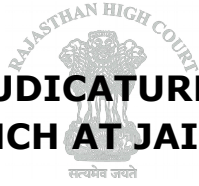




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 5961/2023

Jagdish Prasad Son of Shri Kalluram, aged about 55 Years,
Resident of Village Toda Post Pratapgarh, Tehsil Thanagaji,
District Alwar.

----Petitioner

Versus

1. Arvind Kumar Son of Shri Thanduram, aged about 35 Years, Resident of Dhani Kolyali, Village Bhuriyawas, Tehsil Thanagaji, District Alwar.
2. District Election Officer (Panchayat) Cum District Collector, Alwar, Office of District Collector, Alwar.
3. Returning Officer, Gram Panchayat Bhuriyawas, Panchayat Samiti, Thanagaji, District Alwar, Rajasthan C/o District Election Officer (Panchayat) and District Collector, Alwar.

----Respondents

For Petitioner(s)	:	Mr. R.B. Mathur-Sr.Advocate with Mr. Hitesh Bagri Mr. Falak Mathur Mr. Yug Singh Mr. Darsh Shree Verma
For Respondent(s)	:	Mr. Rajesh Kumar Sharma with Mr. Jitendra Choudhary Mr. Neeraj Batra-G.C.

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on	06/11/2024
Pronounced on	22 /11/2024
Reportable	

1. In compliance of the order dated 27.09.2024 passed by the Hon'ble Apex Court in Writ Petition (Civil) No. 602/2024, this petition was taken up for final disposal and with the consent of learned counsels for the parties, final arguments have been heard and the order was reserved on 06.11.2024.





2. The instant writ petition has been filed by the petitioner feeling aggrieved and dissatisfied by the impugned judgment dated 15.02.2023 passed by the Additional Senior Civil Judge No.3 District Alwar by which the Election Petition, filed by the respondent No. 1 under Section 43 of the Rajasthan Panchayati Raj Act, 1994 (for short, 'the Act of 1994') and Rule 80 of the Rajasthan Panchayati Raj (Election), Rules 1994 (for short, 'the Rules of 1994'), has been allowed and the petitioner has been declared as disqualified to hold the post of Sarpanch, Gram Panchayat Bhuriyawas, Panchayat Samiti, Thanagaji, District Alwar and further a direction has been issued to the District Collector, Alwar to proceed in accordance with law.

3. A challenge has also been made to the order dated 10.04.2023 passed by the Block Development Officer, Panchayat Samiti Thanagaji, District Alwar by which fresh election process for bye-elections has been initiated and certain persons have been nominated as Election Officers.

4. Learned Sr. Counsel for the petitioner submits that the petitioner had contested the election for the post of Sarpanch Gram Panchayat Bhuriyawas, Panchayat Samiti, Thanagaji, District Alwar and his election was assailed by the respondent No. 1 by way of filing an election petition before the Court of Additional District Judge, Alwar which was transferred to the Court of Additional Senior Civil Judge No. 3-Alwar. Counsel submits that the election petition was filed against the petitioner on the ground that the petitioner was having two additional children after the cut off date, prescribed under the Act of 1994 i.e. 27.11.1995. Counsel submits that at the time of submission of the nomination form,





date of birth of the petitioner's son-Rajesh was mentioned as 05.07.1990 and date of birth of the petitioner's daughter-Mamta was mentioned as 15.07.1994. Counsel submits that inadvertently a mistake has occurred on the part of the petitioner with regard to the date of birth of Rajesh. Counsel submits that as per the scholar register, maintained by the Government School, the correct date of birth of his son-Rajesh is 01.01.1995 and as per the private school record, the date of birth of his daughter -Mamta is 15.04.1994. Counsel submits that all these documents were submitted on record before the Election Tribunal and even the evidence of Headmaster of the Government Upper Primary School, Toda, Sitraram Prajapat (DW-3) was recorded who has categorically stated on oath that as per the entry mentioned in the admission form, the date of birth of son of the petitioner -Rajesh was 01.01.1995. Counsel submits that in support of his contentions, he proved and exhibited two documents i.e. school admission form and the certificate regarding date of birth of Rajesh i.e. Annexures A-5 and A-6. Counsel submits that with regard to the date of birth of Mamta, two documentary evidence i.e. school admission form and certificate issued by the concerned school, which were placed on record, were exhibited but without considering the same and without recording any finding with regard to the genuineness of these documents, the impugned judgment has been passed against the petitioner, solely on the basis of the two marksheets of Class-10th issued by the Board of Secondary Education. Counsel submits that the marksheets of Class 10th cannot be treated as the sole criterion for determination of the date of birth, when other evidence were available on record.





Counsel submits that the date of birth recorded in the marksheets of Class-10th may not be correct for some reasons but the date of birth mentioned in the school admission form submitted at the time of taking admission in childhood of both the children cannot be treated as incorrect because no person will presume to take the benefit of incorrect entry in future. In support of his contentions, he has placed reliance upon the following judgments:-

- (1) **Brij Mohan Singh Vs. Priya Brat Narain Sinha and Ors.** reported in **AIR 1965 SC 282**
- (2) **Birad Mal Singhvi Vs. Anand Purohit** reported in **AIR 1988 SC 1796**
- (3) **Joshan Gouda Vs. Brindaban Gouda and Anr.** reported in **2012(5) SCC 634**
- (4) **Rishipal Singh Solanki Vs. State of U.P and Ors.** reported in **2022 (8) SCC 602**
- (5) **Tulachha Ram Vs. State of Rajasthan** (D.B. Criminal Appeal No. 219/2018) decided on 21.12.2018.

Hence, under these circumstances, the impugned judgment passed by the Election Tribunal and the subsequent order dated 10.04.2023, issued by the Government, for handing over the charge of Sarpanch, Gram Panchayat Bhuriyawas, Tehsil Thanagaji, District Alwar are illegal not sustainable in the eye of law and the same are liable to be quashed and set aside.

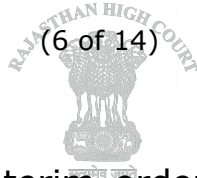
5. Per contra, counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that correct date of birth of both the children of the petitioner i.e. Rajesh and Mamta is 05.07.1996 and 15.07.1998 respectively, as per the record of Secondary Board Education. Counsel submits





that the documents submitted by the petitioner with regard to date of birth of his two children cannot be relied upon because the said documents i.e. school admission forms, was alleged to have been submitted by uncle of the children, who has not been examined in the witness-box before the Election Tribunal. Counsel submits that the documents furnished by the petitioner with regard to date of birth of his two children cannot be relied upon as the same are highly doubtful. Counsel submits that the detailed finding of fact has been recorded by the Tribunal while discarding these documents and thereafter, a cogent finding has been recorded, on the basis of the evidence available on record, more particularly, on the basis of Class 10th marksheets of both the children of the petitioner. Counsel submits that daughter of the petitioner i.e. Mamta was born at Thanagaji, while as per the school admission form, the admission was taken at Jaipur, hence, these documents cannot be relied upon, as there is no reason available with the petitioner to take the admission of his daughter at Jaipur particularly when the other family members were residing at the village Thanagaji. Counsel submits that all these facts were well appreciated by the Tribunal, while deciding the issues No. 1 and 2 by recording cogent reasons, which require no interference of this Court. Counsel submits that while deciding issue No. 3, after declaring the petitioner as disqualified to hold the post of Sarpanch, a direction was issued to the Collector to proceed further in accordance with law and as a consequence thereof process of bye-elections was initiated and the same were conducted after passing of the judgment by the Tribunal dated 15.02.2023 and the result of the said elections has not been





declared because of the interim order passed by this Court and the entire election material including EVM Machine have been kept intact in the store room of Police Station Thanagaji, which is liable to be vacated and the present petition is liable to be rejected and permission be granted to the State-respondent to declare the result of bye-elections. In support of his contentions he has placed reliance upon the order passed in the case of **Birad Mal Singhvi Vs. Anand Purohit** reported in **AIR 1988 SC 1796**.

6. In rejoinder, counsel for the petitioner submits that daughter of the petitioner-Mamta was residing with her uncle at Jaipur at that point of the time because of which admission was taken at Jaipur and the form was submitted by her uncle.

7. Heard and considered the submissions made at Bar and perused the material available on record.

8. Section 19 of the Act of 1994 deals with qualification for election as a Panch or a member.

As per the Section 19, every person registered as a voter in the list of voters of a Panchayati Raj Institution shall be qualified for election as a Panch or, as the case may be, a member of such Panchayati Raj Institution unless such person -

(a) to (K) xxxxx;

(l) has more than two children after 27.11.1995.

(m) to (p) xxxx

Meaning thereby if any person has more than two children after 27.11.1995, he/she is disqualified to contest the election.

9. Now the issue remains for consideration of this Court is "whether the petitioner had two additional children after the cut





off date i.e. 27.11.1995 or not” and whether he was qualified or disqualified to contest the election for the post of Sarpanch?

10. Both the petitioner and the respondent No.1 contested the election for the post of Sarpanch, Gram Panchayat, Bhuriyawas, Panchayat Samiti, Thanagaji, District Alwar. They submitted their nomination papers and the petitioner secured 926 votes, while the respondent No. 1 secured 704 votes and as per the result, the petitioner was elected as Sarpanch.

11. The respondent No. 1 submitted an election petition challenging the election of the petitioner on the ground that he had two additional children after the cut off date i.e. 27.11.1995 hence, he possesses pre-disqualification to contest the election and he be declared as disqualified to hold the post of Sarpanch.

12. The petitioner disclosed the following date of birth of his four children in his nomination paper:-

<u>Serial No.</u>	<u>Name</u>	<u>Date of Birth</u>
1.	Umesh Kumari	30.07.1988
2.	Anita Budaniya	07.06.1990
3.	Rajesh Budaniya	05.07.1992
4.	Mamta Budaniya	15.04.1994

and in column of number of children after 27.11.1995, he mentioned “zero”.

13. The respondent No. 1 alleged in the election petition that incorrect information was submitted by the petitioner with regard to the correct date of birth of his son Rajesh and daughter Mamta in his nomination paper (Ex. 1).

14. The respondent No. 1 alleged that as per the mark-sheets of Class-10th of these two children, issued by the Board of Secondary





Education the correct date of birth of the petitioner's son-Rajesh Kumar Budania is 05.07.1996 and the date of birth of the petitioner's daughter Mamta Budania is 15.07.1998. The Class 10th mark-sheets of both the children issued by Board of Secondary Education were exhibited on the record as Ex. 20 and Ex.21. The Election Tribunal examined AW-3- Kanhiya Lal Tanwar in the witness-box who deposed that as per the record of Board of Secondary Education, the date of birth of Rajesh Budania is 05.07.1996 and the date of birth of Mamta Budania is 15.07.1998. In the cross-examination this witness has stated that while submitting the form of the board examination, the marksheets of Class 8th and 9th were to be taken into consideration but he has not done the same.

15. When the statements of the respondent No. 1 were recorded as DW-1 he has repeated the same date of birth of the two children of the petitioner, as mentioned in their Class 10th marksheets, issued by the Board of Secondary Education. AW2- Kalu Ram stated that he got these marksheets Ex. 20 and Ex. 21 from the Board of Secondary Education, Ajmer.

16. The petitioner examined himself as DW1 in the witness box before the Election Tribunal and stated that the correct date of birth of his son Rajesh is 01.01.1995 and his daughter Mamta is 15.04.1994. He stated that his son Rajesh got admission in Government Upper Primary School at Toda and as per his School Admission Form, his date of birth is 01.01.1995 whereas per the school admission record of Madhav Shishu Niketan Secondary School, Jhalana Dungri, Jaipur the date of birth of his daughter Mamta is 15.04.1994. In support of his contentions, he examined





DW3- Sita Ram Prajapat, Principal of Government Upper Primary School, Toda in the witness box, who stated that in the School Admission Form (Ex.A6) of Rajesh, his date of birth is mentioned as 01.01.1995. He admitted in his cross-examination that the document (Ex. A-5) does not tally with the original and he was not aware about the signatures of the person, which were marked as A to B on the documents and he was not aware about the name of guardian or parents of the child.

17. After giving thoughtful consideration over the evidence led by both the sides and the documents submitted by them, the Tribunal decided issues No. 1 and 2 against the petitioner by holding that the School Admission Forms Ex. A1 and Ex. A5 of Mamta and Rajesh, respectively, were not submitted by the petitioner but the same were submitted by their uncle who has not been examined in the witness box to prove these documents. The Tribunal recorded a finding that the birth place of the daughter of petitioner Mamta is Thanagaji hence, there was no reason or occasion available with her to study at Jaipur. The Tribunal also recorded a finding of fact that son of the petitioner got the job on the basis of his marksheet of Class 10th (Ex. 21), wherein his date of birth is recorded as 05.07.1996. This finding also records that neither the petitioner nor his children Rajesh and Mamta took any steps for correction of their date of birth in their marksheets of Class 10th, issued by the Board of Secondary Education, hence, the same was treated as correct and final.

18. The Indian Evidence Act, 1872 states that a fact is said to be "proved" when after considering overall evidence before it, the Court either believes it to exist, or considers its existence so





probable that prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The Hon'ble Supreme Court in the case of **Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi** reported in **(1991)2 SCC 716** has held that the standard of proof in the case other than criminal, is not proof beyond reasonable doubt, but is based on preponderance of probability and wherever a reasonable and plausible factual inference can be drawn, from the factual and circumstantial evidence on the record, in the favour of a plaintiff, his plaint is to be allowed. This Court in the case of **Smt. Ummed Kanwar Vs. Prabhu Singh**, reported in **(2012)4 WLC (Raj.) 14** has held that standard of proof required in an election petition founded on ineligibility of the candidates is not "beyond reasonable doubt" but only "preponderance of probability".

19. Section 35 of the Evidence Act, 1872 falling under Chapter II thereof, provides that

35. Relevancy of entry in public record or an electronic record made in performance of duty. An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact.

20. The Hon'ble Supreme Court in the case of **Narayan Govind Gavate Vs. State of Maharashtra** reported in **(1977) 1 SCC 133** has held that the result of a trial or proceeding is determined by weighing of the totality of facts and circumstances and





presumptions operating in favour of one party as against the other which may tilt the balance in favour of one party against the other. Admittedly, no presumptions operated before the Election Tribunal in an election petition under Section 43 of the 1994 Act read with Rule 80 of the Rules of 1994. The issues before the Election Tribunal as to the eligibility or otherwise of the petitioner was determinable on the appreciation of evidence, led by the contesting parties before the Election Tribunal.

21. In the case of **Ashwani Kumar Saxena Vs. State of M.P.** reported in **(2012)9 SCC 750**, it has been held by the Apex Court that the matriculation certificate issued by the Central Board of Secondary Education (for short 'CBSE') would be given precedence over any other evidence of the date of birth.

22. Similarly in the case of **Parg Bhati Vs. State of U.P.**, reported in **(2016)12 SCC 744**, it has been held by the Apex Court that if the matriculation certificate is available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as conclusive proof of date of birth. It has been held in para 36 as under:-

"36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain, an enquiry for determination of the age of the accused is permissible which has been done in the present case."





23. The matriculation certificate is a public document and the same is credible and authentic, as per the provisions of Section 35 of the Evidence Act, as has been held by the Hon'ble Apex Court in the case of **Rishipal Singh Solanki Vs. State of UP**, reported in **2022 (8) SCC 602** in para 33.9 and 33.10, which read as under:-

(33.9) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(33.10) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

24. Consequently, without being overtly impressed by evidence, relevant under Section 35 of the Evidence Act, it was incumbent upon the Tribunal to consider and appreciate the totality of Election Petitioner's evidence before it juxtaposed to the defence evidence. It is also not in dispute that the change of date of birth of Rajesh and Mamta in their marksheet of Class 10th issued by the Board of Secondary Education had attained finality as the same was not challenged before an appropriate forum. It was not within the jurisdiction of the Election Tribunal to overlook the mark-sheets issued by a competent officer of the Board of Secondary Education pertaining to the date of birth of two children of the petitioner i.e. Rajesh and Mamta.





25. The petitioner is not sure about the date of birth of son Rajesh i.e. whether he was born before or after the birth of Mamta. In the nomination form Rajesh is shown as elder to Mamta, while before the Tribunal Rajesh is shown as younger to Mamta. Three different dates of birth of son Rajesh are available on the record. The petitioner himself is not sure about the correct date of birth of his son Rajesh. Hence, it is clear that the petitioner has not come before the Court with the correct date of birth of his son Rajesh.

26. In view of the aforesaid facts, reasons and judicial pronouncements, the judgments relied upon by counsel for the petitioner are of no help to the petitioner, looking to the peculiar facts and circumstances of this case because the entry regarding date of birth of the children in their marksheets of Class 10th in the records of Board of Secondary Education, has not been challenged by anyone, hence the same has attained finality and no reason has been assigned by the petitioner that on what basis incorrect dates of birth of his son and daughter were recorded in the records of Class 10th marksheet by the Board of Secondary Education. He has miserably failed to satisfy this Court that if dates of birth of his son and daughter are not correct in the marksheets of Class 10th issued by the Board of Secondary Education, even then why no steps have been taken by anyone of them, for correction of the date of birth in the records of Board of Secondary Education.

27. In view of the discussions made herein above and taking the entire evidence available on the record, the Election Tribunal has not committed any perversity in holding that having two children





after the cut off date i.e. 27.11.1995, provided under Section 19(I) of the Act of 1995 i.e Rajesh on 05.07.1996 and Mamta on 15.07.1998, the petitioner was not eligible to contest the election to the post of Sarpanch and yet having done so and won, it was liable to be set aside.

28. The findings recorded by the Tribunal do not call for any interference by this Court. Consequently, it is found that the impugned judgment does not suffer from any infirmity and the same is hereby upheld and the subsequent order dated 10.04.2023 has been rightly passed by the Government. This Court finds no merit and substance in this petition, accordingly the same is liable to be and is hereby dismissed.

29. Stay application and all pending application(s) also stands dismissed.

30. The Election Officer is directed to declare the result of bye-elections held for the post of Sarpanch Gram Panchayat Bhuriyawas, Tehsil Thanagaji, District Alwar forthwith and proceed further in accordance with law.

31. No order as to costs.

(ANOOP KUMAR DHAND),J

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