
(2007) 01 PAT CK 0135
In the Patna High Court
Case No : CWJC No. 12637 of 2006

Kahkashan Parveen

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Citation : (2007) 01 PAT CK 0135

Final Decision : Allowed

Judgement

S.N. Hussain, J.—This writ petition has been filed for quashing order dated 13.09.2006 (annexure-1) passed by the State Election Commissioner (respondent No. 2) in Case No. 41 of 2006 by which the petitioner, who was elected as Mukhiya of Dumri Gram Panchayat (Darbhanga), has been disqualified for not attaining the age of 21 years as per the provisions of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act" for the sake of brevity) and directed that the said post be treated as vacant.

2. The admitted fact of this case is that election for various posts under the Act was notified by the respondents and on 27.03.2006 nomination papers were filed by the petitioner for the post of Mukhiya of Dumri Gram Panchayat (Darbhanga) which was scrutinised without any objection raised by any one. Finally, elections were held on 18.05.2006, whereafter the result was declared on 20.06.2006 and the petitioner took oath as Mukhiya on 07.07.2006 as she obtained the highest votes. Subsequently on 11.08.2006 (annexure-3), respondent No. 5, who is a voter of the said Gram Panchayat and is the husband of one of the losing contestants for the same post, filed complaint before the Commission to winch the petitioner filed a detailed reply on 13.09.2006 (annexure-4), whereafter the impugned order was passed on 13.09.2006 itself.

3 Learned Counsel for the petitioner submitted that the Commissioner wrongly relied upon the certificates of Bihar. State Madarsa Education Board (hereinafter referred to as "the Board" for the sake of brevity) as in the certificate of Wastania her date of birth was shown as 21.07.1986, whereas in the certificate

of Fauquania her date of birth was shown as 31.01.1986. In this connection he submitted that the said dates of birth were not given by petitioner's parents in the Madarsa, rather they were wrongly given by someone which is proved by the contradictions therein and furthermore the date of birth should have been in accordance with the birth certificate Issued by the proper authority. He stated that in the said circumstances he sent a petition on 05.07.2003 (annexure-5) to the Board through the Principal of the Madarsa concerned, namely Madarsa Islamia Kusheshwar Asthan, Darbhanga, for correction of her age as per her birth certificate and also sent a reminder, but no step has been taken by the authority concerned as yet.

4. Learned Counsel for the petitioner further submitted that the birth certificate dated 20.2.1982 (annexure-6) clearly showed that her date of birth was 31.01.1982 which was verified and found genuine by the Block Development Officer, Biraul (Darbhanga) in his report dated 04.10.2006 (annexure-8). He also stated that the identity card of Election Commission dated 01.01.2002 (annexure-7), voter lists of 2000 and 2006 also proved that in 2006 the petitioner was above 21 years of age. Learned Counsel for the petitioner thus averred that the Commissioner has wrongly relied upon the certificates of the Board, although the petitioner had contested the claim of the complainant in her reply before the Commissioner and had produced reliable, relevant and valid documents in support of her claim, hence the said authority had no authority or jurisdiction to pass the impugned order.

5. On the other hand, learned Counsel for the respondent- Commission as well as learned Counsel for private respondent No. 5 vehemently opposed the contentions of the learned Counsel for the petitioner and submitted that the birth certificate, the identity card, the voter lists of 2000 and 2006 produced by the petitioner were contradictory to each other regarding her age. They further submitted that letter dated 20.9.2006 (annexure-9) sent by the Examination Controller of the Board clearly showed that no petition for correction of her date of birth was filed by the petitioner before the Board and it justified the dates given in the two birth certificates. They also averred that in Dumri Gram Panchayat the registers of births and deaths for the period prior to 2001 were not available and the birth certificate produced by the petitioner was found to be issued from some volume prior to 2001 which was not available with the present Panchayat Sewak and hence the learned Commissioner rightly refused to rely on the said birth certificate of the petitioner. Hence, they submitted that the impugned order is legal and justified and requires no interference.

6. Considering the facts and circumstances of the case, as well as the materials on record and the aforesaid discussions, it is quite apparent that although the petitioner had filed her nomination paper on 27.03.2006, whereafter the elections were held on 18.05.2006 and the results were declared on 20.06.2006, whereafter even the oath of the office of the petitioner was administered on 07.07.2006, but during that period no objection was raised from any quarter with

respect thereto before any authority and it was only after more than a month that respondent No. 5 filed a complaint on 11.08.2006 before the Commissioner. It may be relevant to note here that respondent No. 5 is not only a voter of the constituency concerned, but is also the husband of the contesting candidate for the same post who had lost to the petitioner. It is also to be noted here that the petitioner contested the claim of the complainant before the Commissioner by way of filing a written reply specifically denying the allegation against her date of birth and submitted that her date of birth was 31.01.1982, in support of which she produced her birth certificate and other materials.

7. The power to interfere in such matter has been given to the State Election Commissioner only under the provision of Section 136(2) of the Act. From a perusal of the aforesaid provision, two aspects are quite apparent. Firstly, that if the disqualification is from the date prior to start of election process, such objection should have been raised before the Commissioner during the election process itself. Secondly that where the matter is with respect to a disputed question of fact which is contested and contradicted by the concerned person and requires evidence to decide the same, the Commission has got no authority or jurisdiction to decide the same specially when the process of election has concluded. In such circumstances, the only option left for the losing contestant was to file an election petition raising such question before the prescribed authority under the provision of Section 137 of the Act which clearly provides that the election to any office of a Gram Panchayat or a Gram Katchary shall not be called in question except by an election petition as prescribed. The specific wordings of the aforesaid Section read with the provision of Article 243O of the Constitution of India provided a bar to interference by courts in such electoral matters. This view has been expressed by this Court in case of *Rekha Kumari Vs. The State of Bihar and Others* .

8. With respect to the aforesaid discussions, it is apparent that in this case the alleged disqualification of the petitioner was from the date prior to start of election process, but neither any such objection was raised before, the Commission during the election process itself, nor any genuine reason has been shown by respondent No. 5 which prevented him from filing any such petition earlier. Furthermore, the matter in question with regard to the petitioner's age is clearly a disputed question of fact which has been contested and contradicted by the petitioner on the basis of relevant materials and evidence which were also produced by the petitioner. In the said circumstances, it is quite apparent that the Commissioner had no authority or jurisdiction to decide the said question.

9. So far the question of age of the petitioner and the documents relied by the authorities are concerned, the only materials relied upon by the Commissioner are the two certificates of the Board and the letter of the Examination Controller of the Board (annexure-9). The certificate of Wastania showed that the date of birth of the petitioner was 21.7.1986 whereas in the certificate of Fauquania her date of birth was shown as 31.01.1986. Since both the certificates are with

respect to the classes equivalent to Class VIII and X of the same School, the date of birth shown in both of them should have been the same. But both the certificates show different dates and hence none of them can be legally assumed to be reliable with respect to petitioner's date of birth. Furthermore, letter dated 20.09.2006 (annexure-9) issued by the Examination Controller of the Board states that the petitioner's date of birth during her Fauquania examination was deliberately changed by the Board itself to enable her to appear in the said examination. This is highly obnoxious, to say the least, as the Board or any of its authority had no jurisdiction or power to change, the date of birth, of any candidate unless he/she or his/her parents or guardian comes forward with an affidavit application for the same showing reasons and reliable evidence for changing the same. Furthermore, it has not been shown that the date of birth of the petitioner recorded in the Board was on the basis of any application or affidavit filed, by her parents and hence it had no probative value unless her parents were examined or person on whose information the entry was made was examined. This view is settled by various decisions of Hon"ble Apex Court as well as of various High Court including the judgments of the Supreme Court in case of Birad Mal Singhvi Vs. Anand Purohit, as well as in case of Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, .

10. Furthermore, the petitioner has stated on affidavit that she had sent a petition dated 05.07.2003 (annexure-5) for correction of her age mentioned in the certificates of Wastania and Fauquania to the Board through the Principal of the Madarsa concerned, but only relying upon the aforesaid letter of Examination Controller of the Board (annexure-9) that no such petition is registered in his office, the Commissioner assumed in the impugned order that the petitioner had not sent any petition for correction without realising that the said petition and reminder were sent to the Board through the Principal of the Madarsa concerned and without examining the Principal of the Madarsa and the receiving authority of the Board, the aforesaid assumption is absolutely frivolous and misconceived.

11. However, without appreciating the aforesaid facts and the requirements of law, the Commissioner neither tried to ascertain as to how the date of birth has been recorded in the Board certificate or in the school register, nor any attempt was made to examine the parents of the petitioner or any other person concern. On the other hand, it was the petitioner who produced her birth certificate showing her date of birth to be 31.01.1982 and in support thereof she produced other documents also. The said birth certificate was issued as far back as on 20.2.1982 and there was no material at all in show that it was a forged and fabricated document, but the Commissioner disbelieved it only on two counts, firstly that it was issued by one Kamal Narain Das and according to respondent No. 5 the signature of Kamal Narain Das on the birth certificate and Malgajari receipts were not similar and secondly that the births and deaths registers prior to 2001 were not available with the present Panchayat Sewak.

12. With respect to the first contention, it is quite apparent that when the

signature of Kamal Narain Das on the birth certificate was compared with his signature on Malgajari receipts, the Commissioner himself found them to be similar. Regarding the second contention, the Commissioner again failed to realise that non-availability of births and deaths registers with the Panchayat Sewak cannot be a ground for assuming that the birth certificate of the petitioner was not genuine, specially when he himself found that the birth certificate appears to have been issued from some earlier volume of births and deaths register. The birth certificate being dated 20.02.1982 was clearly much prior to 2001 and hence, the said assumption of the Commissioner should have gone in favour of the petitioner, specially when the Block Development Officer, Biraul (Darbhanga) having asked to enquire into the matter submitted his report dated 04.10.2006 (Annexure-8) finding the said birth certificate of the petitioner to be genuine.

13. Although the petitioner's identify card issued by the Election Commissioner in 2002 and voter lists of 2000 and 2006 mentioned slightly different ages of the petitioner, but all of them showed that she was above 22 years of age at the time of time of filing of her nomination paper in 2006, hence no importance can be given to the minor discrepancies therein, which could have occurred due to inefficiency of the person getting it recorded during different periods, as the petitioner had filed her nomination paper giving her date of birth which is fully proved by her birth certificate.

14. In the said circumstances, neither the Commissioner had any jurisdiction or authority to decide such contested matter after the election process was over, nor the order passed by him was legal and justified on merits. Accordingly, the impugned order date 13.09.2006 (annexure-1) passed by the State Election Commissioner, Bihar, in case No. 41 of 2006 is hereby quashed and this writ petition is allowed. The authorities concerned are directed to reinstate the petitioner on the post of Mukhiya Dumri Gram Panchayat, Darbhanga forthwith.