

Nikki Devi vs The State Election Commission ... on 2 July, 2019

Bench: Chief Justice, Anjana Mishra

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.301 of 2019

In

Civil Writ Jurisdiction Case No.21697 of 2018

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Nikki Devi (female), aged about 34 years, wife of Amit Kumar Singh,
Resident of Village and P.O. Rakiya, Gram Panchayat- Rakiya, P.S. Bihra,
Block- Sattar Kataiya, District- Saharsa.

... .. Appellant/s

Versus

1. The State Election Commission (Panchayat), Sone Bhawan Birchand Patel Path, Patna through the State Election Commissioner.
2. The District Election Officer (Panchayat), Saharsa District- Saharsa.
3. The District Panchayat Raj Officer, Saharsa, District- Saharsa.
4. The Block Development Officer, Sattar Kataiya Block, District- Saharsa.
5. Chanda Devi, Wife of Arbind Prasad Singh, Resident of Village and P.O. Rakiya, Gram Panchayat- Rakiya, P.S. Bihra, Block- Sattar Kataiya, District- Saharsa.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.S.B.K. Mangalam, Advocate Mrs. Anita Kumari, Advocate Mr. Ravi Ranjan, Advocate Mr. Kislay Raj, Advocate
For State Election Commission:		Mr. Amit Shrivastava, Advocate Mr. Girish Pandey, Advocate
For the State	:	Mr. Manish Kumar, A.C. to AAG-6
For Private Respondent :		Mr. Shravan Kumar, Sr. Advocate Mr. Satish Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-07-2019

This appeal arises out of an election dispute to the office of Mukhiya, Gram Panchayat, Rakiya, Block Sattar Kataiya, Saharsa governed by the provisions of the Bihar Gram Panchayat Raj Act, 2006 and the rules framed thereunder.

2. The appellant along with the contesting respondent Chanda Devi was one of the candidates for the office of Mukhiya of the Gram Panchayat in question in the 2016 elections. In the Nomination Form the appellant disclosed that she has completed more than 30 years of age. This Nomination Form was filled up on 4th of April, 2016. Along with the form she also submitted a Notary Affidavit and in Column 6 thereof she disclosed her educational qualification as having passed Matric from a Sanskrit Madhyamik Vidyalaya, Jagatpur, Supaul. In the bio-data form which was to be filled up in terms of the directives of the Election Commission against Column 5 she indicated her date of birth as 1st of January, 1986 and her educational qualification as Matric.

3. Her Nomination Form was accepted and she
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contested the elections and was declared elected.

4. The respondent Chanda Devi filed Election Petition No. 10 of 2016 before the prescribed authority namely the learned Munsif, Saharsa challenging the election of the

appellant alleging corrupt practice by making false declarations, particularly with regard to her name, her educational qualification as well as her date of birth. Since the bone of contention between the parties was confined to the aforesaid issues primarily, it would be apt to refer to Paragraphs 10 and 12 of the Election Petition where these allegations have been made and the denial thereof in Paragraphs 13 and 15 of the written statement filed by the appellant. Oral evidence and documentary evidence was filed by both the parties that has been discussed by the learned Munsif who allowed the Election Petition on the ground that the appellant had made a false declaration about her educational qualification as well as about her date of birth which renders the Nomination Papers unacceptable and, therefore, an incorrect acceptance of nomination on the basis of a false information led to the conclusion that the election result stood vitiated and accordingly the election of the appellant was set aside. While recording findings, the learned Munsif, however, did not find the allegation of different names being depicted by Patna High Court L.P.A No.301 of 2019 dt.02-07-2019

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the appellant to be valid and rejected the said contention of the election petitioner. However, as noted above, the Election Petition was allowed on the other two grounds of false declaration relating to educational qualification and date of birth.

5. Aggrieved, the appellant filed the writ petition,

the judgment dated 28.01.2019 whereof has given rise to this appeal whereby the learned Single Judge has upheld the order of the learned Munsif setting aside the election of the appellant categorically recording that since a false declaration would result in rejection of the nomination of the candidate, therefore, the findings recorded by the Munsif on the issue of date of birth and the educational qualification is correct.

6. The learned Single Judge also found that the judgments cited at the Bar in support of the respondent's contentions clearly support the stand of the election petitioner. The learned Single Judge has further held that the appellant had the opportunity to tender evidence of having either passed the Matric or Intermediate examination and also about the date of birth, but since the appellant had failed to do so, the learned Munsif was justified in setting aside her election.

7. Assailing the aforesaid findings Shri S.B.K. Patna High Court L.P.A No.301 of 2019 dt.02-07-2019

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Mangalam, learned counsel for the appellant has urged that the declaration to be made in the Nomination Form is only about the age of a candidate in order to ensure that the candidate is above 21 years of age. He submits that there is no requirement of indicating the date of birth in the Nomination Form. He then submits that the affidavit filed in support of the nomination also does not require the indication of date of birth and against the column of educational qualification, the qualification and the

name of the school has to be mentioned which has been done by the appellant correctly. In the description contained in the bio-data which is a document in the shape of a form provided by the Election Commission, the date of birth has been indicated as 1 st of January, 1986. It is the submission of Shri Mangalam that whatever be the dates of birth which have been indicated in the impugned judgments, none of them reduces the age of the appellant to be less than 21 years and, therefore, the appellant has nowhere furnished a false information in this regard. He further submits that there is no allegation in the entire Election Petition that the appellant has not matriculated. In the absence of any cogent evidence having been led in support of the Election Petition to substantiate the allegation about the age of the appellant being less than 21 years, the finding recorded by Patna High Court L.P.A No.301 of 2019 dt.02-07-2019

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the learned Munsif and accepted by the learned Single Judge seems to be a finding recorded on erroneous considerations without adverting to the statutory requirement of only mentioning the age of a candidate.

8. He further submits that no evidence was filed to establish that the appellant had not passed the Matriculation examination from the school as disclosed in the Nomination Form. Thus, there was neither any specific averment nor was there any proof to dislodge the declaration made by the appellant that she had matriculated.

9. He has further submitted that the mentioning of the qualification of Intermediate in respect of the elections of 2011 is absolutely irrelevant, inasmuch as, any information tendered with regard to the previous election cannot be used as an information in respect of the Nomination Form filled up for the fresh elections in 2016. It is urged that the learned Munsif has, therefore, completely erred in placing reliance on the declaration of the qualification in the documents of the 2011 elections. This misplaced approach has also been accepted by the learned Single Judge and, therefore, the impugned judgment is vitiated.

10. Responding to the aforesaid submissions,
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learned counsel for the contesting respondent Chanda Devi has urged that during the pendency of this appeal fresh elections have been held in March, 2019 and a certificate to that effect dated 12th March, 2019 has been issued by the Election Officer in favour of one Smt. Raj Kumari Devi. A photostat copy of the said certificate has been placed before the Court. He, therefore, submits that the appellant cannot succeed so long as the newly elected person is not made a party.

11. We may put on record that long before we had called upon the respondents on 26th February, 2019 to file a counter affidavit and had also directed that any election, if held in the meantime, shall be subject to the outcome of the appeal.

Thus, the respondent-State was fully aware of the said order and it was the duty of the State and its agencies to have informed this fact to the Commission and that the Election Certificate and other documents would be subject to the outcome of this appeal.

12. Shri Amit Shrivastava, learned counsel for the State Election Commission has produced the copies of the letters dated 28.02.2019 and 10.05.2019 wherein the State Election Commission has informed the District Election Officer that the present Special Appeal has been filed and if the elections are to be held then the same shall be subject to the Patna High Court L.P.A No.301 of 2019 dt.02-07-2019

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outcome of this appeal. The elections were held in March, 2019 and the elected candidate Raj Kumari Devi has given a declaration, a copy whereof has also been produced by Shri Shrivastava indicating therein that she was fully aware of the pendency of this appeal and that her elections would be subject to the outcome of this appeal.

13. In the said background any fresh elections would survive in the event the present appeal fails and not otherwise. The election held during the intervening period of the pendency of this appeal, therefore, has either to sustain itself or fall through on the outcome of the present appeal. We, therefore, do not find it necessary at this stage to adjourn the matter and issue fresh notices to the newly elected candidate, the elections whereof are by operation of law subject to the outcome of this

appeal as indicated in the order dated 26.02.2019.

14. Learned counsel for the contesting respondent has then urged that the inconsistent declaration of educational qualification by the appellant namely Intermediate in the election documents of the 2011 elections and Matriculation in the documents of 2016 elections clearly establishes the tendering of false information, and with no proof being tendered before the Election Tribunal with regard to any of the Patna High Court L.P.A No.301 of 2019 dt.02-07-2019
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qualifications, has rightly resulted in the setting aside of the election. He then submits that there are four dates of birth of the appellant, 26.10.1987 in the election papers of the year 2011, 1 st of January, 1986 in the election papers of 2016, 12 th of October, 1986 in one of the exhibits and 2 nd of November, 1989 in her Life Insurance Corporation documents. This inconsistency could not be denied or even explained by the appellant before the Election Tribunal or even before the learned Single Judge and, therefore, the only inference that has been rightly drawn is that the appellant had tendered false information which clearly resulted in an improper acceptance of nomination that has materially affected the results arising out of a corrupt practice and, therefore, the election has rightly been set aside. No evidence was led forth on behalf of the appellant to substantiate her claim and, therefore, the learned Munsif and the learned Single Judge have not committed any error in arriving at the

conclusions setting aside the election of the appellant.

15. Shri Amit Shrivastava, learned counsel for the State Election Commission and the learned Standing Counsel for the State have also been heard. They have pointed out the various provisions under the 2006 Act read with the rules framed thereunder and have also handed over a copy of the Patna High Court L.P.A No.301 of 2019 dt.02-07-2019
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instructions issued on 8th February, 2016 by the State Election Commission of Bihar which contains all the documents requiring the furnishing of information by a candidate proposing to contest elections. Sri Shrivastava has also produced the letters of the Election Commission dated 28.02.2019 and 10.05.2019 as well as the declaration and undertaking by Raj Kumari Devi as noted above.

16. Having heard learned counsel for the parties, it would be appropriate to commence with the statutory provisions involved in the present controversy. Section 125-A (1) (v), (2) and (3) of Bihar Panchayat Raj Act, 2006 are extracted hereinunder:-

"125-A. (1) Furnishing of certain information essential for candidates.- A candidate shall, apart from any information which he is required to furnish in his nomination papers delivered under the Act or the Rules made thereunder, also furnish information on affidavit on the following aspects in relation to his/her candidature-

(i) xxx	xxx	xxx	xxx
(ii) xxx	xxx	xxx	xxx
(iii) xxx	xxx	xxx	xxx
(iv) xxx	xxx	xxx	xxx

(v) The educational qualifications of the candidate.

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In case of non-furnishing of the affidavit by any candidate, the nomination of the concerned candidate shall be liable to rejection by the returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officer by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to the representatives of the print and electronic media and to any other candidate or person on deposit of fee prescribed by the Commission.

If any rival candidate furnishes information to the contrary by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

(2) Candidate to furnish information only under the Act and the Rules.- Notwithstanding anything contained in

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any judgment, decree or order of any court or any direction, order or any other instruction issued by the State Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder.

(3) Penalty for filing false affidavit, etc.- A candidate who himself or

through his proposer, with intent to be elected in an election,-

- (i) fails to furnish information relating to sub-section (2); or
- (ii) gives false information which he knows or has reason to believe to be false; or
- (iii) conceals any information, in his nomination paper or in his affidavit which is required to be delivered, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to one year or with fine, or with both."

17. The Election Petition has to be founded on the grounds as provided for under Section 139 which is extracted

hereinunder:-

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139. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the prescribed authority is of opinion-

- (a) that on the date of his election, a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act; or
- (b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or
- (c) that any nomination paper has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
 - (i) by the improper acceptance of any nomination; or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or

- (iii) by the improper reception, refusal or rejection of any vote or reception of any vote which is void; or
- (iv) by any non-compliance with the provisions of this Act or of any

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Rules or orders made thereunder; the prescribed authority shall declare the election of the returned candidate to be void;

(2) If in the opinion of the Prescribed Authority, any agent of a returned candidate has been guilty of any corrupt practice, but the prescribed authority is satisfied;

- (a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the orders and without the consent of the candidate;
- (b) that the candidate took all reasonable measures for preventing the commission of corrupt practices at the election; and
- (c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agent; then the Prescribed Authority may decide that the election of the returned candidate is not void."

18. The definition of corrupt practice is contained in Section 141 of the 2006 Act.

19. The Bihar Panchayat Election Rules, 2006
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framed under the Act provides the procedure for filing of
Nomination Papers and the presentation thereof.

20. Rule 38 and 39 of the 2006 Rules are extracted

hereinunder:-

"38. Filing of nomination paper by Candidates.- (1) Any person may file a nomination paper as a candidate to fill up any seat provided he is qualified to be elected for that seat under the provisions of the Act and not disqualified under Section 136 of the Act.

(2) Each nomination paper under sub-rule (1) shall be filed in Form-6.

39. Presentation of nomination paper- (1) On or before the date appointed under clause (a) of Rule 36, each candidate shall in person, within the time and the place appointed in the notice under rule 36, deliver to the Returning Officer or the Assistant Returning Officer authorized for this purpose by the Returning Officer, a nomination paper duly filled in Form-6 and subscribed by the candidate and a voter of the concerned constituency as his proposer:

Provided that a person, who is subject to any disqualification as a voter under the Act shall not be eligible to subscribe to any nomination paper as a proposer.

(a) Any person, who is enrolled in the

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voter list of the concerned territorial constituency and who not disqualified under sub-section (1) of Section 136 of the Act), may be a proposer of nomination;

- (b) A person can not be a proposer for more than one candidate;
- (c) Any person, who is himself a candidate for a particular constituency, can not be a proposer for any other candidate of the same constituency;
- (d) The proposer for a candidate of a particular constituency can not be a candidate himself for election from the same constituency;
- (e) A proposer once having subscribed to a nomination paper shall not be allowed to withdraw the same;

(f) No nomination paper shall be received by a Returning officer unless it is accompanied by the following papers :-

- (i) A declaration in prescribed form regarding enrollment of candidate and proposer as an elector,
- (ii) A declaration in prescribed form regarding conviction competent court or pending criminal cases in any court.

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(iii) Original Caste Certificate as a proof of belonging to Scheduled Castes/ Scheduled Tribes/ Backward Classes issued by the District Magistrate/Sub-Divisional Magistrate/Block Development Officer in case of nomination being filed by a candidate who wants to avail the benefits of the reservation of seats and nomination fee available to the members of Scheduled Castes/ Scheduled Tribes/ Backward Classes.

(iv) Challan of nomination fee deposited in a Government treasury or Nazir Receipt,

(v) Necessary informations regarding the candidate as required by the Commission in prescribed form.

(g) No nomination paper shall be accepted unless it is submitted within the appointed hour on the last date as specified in column 8 of Form 5 and a nomination paper received by mistake after the fixed hour to be rejected;

(h) On the presentation of nomination paper, the Returning officer shall satisfy himself that the names and electoral roll numbers of the

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candidate and his proposer as entered in the nomination paper are the same as entered in the electoral roll:

Provided that the Returning Officer may -

- (i) permit to rectify any clerical error in the nomination paper with regard to the said names or numbers to bring them into conformity with the corresponding entries in the electoral rolls, and
- (ii) where necessary, direct that any clerical and printing error in the said entries to be overlooked.
- (i) On receiving a nomination paper under sub-rule (1) the Returning Officer shall inform the concerned candidate or his proposer the date, hour and place appointed for scrutiny of nomination in prescribed format and shall enter in the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and every day after the scheduled hour for receiving nomination shall publish the information on the notice board of his office regarding the nomination containing descriptions both of the candidate and his proposer.

(2) No candidate shall file more than two nomination papers for one seat.

(3) The list of nomination papers

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shall be sent to the District Election Officer on the last date fixed for filing the nomination and a copy of this shall be published in the office of the Returning Officer."

21. The scrutiny of Nomination Papers and its final publication is provided for under Rule 41.

22. The Nomination Paper has to be filled up in Form 6 which is extracted hereinunder:-

Panchayat Election

FORM-6

[See Rule 38(2), 39(1)]

NOMINATION PAPER

District.....Block.....

Election for-

* Member of Gram Panchayat..... .from territorial constituency no.....

* Panch of Gram Katchahry from territorial constituency no. ..

* Mukhiya of Gram Panchayat..... from constituency no.

*Sarpanch of Gram Katchahry from constituency no.....

*Member of Panchayat Samitifrom territorial constituency no....

* Member of Zila Parishad from territorial constituency no.

I nominate the following as a candidate of the above post in the above
constituency.

Name of Candidate-

name of Father/Mother/Husband-

Postal Address- Block - District-

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who is listed on Sl. No..... of voter list of
territorial constituency of Gram Panchayat. My
is entered on Sl. No. of the voter list of territorial
no. of Gram Panchayat.....

Block.....District.....

Place:

Date:

Signature/Thumb impression of the Proposer

*Strike off which ever is not applicable.

I, above nominated candidate assent to this nomination and hereby declare that-

(a) I have completed the age of years.

(b) My name and name of my Father/Mother/Husband are written correctly in Hindi in Devnagari Script.

(c) To my best of knowledge and belief I am qualified for the above election and otherwise not disqualified.

(d) I belong to Scheduled Castes/Scheduled Tribes/Backward Classes.

The Caste certificate issued by a competent officer is annexed with this nomination paper.

Place:

Date:

Signature/Thumb impression of Candidate

(To be filled by Returning Officer)

Sl. No. of nomination paper.....

The candidate himself handed over this nomination paper to me in my office on date at..... (time)

Date.....

Returning Officer

Decision of the Returning Officer who accepts or rejects the nomination paper.
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paper.

I have verified this nomination paper in accordance with Rule 41 of the

Bihar Panchayat Election Rules, 2006 and decide as following:-

Place.....

Date.....

Ret

Receipt for nomination paper and notice of scrutiny

(To be given to the candidate presenting nomination paper)

Sl. No. of the nomination paper

Mr./Miss./Mrs.....

a candidate forhas presented his nomi

paper to me on dateat.....(time). The scrutiny of al

nomination papers will be done on

.....(hour).....at the place.....

Place.....

Date.....

*Write the number, name and post of the concerned constituency as
mentioned by the proposer on upper portion of this form.

23. A perusal of the said pro forma would indicate
that the only declaration to be made in the Nomination Paper is
about the completion of the minimum age of the candidate
which is to ensure that the candidate is above 21 years of age. In
the instant case, the appellant has disclosed her age to be about
30 years.

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24. At this very stage, we may put on record that no evidence was led by the Election Petitioner to establish that the appellant was less than 21 years of age. The only contention raised was about the reflection of incorrect dates of birth and on that basis it is alleged that the declaration was false.

25. The election-petitioner filed a document that was labeled as Exhibit-3 which is an information obtained under the R.T.I. regarding date of birth from a school Madhya Vidyalaya, Parsauni, District- Supaul. It is alleged that the date of birth mentioned in the said document is 12 th of October 1986. The contents of this certificate was not proved before the Tribunal by any oral evidence except that it was used to demonstrate a contradiction in the dates of birth. This does not advance the cause of the election-petitioner in any way, inasmuch as, the year of birth i.e. 1986 remains the same. We are surprised that the Tribunal has culled out an admission on the part of the appellant in her written statement about false declaration. The Tribunal has recorded that the appellant has admitted the fact of her age being depicted on the basis of estimation. It is well settled that an admission has to be a clear admission and not a mere ambiguous statement. In the instant case, the written statement nowhere admits of a false

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declaration. It is the Tribunal which has inferred that since the

appellant has admitted the date of birth having been given on estimation would amount to a false declaration. There is no evidence which may indicate that the appellant was less than 21 years as on the date of her filing of her nomination. Had there been any such evidence led by the election-petitioner and not denied by the appellant, it is only then it could have been inferred that the appellant's nomination papers were improperly accepted. This being not the case of the election-petitioner, the finding recorded by the Election Tribunal on this count is erroneous as it has treated its own inference as an admission of the appellant. The said logic, therefore, is unacceptable and the finding of the Tribunal is, therefore, vitiated. We may add that the burden to prove the fact that the appellant was less than 21 years of age lay on the election-petitioner. This burden could not be discharged by any substantial evidence and, therefore, the ingredients of Section 101 of the Indian Evidence Act were not satisfied. The date of birth becomes material only if it reflects that the candidate could be less than 21 years of age as on the date of nomination all the four dates of birth that were pleaded by the election-petitioner included two dates of 1986, one date of 1987 and the Patna High Court L.P.A No.301 of 2019 dt.02-07-2019
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3rd date reflected in the evidence was of 1989. None of the aforesaid in any way could prove that the appellant was less than 21 years of age. Thus, the results of the election were not

materially affected nor such contradictory information as alleged was proved to have resulted in any wrong opinion being formed by the voters. The voters do have the right to know but that is about the minimum age required to contest the elections and not the exact date of birth of the candidate. A voter can form a wrong opinion if the date of birth reflected by the candidate reduces his age to be less than 21 years and then it will definitely be an improper acceptance of a nomination form that would materially affect the result of the election. This is not the case here and as noted above, all the dates of birth clearly establish that in the year 2016 the appellant was more than 21 years of age. She was, therefore, eligible and not disqualified.

26. To say that she adopted some corrupt practice to advance her cause of elections by spreading false information about her age was, therefore, not established by the election-petitioner. We are emphasizing this, inasmuch as, by applying the law the Tribunal as well as the learned Single

Judge have both not traversed the facts in the right perspective
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in the present case. What appears to have been working in the mind of the Tribunal as well as the learned Single Judge is that any contradictory depiction of date would automatically result in it being a false information that would automatically crystallize in the rejection of the Nomination Paper. We do not

find this logic to be correct, inasmuch as, a Nomination Paper can be rejected only if the depiction of an incorrect date of birth results in establishing that the candidate was less than 21 years of age which is the material fact relevant for the purpose of arriving at the conclusion on the issue of the results of the election having been affected materially. The factum of the appellant being less than 21 years could not be proved in terms of Section 3 of the Indian Evidence Act, whereas the assertion of the appellant about her age remained uncontroverted either in the pleadings of the Election Petition or in the oral evidence led by the election-petitioner.

27. The judgments, therefore, relied on by the learned counsel for the respondent and by the learned Single Judge would not apply on the peculiar facts of the present case. The judgment cited by Shri Shrivastava in the case of Joshna Gouda Vs. Brundaban Gouda and another, reported in

(2012) 5 SCC 634 is closer to the contention raised by the Patna High Court L.P.A No.301 of 2019 dt.02-07-2019
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appellant on this issue.

28. The Supreme Court in the case of Mangani Lal Mandal Vs. Bishnu Deo Bhandari, reported in A.I.R. 2012 SC 1094 has after recording the earlier precedents in this regard held that it is for the election-petitioner to establish that the results of the election has been materially affected and then only can election be annulled. As held in the said case, the

Tribunal was under an obligation to have framed an issue and answer it accordingly. We do not find any such issue out of the 10 issues framed by the Tribunal relating to the results having been materially affected. This also vitiates the order of the Tribunal and which aspect has also been not dealt with by the learned Single Judge.

29. Having said so, we find that the different dates of birth as disclosed does not materially affect the result of the election, inasmuch as, the declaration of her age as being above 21 years has not been controverted or dislodged by any evidence led by the election-petitioner. The election petitioner did not lead any evidence to demonstrate that the results had been materially affected. Thus, by way of an inference on the strength of the documents of 2011 elections, there was no evidence to

dislodge the educational qualification of Matriculate and
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consequently the same cannot be held to be a false declaration. The declaration of age as 30 years also does not materially affect the elections, inasmuch as, the declaration only depicted that the appellant was eligible and of the minimum age as prescribed under the Act and Rules that entitled her to contest the elections. As noted above, no evidence was led to dislodge the same by the election-petitioner and, therefore, no adverse inference can be drawn on that count.

30. The requirements of the Election Commission

to fill up a form indicating the date of birth is a document that is required by the Election Commission where the date of birth was indicated as 01.01.1986. This was, therefore, a necessary information as provided for under Rule 39. However, again coming back to the point, the said information does not materially affect the election so long as the appellant's age above 21 years is not disputed.

31. On a close scrutiny of Section 125-A, we find that certain information which is essential for the candidates to be furnished apart from the information contained in the Nomination Papers also includes the educational qualifications of the candidate. As pointed out above, the appellant in the

Nomination Papers has mentioned to be possessed of a
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Matriculate certificate from an Institution in Supaul. This fact could not be dislodged by the appellant by leading any cogent evidence even though he had made an allegation about the false information having been tendered. In our considered opinion, since there was no evidence to the contrary to contradict the claim of the appellant having passed the Matriculation examination from a Sanskrit Madhyamik School and having obtained Matriculation, the same had to be accepted as the only declaration made by the appellant. Once this is accepted, then any declaration of having passed the Intermediate examination in the previous election of 2011 is absolutely irrelevant,

inasmuch as, the mentioning of that qualification in the papers of the previous election cannot be a declaration in respect of the elections of 2016. Thus, it is the declaration in the documents made pertaining to the 2016 elections which could form the basis of any challenge. The election-petitioner, as noted above, has nowhere stated that the appellant is not a Matriculate or has not passed the Matriculate examination. The election-petitioner did not take any pains to obtain any information either under the Right to Information Act or otherwise from the institution concerned to dispute the fact of the appellant having passed her

Matriculation examination from the Sanskrit Madhyamik
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Vidyalaya, Jagatpur at Supaul. In our opinion, it was the duty of the election-petitioner to have discharged the burden by leading positive evidence to dislodge the declaration made by the appellant and, therefore, the election-petitioner having failed to do so, the depiction of having passed Intermediate examination in the documents of 2011 election cannot be a ground to dislodge the declaration made by the appellant in 2016 that she is only a Matriculate. We may also refer to the law laid down by the Apex Court about the standard of proof that is required to be established in election disputes. The Apex Court way back in the case of D. Venkata Reddy Vs. R. Sultan and others, reported in A.I.R. 1976 Supreme Court 1599 has held that all material particulars with specific details have to be pleaded and then

proved. The burden, therefore, is heavy on the election-petitioner and the standard of proof that is required to be established is that which is required for establishing a criminal charge.

32. This was again explained in the case of Joseph M. Puthussery Vs. T.S. John and Ors., reported in A.I.R. 2011 Supreme Court 906 Paragraph 8 and Paragraph 12 of the said judgment lays down the law that an election trial based on the charge of corrupt practice has to be conducted as a criminal
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trial. Not only this, oral evidence in the shape of hear-say evidence which is easily procurable cannot be made the basis of substantiating any charge.

33. The Tribunal has also referred to a document which was exhibited by the election-petitioner as Exhibit-6. This letter is stated to be an attested copy of a letter dispatched by the Secretary, State Election Commission to the District Election Officer indicating that an allegation of concealing facts has been proved and, therefore, the appellant would be guilty for an action to be taken under Section 125.

34. We may mention that while scrutinizing the Nomination Form, if the Election Officer finds the information to be such which is a failure on its part to provide as required therein or gives false information knowingly or has reason to believe to be false or conceals any information then a penalty is

provided under sub-section (3) of Section 125-A. This is at the stage of the filing of the nomination by a candidate. In the instant case, the Nomination Papers were accepted and no action is alleged to have been taken against the appellant pursuant to any such declaration. The aforesaid letter Exhibit-6 and its contents were not proved by the author of the said letter during trial and, therefore, its admissibility had to be examined which Patna High Court L.P.A No.301 of 2019 dt.02-07-2019
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was not done by the Tribunal. Any reliance, therefore, placed by the Tribunal on the said document was subject to any evidence during the trial of the Election Petition itself. There is no material indicated in the judgment of the Tribunal that the said document was proved and that it led to a proof beyond reasonable doubt to establish any concealment of material fact so as to affect the results of the election. The Tribunal, therefore, fell in error on that count as well.

35. There is another finding by the Tribunal which requires notice namely the purpose of disclosure of educational qualification to enable the electorate to make a choice between a candidate with higher qualification and another with a lesser qualification. The Tribunal has concluded that it is possible that the electorate in their wisdom may prefer a candidate with a lesser educational qualification. We are unable to gather any logic to support this speculative assumption by the Tribunal. We fail to see as to how the electorate knew in the year 2016

that the appellant had a higher qualification of Intermediate when she had declared that she was only a Matriculate. The election-petitioner has on the strength of this declaration made in the year 2011 by the candidate taken it as a proof of false information. We are surprised at the inference drawn by the Patna High Court L.P.A No.301 of 2019 dt.02-07-2019
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Tribunal, inasmuch as, there was no pleading nor any proof adduced to establish that the electorate had been informed by the appellant or any other person about her dual qualifications. The availability of a documentary evidence said to have been in the Nomination Paper of 2011 in our opinion has been stretched too far by the trial court that too even erroneously to prove a fact of dissemination of false information. The existence of a false information is one thing and its dissemination to gain advantage on the strength of such false information is another. The election-petitioner could not establish that by depicting her qualification as Matriculate the appellant had been able to woo the voters and obtain a sympathetic opinion in her favour. The finding of the Tribunal, therefore, does not stand to reason and, therefore, the impugned judgment of the Tribunal is clearly vitiated. The learned Single Judge also did not enter into this aspect and simply concluded that this depiction of inconsistent dates of birth is a defect of substantial character that would have necessarily resulted in the rejection of the nomination of the appellant. For this, the learned Single Judge has relied on the

judgment in the case of Harikrishna Lal Vs. Babu Lal

Marandi, reported in (2003) 8 SCC 613. We have gone through

the entire judgment in the case of Harikrishna Lal (supra) and
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we do not find any such ratio culled out therein relating to the educational qualification of a candidate. The facts of the case do not indicate even remotely that it was a case arising out of educational qualification but was rather a case with regard to the inconsequential description of the name of the elected candidate where a challenge raised to the election had failed. The learned Single Judge, therefore, appears to have incorrectly applied the ratio of the said decision on the facts of the present case and the impugned judgment dated 28.01.2019 is, therefore, vitiated for the same reasons as the impugned order of the Tribunal dated 11.10.2018

that are both liable to be set aside.

36. We may also clarify that corrupt practice is a commission or an omission as understood under Section 141 of the 2006 Act, whereas the incorrect acceptance of a Nomination Form is governed by the other provisions, particularly Rules 38 and 39 of the 2006 Rules. A distinction, therefore, has to be made between a corrupt practice as indicated above and that of an alleged false declaration as understood under the 2006 Rule or even under Section 125-A.

37. On the issue of change of name, the finding has been returned in favour of the appellant and, therefore, we need not go into the same as the said finding has not been challenged Patna High Court L.P.A No.301 of 2019 dt.02-07-2019 by the other side.

38. Thus, on all counts, in our opinion, there was no cogent evidence so as to dislodge an elected Mukhiya namely the appellant herein and, therefore, the learned Munsif committed an error in recording findings contrary to the requirement thereby setting aside the election of the appellant.

39. Similarly, the learned Single Judge also did not appreciate the contention raised and does not appear to have examined the peculiar facts of the present case in the light of the statutory provisions quoted hereinabove where an incorrect mentioning of date did not necessarily amount to a false declaration resulting in an improper acceptance of the Nomination Paper so as to materially affect the elections. The same cannot be said to be a corrupt practice which in any way would have possibly influenced the voters to take a decision in favour of the appellant and vote for her. Consequently, none of the two grounds on the basis whereof the election has been set aside were established.

40. The appeal for all the aforesaid reasons is allowed. The impugned judgment dated 28th January, 2019 in C.W.J.C. No. 21697 of 2018 and the order of the Tribunal dated 11.10.2018 in Election Petition No. 10/2016 are set aside.

Patna High Court L.P.A No.301 of 2019 dt.02-07-2019 Election of the appellant to the office of Mukhiya for the Gram Panchayat in question is upheld. The consequential election as informed by the learned counsel of Smt. Raj Kumari Devi being directly governed by the order dated 26.02.2019 that had been passed prior to the elections also stands annulled being consequential in nature. The respondent authorities including District Election Officer, Panchayat Saharsa and the District Panchayatraj Officer, Saharsa are directed to restore the appellant to the office of Mukhiya of Gram Panchayat, Rakiya.

(Amreshwar Pratap Sahi, CJ) (Anjana Mishra, J) P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	02.07.2019
Transmission Date	