IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7884 of 2018

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Sharda Devi D/o-Shri Lalan Ravidas, W/o-Shri Tinku Raj, Resident of Mohalla-Mithapur, B-Area, Nahar Par, Bhanamal ke Pichhe, P.S.-Jakkanpur, District-Patna. ... ... Petitioner/s

Versus

1. The State of Bihar
2. The State Election Commission, Sone Bhawan, Veer Chand Patel Path, Patna represented through its Secretary
3. The State Election Commissioner, the State Election Commission, Sone Bhawan, Veer Chand Patel Path, Patna.
4. The District Election Officer-Cum-District Magistrate, Patna.
5. The Returning Officer of Election of Patna Municipal Corporation, Patna.
6. The Bihar School Examination Board, Patna through its Secretary, the Bihar School Examination Board, Patna
7. The Headmaster, Ram Chandra Vishwakarma High School, Achhua, Patna.
8. The Patna Municipal Corporation, Patna represented through its Chief Executive Officer, Patna Municipal Corporation, Patna.
9. The Chief Executive Officer, Patna Municipal Corporation, Patna.
10. Smt. Soma Choudhary, W/o-Shri Arun Kumar Choudhary, Resident of Mohalla-Mithapur,B-Area, P.S.-Jakkanpur, District-Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prakash Srivastava, Adv.
		Mr. Amresh Kumar Sinha, Adv.
		Mrs. Anu Priyadarshini, Adv.
For the State	:	Mr. Ram Subhas Singh, AC to AAG7
For the Election Commission		Mr. Amit Shrivastava, Adv.
		Mr. Sanjeev Nikesh, Adv.
For Respondent no. 10		Mr. S.B.K. Manglam, Adv.
		Mrs. Anita Kumari, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT

Date : 05-04-2019

The instant writ petition has been filed by the petitioner for quashing the order dated 12.04.2018 passed by the respondent no.3 in Case No. 70 of 2017 by which he has declared the petitioner as disqualified under Section 18(2) of the Bihar Municipal Act, 2007 (for short 'Municipal Act, 2007') on the ground that she was elected without completing the age of

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21 years.

2. The facts of the case, briefly stated, are that the respondent no.2 issued a notification for election of the Patna Municipal Corporation, Patna in the year 2017. In contemplation to the notification, the petitioner being a member of Scheduled Caste filed her nomination paper from Ward No. 19 for the post of Ward Councilor. In the voter list of 2017 of Ward No.19, name of the petitioner was mentioned at serial no. 3213 and her age was mentioned as 21 years. On the basis of the said voter list, she was also issued voter identity card no. AFS3511094. At the time of filing of nomination paper, no objection from any corner was made. In scrutiny, her nomination paper was found in order. She contested the election of the territorial constituency no.19 and was declared as returned candidate.

3. After declaration of result, the respondent no.10 Smt. Soma Choudhary had filed an application in the form of election petition before the State Election Commission, Bihar, Patna alleging therein that the petitioner has been elected in the municipal election even though she had not attained the age of 21 years, which is against the provisions of the Municipal Act, 2007.

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4. On the basis of the said complaint, Case No. 70 of 2017 was initiated before the State Election Commission, Bihar, Patna. In the said case, the petitioner took a plea that her age was 21 years on the date of nomination and she was duly qualified. She had also appended birth certificate, school ID Card, Voter ID card, Adhar Card, PAN Card etc. as part of her reply.

5. After hearing the parties, the State Election Commissioner, vide impugned order dated 12.04.2018 disqualified the petitioner from the post of Ward Councilor of Ward No.19 of Patna Municipal Corporation under Section 18(2) of the Municipal Act, 2007.

6. Mr. Shri Prakash Srivastava, learned counsel appearing for the petitioner submitted that while passing the impugned order dated 12.04.2018 the respondent no.2 has completely ignored and discarded the relevant materials, which were sufficient to prove that the petitioner was not underage at the time of filing her nomination. He submitted that the disputed question of fact could not have been adjudicated by the respondent no.2 after the petitioner had been declared elected as Ward Councilor. He contended that the burden of proving that the returned candidate had not attained the age of 21 years on

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the date of filing nomination was on the respondent no.10, who had filed the complaint and since she had failed to prove by leading cogent evidence, the election of the returned candidate could not have been set aside by the respondent no.2. He further contended that since the complainant had failed to place any evidence before the court to show that entry of age in the matriculation certificate had been made on the basis of information furnished either by the parents or by anyone else having special knowledge about the date of birth of the petitioner, the entry of the date of birth in the matriculation certificate have no evidentiary or probative value. In support of his submission, he has placed reliance on the decision of the Supreme Court in ***Birad Mal Singhvi Vs. Anand Purohit***, since reported in ***(1988) Supp. 2 S.C.R. 1***, ***Brij Mohan Singh Vs. Priya Brat Narain Sinha***, since reported in ***1965(3) SCR 861*** and an unreported decision of this Court in ***Kamta Kumari Vs. State of Bihar (CWJC No. 1632 of 2013)***.

7. Per contra, Mr. Amit Srivastava, learned counsel appearing for the respondent nos. 2 and 3 submitted that the order impugned has been passed by the respondent no.2 after hearing the parties and on the basis of available papers on record for the reason that she was below 21 years of age on the

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date of filing her nomination for the municipal election of 2017. He submitted that this Court has held in several cases that the persons below the age of 21 years are disqualified to contest any election under the Municipal Act, 2007. Further, in several cases, this Court has upheld such disqualification regarding underage as ordered by the Election Commissioner. He submitted that in the instant case the petitioner had made an application for correction of her date of birth on 25.07.2017 through the headmaster of Ramchandra Vishwakarma High School, Achhua, Patna, which had been rejected by the Bihar School Examination Board. Thus, as per Board's record the date of birth of the petitioner is 05.05.1998. As such she was disqualified to hold the post in question as she was below 21 years of age on the date of filing her nomination. He, thus, submitted that there is no illegality in the impugned order and the writ petition is fit to be dismissed.

8. Mr. Nirmal Kumar Sinha, learned A.C. to AAG-7 appearing on behalf of the State has adopted the submissions made by the learned counsel appearing for the respondent nos.2 and 3.

9. Mr. S.B.K.Manglam, learned counsel appearing for the respondent no.10 has submitted that while filing her

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nomination, the petitioner had disclosed her age to be 05.05.1995 and to be Sakshar (Literate). In support of her date of birth and educational qualification, she had also submitted an affidavit duly sworn before the Executive Magistrate, Sadar, Patna. When respondent no.10 came to know that the said affidavit is contrary to the records as she had appeared for Secondary School Examination 2016 (Annual) with Roll Code 71525 Roll No. 1600137, Registration No. 71525-58892-15 and had failed in the said examination, but still she did not submit her mark-sheet at the time of nomination with the nomination form. In the Bihar School Examination Board's record as also in the mark-sheet, her date of birth was recorded as 05.09.1998. As the petitioner had submitted a false affidavit and had also suppressed her mark-sheet of matriculation examination in order to conceal her age as she was less than 21 years on the date of nomination for election of Ward No.19 of Municipal Election, the respondent no.10 filed a complaint before the State Election Commissioner, Bihar, Patna mentioning all the above facts and for cancellation of result of the petitioner, who was declared to be winner for the said Ward and for declaring respondent no.10, who was next in the position to be the winner.

10. The State Election Commission, Bihar, Patna

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ordered for enquiry on such complaint on which the District Returning Officer-cum-Collector, Patna ordered the Returning Officer-cum-Deputy Development Commissioner, Patna to enqire on which after hearing the parties he found the allegation made by the respondent no.10 to be true and sent the same vide his letter dated 31.10.2017 to the Collector, Patna, who vide his letter dated 20.11.2017 sent the same to the State Election Commission, Bihar, Patna. The State Election Commission, Bihar, Patna also sought report from the Bihar School Examination Board, Patna on 12.03.2018 on which the Additional Secretary of the Board vide letter dated 09.04.2018 submitted his report against the petitioner saying that the application for change of her date of birth from 05.05.1998 to 05.05.1995 forwarded by the headmaster on 25.07.2017 was rejected by the Bihar School Examination Board as no fault of the Board was found in recording the date of birth of the petitioner. He submitted that since the petitioner had earned disqualification under Section 18(1) of the Municipal Act, 2007, the respondent no.3 has rightly exercised the power conferred under Section 18(2) of the Municipal Act, 2007 while passing the impugned order. He submitted that any other documents relied upon by the petitioner like birth certificate, school ID

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Card, Voter ID card, Adhar Card, PAN Card etc. in which date of birth has been entered cannot be treated to be valid in view of the date of birth of the petitioner recorded in her matriculation certificate.

11. I have heard learned counsel for the parties and carefully perused the record.

12. On the basis of the pleadings of the parties as also respective submissions made by the learned counsel for the parties, it would be evident that the date of birth of the petitioner as mentioned in the birth certificate, school ID Card, Voter ID card, Adhar Card, PAN Card and voter list is 05.05.1995 whereas the date of birth recorded in the mark-sheet of matriculation of the petitioner recorded by the Bihar School Examination Board including matriculation certificate is 05.05.1998.

13. It is on the basis of said entry of date of birth made in the matriculation certificate the respondent no.10 had made a complaint before the State Election Commission pursuant to which an enquiry was initiated against the petitioner and treating the said entry in the matriculation certificate to be correct, the State Election Commissioner in exercise of his powers conferred under Section 18(2) of the Municipal Act,

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2007 declared the petitioner as disqualified for holding the post of Ward Councilor after she had been elected as Ward Councilor from Ward No. 19 of the Patna Municipal Corporation.

14. Section 18(1) of the Municipal Act, 2007 talks about disqualification for election or after election for holding the post as member of the Municipality. It reads as under :-

> "**18. Disqualifications**.–
>
> (1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as member of the Municipality if such person –
>
> (a) is not a citizen of India;
>
> (b) is so disqualified by or under any law, for the time being in force, for the purpose of elections to the Legislature of the State:
>
> Provided that no person shall be disqualified on the ground that he is less than twenty one years of age, if he has attained the age of twenty one years;
>
> (c) is in the service of the Central or State Government or any local Authority;
>
> (d) is in the service of any such institution receiving aids from the Central or State Government or any local authority.
>
> (e) has been adjudged by a competent court to be of unsound mind
>
> (f) has been dismissed from the service of the Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;
>
> (g) has been sentenced by a criminal

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Court, whether within or without India, to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for keeping good behaviour under section- 109 or section 110 of the Code of Criminal Procedure 1973 (Act 2, 1974) and such sentence or order not having subsequently been reversed; or absconding being an accused in a criminal case for more than six months.

(h) has under any law for the time being in force become ineligible to be a member of any local authority;

(i) holds any salaried office or office of profit under the Municipality;

(j) has been found guilty of corrupt practices;

Provided that on being found guilty of corrupt practices, the disqualification shall cease after 6 (six) years of general election;

(k) if he has not paid all taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election is held.

(l) has been willfully omits or refuses to perform his duties and functions or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or become physically or mentally incapacitated for performing his duties

(m) If he has more than two living children:—

provided that a person having more than two children on or upto the expiry of one year of the commencement of the Ordinance, shall

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not be deemed to be disqualified.

(n) has been absent from three consecutive meetings or sitting of the Municipality without having previously obtained permission from the councillors at a meeting."

15. Section 18(2) of the Municipal Act, 2007 confers powers on the State Election Commissioner to look into the issues relating to disqualification if any question arises as to whether a Member of a Municipality at any level was disqualified before election or has incurred disqualification after election as mentioned in sub-section (1) of Section 18. It reads as under :-

> "18(2) If any question arises as to whether a Member of a Municipality at any level was before election or has become after election subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of State Election Commission. The matter of disqualification may be brought to the notice of the State Election Commission in the form of a complaint, application or information by any person or authority. The State Election Commission may also take suo-motu cognizance of such matters and decide such matters expeditiously after allowing sufficient

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opportunity to the affected parties of being heard."

16. It would be manifest from a reading of Section 18(2) of the Municipal Act, 2007 that the matter of disqualification before or after the election may be brought to the notice of the State Election Commission in the form of complaint application or information by any person or authority. The State Election Commission may also take suo motu cognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties to be heard.

17. It is, thus, apparent that the State legislature while conferring power has prompted the State Election Commission to look into the disqualification incurred before or after the election as provided under Section 18(1) of the Municipal Act, 2007. In case, the petitioner had not attained the age of 21 years on the date of nomination, she was not qualified to be elected on the date of nomination and on receipt of the complaint, the Election Commissioner had jurisdiction to adjudicate the dispute.

18. Having come to the conclusion that the Election Commissioner had jurisdiction to examine the issue of lack of

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qualification of the petitioner on the date of nomination, when I look to the facts of the present case, I find that the State Election Commissioner has passed the impugned order disqualifying the petitioner under Section 18(2) of the Municipal Act, 2007 merely on the basis of the date of birth entered into the matriculation certificate of the petitioner. While placing implicit reliance on the date of birth entered into the matriculation certificate of the petitioner, the State Election Commissioner has placed no reliance on the other documents brought on record like birth certificate issued from the Department of Planning and Development known as Directorate of Economics and Statistics, the admission register of Ramchandra Vishwakarma High School, Achhua, Patna, the Identity Card issued by the High School, Voter Identity Card issued by the Election Commission of India, Adhar Card issued by the Unique Identification Authority of India, the Pan Card issued by the Income Tax Department, Government of India and the voter list of Ward No.19.

19. It would be evident from the impugned order that the petitioner had filed an application for correction of wrong entry of date of birth in the matriculation certificate before the Bihar School Examination Board on 25.07.2017. The said

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application of the petitioner was duly forwarded by the respondent no.7, the headmaster of Ramchandra Vishwakarma High School, Achhua, Patna. In her application, it was categorically stated that her correct date of birth is 05.05.1995 and it was wrongly recorded in the mark-sheet and certificate issued by the Bihar School Examination Board as 05.05.1998. The headmaster of the school while forwarding the application of the petitioner had recorded that the petitioner had taken admission in the school in 2014 in Class IX and in the admission register at serial no. 45, her date of birth is recorded as 05.05.1995. However, the Bihar School Examination Board rejected the application of the petitioner for correction of date of birth entered into the Board's record on the ground that in the matriculation certificate, admit card and mark-sheet, the date of birth recorded is 05.05.1998. There is no fault of the Board with regard to entry of date of birth of the petitioner in those documents. The petitioner had not filed application for correction of date of birth within time and even without getting it corrected, she had filed her nomination paper disclosing her date of birth to be 05.05.1995, which is disrespect and contempt to the certificate issued by the Bihar School Examination Board. The verification report submitted by the Bihar School

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Examination Board to the State Election Commissioner in respect of date of birth of the petitioner is reproduced herein for the sake of convenience and clarity :-

> "छात्रा – शारदा कुमारी, कोड -71525, क्रमांक 1600137 वर्ष -2016 (A) वार्षिक माध्यमिक परीक्षा का जन्मतिथि 05.05.1998 की जगह 05.05.1995 करने से संबंधित आवेदन दिनांक 25.07.2017 को विद्यालय प्रधान द्वारा अग्रसारित, समिति कार्यालय में प्राप्त हुआ। .....……...
>
> छात्रा के आवेदन के साथ मूल पंजीयन, मूल प्रवेश पत्र, OMR एवं विद्यालय अभिलेख के समीक्षोपरांत पाया गया कि छात्रा ने अपने आवेदन में अंकित किया है कि बोर्ड की गलती से उनके सभी प्रमाण पत्रों पर जन्म तिथि 05.05.1998 अंकित हो गया है। जबकि जाँच में यह पाया गया कि पंजीयन OMR सीट में छात्रा / प्रधानाध्यापक द्वारा अंकित जन्म तिथि 05.05.1998 ही समिति से निर्गत मूल पंजीयन, मूल प्रवेश पत्र एवं अंक पत्र आदि पर मुद्रित है। इसमें समिति कि कोई गलती नहीं है, छात्रा का आरोप निराधार है। आवेदिका ने समिति अभिलेख में ससमय बिना जन्म तिथि संशोधन आदेश के ही स्वयं राज्य निर्वाचन आयोग में समर्पित प्रपत्र पर अपनी जन्मतिथि 05.05.1995 अंकित कर दिया है। यह बोर्ड के प्रमाण पत्रों का अपमान एवं अवमानना है। अतएव आवेदिका शारदा कुमारी का जन्मतिथि संशोधन से संबंधित आवेदन एवं अभिलेखों के जांचोपरांत जन्मतिथि 05.05.1998 के स्थान पर 05.05.1995 संशोधन दावा को अस्वीकृत कर दिया गया है। समिति अभिलेख में छात्रा की जन्मतिथि 05.05.1998 अंकित है।
>
> आवेदिका शारदा कुमारी का जन्मतिथि संशोधन आवेदन के क्रम में जांचोपरांत पाया गया कि विद्यालय अभिलेख के विपरीत OMR सीट पर जन्मतिथि अंकित कर प्रधानाध्यापक द्वारा OMR प्रपत्र अग्रसारित कर समिति में जमा किया गया है, एवं ससमय आवेदिका के जन्मतिथि सुधार के लिए कोई कारवाई नहीं किया गया, इसके लिए वे पूर्ण ज़िम्मेवार है।"

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20. From perusal of the report submitted by the Bihar School Examination Board, it would be evident that the application for making correction in the date of birth recorded in the record of the Bihar School Examination Board of the petitioner was rejected mainly on the ground that the application was not filed within time and even without getting it corrected the petitioner had shown her date of birth to be 05.05.1995 in place of 05.05.1998 in the nomination form filed for contesting the election of the Municipal Corporation. The order impugned would further make it evident that the State Election Commissioner has passed the impugned order only on the basis of the said verification report submitted by the Bihar School Examination Board without recording any evidence whatsoever in course of the proceeding initiated for disqualifying the petitioner under Section 18(2) of the Municipal Act, 2007.

21. In ***Birad Mal Singhvi vs Anand Purohit*** (Supra), the Supreme Court has held that the entry of date of birth in the school admission register is not conclusive. In the said case, the election of State Legislative Assembly of Rajasthan from the Jodhpur constituency was held in the year 1985. Nomination papers were filed on 8.2.1985 and the date of scrutiny was 9.2.1985. In all 45 candidates had filed their nominations. After

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scrutiny and withdrawal 21 candidates contested the e1796lection, after polling and counting of votes the appellant was declared elected having obtained majority of votes. The respondent, who was an elector, filed an election petition before the High Court challenging the appellant's election on the ground that the result of election was materially affected on account of improper rejection of nomination papers of three candidates namely, Smt. Umrao Ben, Hukmichand and Suraj Prakash Joshi. It was pleaded that Smt. Umrao Ben was an elector in Sardarpura Assembly Constituency the returning officer wrongly rejected her nomination paper without affording an opportunity to produce a copy of the electoral roll. Hukmichand, and Suraj Prakash Joshi were more than 25 years of age on the date of their nomination, yet the returning officer rejected their nomination papers on the ground that they were not qualified to be a candidate as they were below 25 years of age. The appellant contested the election petition. The High Court allowed the election petition and set aside the appellant's election. It held that the nomination paper of Smt. Umrao Ben was validly rejected as she had failed to comply with Section 33(5) of the Act inasmuch as she had failed to produce a copy of the electoral roll or a certified copy of the relevant extract

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relating to entry of her name in the electoral roll. It further held that nomination papers of Hukmichand and Suraj Prakash Joshi had been rejected improperly by the returning officer as both the candidates had attained the qualifying age of 25 years on the date of nomination. On appeal, while setting aside the order of the High Court and dismissing the election petition, the Supreme Court has taken note of the facts regarding rejection of nomination paper of Hukmichand and Suraj Prakash Joshi as under :-

> "As regards the rejection of the nomination paper of Hukmi Chand and Suraj Prakash Joshi are concerned the High Court has held that none of the two candidates was present before the returning Officer at the time of scrutiny nor any person on their behalf was present. In his nomination paper Ex. 2 Hukmi Chand had given a declaration that he had completed 26 years of age while Suraj Prakash Joshi had given declaration in his nomination paper Ex. 3 that he had completed 25 years of age. At the time of scrutiny no objection was raised against their nomination paper by any party and none appeared on behalf of the aforesaid two candidate. The Returning Officer found that according to the entries in the electoral roll the age of Hukmi Chand was 23 years

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similarly in the case of Suraj Prakash Joshi the entry in the electoral roll indicated that on the relevant date his age was 22 years. On the basis of the entries contained in the electoral roll the Returning Officer held that the two candidates did not possess the requisite qualification of age as required by Article 173 of the Constitution to contest the election. Accordingly he rejected both the nomination papers. Before the High Court a controversy was raised as to whether the two c1796andidate were present at the time of scrutiny but on the evidence on record the High Court has held that neither of the two candidates nor any body on their behalf was present at the time of scrutiny. Placing reliance on the oral and documentary evidence produced by the respondent the High Court has recorded findings that Hukmichand as well as Suraj prakash Joshi both had attained the age of 25 years on the relevant date 1.1.1984 and their nomination papers had been rejected improperly by the Returning officer, which materially affected the result of the election."

22. On perusal of the judgment in Birad Mal Singhvi Vs. Anand Purohit (Supra), it would be evident that before the

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High Court, as regards Hukmi Chand, the respondent had produced Ex. 8 (a copy of scholars register), Ex. 9 (counter-foil of certificate of Board of Secondary Education) and Ex. 10 (mark-sheet of Hukmi Chand). As regards Suraj Prakash Joshi, the respondent had produced Ex.11 (a copy of counter foil of certificate of Board of Secondary Education) and Ex. 12 (Tabulation record of marks obtained by Suraj Prakash Joshi). It would appear that placing reliance on these documents, the High Court held that Hukmi Chand's date of birth was 13.6.1956 and therefore his age on 1. 1. 1984 was more than 25 years. The High Court further held that view of the entry in Ex. 11 certificate issued by the Board of Secondary Education Rajasthan Suraj Prakash was born on 11.3. 1959 and therefore he was qualified to contest the election as he was not less than 25 years of age. On these findings the High Court held that the respondent had successfully proved that the nomination papers of Hukmi Chand and Suraj Prakash Joshi had been wrongly rejected. In this background of facts, after hearing the parties, the Supreme Court held as under :-

> "No doubt, Exs. 8. 9, 10, 11 and 12 are relevant and admissible but these documents have no evidentiary value for purpose of proof of date of birth of Hukmi

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Chand and Suraj Prakash Joshi as the vital piece of evidence is missing, because no evidence was placed before the court to show on whose information the date of birth of Hukmi Chand and the date of birth of Suraj Prakash Joshi were recorded in the aforesaid document. As already stated neither of the parents of the two candidates nor any other person having special knowledge about their date of birth was examined by the respondent to prove the date of birth as mentioned in the aforesaid documents. Parents or near relations having special knowledge are the best persons to depose about the date of birth of a person. If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. The testimony of Anantram Sharma and Kailash Chandra Taparia merely prove the documents but the contents of those documents were not proved. The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the

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basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue.

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No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents have no probative value and the dates of birth as mentioned therein could not be accepted."

23. While concluding, the Supreme Court ruled :-

"The appellant was declared elected as he had polled majority of valid votes. His election could not be set aside unless the respondent-election petitioner was able to prove that Hukmi Chand and Suraj Prakash Joshi had attained the age of 25 years on the date of nomination by producing cogent and reliable evidence before the High Court. The burden to prove that fact was on the respondent throughout and he could not and did not discharge that burden merely by producing the documentary evidence Exs. 8, 9, 10, 11 and 12 or on the basis of oral testimony of Anantram Sharma PW 3 and Kailash Chandra Taparia PW 5. As discussed earlier these documents do not conclusively prove the dates of birth of Hukmi Chand and Suraj Prakash Joshi. The entries regarding dates of birth contained in

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the scholar's register and the secondary school examination have no probative value, as no person on whose information the dates of birth of the aforesaid candidates was mentioned in the school record was examined. In the absence of the connecting evidence the documents produced by the respondent, to prove the age of the aforesaid two candidates have no evidentiary value. The High Court committed serious error in accepting the dates of birth as mentioned in the aforesaid documents. In our view the High Court's entire approach in considering the question of dates of birth was wholly misconceived. The burden to prove the fact in issue, namely, the dates of birth of Hukmi Chand and Suraj Prakash Joshi was on the respondent who was the election petitioner. The respondent could not succeed if no evidence was produced by the appellant on the question of age of the aforesaid candidates and his election could not be set aside merely on the ground that the respondent had made out a prima facie case that the entry contained in the electoral roll regarding the age of two candidates was incorrect. ….. There was no question of drawing adverse inference against the appellant, as the burden to prove the age of

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> Hukmi Chand and Suraj Prakash Joshi was on the election petitioner and since he had failed to prove the same by cogent evidence no adverse inference could be drawn against the appellant. In fact, burden was on the respondent to prove his case by producing Hukmi Chand and Suraj Prakash Joshi, or their parents to prove and corroborate the dates of birth as mentioned in the school register and the certificate. If he failed to do that he could not succeed merely because appellant had not produced them. In the circumstances no adverse inference was at all possible to be drawn against the appellant for not examining Hukmi Chand and Suraj Prakash Joshi or their parents."

24. Thus, the Supreme Court has clearly held that the entries regarding date of birth as mentioned in the scholars register and the Secondary School Examination Board have no probative value unless the entry of date of birth made therein is proved by cogent evidence. The burden to prove the correctness of the entry in such documents is upon the person, who claims correctness.

25. In the instant case, apart from the verification report obtained from the Bihar School Examination Board in

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respect of the entry made in the matriculation certificate, there was no other material before the State Election Commission to arrive at a finding regarding correctness of the date of birth entered into the matriculation certificate. Neither the complainant (Respondent no.10) got herself examined during the proceeding nor proved the correctness of date of birth entered into the matriculation certificate issued by the Bihar School Examination Board nor any authority of the Bihar School Examination Board came forward to depose about the date of birth of the petitioner. There was no evidence on record regarding date of birth of the petition in the record of the Bihar School Examination Board to the extent that the same was made on the information given by the parents of the petitioner or some one having special knowledge of the fact. On the contrary, there was evidence that due to mistake date of birth of the petitioner was entered as 05.05.1998 instead of 05.05.1995. The headmaster of the School had duly forwarded the application of the petitioner but the Bihar School Examination Board rejected the application for correction of date of birth as it was not filed within time and even without getting the date of birth corrected, the petitioner had disclosed her age to be 05.05.1995 in her nomination form.

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26. Keeping in mind the ratio laid down by the Supreme Court in ***Birad Mal Singhvi Vs. Anand Purohit*** (Supra), in the facts and circumstances of the case, I am of the opinion that the entire approach of the State Election Commission in considering the question of date of birth of the petitioner for declaring her as disqualified under Section 18(2) of the Municipal Act, 2007 was wholly misconceived. The petitioner had disclosed her date of birth to be 05.05.1995 in her nomination form. After scrutiny, her nomination was found in order. No one raised any objection regarding her date of birth mentioned in the nomination form. She contested the election and got elected. When the complaint was made, she produced the documents like birth certificate, school ID Card, Voter ID card, Adhar Card, PAN Card, voter list and the application for correction of date of birth filed before the respondent no.6. However, no credence was given to those documents and merely on the basis of verification report submitted by the Bihar School Examination Board, the petitioner has been declared disqualified. The verification report issued by the Bihar School Examination Board may be relevant and admissible, but it has no evidentiary value for the purpose of date of birth of the petitioner. Neither the parents of the petitioner nor the

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respondent no.10 nor any other person having special knowledge about her date of birth nor any authority of the Bihar School Examination Board was examined to prove the date of birth as mentioned in the matriculation certificate. No reason has been assigned by the State Election Commissioner while passing the impugned order as to why the date of birth mentioned in the school admission register as also the application forwarded by the headmaster for correction of the entry recording date of birth of the petitioner in the Board's record or various other documents submitted by the petitioner, as noted above, cannot be relied upon.

27. In ***Brij Mohan Singh Vs. Priya Brat Narain Sinha*** (Supra), a question had arisen whether the returned candidate had attained the age of 25 years on the date of his nomination. The High Court had set aside the election of the returned candidate on the ground that he was below the age of 25 years on the date of filing of nomination. The Supreme Court set aside the order of the High Court and upheld the election of the returned candidate on the ground that the burden of proof that the returned candidate had not attained the age of 25 years on the date of nomination was on the election petitioner and he failed to prove that the election of the returned candidate could

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not be set aside. In that case, the Supreme Court held that entry made in an official record maintained by the illiterate Chowkidar or by somebody else at his request does not come within Section 35 of the Evidence Act.

28. In the instant case also, the burden of proving that the petitioner had not attained the age of 21 years on the date of her nomination was on the complainant (Respondent no.10) and since she has failed to prove that by leading any cogent evidence or even examining herself before the State Election Commissioner, the petitioner could not have been disqualified after being elected.

29. For the reasons and discussions, hereinabove, I am unable to uphold the impugned order dated 12.04.2018 passed by the respondent no.3 in Case No. 70 of 2017 by which the petitioner has been disqualified under Section 18(2) of the Municipal Act, 2007. Accordingly, the same is quashed and set aside. The consequences shall follow.

30. The writ petition stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

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