

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1452 of 2023

Arti Kumari, Wife of Bablu Kumar, Resident of Village and P.O. Ghoswari,
P.S. Ghoswari, District- Patna.

... .. Petitioner/s

Versus

1. The Bihar State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner,
The Bihar State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Officer on Special Duty,
The Bihar State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna
4. Seema Kumari, Wife of Dharamraj Prasad, Resident of Village and P.O. Ghoswari P.S. Ghoswari, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S. B. K. Manglam- Advocate Mr. Awnish Kumar- Advocate
For Election Commission:		Mr. Sanjeev Nikes- Advocate Mr. Girish Pandey- Advocate
For Private Respondent	:	Mr. Shyam Kishore- Advocate Mr. Anuj Kumar- Advocate Mr. Ansul- Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

24-04-2023

Heard learned counsel for the petitioner,

learned counsel for the State Election Commission and

learned counsel appearing for the Private Respondent.

2. The learned counsel for the petitioner submits that the dispute in the present case relates to disqualification under Section 136(1)(b) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the



'Act'). It is next submitted that the State Election Commission under Section 136(2) of the Act has jurisdiction to decide the issue of disqualification.

3. The learned counsel for the petitioner submits that petitioner is aggrieved by an order dated 03.11.2022 passed by the State Election Commissioner, Bihar (Respondent No.2) in Case No.04 of 2022 (Seema Kumari vs. Arti Kumari) communicated to the petitioner by Respondent No.3 vide his Memo No.04 dated 03.11.2022, whereby the Respondent No.2 declared the petitioner disqualification to hold the post of Mukhiya of Gram Panchayat Raj, Ghoshwari on the ground that she had contested the election even before attaining the age of 21 years in breach of Section 136(1)(b) of the Act.

4. The learned counsel for the petitioner submits that the order passed by the Respondent No.2 does not take into consideration the judgment rendered by the Hon'ble Supreme Court in the case of **Brij Mohan Singh vs. Priya Brat Narain Sinha and others reported in A.I.R. 1965 SC 282** and also the order of the Hon'ble



Supreme Court in the case of ***Birad Mal Singhvi vs. Anand Purohit reported in A.I.R. 1988 SC 1796.***

5. The learned counsel next submits that the State Election Commission (hereinafter referred to as S.E.C.) has taken into consideration the judgment of the Hon'ble Supreme Court in the matter of Juvenile Justice Act for determination of age, which in the present case is not applicable nor the Respondent No.2 has considered the case of ***Sharda Devi vs. the State of Bihar and others reported in 2019(3) P.L.J.R. 534.*** The learned counsel for the State Election Commission draws the attention of the Court to Para-23 of the Judgment dated 10.08.2022 in C.W.J.C. No. 6191/2022 (Mamta Kumari Vs. The State of Bihar & Ors.) to submit that the Judgment in the case of Sharda Devi Vs. The State of Bihar has been held to be per incuriam.

6. The learned counsel for the petitioner next submits that an issue which requires consideration by this Court is whether the matriculation certificate can be treated to be an unimpeachable document based on which the State



Election Commission could have arrived at a conclusion deciding the case of the petitioner authoritatively holding that petitioner had not reached the age of 21 years, as such, was ineligible to contest the Panchayat Election.

7. The learned counsel next submits that the said submission i.e. whether matriculation certificate is an unimpeachable document or not has been made, as this Court in the case of ***Rajani Kumari vs. the State of Bihar reported in 2019(6) B.L.J. (1)*** has held that the State Election Commission can decide only such cases with respect to dispute relating to election which are not disputed and is based on unimpeachable document.

8. The learned counsel next submits that the Hon'ble Supreme Court in the case of ***Brij Mohan Singh vs. Priya Brat Narain Sinha and others reported in A.I.R. 1965 SC 282*** has observed in Paragraph-20 of the judgment that:-

“20. An objection was faintly raised by Mr Agarwal as regards the admissibility of Ex. 2 on the ground that the register is not an official record or a public register. It is unnecessary to consider this question as the fact that



such an entry was really made in the admission register showing the appellant's date of birth as October 15, 1937 has all along been admitted by him. His case is that this was an incorrect statement made at the request of the person who went to get him admitted to the school. The request was made, it is suggested, to make him appear two years younger than he really was so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. The appellant's case is that once this wrong entry was made in the admission register it was necessarily carried forward to the Matriculation Certificate and was also adhered to in the application for the post of a Sub-Inspector of Police. This explanation was accepted by the Election Tribunal but was rejected by the High Court as untrustworthy. However much one may condemn such an act of making a false statement of age with a view to secure an advantage in getting public service, a judge of facts cannot ignore the position that in actual life this happens not infrequently. We find it impossible to say that the Election Tribunal was wrong in accepting the appellant's explanation. Taking all the circumstances into consideration we are of opinion that the explanation may very well be true and so it will not be proper for the court to base any conclusion about the appellant's age on the entries in these three documents viz. Ex. 2, Ex. 8 and Ex.



18.”

9. The learned counsel thus submits that even the Hon’ble Supreme Court had observed that however, much one may condemn such an act of making a false submission of age with a view to secure an advantage in getting the public service, a judge of facts cannot ignore the position i.e. in actual life this happens not infrequently. The learned counsel thus submits that what the Hon’ble Supreme Court in ***Brij Mohan Singh’s case*** (Supra) has held is that the matriculation certificate cannot be held to be a sacrosanct document for arriving at a considered conclusion.

10. The learned counsel next submits that the Hon’ble Supreme Court in the case of ***Birad Mal Singhvi’s case*** (Supra) has basically held that until and unless the person, who had filled the initial form at whose behest the date of birth was recorded, is not examined, it cannot with certainty be said that the date of birth as recorded in the certificate is sacrosanct.

11. The learned counsel next submits that in the present case, no dispute had arisen when the petitioner had filled her nomination form and it was only after the petitioner



won the election that the private respondent disputed the same by alleging that petitioner had not attained the age of 21 years, which are mandatory for contesting the Panchayat Election.

12. The learned counsel next submits that the petitioner apart from her matriculation certificate had also brought on record several other documents to substantiate that her date of birth is not 2003 as recorded in the matriculation certificate, but is 1999, as such, the date of birth as being claimed by the private respondent was being disputed by the petitioner based on documentary evidence.

13. The learned counsel thus submits that since the date of birth as recorded in the matriculation certificate was being disputed by the petitioner based on other documentary evidence, as such, the State Election Commission ought not to have proceeded in the matter rather should have disposed the election petition with a direction to the private respondent to file an election petition before the Court of competent jurisdiction where the evidences could have been led.

14. The learned counsel for the State Election



Commission rebuts the submission of the learned counsel for the petitioner and submits that there is a famous English quote:- *“a person, who speaks the truth does not have to remember what he said”* and this quote aptly fits in the present case.

15. It is next submitted that the date of birth of the petitioner recorded in the matriculation certificate is 14.06.2003. In the School Leaving Certificate issued by Durga Girls High School, Lakhisarai, the date of birth is also recorded as 14.06.2003 and the admission of Rajeshwar Lal Mahavidyalay where the petitioner took admission in Intermediate, in the said register also, the date of birth is recorded as 14.06.2003.

16. The learned counsel next submits that since the matriculation certificate itself recorded the date of birth of the petitioner as 14.06.2003, as such, it was an unimpeachable document, moreso when the School Leaving Certificate also recorded the same date of birth. It is further submitted that it absolutely does not stand to reason that as to how the petitioner is contesting her date of birth is not 14.06.2003 when she herself is not sure about her date of birth as would



be evident from impugned order itself. The learned counsel further submits that the petitioner in her nomination form recorded her date of birth as 22.08.1999, which was rectified after cutting 22.08.1999 as 02.11.2000. Further, her PAN Card, Aadhar Card and Horoscope records the date of birth as 26.08.1999. It is thus submitted that petitioner herself is mentioning three date of births i.e. 22.08.1999, 26.08.1999 and 02.11.2000, apart from the one mentioned as 14.06.2003 in her matriculation certificate.

17. The learned counsel thus submits that from the facts stated hereinbefore, it is clear that petitioner herself is not sure about her date of birth. The learned counsel next submits that Aadhar Card, PAN Card and Horoscope are not legal documents for the purposes of determining the date of birth. The learned counsel next submits that PAN Card, Aadhar Card and Horoscope records the date of birth as provided by the person concerned i.e. PAN Card and Aadhar Card and by the parents or grand parents (Horoscope).

18. The learned counsel further submits that the matriculation certificate when issued came to the notice of the petitioner that it records her date of birth as 14.06.2003, but



then no steps were taken by her to get the date of birth rectified. The learned counsel thus submits that if the matriculation certificate recorded the wrong date of birth of the petitioner, then she ought to have moved before the competent authority for getting it rectified, but the same was not done, which further strengthens and reinforces the finding of the State Election Commission that the date of birth of the petitioner as stand recorded in her matriculation certificate is genuine.

19. The learned counsel for the State Election Commission next submits that Aadhar Card and the Voter ID Card of the petitioner were issued on 12.03.2021 and 14.02.2021, in which her date of birth was recorded as 26.08.1999. It is thus submitted that if the petitioner was aware that her date of birth is 26.08.1999 and the same was recorded in the aforesaid two documents then nothing prevented the petitioner from getting her matriculation certificate also rectified as the election were held in October, 2021, for which nominations were filed. The learned counsel thus submits that petitioner had nearly more than six months in between the issuance of her Aadhar Card and Voter ID Card and filing of



nomination for getting her date of birth as recorded in the matriculation certificate rectified.

20. The learned counsel next submits that Sections 35 and 74 of the Evidence Act incorporates that what kind of documents are admissible in evidence. He further relies on a judgment of the Hon'ble Supreme Court in the case of ***Shyam Lal @ Kuldeep vs. Sanjeev Kumar and others reported in A.I.R. 2009 SC 3115*** to submit that School Leaving Certificate is within the ambit of public documents under Section 74 of the Evidence Act. Thereafter, reliance has been placed on another judgment of the Hon'ble Supreme Court in ***Umesh Chand vs. State of Rajasthan reported in A.I.R. 1982 SC 1057*** wherein it has been held that records maintained by a public school according to rule should be presumed to be correct under Section 35 of the Evidence Act.

21. The learned counsel next submits that Section 35 of the Evidence Act is with regard to the relevancy of entry in different records or an electronic records made in performance of duty by public authority. It is thus submitted that though Section 35 of the Evidence Act speaks of relevancy of entries in public or official book made by public servant, but



then the Evidence Act does not define a public servant, but for interpretation, the reference may be made to Sections 74 and 78 of the Evidence Act read with Section 21 of the Indian Penal Code.

22. The learned counsel next relies on a Division Bench judgment of this Court in the case of ***Mamta Kumari vs. the State of Bihar and others reported in 2022(5) B.L.J. 599*** to submit that the facts of the present case is squarely covered by the judgment rendered by the Hon'ble Division Bench in ***Mamta Kumari's case.***

23. The learned counsel next draws the attention of the Court to the judgment rendered in Mamta Kumari's case wherein also Mamta Kumari was disqualified by the State Election Commission to hold the post of Mukhiya on the ground that she had not attained the age of 21 years as mandated under the Act. Further, Mamta Kumari claimed that her date of birth as recorded in School and College is 17.02.2001, when she has wrongly entered the date of birth as 17.01.1996 in her nomination form. The learned counsel next submits that the Hon'ble Division Bench after considering the law in its entirety came to a considered conclusion that the



date of birth as recorded in matriculation certificate would prevail.

24. The learned counsel further submits that the case on which the learned counsel for the petitioner relies i.e. ***Brij Mohan Singh vs. Priya Brat Narain Sinha and others*** is also distinguishable in the facts of the present case for the reason that it is not the case of the petitioner that her date of birth is 26.08.1999 and not 14.06.2003 as recorded in her matriculation certificate, rather the petitioner herself is giving three date of births apart from 14.06.2003, nor she made any endeavours to get her date of birth rectified despite having time and opportunity after issuance of Aadhar Card and Voter ID Card as recorded herein above.

25. The learned counsel thus submits that if the date of birth of the petitioner would have been 26.08.1999, then definitely she would not have recorded her date of birth in her nomination form as 22.08.1999 and thereafter, would have rectified the same by recording 02.11.2000 instead of 26.08.1999, which further reinforces the fact that petitioner was not speaking the truth or truly recording her date of birth, because it is difficult to believe that a person in a document



based on which she had to contest the election would have recorded her wrong date of birth and even if inadvertently the same was recorded then definitely by rectifying the correct date of birth should have been recorded instead of another wrong date of birth i.e. 02.11.2000.

26. The learned counsel appearing for the private respondent adopts the submission made by the learned counsel for the State Election Commission.

27. Considering the submission made by the learned counsel for the State Election Commission, the Court finds no merit in the writ application and accordingly, the writ application is dismissed.

(Satyavrat Verma, J)

Vikash/Alok

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	25.04.2023
Transmission Date	N.A.

