
(2015) 09 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1351 of 2015

Poonam Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Citation : (2015) 09 PAT CK 0005

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Prakash Srivastava, Rajeev Ranjan, Amit Bhushan and Anu Priyadarshi, for the Appellant; Raju Giri, GP and Santosh Kumar Misha, AC to GP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J—The petitioner stands disqualified by the order of the State Election Commission dated 7.1.2015 bearing Memo No. 77 dated 12.1.2015 passed in Case No. 102 of 2011 and Case No. 105 of 2011, inter alia, on grounds that the petitioner was underage to contest the election of Member, Panchayat Samiti, Block-Bakhtiyarpur in the district of Patna.

2. The contest raised through the present writ petition has a chequered history. The present writ petition is the third in the line of challenge made by the petitioner to the order(s) passed by the Commission in respect of her disqualification on grounds of age.

3. The facts of the case briefly stated is that the petitioner contested the election of Member, Panchayat Samiti, Bakhtiarapur in the year 2006 and successfully completed her term as its Pramukh. Although attempt was made by persons to question her election but the challenge was withdrawn. One Jhimi Lal Rai filed a writ petition bearing CWJC No. 1945 of 2007 to question her election but withdrew the same on 2.12.2011. Another challenger namely Kaushalya Devi also filed CWJC No. 8432 of 2007 to raise an election dispute before this Court

but withdrew the same on 3.11.2011. The petitioner having successfully completed her term in 2011 again contested the Panchayat Samiti election in the year 2011 and was successful.

4. The election of the petitioner was questioned by the private respondents by filing the election cases in question bearing Case Nos. 102 and 105 of 2011. The election cases were allowed by the State Election Commission vide judgment and order dated 23.8.2012 present at Annexure-4 and the writ petitioner was disqualified to hold the post of Member, Panchayat Samiti as she was held to be underage to contest the election. The writ petitioner challenged the order of the Commission before this Court in CWJC No. 16448 of 2012 and a Bench of this Court vide order passed on 8.11.2012 present at Annexure-5 disposed of the writ petition with a direction to the Commission to call for a report from the Bihar Sanskrit Shiksha Board (hereinafter referred to as "the Sanskrit Shiksha Board") as regarding the correctness of the Madhyama Certificate so relied upon by the writ petitioner and pass appropriate orders. The Bench was of the opinion that the stand of the writ petitioner in claiming to be adult on the date of contesting the election relying upon the Madhyama Certificate of "the Sanskrit Shiksha Board" should have been given a consideration by the Commission.

5. The private respondents questioned the order of the learned Single Judge in LPA No. 492 of 2013 and the Division Bench without interfering with the order of the learned Single Judge disposed of the appeal vide order passed on 24.9.2013 present at Annexure-6. Following the remand, a report was called for from the Secretary, Sanskrit Shiksha Board present at Annexure-8 and which was submitted by the Examination Controller of the Board on 25.9.2013 forming part of Annexure-8 series. The Deputy Secretary of the Commission was deputed to examine the record and give his report and which also forms part of Annexure-8 series. The State Election Commission vide judgment and order passed on 2.12.2013 upheld the contentions of the election petitioners that the writ petitioner was underage at the time of contesting the election and confirmed its earlier order passed on 23.8.2012.

6. The writ petitioner being aggrieved again came before this Court in CWJC No. 1375 of 2014 and which was heard and allowed on 24.11.2014 on limited grounds that despite the earlier order dated 23.8.2012 of the Commission having been set aside by this Court in CWJC No. 16448 of 2012 yet the Commission while allowing the election case on remand vide order passed on 2.12.2013, had proceeded to confirm the same very order passed on 23.8.2012 which was not in existence. The matter was again remitted back to the Commission for passing a fresh order and which remand has resulted in the impugned order passed on 7.1.2015 impugned at Annexure-11 to the writ petition. Being aggrieved it is for the third time that the petitioner is before this Court.

7. Mr. Shri Prakash Srivastava has appeared on behalf of the petitioner while the State and the State Election Commission are represented by their respective counsel, the respondent No. 6 is represented by Mr. Anil Kumar Tiwari,

respondent No. 7 is represented by Mr. Rajendra Narayan, learned senior counsel, respondent No. 8 is represented by Mr. S.S. Sundaram and Mr. Shashank Shekhar Jha and the respondent No. 9 is represented by Mr. S.B.K. Manglam.

8. Mr. Srivastava, learned counsel appearing on behalf of the petitioner while reiterating the sequence of events as noted hereinabove, has submitted that the petitioner was elected Member, Panchayat Samiti, Bakhtiarpur even in the election held in the year 2006 and was elected Pramukh on 30.6.2006. He submits that although attempts were made to question her election before this Court but the same was withdrawn. He submits that the petitioner completed her tenure and again contested the election in the year 2011 and was successful. It is submitted that the election of the petitioner is being questioned on grounds of being underage at the time of contesting the election. Learned counsel while admitting to the date of birth entered in the records of the Bihar School Examination Board (hereinafter referred to as "the Examination Board") as "22.5.1991" submits that it was due to inadvertent error and oversight which led to such entry and which has been corrected subsequently. It is contended that the petitioner though was examinee for the matriculation examination held in the year 2005 by "the Examination Board" but was expelled. He submits that since the petitioner did not pursue her study under "the Examination Board" that she did not take appropriate steps to get the errors regarding her date of birth corrected in the records. It is submitted that the petitioner appeared in the Madhyama examination held by "the Sanskrit Shiksha Board" and at which stage she corrected her date of birth to read as "8.12.1984". It is submitted that the petitioner appeared as a private candidate through Ganesh Adarsh Sanskrit High School, Bakhtiarpur, Patna and which is manifest from the school leaving certificate issued by the school on 15.9.2006 certifying her date of birth as 8.12.1984. It is contended that the petitioner passed the Madhyama Examination in 2n division and the Madhyama Certificate present at Annexure-3/A also confirms her date of birth as "8.12.1984".

9. Learned counsel next referred to the voter-list present at Annexure-1 to submit that the age of the petitioner has been clearly mentioned as 25 years against serial No. 107 of the voter-list of the year 2011 and which further confirms that she was born in the year 1984. It is contended that the two complainants who are the private respondents herein are close relatives of the writ petitioners who had earlier challenged the election of the petitioner as a Member, Panchayat Samiti in 2006 but withdrew from the contest. It is contended that the State Election Commission has simply proceeded to accept the contentions of the private respondents relying upon the records of "the Examination Board" and although its first order passed on 23.8.2012 (Annexure-4) was set aside by this Court in CWJC No. 16448 of 2012 with a clear direction to pass a fresh order after calling for a report from the Sanskrit Shiksha Board and after examining the validity of the certificate but the State Election Commission reiterated his view in the next order passed on 2.12.2013 despite

the report submitted by "the Sanskrit Shiksha Board" present at Annexure-8 series supporting the claim of the petitioner. It is contended that the order passed on 2.12.2013 (Annexure-9) was set aside by this Court vide Annexure-10 but the same view has been reiterated by the Commission in the impugned order present at Annexure-11 relying upon the Supreme Court judgment rendered in the case of Shah Nawaz Vs. State of U.P. and Another, AIR 2011 SC 3107 : (2011) 3 Crimes 171 : (2011) 8 JT 475 : (2011) 3 RCR(Criminal) 884 : (2011) 8 SCALE 423 : (2011) 13 SCC 751 : (2011) 9 SCR 859 : (2011) AIRSCW 4777 : (2011) AIRSCW 4632 : (2011) 7 Supreme 529 : (2011) 5 Supreme 476 . It is contended that although the judgment rendered by the Supreme Court in the case of Shah Nawaz (supra) was in consideration of the statutory provisions underlying the Juvenile Justice (Care and Protection of Children) Act, 2000 in determining the age of the juvenile and had no application in the present context but the Commission has mechanically applied the judgment to set aside the election of the petitioner treating the date of birth entered in "the Examination Board" as "22.5.1991" to be the correct date of birth.

10. Learned counsel has relied upon a Bench decision of this Court rendered in the case of Kamta Kumari vs. State arising from CWJC No. 1632 of 2013 to submit that this act of the Commission in mechanically relying upon the matriculation records to determine the date of birth has been deprecated. Learned counsel has relied upon a Division Bench judgment of this Court reported in Neelam Devi Vs. The State of Bihar and Others to submit that once there is a serious dispute between the parties which requires enquiry and adjudication upon appreciation of evidence then the issue goes beyond the competence of the Commission. Learned counsel has relied upon paragraph 10, 11, 16, 18, 19, 22, 23 and 27 of the judgment to support his submission. According to Mr. Srivastava where the complainants relied upon one set of documents to canvass their claim of the petitioner being underage while the petitioner relied upon a second set of document to prove otherwise and which required a decision based on comparative assessment, appreciation and evaluation of the documents then the proper remedy for the complainants was by way of an election petition and not within the jurisdiction of the Tribunal to adjudicate on the same.

11. The argument of Mr. Srivastava has been contested by learned counsel appearing for the State, learned counsel for the State Election Commission, Mr. Rajendra Narayan, learned senior counsel appearing for the respondent No. 7, Mr. S.B.K. Manglam, learned counsel appearing for the newly-added respondent No. 9 and Mr. Anil Kumar Tiwari, learned counsel appearing for the respondent No. 6. According to the learned counsel appearing for the respondents, the order impugned does not require any interference.

12. It is the contention of Mr. Manglam that it is on the basis of materials on record of the proceeding that a view has been expressed by the Commission and which appears a possible view. He submits that a mere possibility of another

view would not render the opinion expressed by the Commission unsustainable and this Court in such circumstances may not grant indulgence in the matter. Learned counsel in support of his contention has relied upon a judgment of the Supreme Court reported in *Sushil Kumar Vs. Rakesh Kumar*, AIR 2004 SC 230 : (2003) 2 JT 575 Supp : (2003) 8 SCALE 659 : (2003) 8 SCC 673 : (2003) 4 SCR 802 Supp : (2003) AIRSCW 6005 .

13. Mr. Rajendra Narayan, learned senior counsel appearing for the respondent No. 7 on the other hand has delved into the documents which support the date of birth of the petitioner as "22.5.1991". According to Mr. Narayan, the petitioner has manipulated her date of birth while filling up her forms for the Madhyama Examination from "the Sanskrit Shiksha Board". Mr. Narayan has referred to the enclosures accompanying the counter affidavit filed on behalf of the respondent No. 7 and with reference to Annexure-R-7/A he submits that the School Principal has certified the date of birth entered in the school records of the petitioner as "22.5.1991". With reference to Annexure-R-7/B he submits that the Admit-card and the Tabulation Register placed at Annexure R-7/C all certify the date of birth of the petitioner as such. He submits that the petitioner having been expelled in the matriculation examination in 2005 she has chosen to appear from "the Sanskrit Shiksha Board" and the enquiry so conducted by the Commission under the orders of this Court, revealed several discrepancies and even the registration number was not found in the tabulation register of the Sanskrit Shiksha Board. It is argued that it was in consideration of such discrepancies that the Commission has doubted the Madhyama Certificate issued by "the Sanskrit Shiksha Board" which reveals the date of birth of the petitioner as "8.12.1984". He submits that the very admission of the petitioner before the State Election Commission that the date of birth was mistakenly entered as "22.5.1991" in the records of the Bihar School Examination Board is sufficient enough to prove the alteration made by the petitioner to contest the election. It is contended that in the admitted circumstances reflecting from the school records and the records of the Bihar School Examination Board which shows the date of birth of the petitioner as "22.5.1991" the petitioner was underage to contest the election and has been rightly unsuited by the Commission. According to Mr. Narayan, the opinion of the Commission is in admitted circumstances. Learned counsel referred to a Division Bench judgment of this Court reported in *Vijay Kumar Chaudhary Vs. The State Election Commissioner, The State of Bihar and Bhola Sah* to submit that the Division Bench at paragraph 7 of the judgment has dealt with the jurisdiction of the Commission to adjudicate on the matters of disqualification. On the same issue learned counsel has also referred to a judgment of this Court reported in *Champa Devi @ Champa Kumari Vs. State of Bihar and Others*, (2007) 4 PLJR 619 as well as a Bench decision present at page 787 (*Poonam Kumari vs. State Election Commission*). Learned counsel with reference to the order of remand passed by this Court on earlier occasions submits that never at any stage that the petitioner had questioned the jurisdiction of the Commission to adjudicate on the matter and thus no such issue can be raised by her at the present stage.

14. Mr. Narayan has also relied upon a Division Bench judgment of this Court in LPA No. 267 of 2013 (Rani Devi vs. State Election Commission) to submit that the Division Bench has held that once a person acknowledges the date of birth in the school registers then any alteration on the same would have to be proved by that person by leading appropriate evidence. He thus submits that in the present case since the petitioner admits that the date of birth entered in the school records as "22.5.1991" is a mistake it would not absolve the petitioner from demonstrating with the supportive materials how a new date of birth was entered in the records of "the Sanskrit Shiksha Board".

15. Mr. Anil Kumar Tiwari, learned counsel appearing for the respondent No. 6 has also reiterated the arguments advanced by Mr. Manglam and Mr. Narayan to submit that the petitioner is not entitled for any relief.

16. Surprisingly despite the orders of this Court directing the Commission to verify the genuineness of the Madhyama Certificate issued by "the Sanskrit Shiksha Board" and even when an enquiry was conducted by the Commission in this regard but "the Sanskrit Shiksha Board" or its concerned official was not added as a party to the dispute to answer the charge of manipulation.

17. This Court in consideration of the circumstances where the entire dispute revolved around the veracity of the Madhyama Certificate issued by "the Sanskrit Shiksha Board" directed the petitioner to add "the Sanskrit Shiksha Board" as a party respondent. The Sanskrit Shiksha Board has appeared through counsel Mr. S.S. Sundaram and who has also filed a counter affidavit supporting the Madhyama Certificate issued in favour of the petitioner. In obedience to the order of this Court even the Tabulation Register has been produced by Mr. Sundaram who though fairly admits that the registration number of the petitioner is not present at its place but submits that the Registration No. of the petitioner is 42-002284/06 which should have been mentioned in the Tabulation Register but its non-mentioning would have no adversarial impact. According to Mr. Sundaram, the Tabulation Register is prepared centre-wise and the name of the petitioner appears at serial No. 146. He submits that whereas the Registration No. of the petitioner is 002284/06, the student with Registration No. 2281 bears Roll No. 157, the student with Registration No. 2282 bears Roll No. 154, the student with Registration No. 2283 bears Roll No. 158, the student with Registration No. 2280 bears Roll No. 159 and the student with Registration No. 2278 bears Roll No. 134. According to Mr. Sundaram, the absence of registration number does not signify anything unless the contesting respondents demonstrate that the Registration No. 2284/06 belongs to some other student.

18. Mr. Srivastava in his short reply has submitted that it would be absurd to believe that the petitioner at the age of 15 years would have been allowed to contest the earlier election in the year 2006 and even the Returning Officer would have ignored the appearance of the petitioner as a 15 years old before accepting her nomination. He submits that a bonafide error was committed in the school records and which has been rectified by the petitioner while filling up the

forms as a private examinee in the examination held by "the Sanskrit Shiksha Board" in the year 2006. He submits that the judgment relied upon by Mr. Manglam has been taken note of by the Division Bench in the judgment rendered in the case of Neelam Devi (supra).

19. I have heard Learned counsel for the parties and I have perused the records.

20. Although exhaustive arguments have been advanced by the contesting parties but in my opinion the issue in consideration lies in a very limited compass. The facts are admitted and are not in dispute. It is not in dispute that whereas the school records up to the appearance in the Matriculation Examination by the petitioner through the Bihar School Examination Board reads her date of birth as "22.5.1991", on the other hand the records of "the Sanskrit Shiksha Board" including the Madhyama Certificate for the 2006 Annual Examination reads her date of birth as "8.12.1984". In between them, there is no conclusive piece of evidence to support either of the two dates of birth. The issue thus has to be adjudicated on the basis of the comparative analysis.

21. As argued by the private respondents if the date of birth of the petitioner is treated to be "22.5.1991" then in that case, she would be aged less than 14 years when she appeared in the Matriculation Examination in 2005 in which she was expelled. The said date of birth would also make her 15 years old when she first contested the election in the year 2006. In my opinion, it would be a plain absurdity to accept that the Returning Officer would permit the petitioner to contest the election in the year 2006 at an age of 15 years without questioning on her appearance for there is a wide gap in between the age of 15 years and the eligibility age of 21 years. Certainly the contesting respondents cannot contend that although the petitioner was aged 15 years but her physical appearance was of a 21 years old adult or that the Election Officer was in default. As I have already observed above, except for the two divergent educational records demonstrating two different dates of birth there is no other piece of evidence to conclusively prove the age.

22. In the circumstances discussed above, it would only be prudent to accept that the date of birth entered in the school records and the records of the Bihar School Examination Board as "22.5.1991" was an attempt by the parents or the relatives of the petitioner to provide age advantage to the petitioner in the later period of life as observed by the Supreme Court in the case of Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, AIR 1965 SC 282 : (1965) 3 SCR 861 but having realized the error the petitioner got it corrected when having been expelled from the Matriculation Examination held by the Bihar School Examination Board in 2005, she chose to appear in the Madhyama Examination held by "the Sanskrit Shiksha Board" as a private examinee in the year 2006. Had it been a case where by alteration of the date of birth in a subsequent examination the petitioner would have tried to secure an age advantage then perhaps her conduct would have been held doubtful and the petitioner may perhaps not been permitted to such alteration until she would support it with

cogent evidence to prove the same but the case in hand is otherwise and here the petitioner by alteration of date of birth has enhanced her age by almost 7 years and thus has waived of the age advantage. In the circumstances discussed it would be preposterous to accept the arguments of the private respondents as found in the reasonings of the Commission that such act of the petitioner to alter the date of birth resulting in enhancement of age was with a sole object to contest an election.

23. The other issue which falls for consideration is that whether in such disputed circumstances, the Commission was within its jurisdiction to reject the Madhyama Certificate issued by "the Sanskrit Shiksha Board".

24. The power of the State Election Commission to venture into disputed issues of facts while adjudicating on the issue of disqualification has been a subject-matter of many a writ petitions and some of whom have also been referred to by the respective parties.

25. Section 136(1) of "the Act" discusses the circumstances in which a member of the Panchayat whether before or after the election can be held disqualified. Sub-section (2) thereof vests jurisdiction in the State Election Commission to examine any such complaint or petition filed in this regard. The State Election Commission has also been vested with power to take suo-motu cognizance of any such disqualification and decide the matter after allowing sufficient opportunity to the affected parties.

26. Section 137 of "the Act" on the other hand is couched in a negative manner to prohibit a challenge to any election in any other manner except by way of an election petition. The two forums so provided by the legislature and made available to an aggrieved leave no room for any confusion that the two operate in separate fields and in different circumstances. Demonstrably where a disqualification as set out in section 136(1) of "the Act" can be inferred on a plain examination of documents which are unimpeachable in character, the Commission can well go ahead to decide the issue but where a challenge to the election of a member of a Panchayat under section 136(1) of "the Act" rests on documents which would require adducing, appreciation and evaluation of evidence then the issue sails out of the jurisdiction of the Commission for neither the Commission has been vested with such powers as vested in a Civil Court of competent jurisdiction nor is it technically equipped to adjudicate on such complicated issues. The term used in section 136(2) of "the Act" is "enquiry" and which certainly cannot partake the character of a trial.

27. In so far as the case in hand is concerned, the school records and the records of the Bihar School Examination Board reflect a date of birth as "22.5.1991". The petitioner was expelled in the Matriculation Examination in the year 2005. The petitioner appeared in the Madhyama Examination through "the Sanskrit Shiksha Board" as a private candidate held in the year 2006 and was successful. It is not in dispute that a Madhyama Examination is equivalent to a

Matriculation Examination. Meaning thereby the only Matriculation Certificate which is available on records is the one issued by "the Sanskrit Shiksha Board" and which reflects the date of birth as "8.12.1984". Surprisingly even when the State Election Commission has relied upon the judgment of the Supreme Court rendered in the case of Shah Nawaz (supra) to attach a primacy to a Matriculation Certificate but while recording the opinion it has done exactly the opposite by disregarding the Madhyama Certificate and the reasons are missing.

28. Although the argument of Mr. Narayan centered around the fact that the alteration of the date of birth by the petitioner was objective based to secure an advantage it was the argument of Mr. Manglam that since the Commission has expressed an opinion which is a possible opinion then this Court may not exercise its extraordinary jurisdiction to substitute the same by another opinion. In my opinion, both the arguments are unsustainable since both tend to support a conjectural view. Although the proposition advanced by Mr. Manglam is sound but it does not apply to the present case where despite availability of a Matriculation Certificate, the Commission has sided with the information available in the school records and the records of the Bihar School Examination Board and without giving reasons.

29. Noticeably the onus was on the complainants to lead evidence to prove that the date of birth recorded in the records of "Sanskrit Shiksha Board" was incorrect but except for the evidence already discussed hereinabove no other documentary or oral evidence was led. In this context I am reminded of a judgment reported in Annu Kumari Vs. The State Election Commission, (2014) 4 PLJR 667 which was a case in which the State Election Commission had opined in favour of the election petitioner relying upon the Matriculation Certificate in preference to the school records so relied upon by the returned candidate. The Division Bench with reference to the judgment of the Supreme Court rendered in the case of State of M.P. and Others Vs. Mohanlal Sharma, (2003) 96 FLR 178 : (2002) 10 JT 207 : (2002) 7 SCC 719 : (2003) 1 UPLBEC 808 upheld the opinion of the Commission, inter alia, on grounds that the Matriculation Certificate had greater evidentiary value than the school records and since there was no dispute as to the veracity of the Matriculation Certificate, the reliance placed by the Commission on the same suffered no infirmity.

30. Paragraph 17 of the judgment rendered in the case of Annu Kumari (supra) read thus:

"17. With regard to the above, it is noteworthy that there is no dispute that the matriculation certificate, in question, was issued by a competent authority and, hence, the correctness of the date of birth, recorded in the said certificate, could not have been refused to be accepted by the Election Commissioner..."

31. In the present case the Election Commission has done exactly the opposite. Whereas the Madhyama Certificate which is equivalent to Matriculation Certificate reflects the date of birth of the petitioner as "8.12.1984" and even when in the

earlier round of proceedings this Court had reminded the Commission to examine the matter in the backdrop of the Madhyama Certificate issued by the Sanskrit Shiksha Board but the Commission by merely attributing suspicion to the certificate issued by "the Sanskrit Shiksha Board" has proceeded to reject the date of birth recorded therein in preference to the school records. A mere absence of registration number in the Tabulation Register is no cause for any suspicion when the registration is admitted by "the Sanskrit Shiksha Board" and it is not the case of the private respondents that the registration number claimed by the petitioner i.e. 2284/06 belonged to any other student.

32. For the reasons and discussions hereinabove, I am unable to uphold the opinion expressed by the State Election Commission in the order dated 7.1.2015 passed in Case No. 102 of 2011 and Case No. 105 of 2011 and which is accordingly quashed and set aside.

33. The writ petition is allowed but with no order as to costs. Since the election of the respondent No. 9 as a Member of the Panchayat Samiti, Bakhtiarpur is consequent upon the ouster of the petitioner and was made subject to the outcome of this writ petition vide order passed on 27.2.2015, hence the consequences shall follow. The interlocutory application(s) on record stands disposed of.

34. Let the records of Case Nos. 102 and 105 of 2011 and Tabulation Register so produced by learned counsel for the Commission and Sanskrit Shiksha Board respectively be returned to them.