

MOHD. ABDULLAH AZAM KHAN

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v.

NAWAB KAZIM ALI KHAN

(Civil Appeal No. 104 of 2020)

NOVEMBER 07, 2022

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**[AJAY RASTOGI AND B. V. NAGARATHNA, JJ.]**

*Constitution of India, 1950 – Art.173(b) – Breach of – Qualification for membership of the State Legislature – Age criteria for contesting State Legislative Assembly elections – Discrepancy in date of birth – Burden of proof – Public documents – Probative value – Two different Birth Certificates of appellant showing date of birth at two different places and on two different dates, namely, one on 01.01.1993 at Rampur and another on 30.09.1990 at Lucknow – Elections took place for Uttar Pradesh State Legislative Assembly during January-March 2017 – Appellant was declared elected from the Suar constituency, District Rampur – Respondent-election petitioner challenged the election of the appellant on ground that he was born on 01.01.1993 and therefore was less than 25 years of age when he filed his nomination papers, and was not qualified to contest the election for State Assembly – In rebuttal, appellant claimed his date of birth to be 30.09.1990 – High Court declared the election of appellant to be void and set aside his election – Held (per Ajay Rastogi, J.): When any fact is especially within the knowledge of a party, the burden of proving it lies upon that party – The term “especially” means facts which are pre-eminently or exceptionally within the knowledge of a person – This rule cannot apply when the fact is such as to be capable of being known also by persons other than the party – In the instant case, respondent established from the documentary evidence which belongs to the appellant that, from day one appellant has shown his date of birth as 1<sup>st</sup> January, 1993 not just in his academic record but also in the birth certificate obtained from Nagar Palika, Rampur in the year 2012 – This could have been possible only when the relevant documentary evidence was available with the competent authority in the office of Nagar Palika, Rampur – Since the documents were issued from the office of the public officers based on the relevant data made available by the appellant himself, there was sufficient*

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- A *probative value, as required u/s.35 of the Evidence Act – Merely because the same was later on cancelled by the appellant, it may not lose its evidentiary value – Date of birth of appellant throughout in his records is 1st January, 1993 and only in the year 2015 when he became keen to enter into active politics, DW-5- his mother, submitted an application before Nagar Nigam, Lucknow for the first time on 17<sup>th</sup> January, 2015, claiming that appellant was born on 30th September 1990 – Procedure prescribed u/s.13(3) of the Act, 1969 was not followed by competent authority at Nagar Nigam, Lucknow while issuing fresh certificate of date of birth on 21<sup>st</sup> January, 2015 – No probative value could have been attached to*
- B *documentary evidence obtained from the Queen Mary's Hospital, Lucknow, as a foundation on which the birth certificate was issued on 21<sup>st</sup> January 2015 by Nagar Nigam, Lucknow – Impugned judgment of High Court accordingly upheld – Held (per B.V. Nagarathna, J.) (Concurring) : As per s. 101, the burden of proving a fact always lies upon the party who substantially asserts the affirmative and until such burden is discharged, the other party is not required to be called upon to prove his case – Burden to prove documents lie on plaintiff alone as onus is always on the person asserting a proposition or a fact – Once the plaintiff discharges the initial burden of prove and makes out a case which entitles him to*
- C *relief, in terms of s. 102, the onus shifts to the defendants to prove those circumstances which would disentitle the plaintiff of the relief – However once the evidence has been led by the contesting parties, abstract considerations of onus are out of place and truth or otherwise must always be adjudged on the basis of evidence led by the parties – s. 106 is an exception to the general rule and it stipulates that when a fact to be proved is peculiarly within the knowledge of a party, it is for him to prove it – In an election petition, the initial burden to prove determination of age of returned candidate lies on the petitioner; however, burden lies on the respondent to prove facts within his special knowledge – In the present case, despite the voluminous oral and documentary evidence, the appellant has been unable to prove the fact that he was born on 30.09.1990 – Consequently, he was not 25 years old at the time of filing the nomination – Election of the appellant to state legislative assembly set aside – Evidence Act, 1972 – ss. 101 to 106, 35 and 21 – Registration of Birth and Death Act, 1969 – s.13(3) – U.P.*
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*Registration of the Birth and Death Rules, 2002 – r.9 – A Representation of People's Act, 1951 – ss. 15 and 116 A.*

*Evidence Act, 1972 – Passports and Visas – Evidentiary value of admitted documents – Whether the information entered in the passport application would amount to proof as to contents of such application, including the date and place of birth entered therein –*

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**Held (per B.V. Nagarathna, J.):** Great evidentiary value has to be attached to an application submitted to a government establishment or Office, such as a Passport Office and the details entered in such application, together with the documents submitted therewith, must be understood to be tendered by the applicant who signs the application form thereby accepting that the information submitted therein is true and correct and to the best of his knowledge – In the present case, appellant having admitted the fact that his date of birth was 01.01.1993 and place of birth was Rampur, in the application form dated 06.07.2012, it was not open for appellant to subsequently resile from the aforesaid clear admission and contend that he was unaware that an ‘incorrect’ date of birth was recorded in certain documents – Documentary evidence produced by respondent election petitioner has cogent and probative value – This is because the said documents are consistent with the admitted documents of appellant as well as with the admissions made by the appellant himself.

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*Evidence – Public documents – Probative value of documents made, without following statutory procedure – Whether the Birth Certificate issued on 21.01.2015 by the Nagar Nigam, Lucknow, was a valid piece of evidence – Held (per B.V. Nagarathna, J.):*

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*Birth certificate issued by the Nagar Nigam Lucknow was without following the mandatory provisions of s.13 of the Births and Deaths Registration Act, 1969 – s. 13(3) of the 1969 Act and r. 9 of the U.P Registration of Birth and Death Rules, 2002 provides that any birth or death which had not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of First Class or Presidency Magistrate after verifying the correctness of birth and death – In the present case, Nagar Nigam, Lucknow, had no jurisdiction to register the birth of the appellant after twenty five years from the date on which he was stated to be born by the issuance of the Birth Certificate on*

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- A *21.01.2015 without an order of the Sub Divisional Magistrate as required u/s. 13(3) of the 1969 Act, r/w r. 9(3), 2002 Rules – Moreover, perusal of hospital records such as the Emergency O.T. (E.O.T) register and the Maternity Labour room Register (MLR), shows that same are mired with discrepancies, overwriting and factual inaccuracies which cannot be ignored – Therefore, no weight can be placed on birth certificate issued by the Nagar Nigam, Lucknow on 21.01.2015 which is stated to be issued on strength of an entry made in birth register maintained by hospital – Registration of Birth and Death Act, 1969 – s.13(3) – U.P. Registration of the Birth and Death Rules, 2002 – r.9.*
- B *Evidence – Medical Evidence – Evidentiary value of bone ossification test for determining age – Held (per B.V. Nagarathna, J.): Ossification test cannot be solely relied upon as conclusive proof of age – The general rule for determining the age is that it can vary plus or minus two years and that the date of birth of a person is to be determined on the basis of the material on record and on appreciation of evidence adduced by parties – Report of an ossification test can, at most, be used to corroborate other relevant evidences, oral or documentary.*
- C *Evidence – Documents of identity – Relevance of Aadhar*
- D *Card, Voter I.D. Card and Driving License as regards proof of date of birth – Held (per B.V. Nagarathna, J.): Aadhar card is a means of identity and not a proof of date of birth – On facts, the Aadhar Card, Voter I.D. Card and Driving License did not conclusively establish that the appellant was above twenty five years of age on the date of filing his nomination papers or on the date of declaration of result of the legislative assembly election in question.*

*Words and Phrases – Difference between “burden of proof” and “onus of proof” – Explained.*

#### **Dismissing the appeal, the Court**

- G **HELD:**
- H **per Ajay Rastogi, J.**
  1. When any fact is especially within the knowledge of a party, the burden of proving it lies upon that party. The term “especially” means facts which are pre-eminently or exceptionally

within the knowledge of a person. It is true that it cannot apply when the fact is such as to be capable of being known also by persons other than the party. This rule is an exception to the rule of burden of proof. Thus, when a person acts with some intention other than that which the character and circumstances of the act suggest, the burden of proving the intention is upon him. The bottom line of the purpose of the Indian Evidence Act is to adopt a procedure that helps to facilitate justice and ultimately what is required is to unearth the truth, to prevail. [Para 19][416-G-H; 417-A]

2. As per Section 35 of the Evidence Act, a register of record maintained in terms of the statute or by statutory authority in the regular course of business would be a relevant fact. From the evidence on record, the respondent was able to establish from the documentary evidence which belongs to the appellant that consistently from day one he has shown his date of birth as 1st January, 1993 not only in his academic record but also in the birth certificate obtained by him issued on 28<sup>th</sup> June, 2012 (Ex. A80/ 1) by Nagar Palika, Rampur his date of birth as 1st January, 1993 which could have been possible only when the relevant documentary evidence was available with the competent authority/ in the office of Nagar Palika, Rampur and this fact cannot be ruled out. The respondent has established on record that the date of birth of the appellant is 1st January, 1993 and this fact was not disputed by the appellant that the documents placed and relied upon by the respondent on record are public documents issued by the competent authorities. [Paras 21 and 28][418-B; 425-E-G]

3. The appellant was not holding any documentary evidence to support his claim prior to being placed on record in the course of election petition from Queen Mary's Hospital, which was made to be a basis in the year 2015 to seek a duplicate birth certificate of 30<sup>th</sup> September, 1990. To make it further clear, the duplicate birth certificate was issued by Queen Mary's Hospital on 21st April, 2015 (Ex.A37) indicating the date of birth of the baby of DW.5 on 30<sup>th</sup> September, 1990. From this document, it is clear that on 17<sup>th</sup> January, 2015, on the date when the application was submitted by his mother (DW.5) addressed to the Chief Health

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- A Officer, Nagar Nigam, Lucknow, to obtain the birth certificate of the appellant there was no documentary evidence available in the custody of DW.5 to support that the child was born in the hospital on 30<sup>th</sup> September, 1990. [Para 34][427-G-H; 428-A-B]

4. Apart from oral evidence to support the documents placed
- B on record obtained from the Queen Mary's hospital, it appears that the EOT register where the name of DW.5, mother of the appellant has been shown, entry appears to be partially erased and rest of the page other than the entry relating to DW.5, no change is being reflected from the entire document. [Para 41][432-B]

- C 5. When the entire evidence is before the Court, it is well settled that the burden of proof becomes immaterial at the given point of time the document made *ante litem motam* can be relied upon safely when such documents are admissible under Section 35 of the Evidence Act. [Para 42][432-C]

- D 6. In the instant case, the academic record of the appellant consistently indicates the recorded date of birth of the appellant is 1st January, 1993 and to be more specific before 17<sup>th</sup> January, 2015, all documents which were released from various public offices under the signatures of public authorities, the date of birth of the appellant has throughout been shown as 1st January, 1993 and as stated by DW.5 (mother of the appellant) and so also the appellant (DW.10) after doing his post-graduation he wanted to come in active politics, application was submitted on 17<sup>th</sup> January, 2015 for the first time to the office of the Nagar Nigam, Lucknow for obtaining the birth certificate of the appellant based on Queen Mary's Hospital, Lucknow and the fact is that no documentary evidence was supported along with the application, except the affidavit sworn by DW.5 to the application dated 17<sup>th</sup> January, 2015 and it is not possible for a common man to get the birth certificate in the existing facts and circumstances, but so far as the appellant is concerned, birth certificate was issued with no loss of time on 21<sup>st</sup> January, 2015 which was otherwise not possible. [Para 43]

- G 7. It is also trite law that when both the parties have adduced evidence and that too is in reference to a common question and

particularly for determination of age, which is the subject matter of dispute and when both the parties have adduced evidence, the question of onus of proof becomes academic. In the instant case, the documents issued by Nagar Palika, Rampur in the year 2012, clearly indicate the recorded date of birth as 1st January, 1993 and which is duly supported by his academic record from Class X onwards at all stages which had been generated only under the appellant's own signatures or under the authority of the appellant and this in no manner could be disputed. Merely because the same has been later on cancelled by the appellant, it may not lose its evidentiary value. [Paras 46 and 47][432-F-G; 433-A-B]

8. Section 13(3) of the Registration of Birth and Death Act, 1969, clearly postulates that delayed registration of birth and death are permissible provided a procedure prescribed has been followed after taking orders from the Magistrate and proving the correctness of the date of birth. Although the defence of the appellant is that since his name was already registered in the records of Nagar Nigam, Lucknow, Section 13(3) of the Registration of Birth and Death Act, 1969 may not apply, but this submission appears to be misplaced for the reason that on the basis of the birth record maintained by the Nagar Palika, Rampur, the birth certificate was issued to him under the orders of the competent authority on 28<sup>th</sup> June, 2012, and there cannot be two separate records of birth available in two different municipalities (Rampur/Lucknow) of the same person and in the given situation, no credibility can be attached on the records maintained by the Nagar Nigam, Lucknow. The procedure as prescribed under Section 13(3) of the Act, 1969, in the ordinary course of business, was supposed to be adopted by the authorities while a fresh certificate of date of birth was issued to him on 21<sup>st</sup> January, 2015, which indeed has not been followed by the competent authority by Nagar Nigam, Lucknow. [Para 48][434-H; 435-A-D]

9. In the instant case, the date of birth of the appellant throughout in his records is 1st January, 1993 and only in the year 2015 when the appellant became keen to enter into active politics, the mother of the appellant (DW-5) submitted an application for the first time on 17<sup>th</sup> January, 2015, claiming that

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- A the appellant was born on 30<sup>th</sup> September 1990, and birth certificate may be immediately issued to her and within three days, birth certificate was issued by the Nagar Nigam, Lucknow on 21<sup>st</sup> January, 2015. In support thereof, the documentary evidence which the appellant has placed on record obtained from the Queen Mary's Hospital, Lucknow, as a foundation on which the birth certificate has been issued as alleged from the Nagar Nigam, Lucknow, in the considered view of this Court, no probative value could have been attached to it. [Para 49][435-D-F]
- C *Brij Mohan Singh v. Priya Brat Narain Sinha and Others* [1965] 3 SCR 861; *Joshna Gouda v. Brundaban Gouda and Another* (2012) 5 SCC 634 : [2012] 1 SCR 464; *Birad Mal Singhvi v. Anand Purohit* (1988) Suppl. SCC 604 : [1988] 2 Suppl. SCR 1; *Sushil Kumar v. Rakesh Kumar* (2003) 8 SCC 673 : [2003] 4 Suppl. SCR 802; *Rakesh Kumar v. Sunil Kumar* (1999) 2 SCC 489 : [1999] 1 SCR 470; *Updesh Kumar and Others v. Prithvi Singh and Others* (2001) 2 SCC 524 : [2001] 1 SCR 454; *State of Punjab v. Mohinder Singh* (2005) 3 SCC 702 : [2005] 2 SCR 758; *Vishnu alias Undrya v. State of Maharashtra* (2006) 1 SCC 283 : [2005] 5 Suppl. SCR 474; *Satpal Singh v. State of Haryana* (2010) 8 SCC 714 : [2010] 9 SCR 50 and *Uttamrao Shivdas Jankar v. Ranjitsinh Vijaysinh Mohite Patil* (2009) 13 SCC 131 : [2009] 9 SCR 538 – referred to.
- F per B.V Nagarathna, J. (Concurring)
- G 1. As per Section 101 of the Indian Evidence Act, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. This section is based on the rule, *ei incumbit probatio qui dicit, non qui negat*, which means that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it, because a negative is usually incapable of proof. The burden of proving a fact always lies upon the person who asserts and until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies

has been able to discharge his burden. However, the above rule is subject to the general principle that things admitted need not be proved. The question as to whether burden of proof has been discharged by a party to the *lis* or not, would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a Court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lies would still be liable to produce direct evidence. Burden to prove documents lie on plaintiff alone as onus is always on the person asserting a proposition or fact which is not self-evident. [Paras 12.2, 12.3, and 12.4][447-E-H; 448-A-B]

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2. Also, there is an essential distinction between burden of proof and onus of proof. Burden of proof lies upon a person who has to prove the fact and it never shifts, onus of proof on the other hand, shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. For instance, In a suit for possession based on title, once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiffs title. [Para 12.5][448-D-E]

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3. Section 106 is an exception to the general rule laid down in Section 101, that the burden of proving a fact rest on the party who substantially asserts the affirmative of the issue. Section 106 is not intended to relieve any person of that duty or burden but states that when a fact to be proved is peculiarly within the knowledge of a party, it is for him to prove it. It applies to cases where the fact is especially within a party's knowledge and to none else. The expression 'especially' used in Section 106 means facts that are eminently or exceptionally within one's knowledge. This means a party having personal knowledge of certain facts has a duty to appear as a witness and if he does not go to the witness box, there is a strong presumption against him. In an Election Petition, the initial burden to prove determination of age of returned candidate lies on the petitioner, however, burden

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- A lies on the respondent to prove facts within his special knowledge. [Para 12.10][449-C-E]
4. Great evidentiary value has to be attached to an application submitted to a government establishment or Office, such as a Passport Office and the details entered in such
- B application, together with the documents submitted therewith, must be understood to be tendered by the applicant who signs the application form thereby accepting that the information submitted therein is true and correct and to the best of his knowledge. The successful candidate herein, having signed the application form dated 06.07.2012 wherein it has been expressly
- C entered that his date of birth was 01.01.1993 and place of birth was Rampur, cannot, at a later juncture claim that he was unaware, till the year 2015 that his date of birth as per various documents was 01.01.1993 and his place of birth was Lucknow. The fact that the successful candidate self-attested the birth certificate issued
- D by the Municipal Corporation, Rampur, wherein his date of birth has been recorded as 01.01.1993, would establish that the successful candidate acknowledged, accepted and sought to rely on such fact in order to secure a passport on the basis of such information. It is therefore not open to the successful candidate
- E to subsequently resile from the aforesaid clear admission and contend that he was unaware that an 'incorrect' date of birth was recorded in certain documents. Having admitted the fact that his date of birth was 01.01.1993 and place of birth was Rampur, in the application form dated 06.07.2012 which was at an undisputed point of time, the successful candidate cannot resile from the
- F same. [Para 13.5][453-E-H; 454-A-B]
5. Birth certificate dated 21.01.2015 was issued without following the mandatory provisions of Section 13 of the 1969 Act. Also Rule 9 of the U.P. Registration of the Birth and Death Rules, 2002 and Section 13(3) of the 1969 Act, provided that any birth
- G or death which had not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of First Class or a Presidency Magistrate after verifying the correctness of the birth or death and upon payment of the prescribed fee. Rule 9(3) of the U.P. Registration of the

**Birth and Death Rules, 2002, provided that any birth or death which had not been registered within one year of its occurrence, shall be registered only on an order of the Sub-Divisional Magistrate and after payment of a late fee of Rs. 10/. Therefore, the Nagar Nigam, Lucknow, had no jurisdiction to register the birth of the successful candidate after twenty five years from the date on which he was stated to be born by the issuance of the Birth Certificate on 21.01.2015 (Ex. P2 Paper No. A63/ 1) without an order of the Sub-Divisional Magistrate as required under Section 13(3) of the 1969 Act, read with Rule 9(3) of the U.P. Registration of the Birth and Death Rules, 2002. The birth certificate (Ex. P2 Paper No. A63/ 1) issued by the Nagar Nigam, Lucknow, on 21.01.2015 was null and void. [Para 15.4][460-D-H]**

**6. No weight can be placed on the birth certificate dated 21.01.2015, issued by the Nagar Nigam, Lucknow, which is stated to be issued on the strength of an entry made in the birth register maintained by the hospital and is created by manipulation and interpolation in the relevant hospital records. In the absence of any explanation as to why the relevant birth list, forming the basis of the entry in the birth register, was not available to be produced before the Court, no evidentiary value can be attached to the birth register. Consequently, the birth certificate dated 21.01.2015, issued by the Nagar Nigam, Lucknow on the strength of such documents, cannot be held to be a valid document. [Para 15.13][463-A-C]**

**7. It is also to be noticed that Birth Certificate showing the date of birth of the successful candidate as 01.01.1993 was still holding the field and valid and thus till the same was cancelled subsequently, the successful candidate had two Birth Certificates showing his date of birth at two different places and on two different dates, namely, one on 01.01.1993 at Rampur and another on 30.09.1990 at Lucknow which clearly indicates that only one Birth Certificate was valid and correct as far as successful candidate's date of birth is concerned. The certificate showing the date of birth of the successful candidate as 01.01.1993 at Rampur is the correct certificate and not the one subsequently obtained in the year 2015. [Para 15.14][463-C-E]**

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- A       **8. Entries pertaining to the birth of the successful candidate, in the Emergency O.T.(E.O.T.) and Maternity Labour Room (M.L.R.) registers were mired with discrepancies, overwriting and factual inaccuracies. Both such registers were not authenticated by any Officer of Queen Mary's Hospital or King George University and were not attested. By DW3' s own admission, the only basis on which she was stating that the relevant entries in the registers were genuine was on her understanding of the working procedures of the hospital. This does not inspire much confidence as to the genuineness of the entries made in the registers, which ex facie appear to be manipulated. [Para 16.18][468-F-H]**
- B       **9. An ossification test cannot be solely relied upon as conclusive proof of age and the said test is by no means an infallible or accurate test to determine the correct number of years of a person's life. The general rule for determining the age is that it can vary plus or minus two years and that the date of birth of a person is to be determined on the basis of the material on record and on appreciation of evidence adduced by parties. The report of an ossification test can, at most, be used to corroborate other relevant evidences, oral or documentary. Even so, relying on the aforesaid case, the High Court had rightly observed that if the margin factor of (plus or minus) two years is applied to the case of the successful candidate, it could also mean that in the year 2017 the age of the successful candidate was 24 years which would indicate that he was born in the year 1993. In that background, the medical examination report of the successful candidate dated 27.01.2017 based on an ossification test conducted, wherein his age was recorded to be twenty six years at the relevant time, cannot be accepted as conclusive proof of his age and the same would not hold any water. [Paras 17.2 and 17.3][469-G-H; 470-A-D]**
- C       **10.1. The appellant-successful candidate was not born on 30.09.1990 and was not twenty-five years old at the time of filing the nomination as the appellant has been unable to prove the said fact despite the voluminous oral and documentary evidence provided on record. In fact, G.I.S. Nomination Form submitted by DW-5 at an undisputed point of time and which is part of her**
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Service Book which is adduced as evidence at the behest of the appellant-successful candidate goes against the case of the appellant. The G.I.S. Nomination Form is in consonance with the passports and visa issued by the concerned authorities showing the date of birth of the appellant as 01.01.1993 which have been produced by the election petitioner in support of his case. The issuance of the fresh passport during the pendency of the Election Petition showing the date of birth as 30.09.1990 is of no consequence and cannot be of any assistance to the appellant. Similarly, Class X Secondary School Examination Certificate and Class XII Secondary School Examination Certificate which indicate the date of birth of the appellant as 01.01.1993 even till date, are also in consonance with the earlier passports and visa documents produced by the respondent-election petitioner. In fact, the appellant-successful candidate had relied upon the educational certificates indicating his date of birth as 01.01.1993 and his place of birth as Rampur for the purpose of securing his earlier passports and visa. [Para 20][479-A-F]

10.2. Moreover, the stand taken by the successful candidate that all documents pertaining to the Birth Certificate dated 28.06.2012 issued by the office of Nagar Palika Parishad, Rampur, were burnt due to a short circuit on 08.05.2015 would suggest that the said birth certificate, wherein the date of birth of the successful candidate was recorded as 01.01.1993 came to be destroyed and later cancelled were under suspicious circumstances. [Para 20][479-G-H]

10.3. Further, on a perusal of the E.O.T. and M.L.R. registers, it is clear that the same are mired with discrepancies, over-writing and factual inaccuracies and the same cannot be ignored. Therefore, no weight can be placed on the birth certificate dated 21.01.2015, issued by the Nagar Nigam, Lucknow, which is stated to be issued on the strength of an entry made in the birth register maintained by the hospital, which itself is not authentic in the absence of production of the birth list indicating the birth of the appellant on 30.09.1990, and is created by manipulation and interpolation in the hospital records. [Para 20][480-A-C]

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A      **10.4. No weight can be placed on the result of the ossification test as other documents such as the matriculation certificate, date of birth certificate issued by the Nagar Palika Parishad, Rampur and passports prove that the age and the date of birth recorded in such documents is contrary to the result of the ossification test. [Para 20][480-C-D]**

B      **10.5. The Aadhar card, driver's licence and voter ID of the appellant-successful candidate, which were issued on the strength of the duplicate certificates issued by the Queen Mary's Hospital, Lucknow, and the Nagar Nigam, Lucknow, on 21.04.2015 and 21.01.2015, respectively, are not proof of the successful candidate's date of birth as 30.09.1990. [Para 20][480-D-E]**

*Brij Mohan Singh v. Priya Brat Narain Sinha and Ors.*

**A.I.R. 1965 SC 282 : [1965] 3 SCR 861; Birad Mal Singhvi v. Anand Purohit A.I.R. 1988 SC 1796 : [1988]**

D      **2 Suppl. SCR 1; Joshna Gouda vs. Brundaban Gouda (2012) 5 SCC 634 : [2012] 1 SCR 464 and Narendra Singh v. Mala Ram and Ors. (1999) 8 SCC 198 – distinguished.**

*Mukarrab and others v. State of U.P. (2017) 2 SCC 210 : [2016] 8 SCR 557; RVE Venkatachala Gounder*

E      **v. Arulmigu Viswesaraswami and VP Temple AIR 2003 SC 4548 : (2003) 8 SCC 752: [2003] 4 Suppl. SCR 450 and National Insurance Co. Ltd. v. Rattani (2009) 2 SCC 75 : [2008] 17 SCR 1251 – relied on.**

F      **P.C. Purushothama Reddiar v. S. Perumal (1972) 1 SCC 9 : [1972] 2 SCR 646; Ram Singh v. Col. Ram Singh 1985 (Supp.) SCC 611 : [1985] 2 Suppl. SCR 399; Thiru John v. Returning Officer (1977) 3 SCC 540 : [1977] 3 SCR 538; Kalwa Devadattam v. Union A.I.R. 1964 SC 880 : [1964] 3 SCR 191; Sushil Kumar vs. Rakesh Kumar (2003) 8 SCC 673 : [2003] 4 Suppl. SCR 802 Rani Chandra Kunwar v. Chaudhari Narpat Singh and Ors. (1906) SCC OnLine PC 26 and Robins v. National Trust Company 1927 AC 515 – referred to.**

G      **Rani Chandra Kunwar v. Chaudhari Narpat Singh and Ors. (1906) SCC OnLine PC 26 and Robins v. National Trust Company 1927 AC 515 – referred to.**

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Case Law Reference

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In the judgment of Rastogi, J.

[1999] 1 SCR 470	referred to	Para 12	
[2009] 9 SCR 538	referred to	Para 12	
[1965] 3 SCR 861	referred to	Para 14	B
[1988] 2 Suppl. SCR 1	referred to	Para 14	
[2012] 1 SCR 464	referred to	Para 14	
[2003] 4 Suppl. SCR 802	referred to	Para 14	C
[2001] 1 SCR 454	referred to	Para 42	
[2005] 2 SCR 758	referred to	Para 42	
[2005] 5 Suppl. SCR 474	referred to	Para 42	
[2010] 9 SCR 50	referred to	Para 42	D

In the judgment of Nagarathna, J.

[1988] 2 Suppl. SCR 1	distinguished	Para 8.8	
[2003] 4 Suppl. SCR 802	referred to	Para 8.8	E
[2012] 1 SCR 464	distinguished	Para 8.8	
[1965] 3 SCR 861	distinguished	Para 8.9	
[1972] 2 SCR 646	referred to	Para 9.7	
[2016] 8 SCR 557	relied on	Para 9.10	F
[2008] 17 SCR 1251	relied on	Para 12.3	
[2003] 4 Suppl. SCR 450	relied on	Para 12.5	
[1964] 3 SCR 191	referred to	Para 12.7	G
[1977] 3 SCR 538	referred to	Para 12.12	
(1999) 8 SCC 198	distinguished	Para 12.13	
[1985] 2 Suppl. SCR 399	referred to	Para 12.13	

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- A CIVIL APPELLATE JURISDICTION: Civil Appeal No.104 of 2020.

From the Judgment and Order dated 16.12.2019 of the High Court of Judicature at Allahabad, UP in Election Petition No.8 of 2017.

- B Kapil Sibal, Sr. Adv., M. Nizam Pasha, Zubair Khan, Aditya Samaddar, Ms. Rupali, Samuel, Yojit Singh, Kamal Mohan Gupta, Advs. for the Appellant.

- C Aadil Singh Boparai, Harsh Andani, Gurlabh S. Bhaika Sindhu, Sumer Singh Boparai, Tushar Aggarwal, Sidhant Saraswat, Amarjeet Singh, Pratik Ahuja, B.N. Dubey, Kumar Gaurav, Ms. Ritu Reniwal, Vishal Kumar Singh, Robin Khokhar, Ashok K. Mahajan, Advs. for the Respondent.

The Judgments of the Court were delivered by

**RASTOGI, J.**

- D 1. Instant appeal has been filed under Section 116A of the Representation of People Act, 1951 assailing the judgment and order dated 16<sup>th</sup> December, 2019 passed by the High Court of Judicature at Allahabad, holding the election of the returned candidate (appellant) from 34, Suar Assembly Constituency of District Rampur, as void and consequently came to be set aside.

**Factual background of the case**

- E 2. The notification under the Representation of the People Act, 1951 (hereinafter referred to as “the Act 1951”) was notified for holding election of U.P. State Legislative Assembly from 34, Suar, District Rampur constituency. Public notice was issued by the Returning Officer fixing the election programme for holding election for the afore-stated constituency. According to the schedule of programme, the appellant and the first respondent along with others filed their nomination papers. The scrutiny of the nomination took place on 28<sup>th</sup> January, 2017.

- G 3. After scrutiny and withdrawal of nomination papers, the appellant and six others including the election petitioner were the candidates who remained in the field for election. It may be noted that before the Returning Officer, the respondent (election petitioner) filed an objection against the appellant alleging that he is less than 25 years of age and, therefore, is not qualified to contest the election in view of

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Article 173(b) of the Constitution. The objection was overruled by the Returning Officer and accordingly the election took place as per the schedule, in which the appellant and the respondent (election petitioner) contested along with others. The result of the election was declared on 11<sup>th</sup> March, 2017 in which the appellant secured highest votes and was declared elected.

4. The respondent filed the election petition before the High Court of Judicature at Allahabad on the solitary ground that the appellant was not qualified to contest the election for member of Legislative Assembly in view of Article 173(b) of the Constitution as he was less than 25 years of age when he filed his nomination papers and also on the day on which he contested the election from 34, Suar Assembly Constituency of District Rampur.

5. In the election petition, the respondent (election petitioner), inter alia, contended that objection as regards the age of the appellant was raised by him in the first instance before the Returning Officer, but the same was rejected without appreciating the bare documentary evidence on record and despite the date of birth of the appellant being 1<sup>st</sup> January, 1993, which was recorded throughout in his academic records, including his Secondary School Examination Certificate in 2007 from the Central Board of Secondary Education and Intermediate Examination in 2009 from St. Paul's School, Rampur affiliated to Central Board of Secondary Education, Delhi, the Returning Officer failed to consider the same and arbitrarily overruled the objection raised by him.

6. In the election petition, the following objections were raised and for better appreciation the same are reproduced as under:

- (i) That the appellant was born on 01.01.1993 and, therefore, as on the date of the nomination of scrutiny, the appellant (Mohd. Abdullah Azam Khan) was below 25 years of age.
- (ii) That the appellant (Mohd. Abdullah Azam Khan) appeared in Secondary School (Class – X) Examination in the year 2007. When he appeared for Secondary School examination, his roll number was 5260139. He appeared from St. Paul's School, Rampur, which was affiliated with the Central Board of Secondary Education, New Delhi.
- (iii) That the appellant (Mohd. Abdullah Azam Khan) himself filled-up the admission form and examination form, and in

- A his own handwriting, mentioned his date of birth as 01.01.1993. The record of the appearance and examination of the appellant (Mohd. Abdullah Azam Khan) are available with the Central Board of Secondary Education, New Delhi.
- B (iv) That the Central Board for Secondary Education has issued the Secondary School Examination (Class-X) result bearing the roll number, name, mother's name and father's name and date of birth of the appellant (Mohd. Abdullah Azam Khan). As per the certificate, the mother of appellant is Tazeen Fatima and his father is Mohd. Azam Khan. The date of birth as recorded in the certificate of Secondary School Examination (Class-X) results, 2007 of the appellant (Mohd. Abdullah Azam Khan) is 01.01.1993. A copy of the certificate of Secondary School Examination (Class-X) results of the appellant (Mohd. Abdullah Azam Khan) obtained from the Central Board of Secondary Education is enclosed and marked as Annexure-4 to this petition.
- C (v) That the appellant (Mohd. Abdullah Azam Khan) appeared in Intermediate examination in the year 2009 St. Paul's School, Rampur. The said papers and records are available with St. Paul's School, Rampur and the Central Board of Secondary Education, CBSE.
- D (vi) That the election petitioner has made best efforts to get the admission form, examination form as also documents pertaining to the Intermediate Examination of the appellant (Mohd. Abdullah Azam Khan), but has not been able to get the same. The election petitioner has only been able to get the certificate of Secondary School Examination (Class X) results of the appellant from the Central Board of Secondary Education.
- E (vii) That the appellant (Mohd. Abdullah Azam Khan) thereafter joined Galgotias University, Greater Noida for his Master's Degree where he has filled-up form for admission with the same date of birth (01.01.1993). The record of the appellant (Mohd. Abdullah Azam Khan) in respect of his Master's Degree is available with Galgotias University, Greater Noida.
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7. Thereafter, in his Master's degree which he passed out from Galgotias University, Greater Noida, including his passport and other documents annexed with the nomination papers which are within the public domain consistently indicated that he was born on 1<sup>st</sup> January, 1993.

8. In addition to this, the contention of respondent no.1 before the High Court was that the appellant/returned candidate belongs to a very influential family and his father was a Cabinet Minister (Urban Planning, Development and Local Bodies) in Government of Uttar Pradesh during the period 2012 to 2017 and because of his local influence and being the Minister in-charge, documentary evidence has been created by him in the year 2015, which was thereafter made to be the basis and foundation to justify and support the date of birth of the appellant herein which, as alleged, was wrongly recorded in the school records and the fact is that the records maintained by Queen Mary's Hospital, Lucknow, which indicates that the appellant was born on 30<sup>th</sup> September, 1990, is a later development and were created in the year 2015 to support that the appellant was qualified to contest election in the year 2017 in terms of the requirement of Article 173(b) of the Constitution.

9. In counter, the appellant in the written statement came with a specific case that the documents on which the election petitioner has relied upon regarding the date of birth based on the school/academic records, although the said documents belong to the appellant but his date of birth is incorrectly and inadvertently registered as 1<sup>st</sup> January, 1993, as it was recorded by one of their family friends, Shahzeb Khan, DW.9, who got the appellant admitted to St. Paul's School, Civil Lines, Rampur, where his date of birth was incorrectly and inadvertently registered as 1<sup>st</sup> January, 1993 and that was incorrectly shown throughout in his academic records in Secondary School Examination/Intermediate Examination and also in his higher studies including the date of birth reflecting in the birth certificate issued to him by Rampur Nagar Palika on 28<sup>th</sup> June, 2012, of 1<sup>st</sup> January, 1993 which was later cancelled and according to him, the birth certificate issued by Nagar Nigam, Lucknow, on 21<sup>st</sup> January, 2015 is based on the records maintained by Queen Mary's Hospital, Lucknow, where he was born, his date of birth as per the hospital records is 30<sup>th</sup> September, 1990.

10. The appellant came with a specific case before this Court that his date of birth reflected in his academic record of 1<sup>st</sup> January,

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- A 1993 was incorrect and that being the reason, the birth certificate issued on 28<sup>th</sup> June, 2012 by Nagar Palika, Rampur was duly cancelled on 30<sup>th</sup> January, 2015 and a duplicate certificate of birth dated 21<sup>st</sup> April, 2015 was issued by Queen Mary's Hospital, Lucknow, where he was born, indicating 30<sup>th</sup> September, 1990, as the correct date of birth of the appellant and accordingly he was above 25 years of age on the day when nomination form was filled by him for elections of U.P. Legislative Assembly from 34, Suar Assembly Constituency of District Rampur in the year 2017 and on that date the appellant attained the age of 25 years in terms of Article 173(b) of the Constitution for contesting the election of 34, Suar Assembly Constituency of District Rampur.
- B 11. Both the parties placed the documentary as well as oral evidence in support of their respective defences. The High Court after due appreciation of the documentary as well as oral evidence on record and taking note of the submissions made by the parties returned the finding that on the date of filing of nomination papers i.e. 25<sup>th</sup> January, 2017, on the date of scrutiny of nomination papers i.e. 28<sup>th</sup> January, 2017 and on the date of declaration of result of 34, Suar Assembly Constituency of District Rampur i.e. 11<sup>th</sup> March 2017, the appellant was less than 25 years of age and thus, was not qualified to contest the election in terms of Article 173(b) of the Constitution and declared the election of the appellant to be void and consequently it came to be set aside by the impugned judgment dated 16<sup>th</sup> December, 2019.

#### Submissions of the Appellant

- 12. Mr. Kapil Sibal, Senior Advocate appearing for the appellant, submits that there is a statutory presumption of validity of the nomination papers as reflected under para 6 of Chapter VI of the Handbook of Returning Officers, as held by a Three-Judge Bench of this Court in *Rakesh Kumar v. Sunil Kumar*<sup>1</sup> (para 18) and later considered in *Utamrao Shivdas Jankar v. Ranjitsinh Vijaysinh Mohite Patil*<sup>2</sup> (paras 35, 40 and 44) and further submits that the school/academic records on which reliance was placed by the election petitioner/respondent and of which cognizance has been taken by the High Court under the impugned judgment was not disputed by the appellant, but the appellant disputed the contents of the document relied upon by the respondent throughout

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H <sup>1</sup>(1999) 2 SCC 489

<sup>2</sup>(2009) 13 SCC 131

and that can be reflected from the written statement filed by the appellant to the election petition and it was the specific case of the appellant that the date of birth as recorded in his school records i.e. 1<sup>st</sup> January, 1993 is incorrect and wrongly recorded, in fact, he was born on 30<sup>th</sup> September, 1990 and to support his date of birth, sufficient primary documentary evidence was placed on record which pertains to the authenticated record of Queen Mary's Hospital, Lucknow, which is a Government hospital and followed with the birth certificate issued by the competent authority i.e. Nagar Nigam, Lucknow dated 21<sup>st</sup> January, 2015.

13. To support it further, learned counsel submits that once the contents of the document pertaining to the appellant were disputed specifically in his written statement, the burden was on the election petitioner to prove that the date of birth of the appellant was 1<sup>st</sup> January, 1993 to which no efforts were made and the premise on which the High Court has proceeded to shift the burden of proof on the appellant is in disregard to the principles of the Evidence Act and the fact as alleged is to be proved by the person who pleads under the Evidence Act and made further following submissions:-

- (i) The appellant has stated his date of birth in his nomination papers as 30<sup>th</sup> September, 1990 along with supporting documents. Therefore, the burden of proof lies on the election petitioner/respondent to rebut the presumption by adducing admissible and reliable evidence that meets the standard of preponderance of probabilities and the election petitioner/respondent has failed to produce any legally admissible evidence on record so as to discharge his burden of proof.
- (ii) The respondent/election petitioner has failed to produce any direct and admissible evidence to prove that the appellant was born on 1<sup>st</sup> January, 1993 and was not born on 30<sup>th</sup> September, 1990 and in support, the only document produced by the respondent/election petitioner is the certificate of Class X Exam which is not a document for proof of age.
- (iii) No other document or witness was produced by the respondent to prove an alternate date of birth of the appellant, or to prove the fact that he was not of 25 years of age at the time of scrutiny of nomination papers.

- A (iv) To the contrary, the appellant has adduced sufficient, reliable and cogent oral and unimpeachable documentary evidence which if considered in totality, establishes a preponderance of probabilities that he was above 25 years of age as on 28<sup>th</sup> January, 2017.
- B (v) The best evidence of the date of birth is the testimonial evidence of the mother of the appellant (DW.5) and the doctor who delivered the male child and that is the only direct evidence to support the birth of the appellant on a specific date.
- C (vi) The appellant's mother (DW.5) in her affidavit in examination-in-chief has categorically stated that she was a lecturer in Political Science in Govt. Girls PG College, Rampur and she gave birth four times. The children from the first two deliveries in 1982 and 1984 died at the time of birth and the third child born in the year 1985 is her elder son Mohd. Adib and thereafter she again availed third sanctioned maternity leave from 7<sup>th</sup> August, 1990 to 4<sup>th</sup> November, 1990 which is duly supported by service book, proved by DW.1 and that acknowledges that she gave birth to a male child on 30<sup>th</sup> September, 1990 in Queen Mary's Hospital, Lucknow, in maternity department of King George Medical University, Lucknow, a Government Hospital and it is supported with discharge certificate dated 24<sup>th</sup> October, 1990 (Ex.R7), EOT register (Ex.R4) and MLR register (Ex.R5) duly supported by Dr. Uma Singh (DW.3) and Dr. Vineeta Das (DW.4) who in their oral testimony have supported the delivery of male child to DW.5 mother of the appellant on 30<sup>th</sup> September, 1990.
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- G (vii) The appellant has further explained that the incorrect date of birth in the school record was an error committed on the part of the family friend Shahzeb Khan (DW.9) who got the admission of the appellant in the school in 1995.
- H (viii) It was further submitted that in the absence of any cross-examination of either of the defence witness or the documents placed on record which are public records stands proved in terms of Section 35 of the Evidence Act and further

corroborated by the testimony of DW.5 by her service book, salary register, it was established that the appellant was born on 30<sup>th</sup> September, 1990 in Queen Mary's Hospital, Lucknow.

- (ix) The impugned judgment fails to consider the established evidence though it provides for proof of documents made in the regular course of business by a person other than the author and fails to consider Section 35 of the Evidence Act which states that documents prepared by an official (public or private) in performance of his duty recorded under law are relevant and admissible.      A
- (x) That with respect to the finding of manipulation and interpolation as being recorded in the impugned judgment regarding the birth register (Ex.R12), there is no evidence on record to support such a finding. No question was put to DW.2 as to any manipulation or interpolation in the document. In the absence of any evidence, the finding recorded in the impugned judgment is unsustainable.      B
- (xi) The impugned judgment incorrectly record that Section 13 of the Births and Deaths Registration Act, 1969 and Rule 9 of the UP Registration of Birth and Death Rule, 2002 have not been followed while the birth certificate dated 21<sup>st</sup> April, 2015 was issued. However, the fact is that the birth of the appellant was registered contemporaneously in the year 1990 in Nagar Nigam, Lucknow and it was only a duplicate certificate of registration which was issued on 21<sup>st</sup> January, 2015.      C
- (xii) The documents relied upon by the election petitioner/respondent are not admissible in evidence and in any case are not a proof of date of birth of the appellant on 1<sup>st</sup> January, 1993.      D
- (xiii) The school records are not the direct evidence of the fact of birth and on a balance of probabilities, it cannot be given pre-eminence over direct evidence of the mother, delivering doctor and contemporaneously maintained hospital records.      E
- (xiv) The error in school records was sufficiently explained by DW.5 and accordingly necessary steps were taken by the H

- A appellant for correction of the school records by a letter dated 23<sup>rd</sup> March, 2015 submitted by the appellant to the Regional Officer, CBSE, as proved by DW.7, Arun Joseph Dayal, Director of St. Paul's School, Civil Lines, Rampur.
- B (xv) The reliance on the alleged Group Insurance Scheme (GIS) Nomination form in the service book of DW.5 was not an admitted document to establish that the appellant was born in 1993 and this was a serious misappreciation of the evidence on record committed by the High Court.
- C (xvi) When confronting a witness as to any previous statement in a document it is mandatory that the said document be pointed out to the witness under Section 145 of the Indian Evidence Act to which no efforts were made by the respondent/election petitioner and at the best it is merely a piece of circumstantial evidence which has no legal backing and cannot establish birth of the appellant on 1<sup>st</sup> January, 1993.
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14. These, according to the appellant, were serious manifest errors which were committed by the High Court in passing the judgment impugned and in support of his submissions, counsel placed reliance on the judgments of this Court in *Brij Mohan Singh v. Priya Brat Narain Sinha and Others*<sup>3</sup>, *Birad Mal Singhvi v. Anand Purohit*<sup>4</sup> and *Joshna Gouda v. Brundaban Gouda and Another*<sup>5</sup> and taking assistance of the judgments of this Court submits that the finding recorded by the High Court under the judgment impugned is not legally sustainable and deserves to be set aside.

F **Submissions of the Respondent**

15. Mr. Aadil Singh Boparai, learned counsel for the respondent, on the other hand, while supporting the finding returned by the High Court in the judgment impugned, submits that he was successful in establishing before the High Court that the date of birth of the appellant is 1<sup>st</sup> January, 1993 by leading evidence and also as per the admissions made by the appellant/witnesses, admittedly the appellant was not qualified to contest the election for the Member of Legislative Assembly,

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<sup>3</sup>(1965) 3 SCR 861

<sup>4</sup>(1988) Supp. SCC 604

H <sup>5</sup>(2012) 5 SCC 634

being less than 25 years of age in view of Article 173(b) of the Constitution on the date when nomination papers were filled or the date of declaration of result and made the following submissions:

- (i) The respondent/election petitioner placed unimpeachable evidence on record that includes the marksheets of the appellant's class X certificate, his passports dated 28<sup>th</sup> August, 2006 and original Birth Certificate issued on 28<sup>th</sup> June, 2012 by Nagar Palika, Rampur and his self-filled passport application of the year 2006 and all these documents reflect the date of birth of the appellant as 1<sup>st</sup> January, 1993.      A
- (ii) The documents relied upon by the respondent are admissible in evidence and relevant under Sections 21 and 35 of the Indian Evidence Act. The evidence projected by the appellant was false and fabricated and rightly discarded by the High Court. Cancellation process was initiated by the appellant after the birth certificate was issued by Nagar Nigam, Lucknow on 21<sup>st</sup> January, 2015 indicating 30<sup>th</sup> September, 1990 as date of birth of the appellant. But, execution of the documents relied upon by the respondent has never been disputed and all are public documents in which consistently his date of birth recorded is 1<sup>st</sup> January, 1993 and thus, the burden was on the appellant to adduce evidence to rebut the presumption as aforesaid, that his date of birth is 30<sup>th</sup> September, 1990 and not 1<sup>st</sup> January, 1993.      B
- (iii) Both the parties have adduced their evidence in the election petition, that all pertains to the appellant, not to somebody else. The record of the election petition which pertains to the academic record, including passport and birth certificate of the appellant, until 2015 consistently indicates his date of birth as 1<sup>st</sup> January, 1993.      C
- (iv) That in rebuttal, the appellant placed on record claiming his date of birth to be 30<sup>th</sup> September, 1990, which could not have inspired confidence. In support of his submissions, counsel for the respondent has placed reliance on the judgment of this Court in *Sushil Kumar v. Rakesh Kumar*<sup>6</sup>      D
- (v) The respondent has placed reliance on the judgment of this Court in *Sushil Kumar v. Rakesh Kumar*<sup>6</sup>      E
- (vi) The respondent has placed reliance on the judgment of this Court in *Sushil Kumar v. Rakesh Kumar*<sup>6</sup>      F
- (vii) The respondent has placed reliance on the judgment of this Court in *Sushil Kumar v. Rakesh Kumar*<sup>6</sup>      G

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<sup>6</sup>(2003) 8 SCC 673

- A and taking assistance thereof submitted that the finding of fact returned by the High Court is based on due appreciation attached to its probative value and only thereafter it has been held that the appellant has failed to establish his date of birth as 30<sup>th</sup> September, 1990 and rightly declared the election of the appellant to be null and void and not eligible to contest the election in view of Article 173(b) of the Constitution.
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16. We have heard learned counsel for the parties and with their assistance perused the documentary and oral evidence on record, in extenso. Taking into consideration the settled principles as laid down by this Court, it is to be examined whether the date of birth of the appellant, as claimed by him, is 30<sup>th</sup> September, 1990 or it is 1<sup>st</sup> January, 1993.

#### **Purpose of the Evidence Act**

17. The purpose of the Evidence Act, 1872 is to prove and disprove the existence of facts in issue and to find out the truth of the facts which are asserted by the parties as the decision of the case lies upon/depends upon the truthfulness of those facts. The Act essentially does the balancing of interest between the parties to the proceedings and such balancing has to be done by establishing the truth of the facts asserted. Ultimately, the Indian Evidence Act, 1872 is about the quest towards truthfulness. "*Procedure is the handmade of justice and not its mistress*" i.e. procedure is not to control justice but procedure is the helping hand of justice and it helps to facilitate justice.

18. It is a well-established dictum of the Evidence Act that misplacing the burden of proof vitiates the judgment. At the same time, the rule relating to the burden of proof is based upon certain practical considerations of convenience and reasonableness and also of policy, but where there is a rebuttable presumption of law in favour of one party, the burden of rebutting it lies upon the later.

19. At the same time, when any fact is especially within the knowledge of a party, the burden of proving it lies upon that party. The term "especially" means facts which are pre-eminently or exceptionally within the knowledge of a person. It is true that it cannot apply when the fact is such as to be capable of being known also by persons other than the party. This rule is an exception to the rule of burden of proof. Thus, when a person acts with some intention other than that which the character

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and circumstances of the act suggest, the burden of proving the intention is upon him. The bottom line of the purpose of the Indian Evidence Act is to adopt a procedure that helps to facilitate justice and ultimately what is required is to unearth the truth, to prevail.

20. So far as the principles of burden of proof is concerned, the principles have been succinctly laid down by this Court in **Sushil Kumar** (supra) paras 28 to 32 :

28. It is no doubt true that the burden of proof to show that a candidate who was disqualified as on the date of the nomination would be on the election petitioner.

29. It is also true that the initial burden of proof that nomination paper of an elected candidate has wrongly been accepted is on the election petitioner.

30. In terms of Section 103 of the Indian Evidence Act, however, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

31. Furthermore, in relation to certain matters, the fact being within the special knowledge of the respondent, the burden to prove the same would be on him in terms of Section 106 of the Indian Evidence Act. However, the question as to whether the burden to prove a particular matter is on the plaintiff or the defendant would depend upon the nature of the dispute. (See *Orissa Mining Corp. v. Ananda Chandra Prusty* [(1996) 11 SCC 600]

32. The age of a person in an election petition has to be determined not only on the basis of the materials placed on record but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of Section 106 of the Evidence Act. It is also trite that when both parties have adduced evidence, the question of the onus of proof becomes academic [see *Union of India v. Sugauli Sugar Works (P) Ltd.* [(1976) 3 SCC 32] and *Cox and Kings (Agents) Ltd. v. Workmen* [(1977) 2 SCC 705]. Furthermore, an admission on the part of a party to

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- A the lis shall be binding on him and in any event a presumption must be made that the same is taken to be established.

21. As per Section 35 of the Evidence Act, a register of record maintained in terms of the statute or by statutory authority in the regular course of business would be a relevant fact and in the aforementioned

- B backdrop, the evidence brought on record is required to be considered. The parties have led their documentary as well as oral evidence and have marked exhibits in reference to relevant documents placed by the election petitioner and the appellant in support of their respective claims to justify with regard to the date of birth of the appellant. The oral and documentary evidence relied upon has been noticed in paras 8 and 9 of the judgment and are reproduced herein :

**8.** Both the parties have led documentary and oral evidences. Following papers have been admitted in evidence and have been marked as Exhibits as under:-

**D Petitioner's evidences:**

	Ex. No.	Paper No.	Brief particulars
E	P1  A 49/1-4	(A-49/1 to A 53/1)  A 49/1-4	Passport application dated 06.07.2012 of the respondent under his signature mentioning his date of birth 01.01.1993, and place of birth Rampur. Earlier Passport No.F-8757022, was issued on 28.08.2006 which expired on 31.12.2010. The new pass port No.K7951741 was issued by the Pass port Officer, Bareilly on 13.07.2012 for the period till 12.7.2022. Some papers of Ex.P-1 are mentioned below.
F		A 50/1 – A 50/4	Copy of Bank Pass Book of the respondent of his bank account in State Bank of India, Nawab Gate, Rampur.
G		A 51/1	Copy of birth certificate No.3857 issued by Nagar Palika Parishad, Rampur mentioning date of birth of the respondent as 01.01.1993, Place of birth Rampur, Registration No.RNPB 2012 – 03857, date of Registration 28.06.2012 and date of issue 28.06.2012
G		A 52/2 – A52/3	Copy of respondent's pass port no.F8757022, dated 28.08.2006 mentioning date of birth as 01.01.1993
H		A 53/1	Passport preview details of passport No. K-7951741, dated 13.07.2012 mentioning respondent's date of birth as 01.01.1993 and old pass port No.F8757022, dated 28.08.2006

P-2	(A-60/1 to A-78) A-60/1 - 2	Copy of the respondent's pass port application dated 10.01.2018 mentioning his date of birth as 30.09.1990 and place of birth Lucknow	A
	A-61/1	"on line appointment receipt" issued by Ministry of External Affairs, Government of India for the aforesaid Passport application dated 08.01.2018	B
	A-62/1-3	Copy of the respondent's pass port No.K7951741, dated 13.07.2012 bearing his date of birth as 01.01.1993 and entries of departure/arrival dated 30.04.2013, 05.05.2013, 09.06.2015 and 26.07.2016. A-62/3 is respondent's Visa dated 09.07.2014 mentioning his date of birth as 01.01.1993	C
	A-63/1	Birth certificate dated 21.1.2015 issued by Registrar Birth and Death, Lucknow, mentioning date of birth 30.09.1990, place of birth – Queen Mary's Hospital, Lucknow, U.P., and Registration No.NNLKO – B-2015-292611 and date of registration 21.01.2015	D
	A 64/1	Order of registrar birth and death, Nagar Palika Parishad, Rampur, dated 30.1.2015, cancelling the birth certificate of the respondent dated 28.6.2012, as under:- "श्री मोहम्मद अब्दुल्ला आज़म खान पुत्र श्री मोहम्मद आज़म खान निवासी मो. घेर मीर याज खां, जेल रोड रामपुर को इस कार्यालय द्वारा दिनांक 28.06.12 को निर्गत जन्म प्रमाण पत्र आज दिनांक 30.01.15 को निरस्त किया जाता है।"	E
	A-65/1	Copy of respondent's U.P. Legislative Assembly Identity Card dated 14.03.2017	F
	A-66/1	Copy of Adhar Card of the respondent dated 7.3.2015	G
	A-67/1	Copy of respondent's driving licence	H
	A-68/1	Copy of respondent's voter I.D. Card dated 18.07.2016.	
	A-69/1	Copy acknowledgement dated 10.1.2018 issued by Regional Passport Officer, Bareilly for application dated 10.1.2018	
	A-70/1	Copy of respondent's application dated 10.1.2018 to the Regional Passport Officer Bareilly stating that "I had applied for reissue of passport due to change of date of birth and place of birth."	
	A-75/2	Letter of Regional Passport Officer, Bareilly, dated 11.01.2018 to Registrar birth and death, Municipal Corporation, Lucknow for verification of birth certificate of the respondent	

A		A-76/1	Letter of the Registrar Birth and death, Nagar Palika Parishad, Rampur, addressed to Regional Passport Officer, Bareilly confirming issuance of letter dated 30.1.2015 about cancellation of birth certificate of the respondent.
B	P3	(A- A- 80/1 79 to A- 80/1)	Copy of birth certificate of Mohd. Abdulla Azam Khan (Respondent) dated 28.06.2012 bearing date of registration RNPB 9012-03857, dated 28.06.2012 issued by Nagar Palika Parishad, Rampur on the basis of original record of birth. This birth certificate was got cancelled by the respondent by order of the Registrar dated 30.01.2015
C	P4	A-25/1	Copy of Secondary School examination Class X result 2007, issued by Central Board of Secondary Education showing respondent's date of birth as 01.01.1993

Oral evidence of Election-petitioner:

- D P.W. 1- Kazim Ali Khan (Election-petitioner)  
 P.W. 2- Mohd. Naseem, Passport Officer, Bareilly  
 P.W. 3- Mohd. Ateer Ansari, Junior Passport Assistant, Bareilly  
 P.W. 4- Tej Pal Singh Verma, Chief Sanitation and Food Inspector/  
 Deputy Registrar Birth and Death, Nagar Palika Parishad, Rampur

**Defendant's/respondent's Evidences.**

Documentary Evidence.

	Ex. No.	Paper No.	Brief Particular
F	R1	A 30	List of candidates who filed nomination papers
	R2	A 31	Symbol allotment list issued by Returning Officer
	R3	A32	Declaration of results by Returning Officer on 11.03.2017
G	R4	A100/1-2	Copy of page no. 174 of EOT Register of Queen Mary's Hospital, Lucknow, containing entries of admission of patients dated 29.09.1990, and thereafter entries dated 7 <sup>th</sup> August 1990, 22.09.1990 and 24.09.1990
	R5	A101/1-2	Copy of page No. 225 of MLR Register of Queen Mary's Hospital bearing cuttings and overwriting and no date of admission of Mrs. Tazeen Fatima (mother of the respondent)

R6	A37	Duplicate birth certificate dated 21.04.2015 issued by Queen Mary's Hospital of K.G. Medical University containing baby's name "baby of Tazeen Fatima" born on 30.09.1990	A
R7	A38/1-2	Discharge ticket of indoor patient Tazeen Fatima in Queen Mary's Hospital admitted on 07.08.1990 and discharge on 24.10.1990	B
R8	A41/1-3	Information dated 12.09.2017 given by Professor Vineeta Das, HOD King George Medical University to the mother of the respondent under the RTI Act 2005 intimating that as per rules of the hospital, record of only 10 years is kept. Since matter is of 1990, therefore, true copy of admission register containing entries is not possible to be given. Admission slip is kept by the patient, discharge certificate (paper No. A38/1-2) as produced by Tazeen Fatima is attested.	C
R9	A42/1-5	Information given by King George Hospital by letter dated 19.09.2017 to the respondent under the RTI Act based on the information of Professor Vineeta Das, HOD King George Medical University by letter dated 12.09.2017 addressed to the Information Officer and mentioning that: (paper No. A100/2)  "मोहम्मद अब्दुल्लाह आजम खान के जिस पूष्ट पर जन्म का विवरण अंकित हैं उसी सत्यापित प्रतिलिपि एवं उसके प्रथम पूष्ट की सत्यलिपि इस पत्र के साथ संलग्न है। सूचनार्थ प्रेषित" (paper No. A100/2)	D
R10	A47/1-7	Copy of pay bill Register of RajkiyaMahila PG College, Rampur for the month of August 1990, December 1992, January 1993 and February 1993	E
R11	A95/1-34	Copy of service book of Tazeen Fatima, lecturer, political science who was made permanent by Government Order dated 11.02.1997 w.e.f. 20.04.1988. She submitted her GIS nomination form under his own signature on 26.04.2001(A95/25) nominated Mohd. Azam Khan (husband) 53 years-50%, Mohd Adeel Ajam Khan (Bitu) (son) 15 years - 25% and Mohd. Abdullah Azam Khan (son) 8 years - 25 %	F

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A	R12	A-96/1-5	Application of Dr. Tazeen Fatima, dated 17.01.2015 (mother of the respondent) to Nagar Swastha Adhikari, Nagar Nigam, Lucknow, requesting him to issue birth certificate of her son Mohd. Abdullah Azam Khan as per enclosed affidavit. Her son's birth may be got verified from the records of Queen Mary's Hospital.
B		A96/3	Computer generated sheet of Nagar Nigam, Lucknow, mentioning date of birth registration 21.01.2015, date of birth 30.09.1990 and name Mohd. Abdullah Azam Khan, place of birth - Queen Mary's Hospital, dated 21.4.2015
C		A96/4-5	Photostat copy of birth register of Nagar Nigam, Lucknow containing entry in the name of Abdullah Mohd. Azam Khan recorded in the register on 30.09.1990. Above it on A95/4 are two entries of birth recorded on 07.02.1992 and 25.06.1993 bearing order of some officer to record the birth. The next page (A95/5) starts with the date 02.10.1990 but at the bottom of the page dates are 26.09.1990 and 27.09.1990
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**9. Oral Evidence of Defendant/respondent:**

- E D.W.-1 - Dr. Shailendra K. Tiwari, Assistant Director of Higher Education, U.P. Prayagraj.
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- E D.W.-2 - Dr. Archana Dwivedi, Additional Municipal Commissioner, Lucknow.
- F D.W.-3 - Dr. Uma Singh, Sr. Gynecologist Queen Mary's Hospital (Department of Obst. & Gyno.)
- 
- F D.W.-4 - Dr. Vineeta Das - HOD Obst. & Gyno., Queen Mary's Hospital, Lucknow.
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- F D.W.-5 - Dr. Tazeen Fatima, (mother of the respondent)
- G D.W.-6 - Dr. Vandana Sharma - Principal RajkiyaMahila Post Graduate Degree College, Rampur.
- 
- G D.W.-7 - Arun Josheph Dayal. Director Saint Paul School, Civil Line, Rampur.
- H D.W.-8 - Dr. Satibir Singh, Radiologist, District Hospital, Rampur.

D.W.-9 - Shahzeb Khan, friend of father of the respondent.      A

D.W.-10 - Mohd. Abdullah Azam Khan, respondent.

**Analysis of the Evidence**

22. Now, we shall advert to the circumstances appearing in the case which support the view taken by us. The notification was issued notifying the schedule for election of UP State Legislative Assembly from 34, Suar Assembly Constituency of District Rampur as under:-

- |                                      |                                 |
|--------------------------------------|---------------------------------|
| (a) Date of filing of nomination     | 25 <sup>th</sup> January, 2017  |
| (b) Date of scrutiny of nomination   | 28 <sup>th</sup> January, 2017  |
| (c) Date of withdrawal of nomination | 30 <sup>th</sup> January, 2017  |
| (d) Date of allotment of symbols     | 1 <sup>st</sup> February, 2017  |
| (e) Date of Poll                     | 15 <sup>th</sup> February, 2017 |
| (f) Date of counting                 | 11 <sup>th</sup> March, 2017    |

23. The appellant filled his nomination papers on 24<sup>th</sup> January, 2017, and was declared elected on 11<sup>th</sup> March, 2017 by securing the highest number of votes i.e. 1,06,443 votes.

24. In the election petition filed by the respondent/election petitioner, his solitary objection was that the appellant was not qualified to contest the election for Member of Legislative Assembly in view of Article 173(b) of the Constitution as he was less than 25 years of age when he filled his nomination papers and the date on which he contested the election and also on the date of declaration of the result of 34, Suar Assembly Constituency of District Rampur.

25. The documentary evidence placed by the respondent/election petitioner on record to substantiate that the date of birth of the appellant is 1<sup>st</sup> January, 1993 are all public documents issued by the public authorities and are admissible in evidence in terms of Section 35 of the Indian Evidence Act, are as follows:

Following documentary evidences, record birth year of the appellant to be the year 1993 (01.01.1993):—

- (i) Ex. P4 - paper No. A-25/1 - Copy of secondary school examination Class 10<sup>th</sup> result 2007 issued by Central Board of Secondary Education.

- A       (ii) Ex. P1 - paper No. A-52/2-3, copy of appellant's pass port no. F8757022, dated 28.08.2006 mentioning his date of birth 01.01.1993.
- B       (iii) Ex. P1 - paper No. A-51/1 - copy of birth certificate No. 3857 of the appellant issued by Nagar Palika Parishad, Rampur, showing date of birth of the appellant as 01.01.1993 and date of Registration 28.06.2012.
- C       (iv) Ex. P1 - paper No. A-49/1-4, appellant's pass port application dated 06.07.2012, filed by him under his signature mentioning his date of birth as 01.01.1993, and place of birth Rampur.
- D       (v) Ex. P-1 - paper No. 53/1, Pass port preview details of appellant's pass port No. K-7951741, dated 13.07.2012 and Ex. P-2 - paper No. A62/1-3, copy of appellant's pass port No. K-7951741, dated 13.07.2012 bearing date of birth as 01.01.1993 and entries of departure/arrival dated 30.04.2013, 05.05.2013, 09.06.2015 and 26.07.2016 and Visa dated 09.07.2014 all mentioning date of birth as 01.01.1993.
- E       (vi) Ex.R-11 (Paper No. A95/1-34) the copy of service book of the appellant's mother filed by the appellant in evidence and proved by the D.W.-1. It contains G.I.S. Nomination form signed and submitted by the appellant's mother (D.W.-5) on 26.04.2001 mentioning appellant's age to be 8 years.
- F       (vii) Ex. P3 - paper No. 80/1, copy of appellant's birth certificate dated 28.06.2012, issued by Nagar Palika Parishad, Rampur, issued on the basis of original record of birth. This birth certificate was subsequently cancelled by the Registrar on 30.01.2015 on the application of the appellant.
- G       26. The respondent/election petitioner appeared as a witness, PW.1 and while supporting the documentary evidence established that the date of birth of the appellant as per the school records and other documentary evidence placed on record is 1<sup>st</sup> January, 1993, at the same time made a specific averment in his examination-in-chief regarding the documents placed by the appellant/returned candidate on record, that these are all fake and forged documents which are manufactured to create false evidence regarding the age and date of birth of the appellant.
- H       Further, the official documents issued prior to the year 2015 consistently

indicate his date of birth as 1<sup>st</sup> January, 1993 and that is also elicited A from his cross-examination.

27. The Court Witnesses, PW.2 Mohd. Naseem, the Passport Officer, Bareilly, PW.3 Mohd. Ateer Ansari, Junior Passport Assistant, Bareilly and PW.4 Tej Pal Singh Verma, Chief Sanitation and Food Inspector/Deputy Registrar Birth and Death, Nagar Palika, Rampur were examined and they supported the public documents placed on record which establishes that the birth certificate issued by the Health Department, Nagar Palika, Rampur dated 28<sup>th</sup> June, 2012, in addition, the online application filled by the appellant for the issuance of passport, the old Passport No.F 8757022 issued on 28<sup>th</sup> August, 2006 by PW.2 and PW.3 and placed on record the relevant online application and other documents which were filed by the appellant in January 2015 and all such documents were duly supported by the public officers P.W.2 and P.W.3 in their deposition. The Court Witness PW.4 in his examination-in-chief deposed that all registers and other records related to birth certificate No.3857 dated 28<sup>th</sup> June, 2012 of the appellant have been destroyed because of the fire due to short circuit on 8<sup>th</sup> May, 2015 in the office of Nagar Palika, Rampur and is unable to place any record prior to 8<sup>th</sup> May, 2015, but verified the birth certificate dated 28<sup>th</sup> June, 2012 as the record is available in the computer system and a copy was placed on record and all these documents were generated either by the appellant himself or at his instance. E

28. Thus, from the evidence on record, the respondent was able to establish from the documentary evidence which belongs to the appellant that consistently from day one he has shown his date of birth as 1<sup>st</sup> January, 1993 not only in his academic record but also in the birth certificate obtained by him issued on 28<sup>th</sup> June, 2012 (Ex. A-80/1) by Nagar Palika, Rampur his date of birth as 1<sup>st</sup> January, 1993 which could have been possible only when the relevant documentary evidence was available with the competent authority/in the office of Nagar Palika, Rampur and this fact cannot be ruled out. The respondent has established on record that the date of birth of the appellant is 1<sup>st</sup> January, 1993 and this fact was not disputed by the appellant that the documents placed and relied upon by the respondent on record are public documents issued by the competent authorities. G

29. At this stage, the objection of the appellant was that although the documents relied upon by the respondent belong to him, but the H

- A correctness of the documents is in question, in rebuttal the defence of the appellant throughout even in the defence evidence put forward was that in the year 1995 because his father was away, a friend of his father DW.9, Shahzeb Khan, took him to the school in 1995 and got recorded his date of birth as 1<sup>st</sup> January, 1993. Even if this stand of the appellant is taken on the face value, the date of birth which is recorded in his Secondary School Examination, followed with his passport of the year 2006 and his certificate of birth issued by Nagar Palika, Rampur with registration No.RNPB2012-03857 dated 28<sup>th</sup> June, 2012 of which details have been furnished at least upto the year 2015 consistently in all unimpeachable documentary evidence not only in his academic records
- B but in all other correspondence, he has throughout reflected his date of birth as 1<sup>st</sup> January, 1993, and since these are all his documents issued from the office of public authorities by the public officers based on the relevant data made available by the appellant himself/on filling application online or physically, the documents released to him in the name of the appellant disclose his date of birth as 1<sup>st</sup> January, 1993 and after evaluation of the documentary evidence supported by oral evidence on record, this Court certainly can record that it has a sufficient probative value, as required under Section 35 of the Evidence Act.

30. At the same time, the appellant, on the other hand, has not disputed these documents which have been relied upon by the respondent (election petitioner), of which detailed reference has been made in para 8,said documents belong to the appellant himself and are in public domain, issued by the public authorities/competent authorities and obviously information has been extended by the appellant himself and to make the smoke clear at this stage, the defence of the appellant was that at the time when the appellant went to the school in 1995, the friend of his father DW.9 got recorded his date of birth will not have any significance, since in the matriculation certificate and all applications which are filled by the appellant himself and these documents are generated which the appellant has been failed to counter at any given point of time. In countering, the appellant has come out with a defence that his mother DW.5 who was a Lecturer in a Postgraduate College and retired in 2009, in her cross-examination deposed that her son (the appellant) after doing his M.Tech became active in politics in the year 2015 and at this time she proceeded for issuance of a birth certificate from Nagar Nigam, Lucknow and submitted application on 17<sup>th</sup> January, 2015 (Ex.A-96/1-5).

31. It is curious to note that the request made by her was addressed to the Chief Health Officer, Nagar Nigam, Lucknow with a statement that her son (the appellant) was born on 30<sup>th</sup> September, 1990 in Queen Mary's Hospital, Lucknow and the birth certificate is urgently needed for very important and unavoidable reasons and she enclosed her own affidavit. On such an application being furnished, within three days, the birth certificate was issued by Nagar Nigam, Lucknow on 21<sup>st</sup> January, 2015 (Ex.A-96/3) indicating his date of birth as 30<sup>th</sup> September, 1990, which could not have been ordinarily possible to obtain by the common man.

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32. It is sufficient to note that there was no documentary evidence obtained from Queen Mary's Hospital, Lucknow, prior to the application dated 17<sup>th</sup> January, 2015, submitted by her (mother of appellant) for seeking a birth certificate from Nagar Nigam, Lucknow and it is not the case of the appellant that his date of birth recorded as 1<sup>st</sup> January, 1993 was due to some inadvertence, but at later stage, it came across that the correct date of birth of the appellant is 30<sup>th</sup> September, 1990 and this fact revealed in the year 2015, the family proceeded to obtain a certificate of birth from Nagar Nigam, Lucknow.

33. It is also to be noted that on 28<sup>th</sup> June, 2012, a birth certificate was obtained by the appellant from Nagar Palika, Rampur and supporting documentary evidence must have been available in the office of Nagar Palika, Rampur, or placed by the appellant, on the basis of which the birth certificate has been issued to him on 28<sup>th</sup> June, 2012, and admittedly it is not possible that at two different places (Rampur/Lucknow) his birth has taken place or record is maintained and the document obtained from Nagar Palika, Rampur, on 28<sup>th</sup> June, 2012 was completely concealed and the documents were later generated/obtained from Queen Mary's Hospital, Lucknow, which were for the first time placed on record in the course of the election petition.

34. In other words, the appellant was not holding any documentary evidence to support his claim prior to being placed on record in the course of election petition from Queen Mary's Hospital, which was made to be a basis in the year 2015 to seek a duplicate birth certificate of 30<sup>th</sup> September, 1990. To make it further clear, the duplicate birth certificate was issued by Queen Mary's Hospital on 21<sup>st</sup> April, 2015 (Ex.A-37) indicating the date of birth of the baby of DW.5 on 30<sup>th</sup> September, 1990. From this document, it is clear that on 17<sup>th</sup> January, 2015, on the

- A date when the application was submitted by his mother (DW.5) addressed to the Chief Health Officer, Nagar Nigam, Lucknow, to obtain the birth certificate of the appellant there was no documentary evidence available in the custody of DW.5 to support that the child was born in the hospital on 30<sup>th</sup> September, 1990.
- B 35. A duplicate birth certificate was obtained from Queen Mary's Hospital, Lucknow on 21<sup>st</sup> April, 2015 but what happened to the original, if any, has never been placed by the appellant on record. Just to make a clarification that even in the application dated 17<sup>th</sup> January, 2015, submitted by DW.5 (appellant's mother) there was no mention of a certificate earlier issued and the demand is to issue a duplicate certificate of the date of birth of the appellant who is born, as alleged, in the Queen Mary's Hospital, Lucknow on 30<sup>th</sup> September, 1990. The very foundation on which the appellant has proceeded to establish that his date of birth is 30<sup>th</sup> September, 1990 falls on the ground.
- C 36. It was admitted by DW.5 in her cross-examination that in all his school records, Xth, XIIth, Undergraduate, Postgraduate degree, his date of birth recorded is 1<sup>st</sup> January, 1993 and that the question put to her in cross-examination about the date of birth of the appellant recorded in the academic record is 1<sup>st</sup> January, 1993, she made a very curious statement that it is the appellant who informed her that his date of birth
- E is wrongly recorded in his school records, but neither the appellant nor mother-DW.5 ever proceeded in seeking correction in the date of birth certificate at any given point of time prior to the year 2015.
- F 37. The appellant himself appeared as DW.10 in the witness box. It was his admission throughout that in the academic record, his passport, the date of birth certificate issued from Nagar Palika, Rampur on 28<sup>th</sup> June, 2012, his date of birth recorded as 1<sup>st</sup> January, 1993 and curiously, for the first time, in his examination-in-chief he has stated that his mother told him that he was born on 30<sup>th</sup> September, 1990, and not on 1<sup>st</sup> January, 1993, and in reference to all the documents which were put to him in cross-examination, his only statement was that although these documents belong to him, but his date of birth has been incorrectly recorded, and later cancelled, but while making a statement of date of birth being incorrect, nothing in counter was placed on record, except the documents placed for the first time in the course of the election petition. From where this fact was gathered, it was not disclosed even in the cross-examination and a statement was made in his cross-examination that his date of birth

either in his birth certificate dated 28<sup>th</sup> June, 2012 or in passport wherever recorded of 1<sup>st</sup> January, 1993 at a later stage was cancelled and has made a completely evasive answer in his cross-examination. To support in evidence, the appellant has produced three basic documents, EOT register (R-4), MLR register (R-5) and discharge ticket of Indoor Patient. Dr. Tazeen Fatima, DW.5 (R-7)and the oral evidence of Prof. Vineeta Das, HoD, Obst. & Gyno. (DW.4), Dr. Uma Singh, Sr. Gynaecologist (DW.3) who produced all the registers relating to Queen Mary's Hospital, Lucknow, of the relevant period of the year 1990, when put to cross-examination, reference to the EOT register and particularly to page 174, the question put to her whether entry 174 of EOT register Annual No,5097 carry any overwriting on the particular entry, she admitted that yes, overwriting has been done and which can be seen in column no.3 of it. In a further question put to her in the cross-examination about the description in column no.16 of the register that whether it matches with the information mentioned in rest of the column, and also that whether the entry of period of pregnancy at page 174 of EOT register is different from entry of period of pregnancy in page 225 of MLR register, she admitted that yes, all these entries are different. The extract of questions put to Dr. Uma Singh (DW.3) in reference to the so-called official record of the hospital is as under:

- (a) Whether you can say confidently that the information of the children born on 30.09.1990 was sent to Municipal Corporation, Lucknow?

**Ans.:** Yes.

- (b) Whether you can tell after seeing the entry of page 174 of EOT register Annual No.5097 carried along by you that any overwriting has been done in this or not?

**Ans. :** Yes, overwriting has been done in it. Overwriting is seen in column no.3 of it.

- (c) Whether you can tell by seeing the description in column no.16 of above register that whether it matches with the information mentioned in rest of the column of above register?

**Ans.:** No

- A (d) Whether the nature of period of pregnancy at page no.174 of EOT register Annual No.5097 column no.10 is different from the entry of period of pregnancy in page no.225 of MLR register Annual No.1826, Column no.10?

**Ans.:** Yes.

- B (e) Whether in the manner in which the entries are made at page no.225 of MLR register it matches with the entries made on the above page of other account number?

**Ans. :** Do not match totally.

- C (f) The EOT register and MLR register which you have brought with you today in the Court and presented before the Court, is it attested or signature by any of the officer or department head by Queen Mary's hospital or King George Medical? And the entries therein or any of the page is signed or counter signed by any of the officer or doctor of the hospital? And whether both the above mentioned hospital registers are authenticated by any of the officer or department head?

**Ans.:** Above both registers are not authenticated by the officer of Queen Mary's hospital or King George University.

- E Above both registers are also not attested. But some of the pages are signed by consultant of the hospital.

38. To support the documents placed on record from the Queen Mary's Hospital, Dr. Vineeta Das (DW.4), the HoD, Obstetrics & Gynecology Department, also appeared in the witness box.

- F 39. At the same time, so far as the register of the Nagar Nigam, Lucknow (Ex.R-12) which has been produced by DW.2 Dr. Archana Dwivedi, she appears to have completely surrendered in cross-examination in support of the documents placed by her. Few of the questions put to her in cross examination to produce the register of G Registration of Birth and Death maintained by the Nagar Nigam, Lucknow be relevant to quote:

(a) Whether is it necessary to maintain the birth register in the format given in Registration of Birth & Death Act, 1969?

- H **Ans.:** Yes.

(b) Above papers were shown again and asked that can you see this and till that what is date of registration of birth of the respondent mentioned therein? A

**Ans.:** In column number 3 of this paper date of birth registration is 21.01.2015.

(c) After how many days the birth certificate is being issued after the related entries made in birth register? B

**Ans.:** When the applicant gives a request letter thereafter the birth certificate is issued. Birth registration is done immediately after receiving of birth list from the hospital.

(d) Whether the statement given by you today in front of court is based on the official record maintained in the office? C

**Ans.:** Yes, again stated that the above said birth register is not in the prescribed format, and again want to state that the said format only followed but it has not been used in this case. Pagination has not been done and neither register has been attested nor pagination has been done by any competent officer. D

40. The witness has not even been able to support the documents. Apart from the said documents, we have looked into the extract copies of the birth register maintained by the Nagar Nigam, Lucknow (Ex.R-12). Even from the naked eye, it appears that at page 43, last entry is of 30<sup>th</sup> September, 1990 and there was no space left on the page, still it reveals that someone has tried to insert a further illegal entry and if it would have been in continuation on the next page at page 44 after 30<sup>th</sup> September, 1990, the second entry comes on 2nd October, 1990 and on 1<sup>st</sup> October, 1990 there is no entry. At the same time, all entries appear to have been made at the same point of time in continuation and this Court cannot attach any credence to the documents on which the appellant has heavily relied upon which, according to him, is the basis for issuance of the birth certificate on a mere application submitted by the mother DW.5 dated 17<sup>th</sup> January, 2015, issued by the Nagar Nigam, Lucknow on 21<sup>st</sup> January, 2015. Rest of the documents supported by the oral evidence placed by the appellant on record are only to justify that DW.5 was on maternity leave and a male child was born in the year 1990 and the third maternity leave was availed by her from 7<sup>th</sup> August, E

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- A 1990 to 24<sup>th</sup> October, 1990 and a male child was born on 30<sup>th</sup> September, 1990, no credence of any kind could be attached to it.

41. That apart from oral evidence to support the documents placed on record obtained from the Queen Mary's hospital, we have looked into the relevant documents and from naked eye it appears that the EOT B register where the name of DW.5, mother of the appellant has been shown, entry appears to be partially erased and rest of the page other than the entry relating to DW.5, no change is being reflected from the entire document.

42. When the entire evidence is before the Court, it is well settled C that the burden of proof becomes immaterial at the given point of time the document made *ante litem motam* can be relied upon safely when such documents are admissible under Section 35 of the Evidence Act. This Court in large number of judgments, including *Brij Mohan Singh (supra)*, *Updesh Kumar and Others v. Prithvi Singh and Others*<sup>7</sup>, *State of Punjab v. Mohinder Singh*<sup>8</sup>, *Vishnu alias Undrya v. State of Maharashtra*<sup>9</sup> and *Satpal Singh v. State of Haryana*<sup>10</sup> came to the conclusion that while considering such an issue and documents admissible under Section 35 of the Evidence Act, has to examine the probative value of the contents of the document. The authenticity of entries may also depend on whose information such entry D stood recorded and what was his source of information, meaning thereby, E that such document may also require corroboration in some cases.

43. In the instant case, the academic record of the appellant F consistently indicates the recorded date of birth of the appellant is 1<sup>st</sup> January, 1993 and to be more specific before 17<sup>th</sup> January, 2015, all documents which were released from various public offices under the signatures of public authorities, the date of birth of the appellant has throughout been shown as 1<sup>st</sup> January, 1993 and as stated by DW.5 (mother of the appellant) and so also the appellant herein (DW.10) after doing his post-graduation he wanted to come in active politics, application G was submitted on 17<sup>th</sup> January, 2015 for the first time to the office of the Nagar Nigam, Lucknow for obtaining the birth certificate of the appellant based on Queen Mary's Hospital, Lucknow and the fact is that no

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<sup>7</sup>(2001) 2 SCC 524

<sup>8</sup>(2005) 3 SCC 702

<sup>9</sup>(2006) 1 SCC 283

H <sup>10</sup>(2010) 8 SCC 714

documentary evidence was supported along with the application, except the affidavit sworn by DW.5 to the application dated 17<sup>th</sup> January, 2015 and it is not possible for a common man to get the birth certificate in the existing facts and circumstances, but so far as the appellant is concerned, birth certificate was issued with no loss of time on 21<sup>st</sup> January, 2015 which was otherwise not possible. It may be noticed that cancellation has taken place at a later point of time and who is the authority competent to cancel, nothing has been brought on record but the fact is that the appellant himself has obtained the certificate of birth from Nagar Palika, Rampur on 28<sup>th</sup> June, 2012 indicating his date of birth as 1<sup>st</sup> January, 1993 apart from other documentary evidence which the appellant later got cancelled. This fact cannot be ruled out that there must be the evidence available before the Nagar Palika, Rampur, based on which Birth Certificate was issued to him on 28<sup>th</sup> January, 2012. A very peculiar situation is created. Two birth certificates are issued by two different authorities (Nagar Palika, Rampur/Nagar Nigam, Lucknow) at different point of time, the presumption is that there must be some documentary evidence available in the custody of municipality indicating two different dates of birth of the same person at the same time i.e. the appellant herein.

44. The judgment relied upon by the appellant in *Birad Mal Singhvi (supra)* was a case where one of the defeated candidates filed an election petition and his submission was that there were two other candidates whose nomination papers were arbitrarily rejected by the election officer but they neither came in the witness box nor any person appeared in the witness box to support the date of birth recorded in the matriculation certificates of those two candidates. In the given situation, those records could not have been relied upon and become inadmissible in view of Section 35 of the Evidence Act.

45. So far as the judgment relied upon by the appellant in *Joshna Gouda (supra)* was a case where the reliance was placed on the school admission register and admission form, including the transfer certificate, but no supporting evidence/proof was available on record. In that context, a finding was recorded that conclusive finding regarding the probative value in reference to the three documents Exhs.5, 5A and 7 could not be attached.

46. It is also trite law that when both the parties have adduced evidence and that too is in reference to a common question and

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- A particularly for determination of age, which is the subject matter of dispute and when both the parties have adduced evidence, the question of onus of proof becomes academic. This has been considered by this Court in **Rakesh Kumar (supra)** wherein as regards the determination of age of the candidate in terms of Section 36(2) of the Representation of the People Act, 1951, this Court observed :
- B “27. In *Sushil Kumar v. Rakesh Kumar* [(2003) 8 SCC 673] this Court as regards determination of age of a candidate in terms of Section 36(2) of the Representation of the People Act, 1951 observed: (SCC pp. 684-85, para 32)
- C “32. The age of a person in an election petition has to be determined not only on the basis of the materials placed on record but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of Section 106 of the Evidence Act. It is also trite that when both parties have adduced evidence, the question of the onus of proof becomes academic [see *Union of India v. Sugauli Sugar Works (P) Ltd.* [(1976) 3 SCC 32] and *Cox and Kings (Agents) Ltd. v. Workmen* [(1977) 2 SCC 705 : 1977 SCC (L&S) 342] ]. Furthermore, an admission on the part of a party to the lis shall be binding on him and in any event a presumption must be made that the same is taken to be established.”
- This Court therein followed, inter alia, *Birad Mal Singhvi* [1988 Supp SCC 604] and several other decisions.”
- G 47. In the instant case, the documents issued by Nagar Palika, Rampur in the year 2012, clearly indicate the recorded date of birth as 1<sup>st</sup> January, 1993 and which is duly supported by his academic record from Class X onwards at all stages which had been generated only under the appellant’s own signatures or under the authority of the appellant and this in no manner could be disputed. Merely because the same has been later on cancelled by the appellant, it may not lose its evidentiary value.
- H 48. In this regard, it may be relevant to note that Section 13(3) of the Registration of Birth and Death Act, 1969, clearly postulates that

delayed registration of birth and death are permissible provided a procedure prescribed has been followed after taking orders from the Magistrate and proving the correctness of the date of birth. Although the defence of the appellant is that since his name was already registered in the records of Nagar Nigam, Lucknow, Section 13(3) of the Registration of Birth and Death Act, 1969 may not apply, but this submission appears to be misplaced for the reason that on the basis of the birth record maintained by the Nagar Palika, Rampur, the birth certificate was issued to him under the orders of the competent authority on 28<sup>th</sup> June, 2012, and there cannot be two separate records of birth available in two different municipalities (Rampur/Lucknow) of the same person and in the given situation, no credibility can be attached on the records maintained by the Nagar Nigam, Lucknow, and in our considered view, the procedure as prescribed under Section 13(3) of the Act, 1969, in the ordinary course of business, was supposed to be adopted by the authorities while a fresh certificate of date of birth was issued to him on 21<sup>st</sup> January, 2015, which indeed has not been followed by the competent authority by Nagar Nigam, Lucknow.

49. In the instant case, the date of birth of the appellant throughout in his records is 1<sup>st</sup> January, 1993 and only in the year 2015 when the appellant became keen to enter into active politics, the mother of the appellant (DW-5) submitted an application for the first time on 17<sup>th</sup> January, 2015, claiming that the appellant was born on 30<sup>th</sup> September 1990, and birth certificate may be immediately issued to her and within three days, birth certificate was issued by the Nagar Nigam, Lucknow on 21<sup>st</sup> January, 2015. In support thereof, the documentary evidence which the appellant has placed on record obtained from the Queen Mary's Hospital, Lucknow, as a foundation on which the birth certificate has been issued as alleged from the Nagar Nigam, Lucknow, in our considered view, no probative value could have been attached to it.

50. The High Court, in our considered view, has examined the documentary and the oral evidence available on record in exten so, we find that no manifest error was committed by the High Court in passing the impugned judgment, which may call for our interference.

51. Consequently, the appeal fails and is accordingly dismissed.  
No costs.

52. Pending application(s), if any, stand disposed of.

**A NAGARATHNA J.**

I have had the benefit of reading the judgment proposed by His Lordship Ajay Rastogi, J. While I concur with the reasoning as well as the conclusion arrived at by His Lordship, I, however, wish to elaborate on the reasoning and also assign additional reasons for dismissing the appeal.

- B 2. This appeal assails the judgment of the High Court of Judicature at Allahabad, dated 16.12.2019 in Election Petition No.08 of 2017 by which the petition filed by the election petitioner herein against the successful candidate herein has been allowed and the election of the successful candidate herein, to the Uttar Pradesh Legislative Assembly C from the 34-Suar Constituency, District Rampur held in the year 2017 has been set aside.

For the sake of convenience, the rank of the parties herein shall be referred to as per their rank and status in the Election Petition filed before the High Court. In other words, they shall be referred to as the D election petitioner and the successful candidate, respectively.

3. Succinctly stated, the facts giving rise to the instant appeal are as under:

- E 3.1. A notification was published under Section 15 of the Representation of People Act, 1951(hereinafter referred to as R.P. Act), notifying the election of Uttar Pradesh State Legislative Assembly, *inter alia*, from 34-Suar Constituency, District Rampur, Uttar Pradesh. As per the said notification, the last date for filing the nomination for contesting the election was 25.01.2017 and the poll was scheduled to be held on 15.02.2017. The appellant was the successful candidate while F the election petitioner was the unsuccessful candidate who filed the election petition.

- G 3.2. The successful candidate filed his nomination on 24.01.2017, to contest the elections, from 34-Suar Constituency, District Rampur, Uttar Pradesh. Subsequently, the election petitioner, namely, Nawab Kazim Ali Khan, filed an objection before the Returning Officer, challenging the successful candidate's nomination on the ground that he had not attained the age of twenty-five years at the time of filing his nomination and was therefore, ineligible to contest the election in view of Article 173(b) of the Constitution of India. The election petitioner had filed his objection on the basis of a newspaper article published in a local H daily, *Dainik Jagran Amar Ujala* on 28.01.2017.

3.3. By order dated 30.01.2017, the Returning Officer rejected the objection filed by the election petitioner herein by observing that the successful candidate herein had stated in Column B of Section 3 of the nomination form, as also in Form 26, that his age was twenty-six years. That in support of such claim, the successful candidate had attached his Birth Certificate (No.229428) which was issued to him by the Nagar Nigam, Lucknow, on 21.05.2015 and in the said document, the date of birth of the successful candidate was recorded as 30.09.1990. It was further noted that as per the successful candidate's Aadhar card and the electoral roll, his age at the relevant time was twenty-six years. Consequent to the rejection of the objections raised by the election petitioner and on the basis of the documents submitted and details furnished by the successful candidate in the nomination form, his nomination was accepted by the Returning Officer.

3.4. The election was held as scheduled on 15.02.2017 and on 11.03.2017, the appellant was declared as the successful candidate in the election to the Uttar Pradesh Legislative Assembly from the 34-Suar Constituency, District Rampur. The election petitioner herein stood third in the said election.

4. In the above background, the election petitioner filed Election Petition No.08 of 2017 before the High Court of Judicature at Allahabad, seeking a declaration that the election of the successful candidate to the Uttar Pradesh Legislative Assembly be declared as null and void, for non-compliance of the requirements of Article 173(b) of the Constitution of India. The said prayer was allowed by the High Court and the election of the successful candidate was set aside. Hence, this appeal.

**Pleadings:**

5. The averments made by the election petitioner in his Election Petition do not call for a reiteration except to the following extent:

- i) That the successful candidate had not completed twenty-five years of age, both, as on the date of scrutiny of the nomination papers as well as on the date of the election and therefore, his candidature seeking election to the Uttar Pradesh Legislative Assembly ought not to have been accepted in light of Article 173(b) of the Constitution of India read with Section 36(2) of the R.P. Act.

- A        ii)    That the birth certificates produced by the successful candidate before the Returning Officer were duplicate certificates issued by the Queen Mary's Hospital, Lucknow, and the Nagar Nigam, Lucknow, on 21.04.2015 and 21.01.2015, respectively, and not on 30.09.1990, being the date on which the successful candidate was stated to have been born. Therefore, such documents did not reflect the correct date of birth of the successful candidate.
- B        iii)    That the Returning Officer rejected the objection filed by the election petitioner without verifying the date of birth of the successful candidate in the original birth certificates issued by the Queen Mary's Hospital, Lucknow and the Nagar Nigam, Lucknow. The birth certificates issued by the Queen Mary's Hospital, Lucknow and the Nagar Nigam, Lucknow were fabricated documents and the successful candidate's actual birth certificate was issued by the Registrar (Birth and Death), Nagar Palika Parishad, Rampur, Uttar Pradesh and as per the said document, his date of birth was 01.01.1993 and not 30.09.1990 as contended by the successful candidate.

On the above pleadings, the election petitioner sought setting aside  
E the election of the successful candidate.

6. In response to the Election Petition, the successful candidate in the election, filed his written statement before the High Court, *inter alia*, with the following averments:

- F        i)    That he was born on 30.09.1990 at Queen Mary's Hospital, Lucknow, and not on 01.01.1993 as alleged by the election petitioner. Therefore, he was above the age of twenty-five years as on the last date of filing the nomination, i.e., on 25.01.2017, on the date of scrutiny of his nomination, i.e., 28.01.2017 and on the date on which he was declared as the elected candidate, i.e., on 11.03.2017. Hence, he was duly qualified to contest the election and hold the office of a Member of Legislative Assembly, under Article 173(b) of the Constitution of India and provisions of the R.P. Act.
- G        ii)    That the Returning Officer rightly rejected the objections raised by the election petitioner in view of the fact that there was no defect of a substantial nature in the successful

candidate's nomination paper and accompanying A documents.

With the aforesaid averments it was prayed that the Election Petition filed by the election petitioner be dismissed by the High Court as being devoid of merit.

6.1. The election petitioner filed his replication to the written B statement which is summarised as under:

- (A) While denying the contents of the written statement to be true and the documents attached to the written statement being fabricated, forged and misleading, the election petitioner reiterated the contents of his election petition.
- (B) The election petitioner has taken an additional plea to the effect that on 14.08.2017, the Election Officer Rampur, had forwarded a representation which was moved by one, Mr. Akash Kumar Saxena, Chairman of the Indian Industries Association, to the Chief Election Officer, disclosing discrepancies with respect to the Pan Card of the successful candidate. That the successful candidate had clandestinely procured a new Pan Card bearing No. DWAPK7513R which was issued to him on 24.03.2015, showing his date of birth as 30.09.1990 by deliberately concealing the fact that he had already been issued Pan Card No. DFOPK6164K on 30.08.2013 in which his date of birth was recorded as 01.01.1993. As per the original pan card, the successful candidate was less than twenty-five years of age, whereas, according to his new pan card he was twenty-six years of age.
- (C) Further, the successful candidate had opened a bank account no. 34341386006 in State Bank of India with Pan Card No. DFOPK6164K wherein his date of birth in the bank account was recorded as 01.01.1993. That the successful candidate had two pan cards and had not disclosed his correct income while contesting the legislative assembly elections.

***Evidence:***

7. The parties let in oral as well as documentary evidence in the Election Petition:

7.1. The election petitioner let in oral evidence through PW-1 - PW-4 witnesses. The election petitioner got marked Exhibit P-1 to P-4 documents.

A        7.2. The successful candidate let in oral evidence through DW-1 - DW-10 witnesses. The successful candidate got marked Exb. No.- R1-R12 documents.

B        7.3. On the basis of oral and documentary evidence on record, High Court allowed the Election Petition filed by the election petitioner herein and set aside the election of the successful candidate/appellant herein in respect of 34-Suar Constituency, District Rampur, held in the year 2017. Being aggrieved successful candidate has preferred this appeal.

***Submissions:***

C        We have heard Shri Kapil Sibal, learned senior counsel instructed by learned counsel on behalf of the successful candidate whose election has been set aside by the High Court and Shri Aadil Singh Boparai, learned counsel for the respondent instructed by learned counsel.

D        8. The submissions on behalf of the appellant-successful candidate do not call for reiteration and are epitomised as under:

E        8.1. Learned senior counsel, Shri Kapil Sibal, appearing on behalf of the successful candidate submitted that the impugned judgment of the High Court had been rendered based on an erroneous appreciation of law and facts relating to the controversy at hand, and also on an incorrect understanding of the fact in issue. That the appellant-successful candidate, at the time of filing his nomination as well on the date of polling, had completed the age of twenty-five years and was therefore competent in all respects to hold the office of Member of Legislative Assembly.

F        8.2. It was contented that the fact in issue in the present case is not whether the successful candidate entered his date of birth as 01.01.1993 in his official documents, but whether the successful candidate was actually born on 01.01.1993; or whether despite the fact that certain documents had recorded the successful candidate's date of birth to be 01.01.1993, he was actually born on another date, i.e., 30.09.1990.

G        8.3. It was submitted that the best evidence as regards the actual date of birth of the successful candidate, was the testimonial evidence of the successful candidate's mother (DW-5) and the doctor (DW-3) who delivered the successful candidate. That the law of evidence requires that direct and primary evidence, if available, must be given for proof of a fact and such evidence would be the best evidence of

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such fact. This foundational rule is reflected, *inter-alia*, in Sections 59 to 65 and Section 91 of the Indian Evidence Act, 1872 (hereinafter referred to as “Evidence Act” for the sake of brevity). In the instant case, the evidence of the successful candidate’s mother and the delivering doctor is direct oral evidence of the fact of birth of the successful candidate on a given date.

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8.4. It was vehemently contended that DW-5’s testimony was fully corroborated by the recitals in her service book and salary register, as also by the hospital records. That the hospital records such as the Emergency O.T. (E.O.T) register and the Maternity Labour room Register (MLR), were not only primary and direct evidences that were contemporaneous to the event of birth, but were also public documents which were produced from proper custody and therefore, they would be both relevant and admissible under Section 35 read with Section 74 of the Evidence Act.

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8.5. Further, referring to the testimony of DW-3, namely, Dr. Uma Singh, who is stated to be the doctor who enabled the delivery of the successful candidate, it was submitted that the statements made by DW-3, when considered together with the hospital records, conclusively establish that the successful candidate was born on 30.09.1990. That DW-3 was one such witness, who was connected with the successful candidate’s birth in a manner as would enable her to vouchsafe the truth as to the date of birth of the successful candidate. That the High Court committed a grave error in disregarding the evidence of DW-3 on the sole ground that she stated that she was unable to say with certainty that the baby born to DW-5 on 30.09.1990, was in fact, the successful candidate. That to expect DW-3 to make such an assertion, was an absurd requirement, which was not contemplated under law.

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8.6. Shri Kapil Sibal, learned senior counsel sought to explain the discrepancy in the period of pregnancy of the successful candidate’s mother, as recorded in Column 10 of the relevant entry in the maternity labour room register by stating that the age of the successful candidate’s mother at the time, i.e., 38 years, had been incorrectly entered in the column dedicated for ‘period of pregnancy.’ That this was in the nature of a clerical error and ought not to be held to have a material bearing on the authenticity of the record itself, more so, when all other details recorded in the said register were correct.

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- A 8.7. As regards the allegations of forgery and fabrication of the hospital records, it was averred that by making entries as to the successful candidate's birth on a later date, it would require a single horizontal space in the registers ought to have been kept blank since 1990, till whenever the successful candidate is alleged to have created the forged records.
- B Such an assumption is wholly improbable and therefore, there is no possibility of forgery and fabrication of the hospital records. Further, no such absurd presumption could be made particularly when the hospital records stood corroborated by the testimonial evidence of DW-4, namely, Dr. Vineeta Das, Head of the Department of Gynaecology and Obstetrics as well as by the birth certificate dated 21.04.2015 issued by DW-3 and C DW 4 and proved by them.

- E 8.8. It was next contended that the High Court's reliance on school records of the successful candidate, wherein his date of birth was incorrectly recorded as 01.01.1993, was misplaced. That school records are not direct evidence of the fact of birth and cannot, on a balance of probabilities, be given pre-eminence over direct evidence of the mother, delivering doctor and contemporaneously created hospital records. In order to buttress such averments, reliance was placed on *Birad Mal Singhvi vs. Anand Purohit A.I.R. 1988 SC 1796; Sushil Kumar vs. Rakesh Kumar (2003) 8 SCC 673; Joshna Gouda vs. Brundaban Gouda (2012) 5 SCC 634*.

- F 8.9. It was further submitted that the error in the school records had been sufficiently explained by DW-5, as well as DW-9, who is the person who is stated to have accompanied the successful candidate to get him admitted in school. That it is a common practice in India to give a belated date of birth at the time of admission in school so as to secure benefit of enhanced years of public service, and such practice has been acknowledged by this Court in *Brij Mohan Singh vs. Priya Brat Narain Sinha and Ors. A.I.R. 1965 SC 282*.

- G 8.10. As regards the election petitioner's reliance on the GIS nomination form of the successful candidate's mother, wherein she had stated that the successful candidate was eight years old as on 26.04.2001, it was submitted that the said document was neither direct nor contemporaneous proof of birth on a certain date. The GIS nomination form was at best a piece of circumstantial evidence which had no weight and could not establish that the successful candidate's date of birth was 01.01.1993.

8.11. On the basis of the aforesaid submissions, it was asserted that the election petitioner had not produced sufficient evidence so as to discharge the burden of proof to prove his positive case, as required under law, *vide Birad Mal Singhvi (supra)* and *Sushil Kumar (supra)*. That the entire case of the election petitioner was based on conjectures and farfetched presumptions as to exertion of pressure by the successful candidate's father, for issuance of forged certificates and therefore, the Election Petition ought not to have been entertained by the High Court.

With the aforesaid averments, it was prayed that the impugned judgment be set aside and the instant appeal be allowed by dismissing the election petition.

9. The submissions on behalf of the learned counsel for respondent-election petitioner Sri Boparai, are summarised as under:

9.1. Learned counsel for the election petitioner supported the impugned judgment and contended that there was no infirmity in the findings and decision of the High Court which would call for interference by this Court. Hence, it was prayed that the instant appeal may be dismissed and the judgment of the High Court dated 16.12.2019 be confirmed.

9.2. Learned counsel elaborated his submissions by contending that the nomination of the successful candidate herein to be a candidate for the Uttar Pradesh Legislative Assembly Elections from the Suar District Constituency, District Rampur, was erroneously accepted as the successful candidate was underaged and had not completed twenty-five years of age which is a qualification and an eligibility criterion under Article 173 (b) of the Constitution of India. That since the nomination of the successful candidate was improperly accepted and he was ultimately declared the successful candidate in the said election, the result was liable to be set aside which was rightly done by the High Court.

9.3. Learned counsel for the election petitioner contended that the correct date of birth of the successful candidate is 01.01.1993 as recorded in the Class-X mark-sheet of the successful candidate; the passports issued to him dated 28.08.2006 and 13.07.2012, the successful candidate's original birth certificate dated 28.06.2012 issued by the Nagar Palika Parishad, Rampur, the passport applications of the successful candidate pertaining to the year 2012 and the visa issued to the successful

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- A candidate dated 09.07.2014. It was further contended that the aforesaid documents are public documents and the same were not denied by the successful candidate, hence, they were admissible and relevant under Section 21 and 35 of the Evidence Act and a presumption would arise as to the validity of such documents.
- B 9.4. It was next contended that the defence taken by the successful candidate that he came to know about the incorrect date of birth mentioned in the aforesaid documents only in the year 2015 and the passport and other documents were eventually cancelled, did not inspire confidence as the successful candidate in his cross-examination had stated that the process of cancellation was initiated in the year 2018, much after the election petitioner filed the Election Petition before the High Court. That such a conduct of the successful candidate was demonstrative of the fact that attempts were made to fabricate an earlier date of birth in the records pertaining to the successful candidate, only when his election was challenged, and not prior to that.
- C 9.5. Learned counsel for the election petitioner averred that he had discharged the initial burden of proof by adducing the aforesaid documents as evidence wherein the date of birth of the successful candidate was recorded as 01.01.1993. That the existence of such documents as well as the contents thereof stood admitted by the successful candidate; so also, the fact that the said documents were signed and submitted by him before the competent authorities. In that context, reliance was placed on the judgment of the Privy Council in ***Rani Chandra Kunwar vs. Chaudhari Narpat Singh and Ors. (1906) SCC OnLine PC 26*** to contend that once the successful candidate had admitted the execution of the aforesaid public documents, the onus of proof shifted on the successful candidate to adduce evidence to rebut the presumption and further demonstrate that his date of birth is 30.09.1990 and not 01.01.1993.
- D 9.6. The election petitioner also relied on ***Sushil Kumar vs. Rakesh Kumar (2003) 8 SCC 673***, to assert that, when both the parties have adduced evidence in an election petition, the question of onus of proof would become academic and therefore, it was for the Court to appreciate the contrary oral and documentary evidence and arrive at a conclusion, *de hors* considerations as to who was to discharge whole or part of the burden of proof.
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9.7. Learned counsel for the election petitioner referred to the GIS (Group Insurance Scheme) Nomination form in the service book (Ex. R-11 Paper No. A-95/25) of the successful candidate's mother, which was proved in evidence by DW-1- S. K. Tiwari, Assistant Director of Higher Education, Uttar Pradesh, to contend that the said form was signed by the mother of the successful candidate on 26.04.2001 and in the said form she had admitted that the successful candidate was eight years old as on 26.04.2001. Such an admission was conclusive proof of the fact that he was born in the year 1993 and was therefore eight years old in April, 2001. The said GIS Form was adduced as a piece of evidence by the successful candidate and was also adverted to by DW-5 – Dr. Tazeen Fatima in her cross-examination. However, she did not offer any explanation as to the successful candidate's age in the said form. In this regard, reliance was placed on the judgment of this Court in **P.C. Purushothama Reddiar vs. S. Perumal (1972) 1 SCC 9** wherein it was observed that once a document is properly admitted, the contents of that document are also admitted in evidence and no further evidence would have to be let in by the party relying on such an admission to establish the fact so admitted.

9.8. It was submitted that the E.O.T Register (Ex. R-4 Paper No. A-100/1-2) and the M.L.R. Register (Ex. R-5 Paper No. A-101/1-2) adduced as evidence by the successful candidate, were neither authenticated nor certified by the competent authority of Queen Mary's Hospital. There were irregularities including entry of wrong name, discrepancy in the records pertaining to period of pregnancy, etc., which were admitted by DW-3, Dr. Uma Singh, in her cross-examination and more importantly, D.W.3 also stated that she could not confirm that the successful candidate was born on 30.09.1990.

9.9. It was next contended that the Birth Certificate issued by the Nagar Nigam, Lucknow, wherein the date of birth of the successful candidate was shown as 30.09.1990, was based on a purported entry in the birth register (Ex. R-12 A 96/4-5) which was tendered as evidence by DW-2, Dr. Archana Dwivedi, Additional Municipal Commissioner, Nagar Nigam, Lucknow and the said entry was as a result of manipulation of the public records. That DW-2 in her cross-examination had stated that the birth register was maintained by a clerk and was not in the prescribed format as per the mandate of the Registration of Births Act, 1969, (hereinafter referred to as the "Act", for the sake of brevity), and

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- A the same had not been authenticated or verified by a competent official. Further, the birth register was not paginated and the entry of the name of the successful candidate's mother was not made in a chronological order. Also, DW-2 testified that the Birth List maintained by the hospital, on the basis of which birth entry of successful candidate's name was
- B made in the birth register maintained by the municipality, was not available. Therefore, the substratum or the basis of making the entry in the birth register maintained by the municipality was not available and hence, the corresponding entry was a result of extraneous factors.

- 9.10. Further, it was submitted that reliance placed by the successful candidate on the result of the ossification test did not prove that he was born on 30.09.1990. In order to buttress such contention, learned counsel for the election petitioner placed reliance on *Mukarrab and others vs. State of U.P. (2017) 2 SCC 210* wherein it was observed by this Court that Ossification Test cannot be solely relied upon and is not a conclusive proof of age. In furtherance of such an argument, learned counsel for the election petitioner referred to the testimony of DW-8, Dr. Satbir Singh Ken, who, in his cross-examination had admitted that ossification test is not a definitive proof of age as the result of such a test could vary from the actual age, to a certain degree.

- With the aforesaid averments, it was prayed that the present appeal
- E be dismissed as being devoid of merit and the impugned judgment be confirmed.

***Points for consideration:***

10. Article 173(b) of the Constitution of India states that a person shall not be qualified to be chosen to fill a seat in the legislature of the state unless he is, in the case of seat in the legislative assembly, not less than twenty-five years of age and in the case of a seat in the legislative council not less than thirty years of age.

- Having heard learned senior counsel and learned counsel for the respective parties and on perusal of the material on record, the following
- G points would arise for consideration:

- H (i) *Whether the High Court was correct and justified in allowing Election Petition No.08 of 2017 filed by the election petitioner against the successful candidate and thereby setting aside the election of the successful candidate to the office of Member of Legislative*

*Assembly, from 34-Suar Constituency, District Rampur, Uttar Pradesh, on the ground that there was improper acceptance of successful candidate's nomination paper and there was a breach of Article 173(b) of the Constitution of India?*

(ii) *What order?*

11. The narration of facts and contentions would not call for reiteration except stating that the successful candidate is aggrieved by his election to the Legislative Assembly *vis-à-vis* 34- Suar Constituency, District Rampur, Uttar Pradesh, being set aside at the instance of the election petitioner by the impugned judgment of the High Court.

12. Before proceeding to consider the evidence let in by the respective parties in order to ascertain whether, the conclusions arrived at by the High Court in allowing the Election Petition filed by the election petitioner herein, are just and proper, it is necessary to discuss and delineate on the relevant judgments of this Court cited at the Bar with regard to burden of proof in light of the relevant provisions of the Evidence Act.

12.1. The legal scheme governing various aspects of ‘burden of proof’ in the Indian context, is contained in Sections 101 to 106 of the Indian Evidence Act.

12.2. As per Section 101 of the Indian Evidence Act, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. This section is based on the rule, *ei incumbit probatio qui dicit, non qui negat*, which means that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it, because a negative is usually incapable of proof. The burden of proving a fact always lies upon the person who asserts and until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. However, the above rule is subject to the general principle that things admitted need not be proved.

12.3. The question as to whether burden of proof has been discharged by a party to the *lis* or not, would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise,

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- A sufficient materials have been brought on record so as to enable a Court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lies would still be liable to produce direct evidence, *vide National Insurance Co. Ltd. vs. Rattani* (2009) 2 SCC 75: AIR 2009 SC 1499.
- B 12.4. Burden to prove documents lie on plaintiff alone as onus is always on the person asserting a proposition or fact which is not self-evident. This position is summarised in the observation to the effect that, an assertion that a man who is alive was born requires no proof; the onus, is not on the person making the assertion, because it is self-evident that he had been born. But to assert that he had been born on a certain date, if the date is material, requires proof; the *onus* is on the person making the assertion, *vide Robins vs. National Trust & Co. Ltd.* 1927 AC 515: 101 IC 903.
- C 12.5. It is also to be noted at this juncture that there is an essential distinction between burden of proof and onus of proof. Burden of proof lies upon a person who has to prove the fact and it never shifts, onus of proof on the other hand, shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. For instance, In a suit for possession based on title, once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiffs title, *vide RVE Venkatachala Gounder vs. Arulmigu Visweswaraswami and VP Temple* AIR 2003 SC 4548 (4558-59): (2003) 8 SCC 752.
- D 12.6. In terms of section 102 of the Evidence Act, the initial burden to prove its claim is always on the plaintiff and if he discharges that burden and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff of the same.
- E 12.7. Where, however, evidence has been led by the contesting parties, abstract considerations of onus are out of place and truth or otherwise must always be adjudged on the evidence led by the parties [*Kalwa Devadattam vs. Union A.I.R. 1964 SC 880*]
- F 12.8. As per Section 103, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence,
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unless it is provided by any law that the proof of that fact shall lie on any particular person. This section amplifies the general rule in section 101 that the burden of proof lies on the person who asserts the affirmative of the issue. It lays down that if a person wishes the court to believe in the existence of a particular fact, the onus of proving that fact, is on him, unless the burden of proving it is cast by any law on any particular person.

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12.9. Section 105 is an application of the rule in section 103. When parties to a dispute adduce evidence to substantiate their claim, onus becomes academic and divided, entailing each party to prove their respective plea.

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12.10. Section 106 is an exception to the general rule laid down in Section 101, that the burden of proving a fact rest on the party who substantially asserts the affirmative of the issue. Section 106 is not intended to relieve any person of that duty or burden but states that when a fact to be proved is peculiarly within the knowledge of a party, it is for him to prove it. It applies to cases where the fact is especially within a party's knowledge and to none else. The expression 'especially' used in Section 106 means facts that are eminently or exceptionally within one's knowledge. This means a party having personal knowledge of certain facts has a duty to appear as a witness and if he does not go to the witness box, there is a strong presumption against him. In an Election Petition, the initial burden to prove determination of age of returned candidate lies on the petitioner, however, burden lies on the respondent to prove facts within his special knowledge. (*Sushil Kumar vs. Rakesh Kumar (supra)*)

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12.11. The provisions of Section 106 are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. If he does so, he must be held to have discharged his burden but if he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106.

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[Source: *Sarkar on Law of Evidence, 20<sup>th</sup> Edition, Volume 2.*]

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12.12. In *Sushil Kumar vs. Rakesh Kumar (supra)*, the controversy was with regard to the improper acceptance of the nomination of the sole respondent therein on the premise that he was under qualified to contest the Bihar Legislative Assemble election from

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- A 181, Parbatta Constituency. In the said case, *inter alia*, the horoscope of the respondent therein and admission register of New St. Xaviers School, Boring Road, Patna and transfer certificate issued by Swami Vivekananda Vidyalaya, Mithapur, Patna, were produced as documents to prove that the successful candidate therein was not eligible to contest the said Assembly election. In the said case, Section 35 of the Indian Evidence Act was referred to and it was observed that the register maintained in terms of a statute or by a statutory authority in regular course of business would be a relevant fact and if such vital evidence had been produced, it would clinch the issue. It was observed that there is no reliable evidence on record to show that the date of birth was
- B recorded in the school register on the basis of the statement of any responsible person and that the admission register or a transfer certificate issued by a primary school do not satisfy the requirements of Section 35 of the Evidence Act.

Further, reference was made to *Brij Mohan (supra)* as well as

- D *Birad Mal Singhvi (supra)* and it was observed that in the absence of primary material on the basis whereof the age was recorded, it would not be possible to accept the evidence produced therein. While examining the admission register of the school relied upon by the successful candidate therein, it was observed that entries in the said register had been made by one person with two different pens in one sitting. Also, there were other alterations in the said register and hence, no credence could be given to the same. It was observed that forgery in the register had been done in a crude form and the High Court had noticed the same but still proceeded to rely upon the said documents which amounted to a misdirection in law. It was further observed that the respondent therein
- E had special knowledge as to in which school he had studied and should have disclosed the same instead of disclosing the details of his education. He had taken recourse to *suppression veri* and *suggestion falsi* and had produced documents which were apparently forged and fabricated. The respondent therein could not have been admitted in New St. Xaviers Junior School, being overaged and the evidence of father of the respondent was not trustworthy. Further, the horoscope filed by the respondent in the said case did not inspire confidence. Further, DW-2 who let in evidence on the horoscope was a bystander who had nothing to do either with the preparation of the horoscope or with the writing thereof and his evidence was not trustworthy and the horoscope could not have been looked into
- F for any purpose whatsoever. Also, an application was filed on behalf of

the respondent therein in respect to the occurrence which took place in April, 1995, and the date of birth of the appellant was said to be fourteen years as on that date, and, thus, sixteen years in the year 1996 and was below twenty-five years of age on the date of filing of the nomination.

With reference to the averments made in the bail application on behalf of the respondent therein and the same being an admission, reliance was placed on *Thiru John vs. Returning Officer (1977) 3 SCC 540* to observe that a party's admission as defined in Sections 17 to 20, fulfilling the requirements of Section 21 of the Evidence Act, is substantive evidence *proprio vigore*. An admission, if clearly and unequivocally made, is the best evidence against the party making it and even though conclusive, shifts the onus on to the maker on the principle that 'what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted, the fact admitted must be taken to be established.'

It was further observed in para 65 of the said judgment that :

"65. Furthermore, a person should not be permitted to take advantage of his own wrong. He should either stand by his statement made before a court of law or should explain the same sufficiently. In the absence of any satisfactory explanation, the court will presume that the statement before a court is correct and binding on the party on whose behalf the same has been made."

Under Section 58 of the Indian Evidence Act, a fact admitted need not be proved.

12.13. In *Narender Singh vs. Mala Ram and Ors. (1999) 8 SCC 198*, the controversy was with regard to the improper rejection of nomination papers and the filing of an Election Petition by the candidate whose nomination papers were improperly rejected and improper acceptance of the nomination papers of the returned candidate. This Court speaking through Rajendra Babu, J., discussed about consideration and appreciation of evidence in an election dispute. In para 15 of the judgment, it was observed that the general principle in the matter of appreciation of evidence in an election dispute is that the onus to prove the essential facts which constitute the cause of action in such a dispute is upon the person making it, namely, the election petitioner. What evidence would be sufficient to prove a particular fact depends upon the

- A circumstances of each case. When the evidence adduced is capable of drawing an inference either way, the view that is favourable to the returned candidate will have to be preferred. Reference was made to **Ram Singh vs. Col. Ram Singh 1985 (Supp.) SCC 611**, wherein, it was observed that “in borderline cases the courts have to undertake the onerous task of, ‘disengaging the truth from falsehood, to separate the chaff from the grain’.”
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*Analysis:*

I shall now analyse the oral and documentary evidence on record in order to assess the correctness of the findings of the High Court.

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  - i) ***Re: Passports and Visas of the appellant-successful candidate:***
    - 13. The election petitioner adduced Ex. P-1 and P-3 wherein the date of birth of the successful candidate was shown as 01.01.1993, to contend that the successful candidate was less than 25 years of age at
    - D the time of filing his nomination and the fact that the aforesaid documents indicated the date of birth as 01.01.1993 was not disputed by the successful candidate although the said date was not accepted as his date of birth.
      - 13.1. It is noted that the successful candidate had made applications under his own signature to obtain the passports in the year
      - E 2006 and 2012 (Ex. P-1 – Paper No. A-49/1-4) wherein he had mentioned his date of birth as 01.01.1993. Therefore, the High Court held that the successful candidate had always been aware of the fact that in the educational certificate and passports, his date of birth was shown as 01.01.1993 and had accepted the same till the year 2015.
    - F 13.2. PW-2, Shri. Mohd. Naseem, Passport Officer, Bareilly, deposed that he had brought photocopies of the documents referred to by the successful candidate at the time of making an application for the issuance of his Passport No. K-7951741 which was issued to him on 13.07.2012 from Bareilly Passport Office. PW-2 deposed that the
    - G successful candidate had annexed a copy of his birth certificate issued by the Health Department/Municipal Corporation, Rampur, on 28.06.2012, along with a copy of his online application form, a copy of a pass book pertaining to his bank account held with State Bank and a copy of his old Passport No. F-8757022 issued on 28.08.2006 which was valid till 31.12.2010. To a question whether self-attested copies of
    - H documents submitted by an applicant are maintained in the records,

PW-2 deposed that original copies are returned and self-attested copies      A  
are scanned.

13.3. When a question was posed as to whether by modifying  
the particular entry of date of birth in the successful candidate's old  
Passport No. K-7951741, a new Passport No. Z-4307442 after  
mentioning his date of birth as 30.09.1990 was issued to him on      B  
10.01.2018, PW-2 deposed that he was not in a position to answer the  
question as each application was available separately in the P.S.P.  
system. He deposed that in compliance of the Court's order, he had  
brought only the available record of Passport No. K-7951741 and if  
after that a new Passport No. Z-4307442 was issued, he would have  
to check from the system. That he would be able to present records  
pertaining to Passport No. Z-4307442 on the next date fixed by the  
Court, if the same had in fact been issued.      C

13.4. Further, on perusal of Ex. P-1, paper No. A-49/1-4, which is  
the Passport application dated 06.07.2012 made by the successful  
candidate, I am of the opinion that the same is made under his own  
signature and records his date of birth as 01.01.1993, and place of birth  
as Rampur. In that background, it is necessary to examine whether the  
information entered in the passport application dated 06.07.2012, would  
amount to proof, as to the contents of such application, including the  
date and place of birth entered therein.      D

13.5. I am of the view that great evidentiary value has to be  
attached to an application submitted to a government establishment or  
Office, such as a Passport Office and the details entered in such  
application, together with the documents submitted therewith, must be  
understood to be tendered by the applicant who signs the application  
form thereby accepting that the information submitted therein is true  
and correct and to the best of his knowledge. I find that the successful  
candidate herein, having signed the application form dated 06.07.2012  
wherein it has been expressly entered that his date of birth was  
01.01.1993 and place of birth was Rampur, cannot, at a later juncture  
claim that he was unaware, till the year 2015 that his date of birth as per  
various documents was 01.01.1993 and his place of birth was Lucknow.  
The fact that the successful candidate self-attested the birth certificate  
issued by the Municipal Corporation, Rampur, wherein his date of birth  
has been recorded as 01.01.1993, would establish that the successful  
candidate acknowledged, accepted and sought to rely on such fact in      E

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- A order to secure a passport on the basis of such information. It is therefore not open to the successful candidate to subsequently resile from the aforesaid clear admission and contend that he was unaware that an ‘incorrect’ date of birth was recorded in certain documents. Having admitted the fact that his date of birth was 01.01.1993 and place of birth
- B was Rampur, in the application form dated 06.07.2012 which was at an undisputed point of time, the successful candidate cannot resile from the same.

13.6. I also take note of the fact that the successful candidate had travelled to many foreign countries on his passports which were obtained in the year 2006 and 2012 and the visa which was granted in the year

- C 2014 and in these documents his date of birth was shown as 01.01.1993. I am unable to accept that the successful candidate, who regularly used the passports obtained in the years 2006 and 2012 for international travel, failed all along, to notice that the date of birth recorded in the passports was incorrect. I refuse to believe that an educated individual such as the
- D successful candidate herein, had not, in over nine years (2006 to 2015) looked at the first page of his passport and only later grasped that the date of birth entered therein was ‘incorrect’ only while he was on the verge of entering politics and contesting an election to the Legislative Assembly.

- E 13.7. Further, I also take note of the deposition of P.W.4. who deposed that all the papers related to Birth Certificate No. 3857, Register No. R.N.P.B. 2012-03857, dated 28.06.2012 had been destroyed in a fire due to a short circuit on 08.05.2015 in the office of Nagar Palika Parishad, Rampur and that no papers pertaining to a period prior to such date were available in the Office of Nagar Palika Parishad, Rampur.

- F That such documents were available only in a computer-generated form and a copy of Birth Certificate No. 3857, Register No. R.N.P.B. 2012-03857, dated 28.06.2012 was produced wherein the successful candidate’s date of birth was recorded as 01.01.1993.

- G 13.8. The stand taken by the successful candidate that all documents pertaining to the Birth Certificate dated 28.06.2012 were burnt due to a short circuit on 08.05.2015 in the office of Nagar Palika Parishad, Rampur, would suggest that the said birth certificate, wherein the date of birth of the successful candidate was recorded as 01.01.1993 came to be later cancelled under suspicious circumstances. It is rather strange that a birth certificate pertaining to the year 1993, was destroyed
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in the year 2015 under peculiar circumstances, at a time when the successful candidate was making several efforts to get his date of birth changed in various records. It is rather unbelievable that just when the successful candidate began assuming an active role in politics and undertook various efforts towards correcting his date of birth in several records, i.e., in the year 2015, the birth certificate and relevant documents pertaining to the said certificate, wherein the date of birth of the successful candidate was recorded as 01.01.1993 came to be destroyed in a fire and was accordingly cancelled.

13.9. It is further noted that an application seeking a birth certificate was made on 28.06.2012 bearing No. RNPP 2012-03857 to the Nagar Palika Parishad, Rampur and on the same date, birth certificate was issued to the successful candidate showing the date of birth as “01-Jan-1993”. The place of birth was shown as ‘घेर मीज बाज खा, जेल रोड, रामपुर’. The said address is shown to be the address of his parents at the time of birth of the child i.e., the successful candidate as well as the permanent address of parents. The inference to be drawn from the said document is that in the year 2012, the petitioner consciously applied to Nagar Palika Parishad, Rampur for obtaining the birth certificate in order to append the same for obtaining a new passport. The further inference that I draw from the said document is that the successful candidate has sought his birth certificate from the Nagar Palika Parishad, Rampur as he was born at Rampur and the birth certificate clearly indicates that he was born on 01.01.1993. Subsequently, the said birth certificate was cancelled. PW-4 has deposed that all the documents relating to the issuance of birth certificate to the successful candidate were destroyed in fire on 08.05.2015 which is indeed strange and mysterious as by then the successful candidate had already obtained “duplicate” birth certificate from the Municipal Corporation, Lucknow.

*ii) Re: Educational Certificates of the successful candidate:*

14. As per the Secondary School examination Class X certificate (Exhibit P4, paper no. A-25/1) issued in the year 2007 by the C.B.S.E., the successful candidate’s date of birth has been recorded as 01.01.1993. The High Court has observed that the stand taken by the successful candidate in this regard is that he came to know that his date of birth was ‘incorrectly’ mentioned as 01.01.1993 in the Certificate of Secondary School Examination (Class X) only in the year 2015 when he was scrutinising his educational records, was unbelievable and untrue.

- A 14.1. As regards the successful candidate's educational records, which record his date of birth to be 01.01.1993, his version is that due to his father's busy social and political life, his father's friend Shahzeb Khan (DW-9) got him admitted in the Nursery Class of St. Paul School, Rampur. It is the successful candidate's case that his date of birth was incorrectly recorded as 01.01.1993 instead of 30.09.1990 and the same continued in all his educational records. That he made an application to C.B.S.E. through the Principal of St. Paul School to change the date of birth mentioned in his records and also sent many reminders to the school and the same were forwarded to the office of C.B.S.E. in Allahabad, however, till date no information had been given to him by C.B.S.E.
- B 14.2. In this regard, D.W.-5 mother of the successful candidate deposed that her family friend Shahzeb Khan (DW-9) took the successful candidate to St. Paul School, Rampur, for his admission in Nursery Class in the year 1995 and wrongly entered the date of birth as 01.01.1993 instead of 30.09.1990 in the admission form. That the successful candidate was born on 30.09.1990 and the date of birth mentioned in his educational record was incorrect. DW-5 was asked if she knew that her son-the successful candidate had mentioned his date of birth in Class X, Class XII, under graduate degree and post graduate degree as 01.01.1993. DW-5 deposed that when her son was in the final year of his graduation, he informed her that the date of birth in his educational record was wrongly mentioned and that the date of birth in other educational records could not be corrected without changing the date of birth mentioned in the Class-X Certificate. Therefore, an application was made to the Principal, St. Paul School Rampur, to correct the date of birth as per the school records.
- C 14.3. DW-9, who is stated to be the person who accompanied the successful candidate to St. Paul School to get him admitted in nursery class was also examined. DW-9 deposed that in the year 1995, he took the successful candidate to St. Paul's School, Civil Lines, Rampur, to get him admitted into the said school. That after completing the admission process, the master who was in charge of giving admission, got the successful candidate enrolled in Nursery class and put his date of birth as 01.01.1993 in the admission form and asked DW-9 to sign it and DW-9 signed the same.
- D 14.4. I am of the view that the version narrated by the successful candidate to explain the 'error' in his date of birth, as recorded in all educational records, would not aid the successful candidate's case.

Further, it is to be noted that DW-5-Tazeen Fatima in Paragraph 12 of her Examination-in-Chief and the successful candidate in Paragraph 53 of his written statement had stated that DW-9- Shahzeb Khan, the successful candidate's father's friend, had got him admitted in the nursery class of St. Paul School, Rampur, in the year 1995, and had inadvertently mentioned the date of birth of the successful candidate as 01.01.1993. However, DW-9- Shahzeb Khan, in Paragraph 5 of his Examination-in-Chief has deposed that the master had written the date of birth of the successful candidate in the admission form. Therefore, I am not inclined to attach much weight to the statements of either DW-5 or DW-7 in this regard as they are inconsistent with each other.

14.5. It is further noted that the successful candidate has emphatically stated that his date of birth is 30.09.1990 and not 01.01.1993 and that an erroneous date was given at the time of his admission to nursery class in the year 1995. This would mean that the successful candidate was sought to be admitted in nursery class when he was about 5  $\frac{1}{2}$  years of age which is not believable as he would be over-aged for that class. On the other hand, if he was born on 01.01.1993, it is possible that at 2  $\frac{1}{2}$  years he would have been admitted to nursery class which is the right age to get admission in nursery. Further, the successful candidate has completed his 10<sup>th</sup> standard in the year 2007 and his 12<sup>th</sup> standard in the year 2009 which would mean that the successful candidate was about 14  $\frac{1}{2}$  years when he completed his 10<sup>th</sup> standard and 16  $\frac{1}{2}$  years when he completed his 12<sup>th</sup> standard which is the normal age to do so. If according to the successful candidate his actual date of birth is 30.09.1990, the inference is that he would have been about 17  $\frac{1}{2}$  years when he completed his 10<sup>th</sup> standard and 19  $\frac{1}{2}$  years when he completed his 12<sup>th</sup> standard which is improbable. Also, there is no explanation on record as to why at a belated age he has completed his 10<sup>th</sup> standard and intermediate examination in the year 2009.

14.6. D.W.-7 who is the Director of St. Paul School, Rampur, was also examined to prove the version narrated by the successful candidate. He deposed that the successful candidate addressed a letter dated 23.03.2015 to the school stating therein that in the year 2015 he came to know that his date of birth was incorrectly entered in his educational certificates as 01.01.1993 whereas his actual date of birth was 30.09.1990 and he requested DW-7 to make the necessary changes. He in turn forwarded the letter dated 23.03.2015 to the Regional Office,

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- A C.B.S.E, Allahabad, along with a letter issued by him to the Regional Office, C.B.S.E., dated 15.04.2015 wherein he had requested C.B.S.E. to correct the successful candidate's date of birth. Also, he had sent two reminders to the Regional Office, C.B.S.E., Allahabad, on 19.05.2015 and 21.09.2015 stating that in the register of birth and death and the Birth Certificate provided by the Hospital, the date of birth of the successful candidate was shown as 30.09.1990 and therefore, it should be changed from 01.01.1993 to 30.09.1990. Further, in the reminders, DW-7 stated that in the register of birth and death and the Birth Certificate provided by the Hospital, the date of birth of the successful candidate was shown as 30.09.1990 and therefore, the date of birth in the educational records should also be changed from 01.01.1993 to 30.09.1990.

14.7. It is further noted that on the request made on behalf of the successful candidate, several letters were addressed by the Principal of St. Paul School, Rampur to the Regional Officer, Central Board of

- D Secondary Education, Allahabad requesting for permission to correct the date of birth of the successful candidate. Further, the said permission was not granted and on 30.10.2017, a letter was addressed to the mother of the successful candidate – DW-5 stating that the matter was twenty years' old and it was not possible for the school to trace the required details. This would imply that the school records continue to show the date of birth of the successful candidate as 01.01.1993 and on that basis the other educational records of the successful candidate also indicate his date of birth as 01.01.1993. On perusal of the application seeking passport application form submitted by the successful candidate, it is noted that his date of birth and place of birth have been mentioned as
- F 01.01.1993 and at Rampur. Further, two references given by him are Rafi Raja Khan and Rizwan Mohammad Khan also residing at Ghair Meer Baaz Khan, Jail Road, Rampur. The permanent residential address details of the successful candidate were also shown as Ghair Meer Baaz Khan, Jail Road, Rampur, Ganj, Uttar Pradesh. This would imply that in
- G the school records, the date of birth of the appellant continues to be 01.01.1993 and his place of birth as Rampur.

14.8. But since DW-7 in his request made to the C.B.S.E. relied on the entry made in the register of birth and death and the Birth Certificate provided by the Hospital, it is necessary to examine whether the said register and the hospital records were genuine and can be relied

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upon. Accordingly, such questions are examined in the following section A of the analysis.

*iii) Re: Whether the Birth Certificate bearing Registration No. NNLKO-B-2015-292611 issued on 21.01.2015 by the Nagar Nigam, Lucknow, was a valid piece of evidence?*

15. To ascertain the validity of the birth certificate bearing Registration No. NNLKO-B-2015-292611 issued on 21.01.2015 by the Nagar Nigam, Lucknow, the High Court placed reliance on the following documents: a) (Ex. R-12 A-96/1-5), b) (Ex. R-12 A-96/3), c) (Ex. 12 Paper No. A-96/4-5)

15.1. On perusal of the aforesaid documents and the original hospital file relating to the issuance of birth certificate of the successful candidate, produced by DW-2, it is observed that the file merely contained an application and an affidavit (Ex. R-12 A-96/1-5) dated 17.01.2015 made by the successful candidate's mother to the City Health Officer, Nagar Nigam, Lucknow, for the issuance of a birth certificate and a computer generated sheet (Ex. R-12 A-96/3) which contained particulars of registration of birth of the successful candidate.

15.2. The High Court further noted that the birth register (Ex. 12 Paper No. A-96/4-5) adduced by DW-2 was neither authenticated nor certified by any competent officer and was not even paginated. That DW-2 in her cross-examination had admitted that the Birth Register was maintained by a clerk and was not in the prescribed format as per the mandate of the 1969 Act, and the same had not been authenticated or verified by a competent official. Further, the Birth Register was not paginated and the entry of the name of the successful candidate's mother was not made in a chronological order. DW-2 further testified that the Birth List maintained by the hospital, on the basis of which birth entry is made in the birth register maintained by the municipality, was not available. On the basis of the afore-stated oral and documentary evidence, the High Court held that the Birth Register (Ex. 12 Paper No. A-96/4-5) was a clear case of manipulation and interpolation, as the entry of the successful candidate's date of birth and name was inserted in the small space at the bottom of the page showing it to have been made on 30.09.1990. It was also noted that the successful candidate's entry in the Birth Register did not bear any signature or an order of any authority

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- A of the Nagar Nigam, Lucknow, or the Sub-Divisional Magistrate; the High Court, therefore held that the entry of the successful candidate's name was not made on 30.09.1990 and that the said entry was an interpolation.

- 15.3. The High Court, on perusal of the affidavit (Ex. R-12 A-96/B 1-5) dated 17.01.2015 made by Dr. Tazeen Fatima (DW-5), mother of the successful candidate while seeking issuance of the duplicate birth certificate, held that the successful candidate's mother in the said affidavit had concealed the fact that another Birth Certificate (Ex. P-3 Paper No. A-80/1) issued by the Nagar Palika Parishad, Rampur, existed and was subsequently cancelled on 30.01.2015.

- 15.4. It is further observed that the mother of the successful candidate made an application to the City Health Officer, Nagar Nigam, Lucknow, for the issuance of the birth certificate on 17.01.2015, after twenty-five (25) years of the birth of the successful candidate and the same was endorsed by an officer of the Nagar Nigam, Lucknow, on 19.01.2015 and immediately thereafter i.e. two days later, a certificate was issued to the successful candidate on 21.01.2015. That the birth certificate was issued without following the mandatory provisions of Section 13 of the 1969 Act. Also Rule 9 of the U.P. Registration of the Birth and Death Rules, 2002 and Section 13(3) of the 1969 Act, provided that any birth or death which had not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of First Class or a Presidency Magistrate after verifying the correctness of the birth or death and upon payment of the prescribed fee. Rule 9(3) of the U.P. Registration of the Birth and Death Rules, 2002, provided that any birth or death which had not been registered within one year of its occurrence, shall be registered only on an order of the Sub-Divisional Magistrate and after payment of a late fee of Rs. 10/- I am therefore of the view that, the Nagar Nigam, Lucknow, had no jurisdiction to register the birth of the successful candidate after twenty-five years from the date on which he was stated to be born by the issuance of the Birth Certificate on 21.01.2015 (Ex. P-2 Paper No. A-63/1) without an order of the Sub-Divisional Magistrate as required under Section 13(3) of the 1969 Act, read with Rule 9(3) of the U.P. Registration of the Birth and Death Rules, 2002. In fine, it is held that the birth certificate (Ex. P-2 Paper No. A-63/1) issued by the Nagar Nigam, Lucknow, on 21.01.2015 H was null and void.

15.5. From the impugned judgment, it is further noted that the entry with respect to the successful candidate's date of birth in the Birth Register, showing it to be 30.09.1990, was inserted in all probability in the year 2015. The High Court took note of the fact that the birth certificate was issued to the successful candidate on 21.01.2015 by the Nagar Nigam, Lucknow, and at that time, the father of the successful candidate was a Cabinet Minister of the Department of Urban Development and Local Bodies and the Nagar Nigam, Lucknow, came under his Ministry. The High Court was therefore of the view that the entry in the birth register was a result of undue pressure on authorities by the interested parties and was clearly manipulated. The High Court therefore, held that the evidence adduced by Dr. Tazeen Fatima (DW-5), mother of the successful candidate and by DW-10- the successful candidate, was false and wholly untrustworthy.

15.6. In order to ascertain the validity of the Birth Certificate bearing Registration No. NNLKO-B-2015-292611 issued on 21.01.2015 by the Nagar Nigam, Lucknow, regard must be had to the request letter addressed by the mother of the successful candidate - DW-5 – Tazeen Fatima dated 19.01.2015 to the City Health Officer, Nagar Nigam, Lucknow, for the issuance of a birth certificate to the successful candidate and the copy of the Birth Register maintained by the Nagar Nigam, Lucknow, in which entry in the name of the successful candidate was made on 30.09.1990.

15.7. DW-2 Dr. Archana Dwivedi, Additional Principal Commissioner, Lucknow, deposed that as per the Court's order dated 27.05.2019, she had brought the original birth certificate of the successful candidate issued on 21.01.2015 and the Birth Record of Queen Mary's Hospital from 01.01.1990 to 31.12.1990. She admitted that the register/hospital's birth record did not contain page numbers nor had it been certified by any competent officer or been attested. DW-2 placed before the Court the relevant entry in the hospital birth record which pertained to Tazeen Fatima's delivery on 30.09.1990. In the course of cross-examination, on being asked whether it was necessary to maintain the birth register in the format laid down in 1969 Act, DW-2 answered in the affirmative; however, in response to the question as to whether the birth register produced by her in Court was in the prescribed format, she answered in the negative. When asked on what basis the entry was made in the birth register on 30.09.1990 and whether she had brought any papers related to it, DW-2 deposed that the entries in the birth register

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- A were made according to the birth list provided by the hospital, however, the said list was not available to be produced before the Court.

15.8. Answering a question as to, after how many days of making the related entries in the birth Register, the birth certificate is issued, DW-2 deposed that the birth certificate is issued when an applicant B addresses a request letter and the birth is registered immediately after receiving a birth list from the hospital.

15.9. It is noted that the birth certificate dated 21.01.2015, is said to have been issued by the Nagar Nigam, Lucknow, on the strength of the entry made in the birth register maintained by the Queen Mary's C Hospital, Lucknow, wherein it was recorded that the successful candidate's mother delivered a male child on 30.09.1990. As per the testimony of DW-2, entries in birth register are made according to the birth list provided by the hospital. Therefore, in order to give any finding as to the validity of the birth certificate dated 21.01.2015, issued by the D Nagar Nigam, Lucknow, the validity of the antecedent documents, such as the birth register and birth list maintained by the hospital, on the strength of which the birth certificate dated 21.01.2015 was issued, needs to be examined.

15.10. As is evident from the relevant portion of DW-2's cross examination, although the birth register was to be maintained in the format E prescribed in this regard in the 1969 Act, such format was not followed in the present case, while recording the entry pertaining to the successful candidate's birth on 30.09.1990. Further, while it is stated that such entry was recorded in the birth register on the basis of a birth list maintained by the hospital, it is admitted that the birth list pertaining to the successful F candidate's birth is not available. This means, the basis of making the entry in the birth register maintained by the municipality was not available.

15.11. These facts are to be further considered in light of the finding of the High Court to the effect that the entry pertaining to the successful candidate was inserted in a small space at the bottom of the G page, in the birth register, showing it to have been made on 30.09.1990.

15.12. It is also noted that in the relevant column of the birth register, the successful candidate was recorded as a 'Hindu'. This would further strengthen the case of the election petitioner that the successful candidate's details were subsequently added in a space in the register, H which originally pertained to some other birth.

15.13. In light of the aforesaid discussion, I am of the view that no weight can be placed on the birth certificate dated 21.01.2015, issued by the Nagar Nigam, Lucknow, which is stated to be issued on the strength of an entry made in the birth register maintained by the hospital and is created by manipulation and interpolation in the relevant hospital records. It is therefore held that in the absence of any explanation as to why the relevant birth list, forming the basis of the entry in the birth register, was not available to be produced before the Court, no evidentiary value can be attached to the birth register. It is consequently held that the birth certificate dated 21.01.2015, issued by the Nagar Nigam, Lucknow on the strength of such documents, cannot be held to be a valid document.

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15.14. It is also to be noticed that Birth Certificate showing the date of birth of the successful candidate as 01.01.1993 was still holding the field and valid and thus till the same was cancelled subsequently, the successful candidate had two Birth Certificates showing his date of birth at two different places and on two different dates, namely, one on 01.01.1993 at Rampur and another on 30.09.1990 at Lucknow which clearly indicates that only one Birth Certificate was valid and correct as far as successful candidate's date of birth is concerned. In my view, the certificate showing the date of birth of the successful candidate as 01.01.1993 at Rampur is the correct certificate and not the one subsequently obtained in the year 2015.

15.15. In light of the above discussion, the finding of the High Court as to the invalidity of the birth certificate dated 21.01.2015, issued by the Nagar Nigam, Lucknow, is affirmed.

**iv) *Re: Proof of Birth on 30.09.1990 on the basis of entries in Hospital records and Oral Evidence:***

16. DW-3-Dr. Uma Singh, Senior Gynaecologist, Queen Mary's Hospital stated that she had brought with her, the relevant labour room register and operation theatre register (O.T. Register). Referring to page no. 225 of the Labour register (M.L.R.) annual no. 1826 monthly no. 257, she deposed that the entry pertained to Dr. Tazeen Fatima, successful candidate's mother and as per the said entry she delivered a male child on 30.09.1990 at 3:43 a.m. She also stated that she had signed and issued the duplicate birth certificate dated 21.04.2015 (A-37). In answer to a question as to the authority which issues birth certificates in Queen Mary's Hospital, DW-3 stated that duplicate birth certificates are issued by the person nominated by the Department Head. As regards the procedure

- A for issuance of duplicate birth certificates, DW-3 deposed that an application requesting for a duplicate birth certificate is to be made to the Chief Medical Superintendent of King George University who would thereafter forward the same to the Department Head who would issue the duplicate certificate. DW-3 answered in the negative when asked whether she had brought to the Court the application forwarded by the Chief Medical Superintendent for the issuance of the duplicate birth certificate. While DW-3 stated that it was the responsibility of the Chief Medical Superintendent to inform the Municipal Corporation about the birth of a child, she stated that she was unable to confidently say whether the information of the children born on 30.09.1990 was sent to the Municipal Corporation.

16.1. Referring to the relevant entry in page No. 174 of emergency O.T. register Annual No. 5097 and monthly no. 512, DW-3 was asked whether there was any overwriting on it and she answered in the affirmative. On being questioned whether the entries made in page no.

- D 225 of M.L.R. register matched the entries made in the pages of other annual numbers; DW-3 answered that they '**do not match totally**'.

16.2. Replying to a question as to whether, as per the hospital record presented before the Court it could be said that a male child was born in the hospital on 30.09.1990, DW-3 stated that the register affirms that '**related lady**' gave birth to a male child on 30.09.1990. However,

- E DW-3 answered in the '**negative**' when questioned as to whether she could definitely say that the male child born on 30.09.1990 as per the register brought by her was the successful candidate.

16.3. A question was put to DW-3 by the High Court as to whether, the E.O.T. and M.L.R. registers which DW-3 brought with her were

- F attested or signed by any Officer or Department Head of Queen Mary's Hospital or King George University and whether the entries in the said registers or any page was signed or counter-signed by any Officer or Department Head of the Hospital and whether the registers were authenticated by any Officer or Department Head. DW-3 deposed that

- G both the registers were not authenticated by any Officer of Queen Mary's Hospital or King George University and were not attested. DW-3 deposed that she had neither made the relevant entries in the register nor had she signed them. On being asked as to on what basis she could say that the entries in the register were genuine given that the same were neither made nor signed by her, DW-3 stated that she had stated that they were genuine on an understanding of the working procedure of the hospital.

16.4. On a consideration of the aforesaid documentary evidence in light of the depositions of DW-3, the High Court observed that Page No. 174 of the E.O.T. Register of Queen Mary's Hospital, Lucknow, (Ex. R-4 Paper No. A-100/1-2) containing entries of the admission of patients on 29.09.1990, which showed that the mother of the successful candidate, Tazeen Fatima, was admitted in the hospital and gave birth to a male child, was not trustworthy as contents had been struck out and there was overwriting on the name of "Tazeen Fatima" on the relevant page of the E.O.T. Register. That the entries made in Column 13 and Column 16 did not contain material particulars as shown in entries on the same page pertaining to other patients. The High Court also noticed that the entry in the relevant page of the E.O.T register did not match with the entries in Page No. 225 of the M.L.R. Register (Ex. R-5 Paper No. A-101/1-2). That there was overwriting on the name of "Mrs. Tazeen Fatima" on the relevant page of the M.L.R. Register and that the relevant page of the M.L.R. Register did not contain the date of admission and registration number. The High Court also observed that the period of pregnancy was recorded in the M.L.R. as 38 weeks as against the period of 32 weeks recorded in the E.O.T register. That the entry in the E.O.T. register was made in the name of one "Tazeen Fatima" while in the M.L.R. register it was made in the name of "Mrs. Tazeen Fatima" and the same was in a different hand writing and a different pen was used as compared to other particulars.

16.5. It was further noted that the fact that the contents were scored out and overwritten in the above-mentioned registers was admitted by DW-3-Dr. Uma Singh, Sr. Gynaecologist, Queen Mary's Hospital, (Department of Obst. & Gyno.) in her oral evidence dated 31.07.2019.

16.6. From the deposition of DW-3-Dr. Uma Singh, it is noted that she had stated that the aforesaid two registers were neither authenticated nor signed by any officer or doctor of the hospital and that the entry pertaining to the birth on 30.09.1990 was not signed by her. DW-3 had further deposed that she could not say whether the child born on 30.09.1990 as mentioned in the above registers was the appellant herein. DW-3 further deposed that it was the responsibility of the Chief Medical Superintendent to give information pertaining to the births to the Nagar Nigam, Lucknow, and that she was never given this responsibility and that there was no post of Chief Medical Superintendent in the hospital. Further, DW-3 stated that the above-mentioned registers were maintained

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- A by a clerk, and the concerned clerk was not produced by the successful candidate to prove the alleged entries made in the above-mentioned registers. Further, DW-3-Dr. Uma Singh could not produce the application made by the mother of the successful candidate, to her, for the issuance of a duplicate birth certificate.
- B 16.7. More significantly, DW-3 who is said to have delivered the successful candidate on 30.09.1990 could not categorically say that the male child that she delivered was indeed the successful candidate. Thus, there is no clinching evidence in this regard despite the documents sought to be produced, which in any case have not been rightly believed by the High Court owing to overwriting, interpolation etc. and DW-3 not being able to categorically state that successful candidate was delivered by her on 30.09.1990. Therefore, in my view the evidence of DW-3 does not, in any way further the case of the successful candidate.
- C 16.8. DW-4, Dr. Vineeta Das is stated to be the doctor who issued the Duplicate Birth Certificate on 21.04.2015. Referring to Document A-37 (Duplicate Birth Certificate issued on 21.04.2015) DW-4 was asked whether the same had been signed by her, she answered in the affirmative. As to the contents of Document A-37, DW-4 deposed that it was a duplicate birth certificate which was issued on 21.04.2015 by the Gynaecology Department of the hospital she worked at. DW-4 further deposed that in the first column, it had been recorded that the birth certificate pertained to the baby of Tazeen Fatima, the sex and caste of the child i.e., Male and Muslim, were also recorded; in the second column the name of the mother, Smt. Tazeen Fatima was written and in the third column; father's name i.e., Mohd. Azam Khan was written; and in the fourth column, the grandfather's name was written. DW-4 deposed that in the next line, the date and time of delivery i.e., 30.09.1990 at 3:43 a.m. were mentioned.
- D 16.9. On being questioned as to the procedure that is followed for issuing a duplicate birth certificate, DW-4 stated that the Chief Medical Superintendent, King George Medical University sends a letter to the Head of Department who in turn appoints a Medical Consultant for the issuance of duplicate birth certificates and after that the clerk makes the duplicate birth certificate which has to be signed by the Head of Department.
- E 16.10. On being questioned whether the entries made in Page no. 174 of Manual No. 5097 were made by her, DW-4 answered in the negative.

16.11. On appreciating the above statements in light of the documents referred to above, it is noted that DW-4 in her cross-examination had deposed that birth certificate was issued in the instant case on an application received by the Chief Medical Superintendent but she could not name the medical consultant nominated to prepare the duplicate birth certificate nor could she produce any document relating thereto.

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16.12. The High Court observed that the entries in the E.O.T. register (Ex. R-4 Paper No. A100/1-2) and in the M.L.R. register (Ex. R-5 Paper No. A101/1-2) could not be proved to be genuine by the successful candidate and that he failed to establish that he was the child born on 30.09.1990, as recorded in the aforesaid registers.

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16.13. The High Court therefore rightly held that the successful candidate could not prove that he was born on 30.09.1990 at Lucknow and the evidence adduced by the mother of the successful candidate (DW-5) regarding the alleged birth on 30.09.1990 could not be relied upon in the absence of other corroborative evidence.

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16.14. In furtherance of the RTI application dated 31.08.2017, filed by the successful candidate (during the pendency of the Election Petition before the High Court) seeking information as to his date of birth, DW-4- Dr. Vineeta Das issued a letter (Ex. R-9 Paper No. A42/3) dated 12.09.2017, to the Public Information Officer/Chief Medical Superintendent of King George Medical University, Lucknow, wherein she had stated that the successful candidate was born on 30.09.1990. Upon perusal of the letter dated 12.09.2017, it is observed that the correctness of the contents of the said letter was completely lost in view of the fact that in the relevant page of the E.O.T. Register (Ex. R-4 Paper No. A100/1-2) and in the relevant page of the M.L.R. Register (Ex. R-5 Paper No. A101/1-2), there was no mention of the name of the successful candidate. Thus, the birth of the successful candidate (dated 30.09.1990) could not be related to those entries. The High Court further observed that DW-4 in her cross-examination had stated that she was neither related to the delivery of the successful candidate nor had she made the entries in the E.O.T. Register. The High Court therefore observed that, without there being any record present with DW-4, it was wrong on her part to certify that the successful candidate was born on 30.09.1990 in Queen Mary's Hospital, Lucknow.

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- A        16.15. Based on the above reasoning, the High Court was rightly of the view that the evidence given by DW-3- Dr. Uma Singh and DW-10- the successful candidate could not establish that he was born on 30.09.1990 in Queen Mary's Hospital, Lucknow.
- B        16.16. It is obvious on a perusal of the E.O.T. and M.L.R. registers that the same are riddled with discrepancies, over-writing and factual inaccuracies. A glaring discrepancy, which would have a material bearing on the successful candidate's case is that the period of pregnancy recorded in the M.L.R. register was recorded as 38 weeks as against the period of 32 weeks recorded in the E.O.T register. It is also noted that in the M.L.R. register, Mrs. Tazeen Fatima's name alone has been written in a different handwriting and different ink as compared to the rest of the particulars pertaining to such entry. This would indicate that the name of the successful candidate's mother was entered and adjusted into the available space, and corresponding to particulars, which pertained to some other patient in the Registers.
- C        16.17. While DW-3 has deposed that the duplicate birth certificate was issued after the application was made by the successful candidate's mother to the Chief Medical Superintendent of King George University, requesting for it which was forwarded to the department head of the concerned hospital, but D.W.3 could not produce the forwarding letter.
- D        No effort was made by the successful candidate to produce the same by procuring it by way of making an R.T.I. application. Therefore, I am not convinced that the due procedure was followed before issuing the duplicate birth certificate dated 21.04.2015. In fact, when enquired about the original birth certificate of the duplicate certificate of the successful candidate, there was no answer given.
- E        16.18. Having already noted that the entries pertaining to the birth of the successful candidate, in the E.O.T. and M.L.R. registers were mired with discrepancies, over-writing and factual inaccuracies, I am unable to ignore the same, especially since both such registers were not authenticated by any Officer of Queen Mary's Hospital or King George University and were not attested. By DW-3's own admission, the only basis on which she was stating that the relevant entries in the registers were genuine was on her understanding of the working procedures of the hospital. This does not inspire much confidence as to the genuineness of the entries made in the registers, which *ex facie* appear to be manipulated.

16.19. Further, it is noted from the Labour Room Register that the doctor who attended DW-5-the mother of the successful candidate at the Queen Mary's Hospital was Prof. (Dr.) A. Harish and not Dr. Uma Singh. Dr. A. Harish has not been examined in the matter.

16.20. I, therefore, am not inclined to place much weight on the testimony of DW-4, as she had not made the entries in the E.O.T. Register. Therefore, her statements are not persuasive.

I, therefore, affirm the findings and decision of the High Court *qua* this issue also.

v) ***Re: Medical Examination Report of the successful candidate:***

17. The High Court did not accept the report of the ossification test, as conclusive proof of the successful candidate's age as the same could not be proved by DW-8, Dr. Satbir Singh Ken, Radiologist, District Hospital, Rampur, who was a part of the Medical Board that determined the age of the successful candidate to be 26 years. The High Court based its decision on the fact that DW-8 could not produce the original medical report or the records pertaining thereto. It was also observed that a bone ossification test would always have to be considered having regard to the fact that the results thereof could differ, by up to two years from the actual age of the person tested, *vide Mukarrab and others vs. State of U.P. (2017) 2 SCC 210.*

17.1. In this background, it may also be noted that DW-8 deposed that in his opinion, there could be a difference of one year between the actual age of the successful candidate and the age suggested in the report of the bone ossification test. That on being asked whether it was correct to say that bone ossification tests could not tell the correct age, DW-8 refused to make any comment and stated that he was only a radiologist and had given only the X-Ray report.

17.2. The aforesaid statements would have to be considered in light of the law relating to the evidentiary value of a bone ossification test. This Court has, *in Mukarrab (supra)*, declared that an ossification test could not be solely relied upon as conclusive proof of age and the said test is by no means an infallible or accurate test to determine the correct number of years of a person's life. The general rule for determining the age is that it can vary plus or minus two years and that the date of birth of a person is to be determined on the basis of the

- A material on record and on appreciation of evidence adduced by parties. It has therefore been authoritatively laid down by this Court that the report of an ossification test can, at most, be used to corroborate other relevant evidences, oral or documentary. Even so, relying on the aforesaid case, the High Court had rightly observed that if the margin factor of (plus or minus) two years is applied to the case of the successful candidate, it could also mean that in the year 2017 the age of the successful candidate was 24 years which would indicate that he was born in the year 1993.

17.3. In that background, I am of the view that the medical examination report of the successful candidate dated 27.01.2017 based on an ossification test conducted, wherein his age was recorded to be twenty-six years at the relevant time, cannot be accepted as conclusive proof of his age and the same would not hold any water. This is especially so when other documents such as matriculation certificate, date of birth certificate issued by the Nagar Palika Parishad, Rampur and passports, which have been acknowledged by this Court on various occasions to serve as proof of date of birth are in fact available in the instant case but the date of birth recorded in the said documents is contrary to the result of the ossification test. While I may have been inclined to place some weight on the result of the ossification test, in case other documents which would serve as proof of age were not available, I am unable to accept the same in the instant case. This is because other documents which would serve as proof of age are available and the date of birth recorded in such documents is contrary to the result of the ossification test. Therefore, I affirm the findings and decision of the High Court *qua* this issue also.

F        *vi) Re: Declaration of the successful candidate's mother while submitting the G.I.S. Nomination Form:*

18. This issue pertains to the evidentiary value of the contents of the G.I.S. (Group Insurance Scheme) nomination form which formed a part of the Service Book (Ex. R-11 Paper No. A95/1-34) of the successful candidate's mother, which is relied upon by the successful candidate. In Paper No. A95/25 of the said Service Book is the G.I.S. Nomination Form of the mother of the successful candidate, which records, *inter-alia*, that on 26.04.2001, she had nominated the appellant-successful candidate and two other family members under the Group Insurance Scheme by stating their respective age as on the aforesaid date. In the

said form, the age of the successful candidate is stated as eight years as A on 26.04.2001.

18.1. The High Court observed that DW-1- Dr. Shailendra K. Tiwari, Assistant Director of Higher Education, Prayagraj, U.P., brought the successful candidate's mother's Service Book (Ex. R-11 A95/1-34) which contained the G.I.S. (Group Insurance Scheme) Nomination Form (Ex. R-11 A95/25) which was signed by the mother of the successful candidate on 26.04.2001. The High Court concluded that the successful candidate was born in the year 1993. B

18.2. The High Court further observed that the election petitioner had specifically raised this argument in paragraph 12 (iii) of the Election Petition and yet, the successful candidate did not make any averment in this regard so as to explain the detail entered as such in the G.I.S. nomination form. C

18.3. The G.I.S. Nomination Form (Ex. R-11 Paper No. A95/25) showed that the successful candidate was only eight years old in the year 2001, which would imply that he was born in the year 1993. Further, such admission on the part of DW-5-Tazeen Fatima at an undisputed point of time would have to be considered as conclusive proof of the fact that the successful candidate was born in the year 1993 and was therefore eight years old in April, 2001 in the absence of any explanation to resile from the said admission. The said G.I.S Form was adduced as evidence by none other than the successful candidate and was also referred to by DW-5-Tazeen Fatima in her cross-examination. However, she did not offer any explanation about the entry as to the successful candidate's age in the said form and had not disputed the said G.I.S. Form which was a part of her Service Book. The successful candidate, having relied on DW-5's Service Book, of which the G.I.S. form is a part, cannot now seek to rely on the same selectively, i.e., on only those details entered in the Service Book/G.I.S. form which would potentially support his case while resiling or disregarding as irrelevant any entry or detail therein which would have an adverse impact on his case. D E F

18.4. This Court has held in *P.C. Purushothama Reddiar vs. S. Perumal (1972) 1 SCC 9* that once a document is properly admitted by the party producing the said document, the contents of that document are also admitted in evidence and no further evidence would have to be let in by the party relying on such admission to establish the fact so admitted *aliunde*. G H

- A 18.5. The said G.I.S. Form was adduced as evidence at the behest of the successful candidate and the contents of the same were proved by DW-1-Dr. Shailendra K. Tiwari and were not disputed by DW-5-Tazeen Fatima. Therefore, the successful candidate cannot now be allowed to selectively admit the contents of the same. No attempt was made by the successful candidate to resile from the said admission by offering any explanation as to why reliance could not be placed on the said document when the successful candidate himself was relying on it.
- B 18.6. I, therefore, affirm the findings of the High Court that the G.I.S. Nomination Form (Ex. R-11 Paper No. A95/25) came into existence at an undisputed point of time and is a piece of evidence which proves that the successful candidate was born in the year 1993.

*vii) Re: Aadhar Card, Voter I.D. Card and Driving License:*

- C 19. This issue pertains to the effect of the following documents of identity, wherein the successful candidate's date of birth has been recorded as 30.09.1990, namely, copy of Aadhar Card, driving licence and Voter ID Card of the appellant-successful candidate. Strong reliance has been placed on the above-listed documents to contend that the date of birth recorded therein is 30.09.1990, which is in accordance with the date of birth reflected in the duplicate birth certificates issued by the Queen Mary's Hospital, Lucknow, and the Nagar Nigam, Lucknow, on 21.04.2015 and 21.01.2015, respectively.
- D 19.1. The High Court, on perusal of the successful candidate's Aadhar Card (Ex. P-2 Paper No. A-66/1), Driving License (Ex. P-2 Paper No. A-67/1) and Voter I.D. Card (Ex. P-2 Paper No. A-68/1) held that the above-mentioned documents are not evidence of date of birth of the successful candidate. It was of the view that the date of birth in the Driving License was corrected subsequently and that the Aadhar Card dated 07.03.2015 and the Voter I.D. Card dated 18.07.2016 were issued on the basis of the date of birth mentioned in the birth certificate dated 21.01.2015 issued by the Nagar Nigam, Lucknow, which had been held to be null and void. Reliance was placed on a judgment of its Court in *Smt. Parvati Kumari and Ors. vs. State of U.P. Thru. Principal Secretary Home & Ors. (Misc. Bench No. 13419 of 2018)* to hold that Aadhar card is a means of identity and not a proof of date of birth. The High Court therefore, held that the above-mentioned documents did not conclusively establish that the successful candidate

was above twenty-five years of age on the date of filing his nomination papers or on the date of declaration of result of the legislative assembly election in question. A

19.2. I am inclined to affirm the findings of the High Court *qua* this issue also. It is observed so, in light of the fact that the Aadhar card was issued on 07.03.2015, on the basis of the duplicate birth certificate dated 21.01.2015. Having held that the duplicate birth certificate dated 21.01.2015 does not establish the date of birth of successful candidate as 30.09.1990 and that the same was issued under circumstances which are suggestive of manipulation and interpolation of the hospital records, I am of the opinion that the Aadhar card which was issued on 07.03.2015 would also not have any evidentiary value in so far as successful candidates' date of birth is concerned. Further, the driver's licence and voter ID of the successful candidate herein, which were also issued on the strength of the duplicate certificates issued by the Queen Mary's Hospital, Lucknow, and the Nagar Nigam, Lucknow, on 21.04.2015 and 21.01.2015, respectively, would not serve as proof of the successful candidate's date of birth, having regard to the observations in the preceding paragraphs of the discussion as to the proof of the date of birth of the successful candidate being 30.09.1990. B

19.3. It is observed that all these documents were secured post 2015, at which time the successful candidate started taking active part in politics. I, therefore, am inclined to observe that the said documents were obtained, merely as a means to corroborate the false claims of the successful candidate as to his date of birth and hence are not worthy of consideration as corroborative evidence for the purpose of proving the date of birth of the successful candidate. C

20. I shall now discuss the judgments cited on behalf of the appellant: D

a) In *Brij Mohan Singh vs. Priya Brat Narain Sinha (supra)*, on an examination of the entire oral and documentary evidence, this Court held that the election petitioner therein had not been able to prove that the successful candidate therein was below twenty-five years of age on the date of filing of his nomination while the appellant himself also was not able to show that he was at least twenty-five years of age on that date. It was observed that the burden of proving the age was on F

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- A the election petitioner and when the said burden was not discharged, the election petition must fail.

The aforesaid dictum is of no assistance to the appellant herein as the position with respect to the factual matrix is at variance. Although, the election petitioner herein contended that the successful candidate

- B was less than twenty-five years of age and therefore, was ineligible to contest the Assembly election and the election petitioner had the burden of proving the said fact but the successful candidate took up on himself to prove another fact, namely, that he was born on 30.09.1990 and not on 01.01.1993 and therefore, was above twenty-five years of age. Thus, the burden was on the respective parties to prove their respective cases.
- C On going through the oral and documentary evidence in this case, I find that the appellant herein has failed to prove that he was born on 30.09.1990 in spite of letting in voluminous oral and documentary evidence in view of the discussion and findings arrived at by us. On the other hand, the evidence let in by the respondent-election petitioner, when juxtaposed to
- D the pertinent admissions let in by the appellant herein, has, in my view, enabled the respondent herein to prove his case before the High Court. The reasoning and conclusion of the High Court in my view is thus, just and proper on the appreciation of the evidence on record in the instant case.
- E b) In *Birad Mal Singhvi Singh vs. Anand Purohit (supra)*, the question as regards the age of two candidates, namely, Hukmi Chand and Suraj Prakash Joshi was under consideration. The election petitioner therein had examined, *inter alia*, PW-3 and PW-5, being the Principal, New Government High Secondary School, Jodhpur, since 1984 and Deputy Director (Examination) Board of Secondary Education, Rajasthan, respectively. They produced the scholar's register (Ex.-P8) and counterfoil of the Certificate of Board of Secondary Education (Ex.-P9) of Hukmi Chand, respectively, and tabulation record of the Secondary School Examination, 1974, (Ex.-P10). In the documents at Ex.- P9 and P10, the date of birth of Hukmi Chand was recorded as 13.06.1956. Similarly, insofar as Suraj Prakash Joshi is concerned, Ex.-P11 being the tabulation record of Secondary School Examination of 1977 indicated his date of birth as 11.03.1959 and the counterfoil of certificates and the tabulation form recording the same date of birth on the basis of what was mentioned by the candidate in the examination form were produced.
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In my view, the aforesaid case would have no relevance insofar as the appellant herein is concerned. No doubt, in the present case also, the fact in issue is with regard to the date of birth of the appellant-successful candidate. While the election petitioner in the instant case stated that it is 01.01.1993 and he has produced documents and let in oral evidence in support of the same, the appellant-successful candidate has stated that his date of birth is 30.09.1990 and in support of this fact, has tried to let in both oral and documentary evidence. While considering the oral and documentary evidence on record, I find that the appellant has failed to prove his case that he was born on 30.09.1990. On the other hand, the evidence on record in the form of oral and documentary admissions produced by the appellant herein when juxtaposed and appreciated with the oral and documentary evidence of the respondent-election petitioner herein indicates that the appellant has failed to prove that he was born on 30.09.1990 while the election petitioner has proved that the appellant herein was born on 01.01.1993. This is because the appellant has not let in evidence to show as to on what basis the birth certificate was issued by the Queen Mary's Hospital in which the appellant was born, as well as the basis on which the other birth certificate had been issued by the Nagar Nigam, Lucknow. This is because the entries made in the EOT register and MLR have no evidentiary value in the absence of the birth list sent by the hospital to the Municipal Corporation which is the basis for registering a birth in the birth register maintained by it. Unless the hospital wherein the child was born sends the birth list to the Municipal Corporation, the issuance of birth certificate by it would have no probative value. The duplicate birth certificates issued by Queen Mary's Hospital and the Nagar Nigam, Lucknow, are *de hors* any basis in the instant case. I infer the same on perusal of the documentary and oral evidence discussed above. Therefore, the appellant herein has failed to prove that he was born on 30.09.1990.

On the other hand, the respondent-election petitioner has produced the relevant evidence of an undisputed point of time to prove that the appellant herein was born on 01.01.1993. Such inference can be made from Ex. P-1 to P-4 in which the date of birth of the successful candidate was shown as 01.01.1993. Although, voluminous documents were produced by the appellant to contradict the same, the fact remains that Ex R-11 being the copy of the service book of Tazeen Fatima Lecturer Political Science, mother of the appellant-successful candidate it was categorically stated that the appellant herein was eight years of age in

- A the year 2001 as per GIS nomination form submitted by her under her own signature on 26.04.2001. This critical admission made in the service book stating that the appellant herein was eight years of age in 2001 has not been explained nor any attempt has been made to contradict or resile from the same.
- B The factual matrix in the aforesaid case would not apply *vis-à-vis* the case at hand as the respondent herein produced certain documents in order to prove that the appellant herein was born on 01.01.1993 and the said fact has been proved by producing the relevant oral and documentary evidence. When the said evidence is appreciated in light
- C of the admissions by the appellant herein, I find that the appellant has failed to prove that he was born on 30.09.1990. In the circumstances, I am of the opinion that the documentary evidence produced by the respondent-election petitioner has cogent and probative value. This is because the said documents are consistent with the admitted documents of the appellant as well as with the admissions made by the appellant
- D himself to the effect that, it was only in the year 2015 that he found out that the date of birth mentioned in his records was shown to be 01.01.1993 and that he was born in Rampur and based on the Birth Certificate issued by Nagar Palika Parishad, Rampur, he had continued his affairs including travelling overseas on passports and visas issued on the basis
- E of the Birth Certificate issued by Nagar Palika Parishad, Rampur, which showed that he was born on 01.01.1993.

Further, it was only after the commencement of the proceedings in the election petition and the challenge raised to his date of birth that the appellant made attempts to establish that he was born on 30.09.1990 and hence, took steps to get his educational record, passport and other documents of identity “rectified” so as to make them consistent with his stand as against the election petition. The subsequent alterations made in the documents pertaining to the appellant herein cannot have a bearing on the case since even according to the appellant it was on the basis of the following documents, namely, his Class X Marksheets, his Passport and Visa that the appellant herein was continuing with his activities and identified himself with this date of birth as 01.01.1993 till the year 2015. Therefore, I am convinced that it was only for the purpose of contesting the assembly elections which were held in the year 2017 and being conscious of the fact that he could not do so as he was disqualified on account of being under aged, he took steps to alter his date of birth to

30.09.1990 and made attempts to seek “duplicate” birth certificates from the Nagar Nigam, Lucknow and Queen Mary’s Hospital, Lucknow. Till then, the appellant herein was conscious of the fact that his date of birth in his educational and other records was 01.01.1993 and he used those documents for the relevant purposes that necessitated the usage of the said documents.

Another significant point is that until the document at Ex. P-3 Paper No. A-80/1 was cancelled, the appellant had possessed documents showing two dates of births, one, being 01.01.1993 as having been born in Rampur and the other being 30.09.1990 as having been born in Lucknow. In the circumstances, I am of the opinion that since the basis on which the birth certificate was issued by the Nagar Nigam, Lucknow and Queen Mary’s Hospital, Lucknow, is not brought on record in the form of tenable and probative oral and documentary evidence, the case of the appellant cannot be accepted at all.

By this, it does not mean that respondent herein-election petitioner must fail. I say so for the reason that the appellant herein has produced material to show that he was eight years of age in the year 2001 (G.I.S. Nomination Form) which is consistent with the case of the election petitioner who has produced documents indicating the date of birth of the appellant-successful candidate as 01.01.1993 and therefore, was not eligible to contest for the election to the legislative assembly in the year 2017.

c) The judgment of this Court in *Narender Singh (supra)* is of no assistance to the appellant herein as evidence on record does not give rise to inferences in favour of the appellant herein.

d) The judgment of this Court in *Joshna Gouda (supra)* is also distinguishable. In the said case, the controversy was with regard to the eligibility to contest for the post of Sarpanch under the Orissa Gram Panchayat Act, 1964, it was contended by the first respondent therein that the appellant therein was not eligible to contest as he had not attained the age of 21 years. Therefore, the Election Petition was filed to seek setting aside of the election of the respondent therein. The appellant therein contested the Election Petition. In the said case, the question was whether the appellant therein was born on 07.07.1985 and not on 20.06.1986 as contended by the first respondent-election petitioner therein. The successful candidate therein had produced Exbs. A to H in support of the fact that she was born on 07.07.1985. The High Court found that

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- A Exbs. A and H are voters' list of the years 2007 and 2008 respectively which were prepared later in point of time to the filing of the nomination papers in election in question and they do not reflect the date of birth of the appellant therein. Ex. D being horoscope was rightly not relied upon. Ex. E being a certificate of date of birth issued under the provisions of the Registration of Births and Deaths Act showing the date of birth of the appellant therein as 07.07.1985 but such an entry came to be made pursuant to an application made by the appellant therein subsequent to the nominations in the election in question. Therefore, the High Court refused to place any reliance on the said document also. This Court held that the High Court had rightly refused to believe those documents and
- B the appellant-successful candidate therein had failed to prove her date of birth as 07.07.1985. But that does not automatically lead to the conclusion that the assertion of respondent No. 1 therein that the actual date of birth of the appellant therein is 20.06.1986 was proved. It was observed by this Court that the burden to prove the fact that the appellant therein was born on 20.06.1986 rested squarely on the election petitioner.
- C In that regard, reliance was placed on Section 101 of the Evidence Act. It was further observed by placing reliance on **Robins vs. National Trust Company 1927 AC 515** which is to the following effect:

“ ... To assert that a man who is alive was born requires no proof. The onus is not on the person making the assertion, because it is self-evident that he had been born. But to assert that he [had been] born on a certain date, if the date is material, requires proof; the onus is on the person making the assertion.”
- D This Court held that since the first respondent therein had failed to discharge the burden cast upon him, the Election Petition had to fail
- E on the oral and documentary evidence let in that case. It was held that there was an inconsistency regarding the age of the appellant therein and particularly with reference to her admission in the Upper Primary School and hence, the appeal was allowed and the Election Petition was dismissed. The aforesaid judgment is not applicable to the present case
- F as in the present case there is a clear and unambiguous admission on the part of the appellant through the nomination form being part of the Service Book - (Ex). R-11 paper No. A-95/1-34 and the document produced by the respondent/election petitioner herein. Those documents relate to the appellant herein and the appellant herein had acted upon those documents until his date of birth was changed to 30.09.1990 in the year 2015. Thus,
- G the judgment in **Joshna Gouda** is of no assistance to the appellant herein.

***Summary of Conclusions:***

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- a) I am of the view that the appellant-successful candidate was not born on 30.09.1990 and was not twenty-five years old at the time of filing the nomination as the appellant has been unable to prove the said fact despite the voluminous oral and documentary evidence provided on record. In fact, G.I.S. Nomination Form submitted by DW-5 at an undisputed point of time and which is part of her Service Book which is adduced as evidence at the behest of the appellant-successful candidate goes against the case of the appellant. The G.I.S. Nomination Form is in consonance with the passports and visa issued by the concerned authorities showing the date of birth of the appellant as 01.01.1993 which have been produced by the election petitioner in support of his case. The issuance of the fresh passport during the pendency of the Election Petition showing the date of birth as 30.09.1990 is of no consequence and cannot be of any assistance to the appellant herein.

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Similarly, Class X Secondary School Examination Certificate and Class XII Secondary School Examination Certificate which indicate the date of birth of the appellant as 01.01.1993 even till date, are also in consonance with the earlier passports and visa documents produced by the respondent-election petitioner herein. In fact, the appellant-successful candidate had relied upon the educational certificates indicating his date of birth as 01.01.1993 and his place of birth as Rampur for the purpose of securing his earlier passports and visa.

- b) Moreover, the stand taken by the successful candidate that all documents pertaining to the Birth Certificate dated 28.06.2012 issued by the office of Nagar Palika Parishad, Rampur, were burnt due to a short circuit on 08.05.2015 would suggest that the said birth certificate, wherein the date of birth of the successful candidate was recorded as 01.01.1993 came to be destroyed and later cancelled were under suspicious circumstances.

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- A           c) Further, on a perusal of the E.O.T. and M.L.R. registers, I hold that the same are mired with discrepancies, over-writing and factual inaccuracies and the same cannot be ignored. I am, therefore, of the view that no weight can be placed on the birth certificate dated 21.01.2015, issued by the Nagar Nigam, Lucknow, which is stated to be issued on the strength of an entry made in the birth register maintained by the hospital, which itself is not authentic in the absence of production of the birth list indicating the birth of the appellant on 30.09.1990, and is created by manipulation and interpolation in the hospital records.
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- C           d) I am not inclined to place any weight on the result of the ossification test as other documents such as the matriculation certificate, date of birth certificate issued by the Nagar Palika Parishad, Rampur and passports prove that the age and the date of birth recorded in such documents is contrary to the result of the ossification test.
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- E           e) It is further held that the Aadhar card, driver's licence and voter ID of the appellant-successful candidate herein, which were issued on the strength of the duplicate certificates issued by the Queen Mary's Hospital, Lucknow, and the Nagar Nigam, Lucknow, on 21.04.2015 and 21.01.2015, respectively, are not proof of the successful candidate's date of birth as 30.09.1990.

It would be apposite to refer to para 79 of *Sushil Kumar vs. Rakesh Kumar (supra)* which reads as under:

- F           “79. The Election Tribunal while determining an issue of this nature has to bear in mind that Article 173(b) of the Constitution of India provides for a disqualification. A person cannot be permitted to occupy an office for which he is disqualified under the Constitution. The endeavour of the court therefore should be to see that a disqualified person should not hold the office but should not at the same time unseat a person qualified therefor. The court is required to proceed cautiously in the matter and, thus, while seeing that an election of the representative of the people is not set aside on flimsy grounds but would also have a duty to see that the constitutional mandate is fulfilled.”
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In view of the aforesaid discussion which has been made after taking into consideration all the material on record, I find that the acceptance of the nomination of the appellant-successful candidate was improper. The findings of the High Court in this regard do not require any interference. Hence, the judgment impugned is affirmed and consequently, the appeal is dismissed. The election of the appellant-successful candidate herein to the Uttar Pradesh Legislative Assembly from 34-Suar Constituency, District Rampur, Uttar Pradesh, is set aside. A certified copy of this decision be sent to Election Commission forthwith.

Parties to bear their respective costs.

Bibhuti Bhushan Bose  
(Assisted by : Preetam Bharti, LCRA)

Appeal dismissed.

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