

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5858 of 2023

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Usha Kumari Daughter of Domi Rajak and Wife of Raja Kumar, Resident of Village-Pathraha, Ward No. 9, P.O. and P.S. Ghailarh, District-Madhepura, presently residing at Village-Rahua, P.S. Sabaila, P.S. Sour Bazar, District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The District Magistrate-cum-District Election Officer (Panchayat), Saharsa, District-Saharsa.
4. The District Panchayat Raj Officer, Saharsa, District-Saharsa.
5. The Block Development Officer, Patarghat, District-Saharsa.
6. The Block Panchayat Raj Officer, Patarghat, District-Saharsa.
7. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna, through the State Election Commissioner.
8. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna.
9. The Secretary, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna.
10. The Officer on Special Duty, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna.
11. Samta Devi, Wife of Bechan Sada, Resident of Village-Rahua, P.S. Sabaila, P.S. Sour Bazar, District-Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam, Advocate Mr. Awnish Kumar, Advocate
For the SEC	:	Mr. Sanjeev Nikesh, Advocate
For the Respondent/s	:	Mr. Kumar Alok, SC-7
For the Respondent No.11	:	Mr. S. D. Sanjay, Sr. Advocate Mr. Praveen Kumar Agarwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 24-11-2023

This Court has heard Mr. S B K Mangalam, learned
advocate appearing on behalf of the petitioner, Mr. Kumar Alok,



learned SC – 7 for the State. The State Election Commission is represented by Mr. Sanjeev Nikesh, learned advocate. Mr. S D Sanjay, learned senior advocate duly assisted by Mr. Praveen Kumar Agarwal, learned advocate for the private respondent no. 11.

2. Having notified Panchayat Election in Gram Panchayat Raj, Dhabauli East under Patarghat Block of Saharsa District, the petitioner filed her nomination to contest the said election for the post of Mukhiya.

3. After scrutiny of the nomination paper, the petitioner along with others were allotted election symbol by the Returning Officer. There was no objection against the nomination/candidature of the petitioner from any quarter. The petitioner was finally declared successful for the post of Mukhiya.

4. The respondent no. 11, soon after the declaration of result of election filed a complaint before the State Election Commission with a prayer to declare the petitioner disqualified to hold the post of Mukhiya of said Gram Panchayat, in terms of Section 136(1)(b) of the Bihar Panchayat Raj Act, 2006 on the ground that on the date of her nomination as well as on election, the petitioner had not completed the age of 21 years, in view of



her date of birth mentioned as 05.12.2003 in her matriculation certificate, thus, on the date of her election, she was aged about only 18 years.

5. On receipt of the aforementioned complaint, the State Election Commission registered a case bearing Case No. 68 of 2022 and a report was called for from the District Magistrate-cum-District Election Officer (Panchayat), Saharasa.

6. In pursuant to the direction of the State Election Commissioner, the District Magistrate cum District Election Officer (Panchayat), Saharsa submitted his report vide Letter No. 1675 dated 11.11.2022 (Annexure P-3), mentioning therein, that date of birth of the petitioner recorded in academic certificate is 05.12.2003 and based upon such date of birth, she was only 17 years 9 months and 15 days old on the date of scrutiny of her nomination paper, which is less than 21 years. The aforementioned report of the District Magistrate-cum-District Election Officer, Saharsa has also accompanied the report of the District Education Officer, Madhepur (Annexure '-4) and the report of the Block Education Officer, Murliganj (Annexure P-4/1) enclosing the school leaving certificate of the petitioner and the Admission Register of Bhuneshwari (Murho) High School, Murliganj disclosing, the petitioner's date of birth as



05.12.2003.

7. Notice was issued to the petitioner and she was directed to file her written statement to the complaint petition filed by the respondent. In response thereto, the petitioner appeared before the State Election Commission and filed her detailed written statement. The matter was heard on 03.03.2023 and after hearing the parties, the judgment was reserved and finally the respondent State Election Commissioner has passed the impugned order as contained in Memo No. 1003 dated 27.03.2023, declaring the petitioner disqualified to hold the post on the ground that in view of the petitioner's date of birth, mentioned in the matriculation certificate, she had not attained the required age of 21 years on the date of scrutiny of her nomination paper. The impugned order has been marked as Annexure P-6 to the writ petition.

8. Mr. Mangalam, while challenging the impugned order dated 27.03.2023 passed by the respondent no. 8 submitted that there is inherent non-compliance of the principles of natural justice for the reason that for the purposes of coming to the finding that the petitioner had not attained the age of 21 years on the date of scrutiny of her nomination paper, the State Election Commissioner has relied upon her date of birth



mentioned in the academic certificates and the school Admission Register, but has completely ignored to consider the documents produced by the petitioner along with her written statement, including the affidavit sworn by the petitioner's father before the Executive Magistrate, horoscope prepared in the year 1998 itself, the birth certificates of the petitioner's minor daughter etc. It is further submitted that the respondent State Election Commissioner has failed to consider the fact that in the Admission Register mentioning the date of birth of the petitioner as 05.12.2003 does not contain the signature of any parent/guardian and in absence of any authentic declaration. The reliance of the same is not free from the vice of impeachability.

9. Mr. Mangalam, heavily relied upon the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***Brij Mohan Singh Vs. Priya Brat Naraian Sinha & Ors.*** since reported in ***AIR 1965 (SC) 282*** and more particularly paragraph 20 of the said judgment. On the strength of the Constitution Bench Judgment, he next submitted that the date of birth mentioning in the Admission Register or academic records is not sacrosanct and this fact has been accepted by the Constitution Bench of the Hon'ble Supreme Court in ***Brij Mohan Singh (supra)*** and further reiterated by the Hon'ble



Supreme Court in *Biradmal Singhvi Vs. Anand Purohit* since reported in *AIR 1998 SC 1796*. If that is not sacrosanct, it cannot be said that it is an evidence of unimpeachable character and therefore, in view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court as noted above and the law declared by a Full Bench of this Hon'ble Court in *Rajani Kumari Vs. The State of Bihar* reported in *2019 (4) PLJR 673*, the impugned order passed by the State Election Commission cannot be sustained.

10. After referring to the aforementioned judgments, he further submitted that the respondent State Election Commissioner in order to overcome the law declared by the said Constitution Bench, mentioned that basic fact in the Constitution Bench Judgment was that there were many documents in the name of concerned person, in which his date of birth was mentioned differently than the date of birth mentioned in the matriculation certificate and those documents were accepted by the report as a piece of evidence, whereas in the present case whatever documents have been produced by the petitioner, they have been obtained only after she has passed her matriculation examination or they are not admissible as evidence before the Court.



11. In order to counter the aforesaid reasoning assigned by the State Election Commissioner submission has been made on behalf of the petitioner that though the birth certificate might have been issued after the petitioner had passed her matriculation examination, but so far horoscope is concerned, it was prepared in 1998 itself, but there is no consideration as to why this horoscope is not admissible, as a piece of evidence for determination of age of the writ petitioner. He further submits that at the time of argument of the case before the State Election Commissioner his attention was also drawn to the judgment of the Hon'ble Supreme Court in the case of *Biradmal Singh Vs. Anand Purohit* reported in *AIR (1998) SC 1796*, *Sharda Devi Vs. State of Bihar & Ors.* reported in *2019 (3) BLJ 295*, but there is no consideration of the law laid down in those cases. He also submits that for the purpose of determination of the age, by giving primacy to matriculation certificate, reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Sanjeev Kumar Gupta Vs. State of Uttar Pradesh & Anr.* reported in *2019 (12) SCC 370* and *Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal* reported in *2012 (10) SCC 489*, wherein it was held that wherever there is any doubt or contradictory stand is



being taken by the accused, which raises the doubt on the correctness of date of birth, then an enquiry for determination of the age of the accused is permissible. However, in defiance of the aforesaid legal principle, the respondent no. 8 has declared the petitioner disqualified to hold the post only because in matriculation certificate her date of birth is mentioned as 05.12.2003. He lastly submits that for the purposes of justifying his order, the State Election Commissioner has relied upon the judgment since reported in **2002 (7) SCC 719 (State of M.P. & Ors. Vs. Mohan Lal Sharma)**, but has failed to consider that the aforesaid judgment was in relation to service law, in which after obtaining his service on the basis of a certificate, mentioning his date of birth, **Mohan Lal Sharma** resiling from his date of birth mentioned in the certificate. Thus, the principle decided in the **Mohan Lal Sharma (supra)** cannot be relied upon in the present case.

12. In sum and substance, Mr. Mangalam has submitted that the matriculation certificate cannot be made the sole basis for the determination of age in election matter, if there are other documents, certificates showing otherwise. He summed up his argument that in case there was a disputed question of fact, the Commission ought not to decide such



contentious issue rather relegate the parties to a competent Court of Civil jurisdiction, in view of the law laid down by the Full Bench of this Court in the case of ***Rajani Kumari (supra)***.

13. Per contra, Mr. Sanjeev Nikesh, learned advocate for the State Election Commission submits that the issue raised before this Court regarding primacy to the matriculation certificate has been duly considered by co-ordinate Benches of this Court in the case of ***Arti Kumari vs The Bihar State Election Commission*** and ***Dhiraj Kumar Vs. The State of Bihar*** reported in ***2022 (5) BLJ 599*** and ***2023 (3) BJJ 558*** respectively. Further reliance has also been made on the judgment of the Hon'ble Apex Court as well as the Hon'ble Court in case of ***Sharda Rani Sahay & Ors. Vs. State of Bihar & Ors.*** reported ***2004 (1) PLJR 261 (SC)***, ***Annu Kumari @ Annu Sharma Vs. The State Election Commission, Bihar & Ors.*** reported in ***2014 (4) PLJR 667***, ***Smt. Babita Kumari Vs. The State of Bihar through Chief Secretary & Ors.*** reported in ***2019 (1) PLJR 130*** and further in case of ***Rani Devi Vs. The State Election Commission through its Secretary & Ors.*** reported in ***2019 (1) PLJR 153***.

14. Mr. S D Sanjay, learned senior advocate appearing on behalf of the respondent no. 11 while refuting the contention



of the petitioner has primarily submitted that those, who do not come with clean hand do not deserve any relief. He further submitted that in the nomination paper, duly affidavited, filled up and signed by the petitioner, she herself stated her date of birth as 01.01.2000 and as per the School record of Bhuneshwari (Murho) High School, Murliganj, Madhepura from where the writ petitioner had passed her matriculation, her date of birth is shown as 05.12.2003, which has also been verified and found true as per the record of Bihar School Examination Board. He further submits that even in the Admission Form of Intermediate, the date of birth of the petitioner is mentioned as 05.12.2003 and the Aadhar Card, issued in the name of the petitioner also bears her date of birth as 05.12.2003. The birth certificate produced by the petitioner showing her date of birth as 01.01.1998. Aadhar Card and the affidavit shown by her father as also the birth certificate of her two daughters on the basis of which the petitioner is trying her best to convince the authority that her date of birth is 01.01.1998, rather all manufactured or procured after the complaint being made by the respondent no. 11. He also submitted that the petitioner by playing fraud has managed to obtain several Aadhar Cards and Voter Id-cards, mentioning



different date of births, different addresses, which also speak loud about her conduct of committing forgery, in order to gain advantage anyhow.

15. Learned senior counsel next submitted that in case of *State of M.P. Vs. Mohan Lal Sharma (supra)*, the Hon'ble Apex Court has held that the correctness of date of birth recorded in matriculation certificate could not be refused, rather it ought to have been accepted. Furthermore, he also submits that the present case is squarely covered by the judgment rendered by the Hon'ble Division Bench of this Court in the case of *Mamta Kumari Vs. State of Bihar and Others* reported in *2022 (5) BLJ 599* as also in the case of *Annu Kumari @ Annu Sharma Vs. The State Election Commission, Bihar & Ors.* reported in *2014 (4) PLJR 667* and the judgment dated 24.04.2023 rendered by the learned co-ordinate Bench of this Hon'ble Court in CWJC No. 1452 of 2023, where in the opinion of the Hon'ble Court, the date of birth, as recorded in matriculation certificate has been given primacy over other documents. While concluding his submission, he drew the attention of this Court to the horoscope and submits that the genuineness of the same is not overboard as the horoscope containing the mobile number of the maker, have only nine



numbers, though in the year 1998, there was no such mobile number, containing nine numbers and, thus in his submission the horoscope does not appear to be genuine.

16. In the aforesaid backdrop, the State Election Commission has rightly exercise its power under Section 136 (2) of the Bihar Panchayati Raj Act, 2006 and declared the petitioner disqualified to hold the post of Mukhiya.

17. This Court has given anxious consideration to the submissions advanced on behalf of the learned counsel for the respective parties and also perused the materials available on record. From the materials available on record, it appears that the entire case of the petitioner is based upon her horoscope, aadhar card, birth certificate of her children and affidavit made by her father before the Executive Magistrate, Madhepura showing the actual date of birth of the petitioner is of 01.01.1998 as opposed to the matriculation certificate, showing her date of birth as 05.12.2003. This is also an admitted fact that the petitioner has mentioned her date of birth as 01.01.2000 in her nomination paper. Thus, from the materials as noted hereinabove, three different date of births have been recorded. It is also to be noted that as per the school record of Bhuneshwari (Murho) Higher Secondary School, Murliganj, Madhepura from



where, the petitioner has passed her matriculation, the record also suggest her date of birth as 05.12.2003. Similarly, having passed the matriculation examination, the petitioner submitted her application for intermediate (+2) course, mentioning her date of birth as 05.12.2003 and one of the aadhar card shows the similar date of birth as 05.12.2003.

18. Needless to observe that School Leaving Certificate, Admission Register, Admission Form filled up at the time of admission containing the age of an individual is to be made on the information supplied to the school authorities either by the guardian/parents or by the candidate and thus, the same has been termed as more authentic evidence under Section 32 Clause (5), unless it is established by unimpeachable contrary material to show that it is inherently improbable. So far the horoscope is concerned, admittedly the same is admissible but it is a very weak piece of evidence to prove age of a person and that heavy onus lies on a person who wants to press it into service to prove its authenticity.

19. If, according to the petitioner, the horoscope reflected the actual state of affairs, it has not been explained as to why no steps were taken by the petitioner or by her guardian to get the school records and the academic certificates corrected



till date.

20. A serious doubt has been cast by the private respondent regarding authenticity of the horoscope, when attention of this Court has been drawn that it contains the nine digit of mobile number, when the fact is that in the year 1998 there had not been any number containing nine digit to any mobile phones.

21. This Court cannot lose sight of the fact that the Application Form and the Admit Card is to be filled up on the basis of the information/particulars provided by the candidate after giving his/her counter signature on the basis, thereof, the Admit Card, Registration Form is to be issued and had there been any mistake, the same was certainly required to be rectified.

22. The reliance made on behalf of the petitioner on a Constitution Bench judgment rendered in the case of ***Brij Mohan Singh (supra)*** is in the opinion of this Court is distinguishable in the facts of the present case for the reason that despite showing the case of the petitioner, that her date of birth is 01.01.1998 and not 05.12.2003 as recorded in her matriculation certificate, rather the petitioner herself has shown her date of birth as 01.01.2000 in her nomination paper and, she



did not make any endeavour to get her date of birth corrected, despite having got proper time and opportunity.

23. It is trite law that a person, who does not disapprove, approves. No party can be allowed to accept and reject the same things. Well settled it is, that any party, which takes advantage of any instrument must accept all that is mentioned in the said document. It would be worth noting here that the petitioner cannot be allowed to blow hot and blow cold as per her wishes in different circumstances. If the submission of the petitioner regarding her date of birth, as mentioned in the horoscope or birth certificate and the father's affidavit is to be accepted, then the question would arise as to why till date any action has not been taken to get the date of birth mentioned in the matriculation certificate be corrected. The petitioner cannot be allowed to enjoy the benefit of horoscope as well as the matriculation certificate once for the purposes of election and another for the purposes of appointment in government service. In absence of any bona fide action in getting the mistake rectified, the Court would certainly go by the documents, which has force of unimpeachable documents.

24. The learned Division Bench of this Court in the case of *Mamta Kumari (supra)* while considering the identical



matter and taking note of the fact that Mamta Kumari claimed that her date of birth as recorded in school and college is 17.02.2001 and when she has wrongly entered the date of birth as 17.01.1996 in her nomination form, the learned Court after considering the law in its entirety came to a considered conclusion that the date of birth in matriculation certificate would prevail. Similarly, in identical matter, where one of the successful candidate for the post of Mukhiya, aggrieved by the order of the State Election Commission declaring her to be disqualified under Section 136(1)(b) of the Bihar Panchayat Raj Act filed CWJC No. 1452 of 2023, the learned co-ordinate Bench vide its order dated 24.04.2023 has been pleased to dismiss the writ application. The learned co-ordinate Bench while dismissing the writ application has been pleased to hold that once the petitioner herself is not sure about her date of birth, it is difficult to believe that a person in a document based on which she had to contest election would have recorded her wrong date of birth and even if inadvertently same was recorded, then definitely by rectifying correct date of birth should have been recorded instead of another wrong date of birth.

25. The learned co-ordinate Bench has also taken



cognizance of the provisions that Sections 35 and 74 of the Evidence Act incorporates that what kind of documents are admissible in evidence. On relying upon the judgment of the Hon'ble Supreme Court in the case of ***Sham Lal @ Kuldip Vs. Sanjeev Kumar and Others*** reported in ***AIR (2009) SC 3115***, wherein it was held that school leaving certificate is within the ambit of admissible document under Section 74 of the Evidence Act. Thereafter, the learned Court has also taken cognizance of the judgment of the Hon'ble Supreme Court in the case of ***Umesh Chandra Vs. State of Rajasthan*** reported in ***AIR (1982) SC 1057***, wherein, it has been held that records maintained by a public school according to the rule should be presumed to be correct under Section 35 of the Evidence Act. Similarly, in the case of ***Annu Kumari @ Annu Sharma (supra)***, the learned Court in its considered opinion held that the date of birth as recorded in matriculation certificate would prevail over other document. The Hon'ble Supreme Court in the case of ***State of M.P. & Ors. Vs. Mohan Lal Sharma*** reported in ***2002 (7) SCC 719*** has succinctly held that correctness of date of birth recorded in matriculation certificate could not be refused rather it ought to have been accepted.

26. This Court has also perused the impugned order



passed by the State Election Commission dated 27.03.2023 as contained in Memo No. 1003, however, no illegality has been found. Needless to observe that while exercising the power of judicial review, the Court can review to correct the errors on law and fundamental procedural requirements, which may lead to manifest injustice and can interfere with the impugned order. However, well settled it is that judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

27. In view of the aforesaid facts, circumstances and the position obtaining in law, this Court does not find any reason or occasion to interfere in the impugned order, accordingly, the writ petition stands dismissed.

28. There shall be no order as to cost.

(Harish Kumar, J)

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AFR/NAFR	NAFR
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Transmission Date	NA

