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04.01.2024
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 17865 of 2023

**Mahaddesh Sk.
-versus
The Commissioner, West Bengal State Election
Commission & Ors.**

Mr. Robiul Islam. ... For the Petitioner.

**Mr. Amal Kumar Sen, AGP
Ms. Ashima Das Sil.
... for the State.**

**Mr. Sonal Sinha.
Mr. Avishek Prasad.
...For the Election Commissioner.**

The petitioner complains that fraud has been committed by the private respondent at the time of filing the nomination for contesting the Panchayat General Elections, 2023 by disclosing incorrect date of birth relying upon false and forged documents.

The petitioner has annexed the birth certificate as well as the school-leaving certificate of the private respondent wherefrom it appears that in the birth certificate the date of birth of the private respondent is recorded as 16th July, 2001 and the date of birth recorded in the school leaving certificate is 16th July, 2023.

If the date of birth as recorded in the school leaving certificate is taken as correct, then the petitioner remains a minor on the date of filing nomination for election. If the date of birth recorded in the birth certificate of the private respondent is taken as correct, then the date of birth recorded in the school

living certificate has to be taken as incorrect. A person cannot have two dates of birth.

The petitioner has already made an application before the Panchayat Returning Officer requesting cancellation of the election of the minor candidate.

The same is pending consideration for a considerable period of time.

As fraud has been pleaded, accordingly, the same is required to be adjudicated by the competent authority.

Leave is accordingly granted to the petitioner to file appropriate representation before the Sub Divisional Officer annexing all documents in support of the fraud which the petitioner is pleading.

On receipt of the application from the petitioner, the Sub Divisional Officer, Berhampore Sadar shall consider the same in accordance with law after giving a reasonable opportunity of hearing to the petitioner as well as the returned candidate at the earliest but positively within a period of six weeks from the date of filing the representation.

If it ultimately transpires that the date of birth relied upon by the private respondent is incorrect, then necessary consequential steps shall be taken to address the issue.

Leave granted to the learned advocate for the petitioner to implead the Sub Divisional Officer, Berhampore Sadar as party respondent in the instant writ petition.

The formality of serving a copy upon the added respondent stands dispensed with as the State is duly represented by the learned advocate.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)