

(2016) 12 PAT CK 0058

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No. 16753 of 2016

Lalita Kumari

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Dec. 20, 2016**Acts Referred:**

- Bihar Panchayat Raj Act, 2006 - Section 136(2)
- Constitution of India, 1950 - Article 226, Article 227

Citation: (2017) 1 BLJud 159 : (2017) 2 PLJR 564**Hon'ble Judges:** Mr. Ahsanuddin Amanullah, J.**Bench:** Single Bench

Advocate: Mr. P.K. Shahi, Sr. Advocate Mr. S.P. Srivastava and Mr. Prabhat Kumar Singh, Advocates, for the Petitioner; Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates, for the State Election Commission; Mr. Patanjali Rishi, A.C. to A.A.G. 6, for the State

Final Decision: Dismissed

Judgement

Mr. Ahsanuddin Amanullah, J. (Oral) - Heard Mr. P. K. Shahi, learned senior counsel assisted by Mr. S.P. Srivastava, learned counsel for the petitioner, Mr. Amit Shrivastava, learned counsel for the State Election Commission and Mr. Patanjali Rishi, learned A.C. to A.A.G. 6 for the State.

2. The writ petitioner has moved the Court for quashing of order dated 19.09.2006, passed by the respondent no. 7 in Case No. 10 of 2016, by which the petitioner has been declared to be disqualified from the post of Mukhiya of Panchayat Raj, Chakwa Bharwari, Block-Baheri, District-Darbhanga and the seat has been held to be vacant with a direction that the same be filled up in accordance with law.

3. Learned counsel for the petitioner submitted that though her date of birth recorded in the Matriculation certificate is 15.01.1996, but the same is an error for which steps have been taken for correction. He submitted that the Nagar Panchayat, Bakhtiyarpur had issued a birth certificate in which the date was recorded as

05.01.1993 and in the Aadhar Card also, the date of birth recorded is 05.01.1993. Similarly, he submitted that in the transfer certificate issued by the school, the date of birth is recorded as 05.01.1993. Learned counsel submitted that once there was a dispute with regard to the date of birth and there were documents to show that she was born in January, 1993, the respondent no. 7 ought not to have interfered in the matter as recording of the date of birth in the matriculation certificate is a rebuttable fact and is not a conclusive proof of the date. He further submitted that even the power to go into the question of disqualification based on the date of birth is beyond the jurisdiction of the respondent no. 7, as such dispute can only be adjudicated in an election petition as the petitioner having been elected and given certificate has also assumed office of the post of Mukhiya. Learned counsel submitted that the respondent no. 7 has not considered the documents produced on behalf of the petitioner while passing the impugned order and, thus, the same cannot be sustained. Learned counsel further submitted that if in future, it is held that the entry of the date of birth in the Matriculation certificate is erroneous, the petitioner would have suffered irreparable loss as she cannot turn the clock back and, thus, would have lost the period even though being eligible for being elected as a Mukhiya.

4. Learned counsel appearing for the respondents no. 5 to 7, submitted that the power to go into such aspect flows from the statute which in turn has the sanction and backing of the Constitution of India. He submitted that Article 243-F(1) of the Constitution of India lays down in clear terms that the minimum age for a person to be qualified for membership of a Panchayat is 21 years. He further submitted that if with regard to the same, there is any question for deciding such disqualification, it shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide. It was submitted that in terms of such constitutional provision, the State Legislature in its wisdom has enunciated the disqualifications in Section 136(1) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the "Act") in which it has clearly been written that a person shall be disqualified for election or after election for holding the post, meaning thereby that even after election, such disqualification can be gone into. He submitted that Section 136(2) of the Act clearly provides that the matter relating to disqualification shall be considered by the State Election Commission either in the form of a compliant, application or information by any person or authority or even suo motu. It was submitted that in the present case, the petitioner was noticed, upon receipt of complaint from respondent no. 8, and after hearing the parties, the order has been passed. He further submitted that from the order impugned itself, it is clear that all documents, on which the petitioner has placed reliance, have been mentioned and considered. Learned counsel submitted that even the Courts have held that the probative value of date of birth in Matriculation certificate has greater evidentiary value compared to the certificate issued by the Mukhiya, Headmaster of the local school or a local doctor. For such proposition, he has relied upon Division Bench

judgments of this Court in the case of **Annu Kumari v. State Election Commission reported as 2014 (4) PLJR 667**; **Smt. Sudha Kumari v. State Election Commission reported as 2015(4) PLJR 249** and an unreported decision in the case of **Rani Devi v. The State Election Commission & Ors. in L.P.A. No. 267 of 2013 dated 06.03.2013**.

5. Having considered the rival contentions, this court does not find any merit in the present writ application. The admitted position is that the petitioner had passed the Matriculation Examination in the year 2011 and as per the date of birth recorded in such certificate, he was born on 15.01.1996. That entry remains till date and the plea that such entry is erroneous and for which steps have already been taken for correction, would not be of much relevance for the simple reason that more than five years have passed before the petitioner has made any effort to get the entry corrected, which clearly is a result of the adverse effect of such an entry in light of the pendency of the complaint against her with regard to her being underage and, thus, disqualified for the post of Mukhiya. Even the birth certificate issued by the Nagar Panchayat, Bakhtiyarpur is dated 17.06.2016, i.e., much after the nomination and election and so cannot be said to be an unimpeachable document or a contemporaneous document. The admitted position being that before the respondent no. 7, there being various documents, reliance placed on the entry made in the Matriculation certificate, in the considered opinion of this Court was the best document to be relied upon in view of it having greater probative value compared to any other certificate. Such view finds support in the judgment of the Division Benches of this Court in the cases referred to by learned counsel for the respondents no. 5 to 7.

6. As far as the argument of learned counsel for the petitioner that if in future a correction is made with regard to the date of birth in the Matriculation certificate, the petitioner would have suffered, the Court can only observe that it would be only on account of laches on the part of the petitioner herself, inasmuch as, the Matriculation certificate was issued in the year 2011 and despite that she did not to move the authority concerned for any correction soon thereafter. This is also indicative of her conduct where she wanted to have an alternate certificate by which she gets an advantage of three years in future for any employment.

7. In view of the discussions made herein above and taking an overall view of the matter, the Court does not find any error in the order impugned so as to warrant any interference.

8. Accordingly, the writ application stands dismissed.