
(2009) 07 AHC CK 0123
In the Allahabad High Court

Anil Kumar

APPELLANT

Vs

Smt. Suchita
Smt. Suchita Vs Anil Kumar and Another

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Constitution of India, 1950 — Article 243K, 243O

Citation : (2009) 4 AWC 3810

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.

Politics becomes dirty when politicians behave immorally.

- His Holiness The Dalia Lama.

1. Indian democracy is considered to be the largest in the world and it is flourishing for the last 60 years. Nonetheless, it is not a very healthy democracy, though many may not agree. Lack of morality of the people connected with public life is the cause for the present litigation.

2. This appeal and the writ petition were tagged together by an earlier order of the Court and as such came-up for hearing before me in the weekly cause list.

3. The appeal is being treated to be the leading case with the consent of the parties.

Facts :

4. The facts leading to this litigation in nutshell may be summarised as under:

5. In the Zila Panchayat, Varanasi there are 39 members including the appellant Anil Kumar and the respondent Smt. Suchita Patel, who were declared elected as members on 25.10.2005 from Bada Gaon 4 and Kashi Vidhyapeeth 5 areas

respectively.

6. The elections for the post of Adhyaksha/President of the Zila Panchayat, Varanasi were notified by the Election Officer/District Magistrate, Varanasi on 20.12.2005 which notification was published in the daily newspaper dated 21.12.2005. The post/seat was reserved for backward class. The last date for nomination was 31.12.2005. Four members of the Zila Panchayat filed nominations including the appellant Anil Kumar and the respondent Smt. Suchita Patel. The other two members withdrew their nominations. Thus, leaving the appellant Anil Kumar and the respondent Smt. Suchita Patel only in the fray. The voting took place on 7.1.2006 and all the 39 members voted. Appellant Anil Kumar received 19 votes whereas Smt. Suchita Patel secured 20 votes and as such was declared elected by a margin of one vote only.

7. The election of the respondent Smt. Suchita Patel as Adhyaksha of the Zila Panchayat, Varanasi was challenged by some electors i.e. Sudha Singh and others by filing a writ of quo warranto being writ petition No. 13606 of 2006 on the ground that she is not qualified to hold the post as she had not completed 21 years of age which is the minimum prescribed for the purpose. Another writ petition No. 31458 of 2006 was filed by one another elector Iqbal to the same effect. Both these petitions were got dismissed as not pressed on 4.4.2008.

8. In the meantime, the appellant Anil Kumar on 4.2.2006 filed an election petition No. 11 of 2006 Anil Kumar v. Smt. Suchita Patel under Rule 33 of Zila Panchayat (Election of Adhyaksha and Upadhyaksha and Settlement of Election Disputes) Rules, 1994 (for short the Rules hereinafter). The said election petition was filed precisely on the allegations that the date of birth of the respondent Smt. Suchita Patel as recorded in the High School certificate of the year 2002 is 9.6.1986 and, therefore, on the date of nomination or on the date of election, she had not completed 21 years of age which is the minimum prescribed u/s 18-C of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (for short the Act hereinafter) and, therefore, her election is void and is liable to be set aside and the appellant is entitled to be declared as duly elected. The respondent Smt. Suchita Patel contested the election petition and filed her written statement dated 31.5.2006. In the written statement the respondent Smt. Suchita Patel basically contended that she was fully qualified to contest the election for the post of Adhyaksha as she was more than 21 years of age at the time of filing her nomination papers. She accepted that she had passed her High School examination in the year 2002 of the Madhyamik Shiksha Parishad, Uttar Pradesh but submitted that the date of birth recorded in the High School certificate is of no consequence. The entry of age in the electoral roll is conclusive wherein she is recorded to be 28 years of age. She is recorded as voter in the electoral rolls of Gram Panchayat, Chitaipur, Block Kashi Vidhyapeeth, District Varanasi. However, in the entire written statement she nowhere pleaded her precise correct date of birth.

9. In the election petition the respondent Smt. Suchita Patel moved an

application under Order VII Rule 11 C.P.C. for the rejection of the plaint primarily on the ground that the election petition was beyond time. The application was rejected by the Court below vide order dated 27.1.2007. This order has been assailed by the respondent Smt. Suchita Patel by filing the above writ petition No. 11644 of 2007 Smt. Suchita Patel v. Anil Kumar. In the writ petition subsequently, an amendment application was moved for adding two additional grounds and a prayer challenging the validity of Section 264-B of the Act and Rule 33 to 47 of the Rules and for declaring them to be ultra vires to Article 243-K(4) of the Constitution of India (hereinafter for short the Constitution). The amendment was allowed vide order of the Court dated 12.3.2007. However, as no interim order was granted in the above petition, the proceedings of the election petition continued.

10. In the election petition three issues were framed. The first issue related to the age of the respondent Smt. Suchita Patel and her disqualification on account of being under age. The issue No. 2 was with regard to the jurisdiction of the Court and the 3rd issue was as to whether the election petition was barred by Section 27 of the Act. The issue No. 2 with regard to the jurisdiction was decided in favour of the appellant Anil Kumar vide order dated 9.10.2007, which order was challenged by the respondent Smt. Suchita Patel by means of writ petition No. 52849 of 2007 which was dismissed on 29.10.2007.

11. Finally, the election petition was decided and dismissed vide judgment and order dated 20/26.3.2008. The election petition was held to be barred by Section 27 of the Act and at the same time it was also held that the respondent Smt. Suchita Patel was not disqualified as aforesaid.

12. This judgment and order has been assailed by the appellant Anil Kumar by filing this appeal under Rule 47 of the Rules. The appeal was admitted on 16.4.2008 and notices were issued to the respondents. The respondents on appearance apart from filing counter affidavit moved an application to permit her to make submission quo-challenge to the constitutional validity of Section 264-B of the Act and Rule 33 to 47 of the Rules. On the said application notices were issued to the Advocate General on 22.9.2008.

13. I have heard Sri K.N. Tripathi, Senior Advocate assisted by Sri N.K. Pandey, learned Counsel for the appellant Anil Kumar and Sri Ravi Kiran Jain, Senior Advocate assisted by Sri D.V. Singh, for the respondent Smt. Suchita Patel. Additional Advocate General Sri Zafar Nayyar assisted by Shri R.C. Srivastava learned standing counsel appeared for the State of U.P. and made his submissions adopting the arguments as taken by Sri Tripathi.

14. In so far as the writ petition is concerned, the prayer made for the quashing of the order dated 27.1.2007, has been rendered infructuous inasmuch as the election petition has already been decided on merits, the validity of which order is under consideration in appeal.

15. As far as challenge to the constitutional validity of the provisions of the Act

and Rules are concerned, the same have also been raised in appeal and shall be dealt with first before considering the other points arising for determination.

16. Out of the three issues formulated in the election petition issue No. 2 with regard to the jurisdiction stands decided vide order dated 9.10.2007 of the Court below which has been affirmed by this Court in writ petition No. 52849 of 2007 decided on 29.10.2007 and as such has become final and conclusive between the parties. Thus, findings on issue Nos. 1 and 3 only remain for consideration in appeal.

Points for determination.

17. In this manner two points arise for determination in appeal apart from the common point relating to the vires of the provisions of the Act and the Rules. In short, these points are :

- (i) Constitution validity of certain provisions of the Act and the Rules;
- (ii) Maintainability of the election petition; and
- (iii) Age of the respondent Smt. Suchita Patel and as to whether she is disqualified u/s 18-C of the Act.

Point No. 1.

18. Sri Ravi Kiran Jain vehemently submitted that Section 264-B of the Act and Rule 33 of the Rules is ultra vires to Article 243-K(4) of the Constitution of India as the Act fails to make provisions with respect to all matters relating to and in connection with the elections of the Panchayats. Secondly, the Rules have not been framed by the State Legislature and subordinate legislation is not permissible.

19. Now before making any endeavour to deal with the above submission it may be noted that all constitutional amendments and statutory enactments are presumed to be within the four corners of the Constitution and the burden is upon the person who attacks the Constitutionality of any law to show that there is a clear transgression of the Constitutional principles.

20. In order to consider Constitutionality of the above provisions, it would be better to have a glance upon some of the relevant provisions of the Constitution of India (for short the Constitution hereinafter) as well as the offending provisions of the Act and the Rules therein.

21. Article 243-K of the Constitution contained in part IX of the Constitution specifically empowers legislature of the State by law to make provisions in respect of all matters relating to or in connection with the elections to the Panchayat and Article 243-O thereof provides that elections of any Panchayat shall be questioned only by means of an election petition in such manner as may be provided by or under any law made by the legislature of the State.

22. The provisions of the aforesaid Act are in consonance with the provisions of

part IX of the Constitution of India relating to the Panchayats. Section 237 of the said Act authorises the State Government to make Rules in respect of all matters which are requisite for carrying out the purposes of the Act and at the same time Section 264-B of the Act lays down the manner and conduct of the election of the Zila Panchayat. It is in exercise of the powers u/s 237 of the Act read with Section 264-B of the Act that the aforesaid Rules have been framed. The said Rules have the approval of each house of the State legislature as is provided u/s 237 (3) of the Act. The aforesaid Rules in Rule 33 to 47 lays down the form and manner of presenting election petition and the procedure thereto. The aforesaid provisions of Article 243-K and 243-O of the Constitution, Section 237 and 264-B of the Act and Rules 33, 34 and 35 of the Rules are reproduced herein below:

Article 243-K. Elections to the Panchayats.- The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

Art. 243-O. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies of the allotment of seats to such constituencies made or purporting to be made under Article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by any election petition presented to such authority and in such manner as is provided for by or under any Law made by the Law made by the Legislature of a State.]

Section 237. Power of State Government to make rules.-(1) The State Government [may by notification in the Gazette made rules], consistent with this Act in respect of any matter or matters for which the power of making rules is

expressly or by implication conferred by this Act, and may also make rules which are otherwise requisite for carrying out the purposes of this Act.

(2) Any rule made under Sub-section (1) may be general for all Zila Panchayats or all Kshettra Panchayats or special for any one or more Zila Panchayats or Kshettra Panchayats to be specified [x x x]

[(3) All rules made under this Act shall, as soon as may be after they are made be laid before each House of the State Legislature while it is in session for a total period of thirty days extending in its one session or more than one successive sessions, and shall, unless some later date is appointed, take effect from the date of their publication in the Gazette, subject to such modifications or annulments as the two Houses of the State Legislature may during the said period agree to make so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.]

Section 264-B. Manner and conduct of election.- (1) The election to the office of an Adhyaksha, Upadhyaksha or a member of a Zila Panchayat and a Pramukh, Up-Pramukh or a member of a Kshettra Panchayat shall be held by secret ballot in the manner provided by rules which shall also provided for resolution of doubts and disputes relating to the election of such Adhyaksha, Upadhyaksha, Pramukh and Up-Pramukh.

(2) the superintendence, direction and control of the conduct of election of the office of an Adhyaksha, Upadhyaksha or a member of a Zila Panchayat and of a Pramukh, Up-Pramukh or a member of a Kshettra Panchayat shall vest in the State Election Commission.]

[(3) Except as provided in Sub-section (4), the State Government shall, in consultation with the State Election Commission, by notification, appoint the date or dates for general election of the Adhyaksha, Upadhyaksha or members of a Zila Panchayat or the Pramukh, the Senior Up-Pramukh, the Junior Up-Pramukh or members of a Kshettra Panchayat.

(4) The Election Commission shall, in consultation with the State Government, by notification, appoint date or dates for bye election of the Adhyaksha, Upadhyaksha or members of a Zila Panchayat or Pramukh, Senior Up-Pramukh, Junior Up-Pramukh or members of a Kshettra Panchayat.]

Rule 33. Time and manner of presenting petitions.- (1) An election petition calling in question the election of an Adhyaksha or Up-Adhyaksha may be presented to the Judge at any time within thirty days from the date of declaration of the result under Rule 13, Rule, 28, as the case may.

(2) It shall be presented in person by the petitioner or if there are more than one petitioner, by any one or more of them.

Rule 34. Form, etc. of petition.- (1) An election petition shall specify the ground or grounds on which the election of the returned candidate is questioned and shall

contain a summary of the circumstances alleged to justify the election being questioned on such grounds.

(2) The person whose election is questioned and where the petitioner claims that any other candidate shall be declared elected in the place of such person, every unsuccessful candidate shall be made a respondent to the petition.

Rule 35. Relief that may be claimed by the petitioner.- A petitioner may claim either of the following declarations-

(a) that the election of the returned candidate is void;

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

23. The combined study of Article 243-K and 243-O of the Constitution demonstrates that under Article 243-K of the Constitution, the State legislature has been authorised to make law in respect to all matters relating to or in connection with the election of the Panchayats whereas Article 243-O of the Constitution provides that the election shall not be called in question except by an election petition presented to such authority and in such manner as may be provided by or under any law made by the legislature of the State. Thus, the intention of the Constitution is that the matters concerning the elections of Panchayat are to be laid down by law made by the State legislature and that the form and manner of the presentation of the election petition which is after the completing of the elections process, may be made either by the State legislature or under the law made by the legislature of the State. Here a distinction has to be drawn between the phrase (i) by law made by the legislature of a State; and (ii) under any law made by any legislature of the State. The distinction is that when a thing is required to be done "by law", it means as per the provisions contained in the concerned statute/Act itself but where anything is required to be done "under law", it means an action under the subordinate legislation enacted in exercise of the powers conferred by the concerned Act/statute. The above quoted provisions of Article 243-O of the Constitution read with Section 237 of the Act show that the Constitution permits the State legislature to make provision with respect to all matters relating to or in connection to the Panchayat and that form and manner of questioning the election of the Panchayat may be provided by the state legislature itself or under any law which means by any subordinate legislation. The relevant Rules 33 to 47 of the Rules providing for the form and manner of presentation of an election petition are therefore undoubtedly under the law made by the State legislature and as such are in consonance with the provisions of Article 243-O of the Constitution.

24. The second aspect that the Act and the Rules does not provide any guidelines or make provision with regard to all matters concerning the election of the Panchayat as is mandatory under Rule 243-K(4) of the Constitution is totally misplaced. It may be noted that though the legislature of the State is competent to make law in respect of all matters relating to election of the Panchayat but it

does not mean that it cannot legislate in respect of some of them and leave the other matters for legislation later on as and when the need arises. In the event the State legislature for the time being has chosen to lay down law only in respect of certain matters, leaving other matters to be legislated subsequently, the same would not result in making the existing provisions ultra vires to Article 243-K(4) of the Constitution. Undoubtedly, the existing provisions of the Act and the Rules are not beyond the legislative competence of the State Legislative and a such cannot be termed as beyond the powers.

25. A similar controversy had earlier been dealt with by another Single Judge of this Court in the case of Jayadrath and Anr. v. Jivendra Kumar and Ors. 1998 (89) RD 26. In the aforesaid case the Court while dealing with the same provisions of this very Act and the Rules laid down that subordinate legislation is permissible in respect of post election matters which may be made either by the legislature itself or under the law made by the State legislature. It was further held that as the Rules have been framed under the law made by the legislature i.e. the Act though by means of subordinate legislation, they are in consonance with the provisions of Article 243-O of the constitution of India. Thus, in view of the aforesaid, legal position neither any of the provisions of the Act are repugnant to Article 243-K(4) of the Constitution as contended nor any of the Rules suffer from excessive delegation or legislative incompetence. Therefore, the submission attacking the vires of the provisions of the Act and the Rules has no merits and fails.

Point No. 2.

26. There is no dispute between the parties that the only ground on which the election petition was filed was that the respondent Smt. Suchita Patel was not 21 years of age on the relevant date and as such was disqualified for being nominated and elected as Adhyaksha of Zila Panchayat.

27. Sri Ravi Kiran Jain, in the view of the provisions of Section 27(2)(c) of the Act contends that as the issue raised in the election petition is with regard to qualification/disqualification of the respondent Smt. Suchita Patel to hold the office of Adhyaksha, the dispute is referable to the Judge and the election petition for the purpose as provided under Rule 33 of the Rules is not maintainable.

28. Section 27 sub Clause (2)(c) of the Act which is relevant provides that if a dispute arises as to whether a person has become disqualified to be Adhyaksha or Upadhyaksha, the dispute shall be referred to the Judge as may be prescribed. The manner and procedure of raising dispute u/s 27(2)(c) of the Act has been laid down in rules 48 to 52 of the Rules. For the sake of convenience the relevant part of the Section 27 of the Act is quoted herein below.

(1) ...

(2) If a dispute arises as to whether a person-

- (a) has been lawfully chosen [x x x] a member of a Zila Panchayat u/s 18; or
- (b) has ceased to remain eligible for being chosen [x x x] a member [x x x] of the Zila Panchayat for the purposes of Section 20; or
- (c) has become disqualified to be Adhyaksha or Upadhyaksha for the purposes of Section 19, the dispute shall be referred in the manner prescribed to the Judge whose decision shall be final and binding.

29. The power given u/s 27 of the Act is very limited in nature and is confined only to cases where an Adhyaksha or Upadhaksha after being elected becomes disqualified. Thus, it is only in the limited cases where the person subsequent to election for one reason or the other earns disqualification that the matter is referable to the Judge concerned and not otherwise. In other words, where a person who was disqualified from the very beginning to contest for the post of Adhyaksha and to hold the same, the provisions of Section 27(2)(c) of the Act would not come into play. In that event, an election petition under Rule 33 alone would be maintainable as it would amount to incorrect acceptance of nomination of a person who is not qualified.

30. On the contrary Article 243-O of the Constitution provides that no election to any Panchayat (which obviously include the post/office of Adhyaksha) shall be called in question except by an election petition. In consonance thereof Rule 33 of the Rules provide for disputing the election of Adhyaksha or Upadhyaksha by presenting an election petition to the Judge concerned for which no specific grounds have been enumerated.

31. A bare reading of Rule 33 of the Rules demonstrates that it is much wider in amplitude in comparison to Section 27 of the Act. Rule 33 provides that an election of an Adhyaksha or Upadhyaksha of Zila Panchayat can be questioned by filing an election petition before the Judge concerned and such a petition can be on any ground whatsoever as the grounds have not been enumerated therein i.e. adopting corrupt practice, incorrect acceptance or rejection of the nomination paper or even on the ground of disqualification of the person concerned, etc. It would not be proper to give a restrictive meaning to Rule 33 of the Rules so as to exclude the ground of disqualification from its ambit in view of the language used in Article 243-O of the Constitution.

32. Section 18-C of the Act clearly lays down that a person who has not completed the age of 21 years shall not be qualified to be elected as a member or office bearer of the Zila Panchayat. The effect of the aforesaid provision is that the election of a person who does not fulfil the above requirement would be void. In the case of Sushil Kumar Vs. Rakesh Kumar, the Supreme Court observed such a question undisputedly would fall for consideration in an election petition as despite disqualification the acceptance of nomination paper of such a person amounts to incorrect acceptance.

33. There is another angle for arriving at the above conclusion. Both u/s 27(2)(c)

of the Act and Rule 33 of the Rules, the matter is to be adjudicated by the Judge concerned which u/s 2(24) of the Act means the District Judge and any other subordinate Civil Judge or judicial officer named or designated by the District Judge in this behalf. As such the dispute in both the cases is to be decided by the same person/authority for which the procedure is also the same. Therefore, it makes no difference if such a dispute comes before the Judge concerned either by reference u/s 27(2)(c) of the Act or though on election petition under Rule 33 of the Rules.

34. In view of the above limited sphere of operation of Section 27(2)(c) of the Act, I am of the firm opinion that the Court below manifestly erred in deciding issue No. 3 and holding that the election petition was barred. Therefore, the finding on the said issue deserves to be set aside and is hereby set aside and it is held that the election petition under Rule 33 of the Rules is maintainable even on the ground of disqualification which is said to have existed at the time of nomination.

Point No. 3.

35. The most crucial point for determination in this appeal is the date of birth of the respondent Smt. Suchita Patel. It has its own story to tell.

36. According to the appellant Anil Kumar she is under age and is disqualified to hold the office of Adhyaksh, Zila Panchayat as neither on the date of nomination nor on the date of declaration of result she had attained the age of 21 years. According to him, her date of birth is 9.6.1996.

37. In support he brought on record the certificate dated 24.1.2006 issued by the Principal, Poorva Madhyamik Vidhalaya Khanpur Shiksha Kshetra Sikner, Mirzapur certifying the date of birth of Km. Suchita Patel daughter of Sri Jokhan Ram Singh as per entry in the school register to be 9.6.1986. He also obtained and filed the duplicate of the High School certificate of the respondent Smt. Suchita Patel dated 30.1.2006 issued by the Madhyamik Shiksha Parishad, Uttar Pradesh showing the respondent Smt. Suchita Patel to have passed High School in 2nd division from S.S.N. Inter College, Hansipur, Mirzapur in the year 2002 and her date of birth to be 9.6.1986. On the other hand, the defence of the respondent Smt. Suchita Patel is that she is above 21 years and her date of birth mentioned in the High School certificate is not conclusive. However, without pleading her actual date of birth, she adduced evidence to the effect that her correct date of birth is 3.7.1984.

38. The High School certificate of the respondent Smt. Suchita Patel as submitted by the appellant Anil Kumar is not in dispute. Admittedly, she had passed her High School from S.S.N. Inter College, Hansipur, Mirzapur in the year 2002 from the Madhyamik Shiksha Parishad, Uttar Pradesh with roll No. 2011263. Therefore, the appellant Anil Kumar on its basis has been able to discharge his burden to prove that the date of birth of the respondent Smt. Suchita Patel is 9.6.1986. Now when the respondent Smt. Suchita Patel disputes

the correctness of the same the burden shifts upon her to prove otherwise.

39. Undisputedly, respondent Smt. Suchita Patel took admission in the year 1991 in class 1 in Shiv Devi Bal Sewa Shikshan Sansthan, Baghan, Block Shikhand Tehsil Chunar, District Mirzapur and had studied up to class 5 therein. Thereafter, she took admission in Poorva Madhyamik Vidhyalaya, Khanpur, Mirzapur from where she passed class 6, 7 and 8. Finally she was admitted in S.S.N. Inter College, Hansipur, Mirzapur for her High School and Intermediate. It is also not disputed that right from the year 1991 when she took admission in class I in Shiv Devi Bal Sewa Shikshan Sansthan her date of birth in every school register, transfer certificate etc. continued to be recorded as 9.6.1986, which is also her date of birth mentioned in her High School certificate. This position continued till the filing of the election petition i.e. for the past 15 years.

40. It may be borne in mind that under the service jurisprudence in the absence of birth certificate, the date of birth as appearing in the High School certificate and in its absence the one which is entered in the service book at the time of joining is preferred and taken into consideration. Any application for change in the date of birth as recorded in the service book after a long lapse of time especially at the fag end of service is not encouraged and is normally not entertained. The object is not to disturb the record which had continued for a long time. Therefore, on the same analogy as the date of birth of the respondent Smt. Suchita Patel had continued to be recorded as 9.6.1986 for over 15 years from 1991 to 2006 in the school/college registers and even in the High School certificate 2002 for about 4 years there was no justification on her part to have indulged into an exercise to prove that her aforesaid date of birth as recorded is wrong. It would have been different if she was possessed of any positive evidence such as certificate of registration of her date of birth under the Registration of Births and Deaths Act, 1969. In the absence of such documentary evidence, under the facts and circumstances, she should have gracefully accepted her date of birth as recorded to be final and to quit the office. But, lure of political power, over powered her morality and compelled her to enter into this ugly litigation by manipulating documents after documents probably by wielding her political influence.

41. It was only when the election petition was filed on 4.2.2006, Jokhan Ram, the father of the respondent Smt. Suchita Patel, for the first time on the strength of a photocopy of the Kutumb register, moved on application on 5.2.2006 before the Head mistress of Shiv Devi Bal Sewa Shikshan Sansthan, Mirzapur that her date of birth in the said school register is wrongly recorded as 9.6.1986. Her correct date of birth is 3.7.1984 and therefore, correction be made in the school register. Simultaneously, the respondent Smt. Suchita Patel herself submitted an affidavit dated 13.2.2006 to the Basic Shiksha Adhikari, Mirzapur that she has lost her transfer certificate of class 5 which was issued to her in 1996 by the above school and, therefore, a duplicate or second transfer certificate may be issued. It is said that on the basis of some endorsement of the Basic Shiksha

Adhikari, Mirzapur on the said affidavit, on the application of her father, the head mistress of the school corrected her date of birth in the school register to 3.7.1984 and the second transfer certificate showing her date of birth to be 3.7.1984 was issued on 13.2.2006. Thereafter, she applied for change of her date of birth in the school register of Poorva Madhyamik Vidhyalay and for issuance of second transfer certificate from the said school also. In view of the amended transfer certificate issued from Shiv Devi Bal Sewa Shikshan Sansthan, necessary correction in the school register of Poorva Madhyamik Vidhyalaya was also made and a fresh transfer certificate dated 28.2.2006 was issued to her mentioning her date of birth to be 3.7.1984 in place of 9.6.1986 as was recorded earlier. Once the respondent Smt. Suchita Patel succeeded in getting her date of birth changed from 9.6.1986 to 3.7.1984 in the school registers and transfer certificates of Shiv Devi Bal Sewa Shikshan Sansthan & Poorva Madhyamik Vidhyalaya from where she had passed class 1 to 5 and class 6, 7 to 8 respectively, she applied for the change of her date of birth in the college register of S.S.N. Inter College, Hansipur, Mirzapur and then in the High School certificate which were also got corrected accordingly.

42. The head mistress Smt. Amrawati of Shiv Devi Bal Sewa Shikshan Sansthan was examined as PW 3. She categorically stated that the admission form of the respondent Smt. Suchita Patel of class 1 of the year 1991, contains her date of birth as 9.6.1986. On its basis, her date of birth in the school register was recorded as 9.6.1986. The respondent Smt. Suchita Patel was issued transfer certificate twice. First transfer certificate was issued to her when she had passed class 5 from the school mentioning her date of birth as 9.6.1986. The second transfer certificate was issued to her on 15.2.2006 (after filing of the election petition) mentioning her date of birth as 3.7.1984 after necessary correction was carried out in the school register on the application of her father. She also accepted in her statement that the entire record has been lost by her including the original affidavit of the respondent Smt. Suchita Patel dated 13.2.2006 which contained the endorsement of Basic Shiksha Adhikari while returning from the Court on the last date when the same was with her. However, when the photocopy of the affidavit dated 13.2.2006 was shown to her she admitted that there was no specific order of the Basic Shiksha Adhikari on the said affidavit for changing the date of birth of respondent Smt. Suchita Patel.

43. Similarly, the head master in-charge Ramesh Dutt Sharma of Poorva Madhyamik Vidhyalaya, Kanpur, District Mirzapur as PW 4 stated that the respondent Smt. Suchita Patel was admitted to the school in class 6 in the year 1996 on the basis of the transfer certificate issued by the Shiv Devi Bal Sewa Shikshan Sansthan which recorded her date of birth as 9.6.1986. Accordingly, in the school register her date of birth was recorded as 9.6.1986 and after she passed class 8 from the said school she was issued transfer certificate on 1.7.1999 mentioning her date of birth to 9.6.1986. However, on the application of the respondent Smt. Suchita Patel dated 17.2.2006 and the affidavit dated 27.2.2006 for correction of her date of birth in the school register and for

issuance a fresh transfer certificate, in view of the second transfer certificate issued by Shiv Devi Bal Sewa Shikshan Sansthan, necessary changes in the school register were made and she was issued a fresh transfer certificate on 28.2.2006 mentioning her changed date of birth as 3.7.1984.

44. Thus, the copy of the Kutumb register and an alleged endorsement of the Basic Shiksha Adhikari, Mirzapur on the affidavit of the respondent dated 13.2.2006 happened to be the foundation for the successive changes in her date of birth in the school registers, transfer certificates and the High School certificate.

45. Now let me examine whether the copy of the Kutumb register showing the death of the mother of Smt. Suchita Patel can form sufficient basis for establishing that her date of birth i.e. 9.6.1986 as earlier entered in all school registers and the High School certificate is wrong and that her correct date of birth is 3.7.1984.

46. The State of U.P. in exercise of its power u/s 110 of U.P. Panchayat Raj, 1947 enacted the U.P. Panchayat Raj (Maintenance of Family Register) Rules, 1970, which provide for the preparation of family register which is popularly known as Kutumb register. Rule 2 of the aforesaid Rules, provides for preparation of Kutumb register in Form "A" containing family wise names and particulars of all persons ordinarily residing in the village. These entries are to be made quarterly. All changes made in the Kutumb register are to be ratified by the Gram Panchayat in the next meeting. The object behind maintaining the Kutumb register under the aforesaid Rules, is to maintain a list of all persons who are ordinarily resident in the area of the Gram Sabha to be recorded family wise. Therefore, entry in the Kutumb register may be a conclusive proof of a fact that a person whose name appears therein is a resident of the village and belongs to a particular family but as its purpose is not to maintain the record of date of birth or death of a person it can be a conclusive proof about the date of birth or even the death of a person whose name happened to be recorded therein though it may form a piece of evidence. Such date of birth or death could have been proved conclusively by producing a certificate of registration under the Registration of Births and Deaths Act, 1969. No such certificate of registration under the above Act either with regard to the date of birth of Smt. Suchita Patel or of the death of her mother Smt. Sakhi Devi was produced which could have been the most authentic document to establish the date of birth of the respondent Smt. Suchita Patel or of the date of death of her mother. The Kutumb register is only a document showing the names of the members of the family and that they are ordinarily resident of a village concerned and as such it cannot be a conclusive proof either of the date of birth or of death of any family member mentioned therein.

47. The above Kutumb register at best could only give an indication about the date of death of mother of the respondent Smt. Suchita Patel but it by no means can establish the actual date of birth of the respondent Smt. Suchita Patel. There

is no positive evidence to establish her date of birth to be 3.7.1984.

48. A perusal of the above Kutumb register reveals that it contains the names of all family members of Jokhan Ram but it does not mention the name of the respondent Smt. Suchita Patel therein. It records the date of death of Smt. Sakhi Devi as 15.10.1984 and as such if Smt. Suchita Patel was born earlier her name ought to have appeared in the Kutumb register which is conspicuous of her absence. Besides the above, the date of birth of all family members recorded in the Kutumb register happens to be 1st of January of the year concerned. This itself proves that the Kutumb register was not maintained for the purposes of recording exact/actual date of birth or death of the persons mentioned therein but only for recording the names of the family members. Moreover, no evidence was produced to show as to under whose orders and when the entry of the date of death of Smt. Sakhi Devi was made in the Kutumb register. There is no evidence to prove that her date of death was recorded in the year 1984 or immediately thereafter. Thus, the aforesaid Kutumb register cannot be regarded as a reliable document to prove even the date of death of the mother of the respondent Smt. Suchita Patel.

49. The father of the respondent Smt. Suchita Patel had applied for the correction of her date of birth vide application dated 5.2.2006 and the application mentions that in support of the correction prayed for, a copy of the Kutumb register is being enclosed. The alleged enclosed copy of the Kutumb register, on closure examination reveals that it was issued on 17.2.2006 and as such it was not possible for her father to have enclosed it with the application dated 5.2.2006. This being the over all position with regard to the Kutumb Register which has been made the foundation for seeking change in the date of birth of the respondent Smt. Suchita Patel, I am of a definite view that such a document cannot be of any trustworthy evidentiary value to prove the actual date of birth of the respondent Smt. Suchita Patel.

50. An attempt has been made to justify the death of respondent's mother on 15.10.1984 by producing a certificate of the doctor who was also produced as a witness in support thereof. However, the said certificate of the doctor was never made the basis for any claim that the mother of the respondent died on 3.7.184 before any of the authorities concern. Her date of death was sought to established only on the basis of the Kutumb register which alone was furnished with the application dated 5.2.2006 for necessary change in the school register. Certificate of the doctor was not part of the said application for claim for change in the date of birth. Therefore, the death certificate so issued by the doctor is of no material relevance. A perusal of the said certificate and the statement of doctor reveals that he was not a qualified or a registered medical practitioner having any proper knowledge of medical science. Therefore, the certificate does not inspire confidence.

51. The headmistress of Shiv Devi Bal Sewa Shikshan Sansthan had carried out the change in the date of birth as appearing in the school register in view of the

above Kutumb register which apparently cannot be accepted. The other document on the basis of which such a change could be justified may be an endorsement of the Basic Shiksha Adhikari, Mirzapur on the affidavit dated 13.2.2006 alleged to have been submitted by the respondent Smt. Suchita Patel for issuance of second transfer certificate as she had lost her original transfer certificate of class 5 which was issued to her in the year 1996. The said original affidavit and the endorsement of the Basic Shiksha Adhikari contained thereon was not produced in evidence. The story that the original transfer certificate has been lost and therefore, she requires another certificate on the face of it is false which appears to have been concocted with ulterior motive obviously for manipulating change in her date of birth as recorded. This is for the reason that the original transfer certificate is normally deposited with the school in which admission is taken subsequently and as such it does not remain in possession of the student concerned. Therefore, there is no question of its being lost by her and for asking for issuance of second such certificate. Moreover, transfer certificates which are school leaving certificates are required for the purposes of taking admission in higher classes and for no other purpose. Therefore, there was no occasion for the respondent Smt. Suchita Patel for demanding the second transfer certificate after more than 12 years of having passed class 5 and that too after having passed High School and Intermediate. Similar is the situation with regard to the demand of second transfer certificate of Poorva Madhyamik Vidhlaya, Khanpur, Mirzapur.

52. It may not out of context that the date of birth once mentioned in the High School's certificate is ordinarily not liable to any change. Regulation 7 of Chapter 3 Part II-B of the Regulations framed under the U.P. Intermediate Education Act, 1991 permits the Board to make necessary correction in a High School certificate within a period of two years of its issuance and not thereafter. The respondent had not applied for the change of her date of birth in the High School certificate of the year 2002 till February 2006. Therefore, the Board of High School was not competent to have unilaterally changed her date of birth in the High School certificate on any application made in the month of February 2006 i.e. after about 4 years of the issuance of the High School's certificate. The entire exercise in this regard appears to have been gone through in a clandestine manner. It is settled legal position that any change in the High School certificate after two years specially with regard to change of date of birth is required to be got done through process of the Court by instituting a civil suit for declaration for the correct date of birth and not otherwise.

53. In Umesh Chandra Vs. State of Rajasthan, the Supreme Court while seized with the matter of determination of the age of an accused observed that entries in school registers and admission form which are maintained in the regular course of official duty and existing ante litem mortem are more reliable and authentic evidence. Therefore, the date of birth of the respondent Smt. Suchita Patel changed on the basis of documents coming into existence after the initiation of the present proceedings or during the pendency of the election

petition cannot be accepted as reliable piece of evidence for determining her correct date of birth.

54. On behalf of the respondent Smt. Suchita Patel much stress has been laid upon the voter's list 2005 of Gram Panchayat, Chatipur, Block Kashi Vidhyapeeth, Varanasi where her name appears as a voter with her age as 28 years. It may be noted that her name also appears in the electoral rolls of 2005 of Gram Panchayat, Khanpur, Mirzapur wherein her age has been mentioned as 20 years. Such enrolment of the respondent Smt. Suchita Patel at two places is not disputed. The aforesaid two electoral rolls cannot be reconciled. A person cannot be enrolled as a voter simultaneously from two constituencies. In view of the apparent inconsistency which has not been explained, in the two electoral rolls on record none of them can be taken to be true or reliable to establish her correct age. The Supreme Court in *Sushil Kumar Vs. Rakesh Kumar*, has already held that date of birth entered in electoral roll and election identity card issued by the election commission of India is not a conclusive piece of evidence to establish the age or date of birth of a person concerned.

55. The respondent Smt. Suchita Patel at the time of filing her nomination on affidavit disclosed her age to be 28 years. The nomination was made in December 2005 and if her statement on affidavit is taken to be correct, her date of birth would fall sometime in the year 1977 and not in the year 1984 as is being tried to be established by her. Such a huge variation as per her own showing is very surprising and beyond comprehension which *ex facie* establishes her falsehood.

56. Then the very absence from her pleadings about her exact date of birth itself casts enormous doubt on the trustworthiness of her entire evidence inasmuch as she cannot be allowed to travel beyond her pleadings and to adduce evidence on the point not specifically pleaded.

57. Above all, the findings on this issue by the Court below have been recorded in a very cursory and a cryptic manner. The Court below has not taken enough care to apply the elementary principle of analysing the evidence and recording reasons in the returning the findings. Thus, the judgment and order of the Court below is completely uninformed of reasons which is a *sine qua non* for writing a judgment in view of Section 2(a) read with Order XX Rule 4(2) of C.P.C. which provides that a judgment shall contain apart from other things reasons for such decision.

58. Thus, it is amply clear that the date of birth of respondent continued to be recorded as 9.6.1986 since 1991 up till the filing of the election petition. Thereafter in a calculated move the date of birth was got changed in all three schools/colleges and the High School certificate on the strength of a Kutumb register showing the death of her mother in the year 1984 without there being any positive evidence about her actual date of birth.

59. In view of the aforesaid facts and circumstances, I hold that the Court below

manifestly erred in holding 3.7.1984 to be the date of birth of respondent Smt. Suchita Patel. Her actual date of birth is 9.6.1986 as had appeared in all the three school/college registers and the unamended High School certificate of the year 2002. Accordingly, on the date of nomination i.e. 31.12.2005 and on the date of declaration of the result i.e. 7.1.2006 she was only aged about 19 and half years and as such was disqualified in view of Section 18-C of the Act from contesting and holding the post of Adhyaksha of Zila Panchayat. Therefore, her election is void.

60. In the end Sri Jain made a feeble attempt to argue that both the reliefs i.e. for declaring the election of returned candidate as void and that the petitioner be declared as duly elected cannot be claimed and granted simultaneously. The submission on the face of Rule 35 of the Rules appears to have no force. Rule 35 of the Rules provides that the petitioner in an election petition may claim either of the following declarations :

- (i) That the election of a returned candidate be declared void;
- (ii) That the election of a returned candidate be declared void and that he himself or any other candidate has been duly elected.

61. The second relief which is permitted under the aforesaid Rule includes both the reliefs with regard to the declaration as void the election of the returned candidate and at the same time for declaring the other person as duly elected. Thus, under the aforesaid Rule the petitioner is entitled to claim both the reliefs simultaneously.

Conclusion.

62. In view of the aforesaid facts and circumstances, I conclude as under:

- (i) The election petition as filed by the appellant Anil Kumar was not barred by Section 27(2)(c) of the Act;
- (ii) The date of birth of the respondent Smt. Suchita Patel is 9.6.1986 and as such she was under-age and was disqualified in view of Section 18-C of the Act to contest and hold the post of Adhyaksha of Zila Panchayat, Varanasi on the relevant date and therefore, her election is void.
- (iii) The provisions of the Act and the statute as contended on behalf of the respondent Smt. Suchita Patel are not ultra vires to the Constitution specially Section 243-K(4) of the Constitution of India.

Relief :

63. In the result, the writ petition is dismissed and the appeal succeeds and is allowed. The judgment and order dated 20.3.2008 passed by Additional District Judge/Special Judge, S.C.S.T., Varanasi in Election Petition No. 11 of 2006 Anil Kumar v. Smt. Suchita Patel is set aside and the election of respondent Smt. Suchita Patel as Adhyaksha of Zila Panchayat, Varanasi is declared to be void and

the appellant Anil Kumar is declared to be duly elected.

64. In the end, the Court is constrained to observe that litigation of such a nature and apparent manipulation of records post litum shakes the confidence of the people and erodes the image of persons in public life. Therefore, it would not be proper for this Court in larger public interest to leave the matter at this stage without getting an inquiry and fixing the responsibility of all who are responsible for making such changes in the High School certificate of the respondent and the school/college registers. Therefore, Secretary, Secondary Education, U.P., Lucknow is directed to personally look into the matter and to institute an inquiry as to under what circumstances the date of birth of the respondent Smt. Suchita Patel in the High School's certificate 2002 has been changed especially in violation of Regulation 7 Chapter 3 of Part II-B of the Regulations under the Intermediate Education Act, 1921 and to apprise the Court with the result of such an inquiry within a period of three months. The certified copy of this judgment and order is directed to be kept on record of the Madhyamik Shiksha Parishad, U.P., Allahabad along with the record pertaining to the High School certificate of the respondent Smt. Suchita Patel as well as on the school/college registers of the institutions Shiv Devi Bal Sewa Shikshan Sansthan, Poorva Madhyamik Vidhyalaya and S.S.N. Inter College, Mirzapur. The Court cannot also refrain itself from commenting upon the conduct of the headmistress, headmaster and the principal of the schools/colleges concerned who apparently buckled to the pressure of the respondent Smt. Suchita Patel and appears to have rendered full support to her enabling her to succeed in her game plan. This speaks low about the morality of the teachers also in whose hands lies the future of the country.

65. In the overall circumstances of the case, the appellant Anil Kumar is awarded cost of this appeal which I quantify to be Rs. 10000/- (Rupees Ten thousand) payable by the respondent Smt. Suchita Patel within a period of one month from today failing which the same shall be recoverable from her as arrears of land revenue. The cost so awarded may be deposited by the respondent Smt. Suchita Patel with the registry of the Court for payment to the appellant Anil Kumar.

66. A copy of this judgment be sent to the Secretary, Secondary Education U.P., Lucknow, District Inspector of Schools, Mirzapur and Basic Shiksha Adhikari, Mirzapur for information and necessary action as suggested.