049) has held that entries in the electoral roll are conclusive evidence only of the fact that the person referred to in that entry is an electoral of that constituency. Relying on the decision rendered in case of **Sushil Kumar v. Rakesh Kumar**, reported in (2003) 8 SCC 673, the Division bench in case of **Rani Devi** (supra) has dealt with the inconclusive evidentiary value of the electoral roll to determine the date of



birth. It will be useful to reproduce paragraph 51 of the Supreme Court's decision in case of **Sushil Kumar** (supra), which has been noticed by the Division Bench in case of **Rani Devi** (supra), which reads as under: -

“51. In both the aforementioned documents the age of the respondent was stated to be 24 years as on 1-1-1995. According to the respondent he was born in 1968 and, thus, on the said date he would have been more than 24 years of age. Why such an inconsistency crept in, has not been explained. The High Court, however, did not give much importance to the said fact and proceeded on the basis that these documents go to show that the respondent was a major on that day. It is conceded by Mr Mullick, learned counsel appearing on behalf of the respondent that the date of birth of a voter contained in the voter list and the election identity card issued by the Election Commission of India is not conclusive. They are recorded as per the statements made by the person concerned. Be that as it may, it was for the High Court and consequently for this Court in appeal to consider the said materials on record in their proper perspective. We may, however, observe that the said documents do not conclusively show that the respondent was a major on that day.”



14. The Supreme Court in case of ***Sushil Kumar*** (supra) has taken note of the fact that the date of birth of a voter contained in the voter list and the electoral identity card issued by the Election Commission of India is recorded as per the statements made by the person concerned and the same is not conclusive.

15. In case of ***Annu Kumari @ Annu Sharma*** (supra), relying on Supreme Court's decision in case of ***State of M.P. Vs. Mohanlal Sharma***, reported in (2002) 7 SCC 719, the Division Bench of this Court has held that correctness of date of birth recorded in matriculation certificate could not have been refused, rather it ought to have been accepted by the SEC.

16. It is noteworthy that in case of ***State of M.P. Vs. Mohanlal Sharma*** (supra), the Supreme Court has held that date of birth, as recorded in the matriculation examination carries a greater evidential value than the evidential value attached to the certificate given by a retired Headmaster showing different date of birth.

17. In the present case, relying on the Supreme Court's decision in case of ***Birad Mal Singhvi*** (supra), an attempt has been made on behalf of the petitioner to persuade this Court that onus was heavy upon respondent No. 7 to prove that the petitioner was under age for the purpose of election, by adducing cogent



evidence. In our considered view, the decision in case of ***Birad Mal Singhvi*** (supra), was rendered in entirely different facts and circumstance of that case and is distinguishable. The case before the Supreme Court had arisen out of a decision of Rajasthan High Court on an election petition filed by an elector (not a contestant) for setting aside the election of the appellant before the Supreme Court mainly on the ground of rejection of nomination papers of three candidates, namely, Smt. Umroa Ben Hukmi Chand and Suraj Prakash Joshi, by the returning officer. The nomination paper of Smt. Umroa Ben was rejected by the returning officer as she had failed to file a certified copy of the relevant entry in the electoral roll of Sardarpura Assembly Constituency along with her nomination. In respect of Hukmi Chand and Suraj Prakash Joshi, the returning officer had rejected their nomination at the time of scrutiny since the entries contained in the electoral roll indicated that they were below 25 years of age. None of the two contestants, namely, Hukmi Chand and Suraj Prakash Joshi, were present at the time of the scrutiny of the nomination papers by the returning officer. The High Court of Rajasthan upheld rejection of nomination paper of Smt. Umrao Ben by the returning officer. However, it held that nomination paper of Hukmi Chand and Suraj Prakash Joshi had been improperly rejected by the returning



officer as both the candidates had attained the qualifying age of 25 years as on the date of nomination based on the entry of date of birth in the Examination Board's register and Scholar's register. The election petition was allowed by the High Court of Rajasthan and, accordingly the election of the appellant before the High Court was set aside. In the facts and circumstances of that case, a question had arisen, *inter alia*, before the Supreme Court as to whether the respondent had proved in accordance with law that Hukmi Chand and Suraj Prakash Joshi, whose nomination papers were rejected by the returning officer, had attained the age of 25 years. In the aforesaid background, the Supreme Court held in case of ***Birad Mal Singhvi*** (supra) as under : -

“17. The appellant was declared elected as he had polled majority of valid votes. His election could not be set aside unless the respondent-election petitioner was able to prove that Hukmi Chand and Suraj Prakash Joshi had attained the age of 25 years on the date of nomination by producing cogent and reliable evidence before the High Court. The burden to prove that fact was on the respondent throughout and he could not and did not discharge that burden merely by producing the documentary evidence Exs. 8, 9, 10, 11 and 12 or on the basis of oral testimony of Anantram Sharma PW 3 and Kailash Chandra Taparia PW



5. As discussed earlier these documents do not conclusively prove the dates of birth of Hukmi Chand and Suraj Prakash Joshi. The entries regarding dates of birth contained in the scholar's register and the secondary school examination have no probative value, as no person on whose information the dates of birth of the aforesaid candidates was mentioned in the school record was examined. In the absence of the connecting evidence the documents produced by the respondent, to prove the age of the aforesaid two candidates have no evidentiary value. The High Court committed serious error in accepting the dates of birth as mentioned in the aforesaid documents. In our view the High Court's entire approach in considering the question of dates of birth was wholly misconceived. The burden to prove the fact in issue, namely, the dates of birth of Hukmi Chand and Suraj Prakash Joshi was on the respondent who was the election petitioner. The respondent could not succeed if no evidence was produced by the appellant on the question of age of the aforesaid candidates and his election could not be set aside merely on the ground that the respondent had made out a prima facie case that the entry contained in the electoral roll regarding the age of two candidates was incorrect. It appears that in his list of witnesses the appellant had included the



name of Suraj Prakash Joshi and his father Maghdutt Joshi as witnesses but they were not examined by him. Similarly, Hukmi Chand was also cited by the appellant but he was also not examined instead Navratan Mal Bhandari, brother of Hukmi Chand was examined as PW 4 and Ghanshyam Chhangani was examined as PW 6 by the appellant, who supported the appellant's case that Hukmi Chand and Suraj Prakash Joshi had not attained the age of 25 years on the date of nomination. Since the appellant had not examined Hukmi Chand, Suraj Prakash Joshi or their parents, the High Court drew adverse inference against him. The High Court committed serious error in doing so. There was no question of drawing adverse inference against the appellant, as the burden to prove the age of Hukmi Chand and Suraj Prakash Joshi was on the election petitioner and since he had failed to prove the same by cogent evidence no adverse inference could be drawn against the appellant. In fact, burden was on the respondent to prove his case by producing Hukmi Chand and Suraj Prakash Joshi, or their parents to prove and corroborate the dates of birth as mentioned in the school register and the certificate. If he failed to do that he could not succeed merely because appellant had not produced them. In the circumstances no adverse inference was at all possible to be



drawn against the appellant for not examining Hukmi Chand and Suraj Prakash Joshi or their parents.”

18. Apparently, in case of *Birad Mal Singhvi* (supra), the correctness of dates of birth of two contestants in the electoral roll was questioned by an elector in an election petition. The contestants Suraj Prakash Joshi and Hukmi Chand, whose dates of birth were under dispute, were cited as witnesses. None of them were, however, examined. The High Court had drawn adverse inference against the returned candidate for non-examination of Hukmi Chand and Suraj Prakash Joshi. The Supreme Court, in the aforesaid background, held that there was no question of drawing adverse inference against the appellant as the burden of proving the age of Hukmi Chand and Suraj Prakash Joshi was on the election petitioner.

19. It is significant to note that in case of *Birad Mal Singhvi* (supra), the returned candidate had raised a contention, *inter alia*, that there was no evidence to prove that the School/Board certificates and registers related to the said Hukmi Chand and Suraj Prakash Joshi. The High Court of Rajasthan had rejected the submission of the returned candidate on the ground that he (the returned candidate) had raised no such plea in the written statement nor he had produced any evidence to prove that



the documents did not pertain to Hukmi Chand and Suraj Prakash Joshi or that any other persons having same parentage by the name of Hukmi Chand and Suraj Prakash Joshi existed. (see para 12). The Supreme Court, in the aforesaid background held that the High Court of Rajasthan committed an error. Juxtaposed to the above, in the present case, it is an admitted fact that the certificates/registers of the school and the Board containing date of birth of the petitioner as 17.02.2001 pertain to the petitioner.

20. In the present case, on the other hand, the dispute relates to issue of disqualification under Section 136(1)(b) of the Act. The SEC has been given the jurisdiction under Section 136(2) of the Act to decide the issue of disqualification. Evidently, the petitioner attempted to dispute her own date of birth as recorded in the matriculation certificate way back in 2016. It is incorrect to suggest that the SEC relied only on the entry of date of birth in the registers maintained by the Bihar School Examination Board. From the impugned order, it transpires that the SEC has taken into account the School Leaving Certificate, Admission Register for admission in Class-IX, Cross-list of Matriculation Examination, School Leaving Certificate after having passed matriculation examination and Registration Receipt Register, which consistently demonstrated that the petitioner's date of birth was 17.02.2001.



The petitioner's reliance on the date of birth 17.01.1996 mentioned in her horoscope, being a weak evidence, was rightly rejected by the SEC.

21. It is the settled legal position that judgment of the Supreme Court is not to be read mechanically as a *Euclid's theorem* as if it were a statute, as emphatically laid down by the Supreme Court in case of ***Deepak Bajaj v. State of Maharashtra***, reported in **(2008) 16 SCC 14**, referring to its earlier decision in case of ***Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani***, (2004) 8 SCC 579. Paragraphs 9, 10, 11 and 12 of the decisions in case of ***Bharat Petroleum Corpn. Ltd.*** (supra) lucidly lay down the said legal principle, which are being reproduced hereinbelow for quick reference: -

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become



necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,...”

10. In *Home Office v. Dorset Yacht Co.* [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said, “Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances”. Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)* [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: “One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.” And, in *Herrington v. British Railways Board* [(1972) 2 WLR 537 :



(1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT* [AIR 1962 SC 680] , AIR p. 688, para 19)

“19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”



“Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

22. In case of *Ambica Quarry Works v. State of Gujarat*, reported in (1987) 1 SCC 213, the Supreme Court has stated that ratio of any decision is to be understood in the background of the facts of that case. It has been held that it is trite that a case is only an authority for what it actually decides and not what logically follows from it. In case of *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, reported of (2003) 2 SCC 111, the Supreme Court has reiterated that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

23. At the cost of repetition it is being pointed out that in case of *Birad Mal Singhvi* (supra), the persons, whose date of birth was in dispute on the basis of entries made in the scholar's register were not produced as a witness, nor their parents, to substantiate that the date of birth was correctly mentioned in the school/Board's register. In the present case, on the admission by



the petitioner of existence of matriculation certificate bearing entry of a date of birth, the existence of the certificate was not at all in dispute nor the entry made therein. Further, the Single Bench decision of this Court rendered in case of ***Sharda Devi*** (supra) does not notice Division Bench decisions of this Court in case of ***Rani Devi*** (supra) and ***Annu Kumari @ Annu Sharma*** (supra). It appears from the decision in case of ***Sharda Devi*** (supra) that the Division Bench in cases of ***Rani Devi*** (supra) and ***Annu Kumari @ Annu Sharma*** (supra) were not brought to the notice of the learned Single Judge. The said decision, in our opinion, is *per incuriam*.

24. In our opinion, respondent No.7 discharged its onus by relying on a document having evidentiary value to demonstrate that the petitioner's date of birth was 17.02.2001 and accordingly she was under age on the date of nomination.

25. The claim of the respondent No.7 was based on the documents relating to admission of the petitioner in B.A. course. Subsequently, it emerged before the SEC that the petitioner's date of birth available in the records of the Bihar School Examination Board was 17.02.2001. The petitioner has presented a peculiar case before this Court as, on the one hand, she claimed her correct age to be 17.01.1996, on the other, she is said to have taken steps



for change of a date of birth from 17.01.2001 to 17.02.2000. It is curious that the petitioner has brought on record photo copy of an application for correction of date of birth said to have been forwarded on 03.06.2016 by the In-charge Headmaster. There is no plea as to what steps were taken by the petitioner after filing of the said representation dated 03.06.2016 for correction of the date of birth. Nearly six years thereafter, she is said to have filed another representation before the Bihar School Examination Board forwarded by the Principal of the School on 21.03.2022. It is noteworthy that in this representation there is no reference to the petitioner's earlier representation said to have been forwarded in 2016 for correction of date of birth. It is also an admitted position as would emerge from a bare perusal of paragraph 7 of the petitioner's supplementary affidavit filed before the State Election Commission (Annexure-6 of the writ petition) that the representation dated 21.03.2022 has been made by the petitioner for correction of her date of birth after respondent No.7 had filed her complaint under Section 136(2) of the Bihar Panchayat Raj Act alleging petitioner's disqualification based on date of birth. In such view of the matter, the said two representations said to have been forwarded by the Principal on 03.06.2016 and 21.03.2022 do not inspire confidence, moreso for the reason that there is no statement



regarding actual receipt of the said representations by the Bihar School Examination Board. In our view, the stand taken by the petitioner that she had taken steps for change in the date of birth by making a representation before the Bihar School Examination Board is an afterthought.

26. It has been aptly pointed out in the counter affidavit filed on behalf of SEC that it is specifically scripted in paragraph 2 of the EPIC that date of birth mentioned in the said card shall not be treated as proof of age/date of birth for any purpose other than registration in the electoral roll. There is specific statement made in the counter affidavit filed on behalf of the SEC that the date of birth mentioned in the Aadhar Card is not a proof to establish the correctness of the name, date of birth or address of the person enrolled. The said aspect has not been disputed by filing any rejoinder to the said counter affidavit. The SEC has disputed the genuineness of the birth certificate issued in favour of the petitioner after her election with reference to Section 13 of the Registration of Births and Deaths Act, 1969, which deals with registration of births and deaths. Even this aspect has not been denied by the petitioner by filing a rejoinder.

27. In our opinion, in the given facts and circumstances of the case, as noted above, there being no dispute about the



petitioner being underage on the basis of the entry of date of birth available in the matriculation certificate as on the date of nomination for election to the post of Mukhiya, finding of the SEC to the effect that the petitioner was disqualified to hold the post of Mukhiya by virtue of the provision under Section 136(1)(b) of the Act cannot be said to be suffering from any such legal infirmity as would require this Court's interference in exercise of power of judicial review under Article 226 of the Constitution of India. The petitioner was given adequate opportunity of hearing before the impugned order came to be passed. The impugned order has taken into consideration relevant materials for reaching the conclusion that the petitioner was disqualified to hold the post of Mukhiya as she suffered disqualification on the ground that she was less than 21 years of age on the date of her nomination for the post of Mukhiya and subsequent election to the said post. We do not agree with the submissions advanced on behalf of the petitioner that the SEC has not taken into consideration all relevant materials presented by the parties before it for reaching the aforesaid conclusion.

28. In our view, the petitioner herself has been taking vacillating stands in respect of her date of birth inasmuch as on the one hand she claims her correct date of birth to be 17.01.1996 as



recorded in Aadhar, EPIC and PAN Card, she has claimed her correct date of birth as 17.02.2000 for the purpose of her educational qualification (matriculation certificate).

29. The SEC has relied on Division Bench decision of this Court in case of *Annu Kumari @ Annu Sharma* (supra) while accepting entry of date of birth in the matriculation certificate. The said view of the SEC, in our opinion, cannot be said to be erroneous in the facts and circumstances as discussed above. The impugned order, in our opinion, does not require interference by this Court.

30. This writ application is accordingly dismissed.

31. There shall not be any order as to costs.

(Chakradhari Sharan Singh, J)

Madhuresh Prasad, J. : I agree.

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	19.05.2022
Uploading Date	12.08.2022
Transmission Date	N/A

