

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6226 of 2023

Smt. Ragini Kumari @ Ragni Kumari Roy, Wife of Sri Rajesh Kumar,
Resident of Village-Ramjidube Tola, Ward No. 11, P.O.-Laukhan, P.S.-Dhaka,
District-East Champaran, Bihar-845418.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The State of Bihar through the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar.
3. The State Election Commission through its Secretary, 3rd Floor, Sone Bhawan, Daroga Rai Path, R Block Chauraha, Beer Chand Patel Path, Patna, Bihar-800001.
4. The State Election Commissioner, State Election Commission, 3rd Floor, Sone Bhawan, Daroga Rai Path, R Block Chauraha, Beer Chand Patel Path, Patna, Bihar-800001.
5. The OSD, State Election Commission, 3rd Floor, Sone Bhawan, Daroga Rai Path, R Block Chauraha, Beer Chand Patel Path, Patna, Bihar-800001.
6. The District Magistrate cum Returning Officer, East Champaran, Motihari.
7. Smt. Radha Kumari Patel @ Radha Patel, Wife of Raj Kumar Singh, resident of Village-Vikrampur, Panchayat-Gahai, Block-Dhaka, P.O. and P.S.-Dhaka, District-East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y V Giri, Sr. Advocate Mr. Pranav Kumar, Advocate Ms. Shristi Singh, Advocate
For the State	:	Mr. Kumar Alok, SC-7 Ms. Rashmi Ranjan, AC to SC-7 Mr. Satyeshwar Prasad, AC to SC-7
For SEC	:	Mr. Sanjeev Nikesh, Advocate Mr. Girish Pandey, Advocate
For Private Respondent	:	Mr. S. B. K. Manglam, Advocate Mr. Avnish Kumar, Advocate Mr. Kumar Gaurav, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 24-11-2023

This Court has heard Mr. Y. V. Giri, learned senior
counsel duly assisted by Mr. Pranav Kumar, learned counsel



representing the petitioner, Mr. S. B. K. Mangalam, learned counsel for the respondent no. 7, Mr. Sanjeev Nikesh, learned counsel assisted by Mr. Girish Pandey, learned counsel for the State Election Commission and Ms. Rashmi Ranjan, learned counsel for the State.

2. The petitioner by invoking the prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India seeking quashing of Memo No. 05/2022 dated 27.03.2023 issued under the signature of the State Election Commissioner by which the petitioner has been removed from the post of Mukhiya, Gram Panchayat Raj, Gahai for purportedly being underage and the District Magistrate, East Champaran, Motihari has been directed to take legal action in terms of Section 125 (Ka)(3) of the Panchayat Raj Act and Sections 177 and 181 of the Indian Penal Code, 1860. The petitioner further sought a direction commanding the respondents not to give effect to the order bearing Memo No. 05/2022 dated 27.03.2023 till final disposal of the writ petition.

3. The short facts, which led to the filing of the present writ petition is that in the month of October, 2021, the election for the post of Mukhiya, Gram Panchayat Raj, Gahai under Dhaka Block was notified by the State Election Commission.



The petitioner being eligible had filed her nomination paper for the post of Mukhiya on 27.09.2021. In the nomination paper, the petitioner had declared her age as 21 years by mentioning her date of birth as 25.01.1999. On the basis thereof, scrutiny was held, admittedly no objection was raised and finally the petitioner contested and was declared as a returned candidate for the post of Mukhiya.

4. The respondent no. 7 having lost the election being unsuccessful candidate filed Complaint Case No. 5/2022 before the State Election Commission questioning the election of the petitioner on the ground that on the alleged date of nomination, the petitioner was underage and had not attained the age of 21 years as mandatorily required under Section 136(1)(b) of the Bihar Panchayat Raj Act, 2006, which is evident from the matriculation certificate of the petitioner showing her date of birth as 25.01.2002. Thus, on the date of nomination the age of the petitioner was only 19 years 8 months and 10 days. Pursuant to the registration of Complaint Case No. 5/2022, notice was issued to the petitioner informing her to appear and contest the case along with the documentary evidence in her support. In response to the aforesaid notice, the petitioner filed a detailed explanation before the State Election Commission refuting the



allegation made in the complaint, copy of which is marked as Annexure-6 to the writ application. In the meantime, the Returning Officer-cum-Block Development Officer, Dhaka, East Champaran vide his letter dated 07.02.2022 (Annexure-5) requested the District Panchayat Raj Officer, East Champaran, Motihari to conduct an enquiry on the petition filed by the complainant.

5. In the explanation filed by the petitioner, she specifically stated her date of birth as 25.01.1999 and in support of the aforesaid contention, Voter I.D. card, PAN card, Aadhar card and birth certificate issued from the office of the Department of Economics and Statistics, Government of Nagaland as also the transfer certificate issued from the Vidhya Bhawan Higher Secondary School, K. Kire Colony, Dimapur, Nagaland have been brought on record showing her date of birth as 25.01.1999.

6. It is submitted on behalf of the petitioner that her actual date of birth is 25.01.1999 as per the records available with the Vidhya Bhawan Higher Secondary School, K. Kire Colony, Dimapur, Nagaland. However, after retirement of her father, the family shifted to Motihari in the year 2012 where she took admission in DAV Public School, Narha, Panapur but due



to mistake of the Clerk her date of birth was recorded as 25.01.2002, instead of 25.01.1999. Though the transfer certificate issued by the Vidhya Bhawan Higher Secondary School, K. Kire Colony, Dimapur, Nagaland (Annexure-7) and the birth certificate (Annexure-7A) issued by the Government of Nagaland, Department of Economics and Statistics, it is evident that her date of birth is recorded as 25.01.1999. Learned senior counsel, Mr. Y. V. Giri while clarifying the position submitted that the date of birth of the petitioner as 25.01.1999 is based upon the documentary evidence and the certificate issued by the Government of Nagaland way back in the year 2005, much prior to 2021, i.e., the year in which the petitioner had filed her nomination and contested the election of Motihari. He submitted that even the school at Nagaland in which the petitioner had studied till 2012, on correspondence, had informed by its letter dated 17.03.2022 (Annexure-7) that the petitioner took admission in the school on 12.01.2006, left the school on 14.12.2012 and as per the school register, her date of birth is recorded as 25.01.1999.

7. Mr. Giri, learned senior counsel while assailing the impugned order has submitted that the matriculation certificate undoubtedly is an unimpeachable document but the same cannot



be treated as sacrosanct, if there are documents available on record to impeach the same. In the present case, the documents which create doubt with regard to the date of birth as recorded in her matriculation certificate is the date of birth as recorded in her birth certificate issued by the Government of Nagaland in terms of Section 12/17 of the Registration of Births and Deaths Act, 1969 and Rule 8 of the Nagaland Registration of Births and Deaths (Amendment) Rules 1999, coupled with the fact that even the school register mentioned her date of birth as 25.01.1999 as recorded hereinabove. Learned senior counsel next submits that he is aware of the law decided by the learned Full Bench of this Court in the case of ***Rajani Kumari vs. the State Election Commission*** reported in (2019) 6 BLJ 1 (FB) ***PHC*** wherein it has been 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 an unimpeachable document. No doubt, the matriculation certificate is a document of unimpeachable character but in the facts of the present case, can it be construed that the matriculation certificate is unimpeachable or cannot be impeached. Heavy reliance has been made on the judgment of the Hon'ble Supreme Court in the case of ***Brij Mohan Singh vs.***



Priya Brat Narain Sinha and others reported in **AIR 1965 SC 282** and also the judgments of the Hon'ble Supreme Court in the case of **Birad Mal Singhvi vs. Anand Purohit** reported in **AIR 1988 SC 1796**. Learned senior counsel relying on the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **Brij Mohan Singh** (supra) draws the attention of the Court to paragraph no. 20 of the judgment which reads as under:

“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."

8. Learned senior counsel thus submits that what can be culled out from the judgment of the Hon'ble Supreme Court in the case of **Brij Mohan Singh** (supra) is that the matriculation certificate cannot be held to be a sacrosanct and an unimpeachable document for arriving at a conclusion until and unless the person, who has filled up 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 matriculation certificate is sacrosanct, it is thus submitted that in the present case it was the uncle of the petitioner who had accompanied her to the school for getting her admitted and in whose presence the Clerk had committed the aforesaid mistake, when it is an admitted fact that the date of birth certificate as issued by the Government of Nagaland was of the year 2005 and the petitioner took admission at Motihari in the year 2012 as such it cannot be presumed that the petitioner would have disclosed her date of birth as "2002" instead of "1999".



9. Learned senior counsel while summing up his submission further submitted that the question of age is a pure election dispute as it is a pure question of fact which has been seriously disputed by the petitioner and thus it was incumbent for the Election Commission to record a preliminary finding whether the issue raised in the complaint is an election dispute or not. Since the Commission has not recorded in the decision on the preliminary finding it is liable to be set aside in the light of the Full Bench judgment of the Hon'ble Supreme Court in the case of ***Rajani Kumari*** (supra). All the more, two judgments of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner have mandated that burden of proving that the candidate was underage was on the election petitioner.

10. A counter affidavit has been filed on behalf of the respondents no. 3 to 5. Mr. Sanjeev Nikesh, learned counsel appearing on behalf of the State Election Commission has vehemently refuted the contention made on behalf of the petitioner and with reference to the statement made in the counter affidavit, submitted that the petitioner has declared her age 21 years on the basis of voter list and voter I.D. card though it is manifest that the date of birth mentioned in this I.D. shall not be treated as proof of age. The said issue has been decided



in the catena of judgments, including in the case of *Mamta Kumari vs. State of Bihar* reported in (2022) 5 BLJ 599. He further submits that with regard to the school leaving certificate of Vidhya Bhawan Higher Secondary School, K. Kire Colony, Dimapur, Nagaland, it transpires that the petitioner was admitted in the aforesaid school on 12.01.2006 and the date of leaving of school is 14.12.2012, the date of birth as scripted in the school leaving certificate is 25.01.1999 and she was promoted to Class-8. But the aforesaid document itself creates a doubt because she was admitted to DAV Public School, Panapur, East Champaran on 05.07.2013 in Class VII itself and her date of birth is shown as 25.01.2002. The aforesaid facts also fortify from letter dated 08.02.2022 issued by the Ramdeo Rambhajan Senior Secondary School where the date of birth of the petitioner is also shown as 25.01.2002, the copy of which is marked as annexure-R3-5/2 to the counter affidavit.

11. Mr. Nikesh further submits that the certificate of date of birth allegedly issued by the Government of Nagaland is also not in consonance with Section 13 of the Registration of Births and Deaths Act, 1969. Moreover once the date of birth was issued to the petitioner on 17.12.2005 then a new birth certificate in place of duplicate certificate cannot be issued by



the same authority and from perusal of both the certificates issued on 09.09.2008 and 17.12.2005 in favour of the petitioner it transpire that the place of birth of the petitioner in both the certificates are different, thus, it creates suspicion. Further submission has been made that the petitioner passed her matriculation examination in the year 2017 and Intermediate examination in the year 2019 but no effort has ever been made to correct her date of birth, through the concerned Examination Board on the basis of alleged birth certificate or transfer certificate, though the admit cards are filled up by the candidate but she has never tried to correct her date of birth and after about 20 years of passing of matriculation, the petitioner is claiming her date of birth as 25.01.1999 which is not tenable in the eyes of law. Reliance has also been made upon the judgments of the Hon'ble Court in **2019(1) PLJR 153, 2019(1) PLJR 130, 2019(1) PLJR 141, 2014 (4) PLJR 667 and 2022 (5) BLJ 599.**

12. A counter affidavit has also been filed on behalf of the respondent no. 7. Mr. S. B. K. Mangalam, learned counsel representing the respondent no. 7 has vehemently opposed the prayer of writ petitioner and submitted that the writ petitioner had fabricated the documents which is evidently clear from her



stand before the District Magistrate and thus, the writ petitioner is liable to be prosecuted for the commission of an act of perjury to mislead this Hon'ble Court as also the State Election Commission. It is submitted that if the report submitted by the District Magistrate to the State Election Commission regarding the age of the writ petitioner was not challenged by the writ petitioner before any appropriate forum and the writ petitioner had not produced a single document in support of her date of birth being 25.01.1999, the report of the District Magistrate attains finality and has thus become an unimpeachable document. The State Election Commission has committed no illegality to declare the petitioner disqualified to hold the post of Mukhiya since she had not attained her requisite age of 21 years on the date when she filed her nomination paper.

13. Mr. Mangalam further submits that since the complaint of the respondent no. 7 was based upon a document, maintained by the public servant in discharge of his official duties, therefore direction had been issued by the State Election Commission to hold an enquiry in the matter and submit a report, whereupon the respondent no. 6 issued a notice to the writ petitioner through the Sub Divisional Officer, Pakridayal and the writ petitioner was directed to appear in the office of the



respondent no. 6 on 14.02.2022 along with her educational and other certificates in order to show her date of birth. But the writ petitioner did not appear on the ground of her ailment. Moreover, in order to verify the genuineness of the matriculation certificate of the Central Board of Secondary Education, the Sub Divisional Officer, Pakridayal called upon the principal of D.A.V. Public School, Nrha, Panapur for its verification and in response thereto, the principal, D.A.V. Public School vide his letter dated 22.02.2022 certified the result/mark sheet and submitted that the result/mark sheet which is attached with the letter is true as per his school record. Similarly, the Principal of Ramdeo Rambhajan Senior Secondary School also submitted his report vide Letter No. 15 dated 19.02.2022 stating therein that the petitioner was admitted in his school in Class XI in the year 2017 on the basis of the transfer certificate of DAV Public School in which her date of birth was mentioned as 25.01.2002.

14. Mr. Mangalam further emphasized his submission that the irrespective of the opportunity given to the writ petitioner she did not choose to appear and in her place her father-in-law, Uma Shankar Yadav appeared before the respondent no. 6 and informed that the matriculation certificate



has been lost and in support of the petitioner's date of birth, birth certificate of the petitioner issued from Dimapur, Nagaland and the transfer certificate as well as the Aadhar Card, PAN Card, Voter I.D. card have been placed on record which, according to the respondent no. 7, is fabricated document and procured after the dispute arose.

15. In response to the aforesaid contention raised by the State Election Commission as well as the private respondent, rejoinder to the respective counter affidavits have been filed and submission has been made that the respondent Commission is for the first time questioning the veracity of the birth certificate issued by the Government of Nagaland without any evidence and at this stage the respondent Commission cannot aver that the certificate has not been issued in compliance of the relevant provision, certificate having been issued by the Government of Nagaland, a presumption would be drawn in favour of the certificate having validly been issued. Consequently, this is not a ground against which the Commission had recorded any finding in the impugned order dated 27.03.2023 and in fact the present case was not fit to be decided summarily by the State Election Commission and it ought to have been relegated to the appropriate court, that apart it is not appropriate to adjudicate



such complex disputed question in a writ jurisdiction.

16. This Court has given anxious consideration to the submissions advanced on behalf of the parties and also perused the materials available on record. Before coming to the merits of this case, it would be proper to observe that while exercising the power of judicial review, the Court has primarily confined to errors in the decision making process and not the merits of the decision, unless the party challenging the order is able to show arbitrariness or perversity in the impugned order, calls for interference. If the finding of the Tribunal is based on materials furnished before it derives from logical conclusion and is a reasonable possible view, there would not be any justification to interfere even if another possible view is also present.

17. Now, in the light of the scope of judicial review, this Court would examine the case of the petitioner as to whether the petitioner is able to make out a case of interference in the impugned order passed by the State Election Commission. In sum and substance, the issue arises for consideration in the present case is whether matriculation certificate can be considered an unimpeachable document for the State Election Commission to consider an election dispute in terms of Section 136(2) of the Bihar Panchayat Raj Act, 2006 for holding a



returned candidate to be disqualified from holding the post of Mukhiya on the ground of age.

18. Admittedly, the case of the petitioner is based upon the school leaving certificate issued by the Vidhya Bhawan Higher Secondary School, K. Kire Colony, Dimapur, Nagaland and the birth certificate issued from the office of the Department of Economic and Statistics, Government of Nagaland showing her date of birth as 25.01.1999. The other documents, like voter I.D. PAN card and Aadhar card produced by the petitioner are of much belated stage. It is the admitted position that the writ petitioner submitted her declaration on affidavit filed along with nomination paper showing her educational qualification as intermediate and in both the matriculation certificate as well as the intermediate her date of birth was 25.01.2002. The aforementioned date of birth as mentioned in the matriculation certificate has never been disputed by the appellant and if the contention of the petitioner that her correct date of birth is 25.01.1999, the question would arise as to why not any step or effort has been taken to get it corrected till date. All the more, if the case of the petitioner is based upon the fact that at the time of admission her maternal uncle accompanied her and on account of mistake of Clerk, her date of birth was recorded as



25.01.2002 instead of 25.01.1999.

19. This Court cannot lose sight of the fact that at the time of registration of matriculation examination with the Central Board of Secondary Education every particulars/details is to be filled up by the students concerned followed by the counter signature of their parents and thus chances of mistake are quite bleak. Even if some mistake has occurred, there is a provision for rectification which, in the present case, has never been done. It would also be worth noting here that at the time of enquiry conducted by the Sub Divisional Officer, Pakridayal, notice was issued but on account of ailment and otherwise, the petitioner did not choose to appear and defend her case.

20. In an identical situation, the learned Division Bench of this Court in the case of ***Babita Kumari vs. State of Bihar*** reported in ***2019(1) PLJR 130*** has been pleased to hold “that if there is matriculation certificate available, the genuineness of which is not in dispute based on entries made by the appellant herself, we find no reason to place reliance on transfer certificate which in any case cannot be conclusive proof of age, the alleged entries in the transfer certificate are matters of evidence to be proved by the person in accordance with law who seeks to rely upon the same.” This Court has also perused



the two certificates issued in favour of the petitioner by the Department of Economics and Statistics, Government of Nagaland, there appears difference of registration number and its date of registration as well as address of parents at the time of birth of the child. In the certificate issued in favour of the petitioner on 09.09.2008 even the date of issuance does not find place, the same casts doubt upon its credibility.

21. In the case of **Rani Devi vs. State Election Commission** reported in **2019(1) PLJR 153**, the learned Division Bench while considering an identical issue in relation to the date of birth of a candidate, making reliance upon the judgment rendered in the case of **Sushil Kumar vs. Rakesh Kumar** reported in **(2003) 8 SCC 673**, has been pleased to hold that once the appellant acknowledges the School Admission Register bore her date of birth based on a disclosure made by her own family members, the onus is on her to demonstrate by leading necessary evidence how and why an incorrect date of birth was furnished and how her correct date of birth was different as given in the electoral roll prepared much later. It would be relevant to quote paragraphs no. 12 and 13 of the judgment which reads as follows:

“(12.) Once the appellant acknowledges the School Admission Register bore her date of birth as



15.03.1990 based on a disclosure made by her own family member, the onus is on her to demonstrate by leading necessary evidence how and why an incorrect date of birth was furnished and how her correct date of birth was 18.08.1987. What were the subsequent inquiries and materials in contradiction to that available when the first date of birth was revealed and on basis of which a fresh determination for correction of the date of birth was arrived at. The electoral roll has been prepared much later in the year 2011. Not an iota of evidence has been furnished by the appellant with regard to the nature of inquiry held when her date of birth was recorded as 18.08.1987 in the electoral roll. The entry in the School Register being first in point of time without any evidence on record to contradict, cannot be sufficient to distract the earlier entry simpliciter. If the appellant is sanguine that she has materials to demonstrate the correct date of birth as 18.08.1987 by leading appropriate evidence, it is for her to institute an appropriate proceeding for a declaration of the correct date of birth.

(13.) The inconclusive evidentiary value of the Electoral Roll to determine the date of birth was noticed in (2003) 8 SCC 673 (Sushil Kumar v. Rakesh Kumar) holding as follows:-

Electoral roll and Election Commission Identity card

"51. In both the aforementioned documents the age of the respondent was stated to be 24 years as on 01.01.1995. 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."

22. Further, the State Election Commission has rightly relied upon the Division Bench judgment of this Court in the case of ***Mamta Kumari Vs. The State of Bihar*** reported in ***2022(5) BLJ 599***, wherein the writ petitioner Mamta Kumari on being 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 in the Act, challenged the same by claiming her date of birth as recorded in school and college 17.02.2001. However, the learned Division Bench having found variances of her date of birth in different records in comparison to her date of birth mentioned in her nomination form as 17.01.1996, finally came to the conclusion that the date of birth as recorded in matriculation certificate would prevail.

23. This Court also finds that the reliance made on behalf of the petitioner on the Constitution Bench judgments of



the Hon'ble Supreme Court in the case of ***Brij Mohan Singh*** (supra) is distinguishable in the facts of the present case for the reason that in the case in hand, the petitioner being a student of a school affiliated under Central Board of Secondary Education herself filled up the registration form countersigned by her parents, now she cannot be allowed to refute the details/particulars provided by herself, when no effort has ever been made by her to rectify the mistake, all the more she has admitted in the intermediate course on the basis of the matriculation certificate.

24. A similar issue has also been dealt with by the coordinate Bench of this Court in the case of ***Arti Kumar Vs. the Bihar State Election Commission*** reported in ***2023(3) BLJ 558*** giving primacy to the matriculation certificate when a dispute arose with respect to the correctness of the date of birth.

25. This Court has also perused the impugned order passed by the State Election Commissioner and does not find any perversity and illegality warranting any interference. In the afore-noted facts, the matriculation certificate has greater evidentiary value than the certificates / documents relied upon by the petitioner, all the more when veracity of particulars of matriculation certificate has never been disputed. It is well settled that a person who does not disapprove, approve.



26. In the aforesaid facts, circumstances and position obtaining in law, this Court does not find any merit in the writ petition and accordingly the same is dismissed.

27. There shall be no order as to costs.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	25.09.2023
Uploading Date	25.11.2023
Transmission Date	

