
(2003) 09 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3287 of 2002

Rajesh Kumari (Smt.)

APPELLANT

Vs

Civil Judge (Sr.Dn.) and Others

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Rajasthan Panchayati Raj (Election) Rules, 1994 — Rule 21

Citation : (2004) 1 RLW 312 : (2004) 1 WLC 336

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : R.P. Garg, for the Appellant; Rakesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—The matter was heard finally with the consent of learned counsel for the parties.

2. The petitioner was elected as Sarpanch of Panchayat circle Noorpur Ganjpur (Alwar) in the election held on January 31, 2002. Challenging the election of the petitioner, the second respondent instituted election petition in the court of District Judge, Alwar which was later on transferred to the Court of Civil Judge (Sr. Dn.) Laxmangarh. The main grounds raised in the petition was that the petitioner was below twenty one years on the date of election therefore she was not qualified to contest the election. In the reply to the petition, the petitioner pleaded that as per Electoral Roll she had attained the required age and election petition was not maintainable. As many as seven issues were framed out of the pleadings of the parties. The second respondent examined herself and produced Smt. Siya Singh and Subhash as witnesses to establish that the petitioner was under age on the date of the election whereas the petitioner in addition to her evidence got examined Kanderu Singh, Rajendra Singh and Ram Sahay. Learned Court below allowed the election petition vide judgment dated May 18, 2002 holding that the age of the petitioner on the date of election was 19 years 5 months and as she was under 21 years of age, her election to the post of

Sarpanch was illegal. The petitioner in the instant writ petition seeks to quash the said judgment dated May 18, 2002.

3. Mr. R.P. Garg, learned counsel for the petitioner canvassed that as recorded in the scholar register had no probative value as it was drawn on the basis of information supplied by a stranger Bhajan Lal who was never authorised by the father or guardian of the petitioner. Thus the documents Ex. 5 and Ex. 6 could not have made the basis of determining the age of the petitioner. Learned counsel further urged that the Court below could not have overlooked the Revised Electoral Roll, according to which the petitioner was 22 years of age on the date of election. Reliance was placed on *Birad Mal Singh v. Anand Purohit* (1).

4. Per contra, Mr. Rakesh Kumar, learned counsel for second respondent supported the impugned judgment and urged that the documents Ex. 5 and Ex. 6 were rightly relied upon as the petitioner herself admitted that she had studied in Primary School Chimny. In 1999 the age of petitioner was recorded as 19 years and it tallied with the age recorded in the school register. It was further canvassed that only to become eligible to contest the election the petitioner gave a false date of birth and got revised voter list. Placing reliance on *Syed Yakoob v. K.S. Radha Krishnan and Ors.* (2), learned counsel canvassed that finding of facts recorded by learned court below should not have been gone into in a writ of certiorari.

5. I have pondered over the rival submissions and carefully scanned the material on record.

6. In *Birad Mal Singh v. Anand Purohit* (supra), it was indicated that the entries regarding date of birth contained in the scholar's register and the secondary school examination have no probative value, if no person on whose information the date of birth of the candidate was mentioned in the school record is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry is made on the basis of the information given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. The truth or otherwise of the facts in issue, namely, the date of birth of the candidate as mentioned in the documents must be proved by admissible evidence i.e. by evidence of those persons who can vouchsafe for the truth of the facts in issue.

7. In the instant case admittedly one Bhajan Lal gave information about the date of birth of the petitioner, on the basis of which it was entered in the school register. In this situation, it was incumbent on the second respondent to examine Bhajan Lal to establish that he had special means of knowledge of date of birth of the petitioner. Although Head Mistress of the School got the entries in the scholar's register exhibited, it could not be established as to what were the special means of knowledge of date of birth. Father of the petitioner appears to

be illiterate as he put thumb impression on his statement recorded in the court below. It was Bhajan Lal who could alone testify as to what relations he had with the petitioner and what was his source of knowledge about her date of birth. As Bhajan Lal was not examined the entries in the School Register in my opinion had no probative value and the age of the petitioner could not have been determined on the basis of documents Ex.5 and Ex.6. The Electoral Rolls for the election of Sarpanch for Panchayat circle Noorpur Ganjpur were revised under the provisions of Rajasthan Panchayati Raj (Election) Rules 1994 (for short "1974 Rules") whereby the corrected date of birth of petitioner was recorded. If second respondent had any grievance in regard to revised age of the petitioner an appeal could be preferred under Rule 21 of the 1974 Rules. As no appeal was filed the entries in the Electoral Roll which had attained Finality, could not have been attacked by any other mode and the Court below was duty bound to comply with the statutory provisions.

8. In Syed Yakoob v. K.S. Radhakrishnan (supra), the Constitution Bench of Hon'ble Supreme Court indicated that in writ of certiorari error of fact howsoever grave cannot be interfered with but an error of law which is apparent on face of record can be corrected. In the case on hand the court below in ignoring the mandate of 1974 Rules and relying on the entries in the scholar's register, committed such an error which is apparent on the face of record.

9. As a result of the above discussion I allow the writ petition and set aside the judgment dated May 18, 2002 of the learned Civil Judge (Sr. Dn.) Laxmangarh District Alwar. No costs.