

WP(C) 1469/2008
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA
JUDGMENT AND ORDER (ORAL)

In this proceeding, the real issue involved is as to whether the date of birth of the petitioner is 30.09.1987 or 01.09.1985. As per the Admit Card issued in favour of the petitioner by the Board of Secondary Education, Assam, her date of birth is 30.09.1987. The Admit Card recording her date of birth as 30.09.1987 is pertaining to the H.S.L.C. Examination, 2003.

2. The petitioner contested the Zila Parishad election held in 2007 declaring her date of birth as 01.09.1985, which is contrary to the age recorded in the H.S.L.C. Admit Card and also her own stand in the application filed in the office of the particular political party seeking ticket to contest the election. A copy of the said application dated 7.2.2007 has been annexed as Annexure-B-1 to the counter affidavit filed by the Respondent No.6. In the said application, the petitioner declared her age as 30.09.1987.

3. When the matter rested thus, the petitioner obtained the Annexure-6 certificate dated 10.12.2007 issued by the Senior Medical & Health Officer, South Salmara P.H.C. In the said certificate, her date of birth was recorded as 01.09.1985, contrary to her aforesaid declared age. It is the case of the petitioner that she has obtained the said certificate on the basis of the Annexure-H-1 certificate dated 14.09.1985 issued by the particular Gaon Panchayat (Jamadarhat Gaon Panchayat). In the said certificate, her date of birth was shown as 01.09.1985.

It will be pertinent to mention here that in the said certificate dated 14.09.1985, the name appears is that of one Musstt. Narzina Khatun and that of her parents as Arfan Ali Sheikh and Begum Anima Khatun. However, in Annexure-6 certificate dated 10.12.2007 issued by the Sr. Medical & Health Officer, South Salmara P.H.C., the name shown is Narjin Parvin and that of her mother as Akola Khatun. Such variation in the names is sought to be explained by Annexure-4 affidavit filed on 10.12.2007 declaring that the original name of the petitioner is Narjina Parvin and that of her parents Arfan Ali and Akola Khatun.

4. It is the stand of the petitioner that she and her parents are also known by the names Narjin Parvin, Arfan Ali and Akola Khatun respectively. It is her claim that on the basis of the said declaration made in the affidavit and the aforesaid Annexure-H-1 certificate dated 14.09.1985, the particular Sr. Medical & Health Officer issued the Annexure-6 certificate on 10.12.2007 i.e. on the same date, on which the said affidavit was sworn in by the petitioner. It is interesting to note that the Annexure-6 certificate has been sought to be projected as a duplicate copy of the Annexure-H-1 certificate dated 14.09.1985. Needless to say that in case of issuance of any duplicate certificate, same very contents will have to be there as that of the original. However, in the instant case, the said Sr. Medical & Health Officer issued the purported duplicate certificate, which is apparently in variation with that of the Annexure-H-1 certificate dated 14.09.1985. Such variations are sought to be done away with by the aforesaid affidavit.

5. It is on the basis of the aforesaid duplicate certificate dated 10.12.2007 showing the date of birth of the petitioner as 01.09.1985, the petitioner contested the Zila Parishad election and was elected as a member. The petitioner could not rely on her declared date of birth as recorded in the HSLC Admit Card and in her own aforesaid application seeking ticket, which is 30.09.1987 inasmuch as in the event of depicting the said correct age, she would not have been eligible to contest the election, being not within the qualifying range of age, which is 21 years.

6. In the aforesaid affidavit sworn in by the petitioner on 10.12.2007, there was no mention about the date of birth recorded in the HSLC Admit Card and it was also not the case of the petitioner that the said date of birth was wrongly recorded.

7. The aforesaid anomalies came to the notice of the authority when the Respondent No.6 invoked the provisions of the RTI Act, 2005 to know the details about the recording the date of birth of the petitioner. The application was filed before the Joint Director of Health Services, he being the District Registrar of Death & Birth. After necessary communications etc. the Joint Director invited the Sr. Medical & Health Officer, who had issued the duplicate certificate to come to his office with all relevant documents for hearing the case under the RTI Act. Thereafter, by Annexure-12 communication dated 17.03.2008, the Joint Director of Health Services, Dhubri informed the Respondent No.6 that the validity of the duplicate certificate was in doubt and that the same cannot be accepted as a valid document.

8. After necessary verifications etc. were carried out, the Joint Director of Health Services, Dhubri by his Annexure-13 letter dated 19.03.2008 directed the Senior Medical & Health Officer to cancel the duplicate certificate dated 10.12.2007 following which the said Sr. Medical & Health Officer by his letter dated 25.03.2008 addressed to the Joint Director of Health Services communicated his decision to cancel the said duplicate certificate. These two annexures are impugned in this proceeding.

9. I have heard Mr. H.R.A. Choudhury, learned Sr. counsel assisted by Mr. A. . Matin, learned counsel for the petitioner as well as Mr. B. Sinha, learned counsel representing the Respondent No.6. I have also heard Mr. B. Gogoi, learned Standing Counsel, Health as well as Ms R. Chakraborty, learned Addl. Sr. Govt. Advocate, Assam representing the Respondent No.5.

10. The basic facts have been noted above. There is absolutely no doubt that the petitioner has placed reliance on the duplicate certificate dated 10.12.2007 (Annexure-6 to the writ petition) only to make her eligible to contest the election. She was aware that she was not eligible to contest the election on the basis of the date of birth recorded in the HSLC Admit Card, which is 30.09.1987.

To pave the way for issuance of the Annexure-6 purported duplicate certificate dated 10.12.2007, the petitioner placed reliance on the aforementioned Annexure-H-1 certificate purportedly issued on 14.09.1985. However, when it was found that necessary particulars are in variations, she had sworn an affidavit on 10.12.2007 to meet with the said variations. The Sr. Medical & Health Officer without any cross verification issued the duplicate certificate on the same date i.e. 10.12.2007 (Annexure-6 to the writ petition) incorporating the particulars as mentioned in the affidavit. Such course of action adopted by the Sr. Medical & Health Officer was totally uncalled for. He could not have issued the certificate naming the same to be the duplicate of what is stated to be Annexure-H-1 certificate dated 14.09.1985.

11. Mr. B. Gogoi, learned Standing Counsel, Health, upon a reference to the counter affidavit filed by the Health Department, has also submitted that the Annexure-H-1 certificate was not a valid one inasmuch as, even if, the said certificate is held to be in existence, same having been issued with the signature of an unauthorized person, same cannot be said to be a valid document. Annexure-H-1 certificate depicts that the particular certificate is with the rider 'For'.

12. Apart from the above, the said certificate dated 14.09.1985 is in the name of Musstt. Narzina Khatun and not in the name of Narjina Parvin. There is also apparent variation in the name of the parents of Musstt. Narzina Khatun and that of the names appearing in the duplicate certificate dated 10.12.2007. The most pertinent variation which stares on the face of it, is in the name of the mo

ther of the petitioner, which according to the purported original certificate is Begum Anima Khatun, but in the duplicate certificate, same is shown to be Akola Khatun.

13. Apart from the above, what has been revealed is that the petitioner has made use of the documents with the variations as per her sweet will and the Sr. Medical & Health Officer readily issued the duplicate certificate in question without any cross-verification. However, when the things came to light, the Joint Director of Health Services took action in the right direction and issued direction for cancellation of the duplicate certificate. Accordingly, the impugned communications were made.

14. The primary ground on which Mr. Choudhury, learned Sr. counsel for the petitioner has advanced his argument is that before cancelling the duplicate certificate, the petitioner was not given adequate opportunity of being heard. On the other hand, both Mr. B. Sinha, learned counsel representing the Respondent No. 6 and Mr. B. Gogoi, Standing Counsel, Health submit that having regard to the facts and circumstances involved in the case, there is no question of violation of the principles of natural justice.

15. On being asked as to what would have been the argument of the petitioner, had she been given an opportunity of being heard in respect of the impugned communications, Mr. Choudhury, learned Sr. counsel fairly admitted that the petitioner could not have agitated anything more than what has been stated in the writ petition and argued. However, Mr. Choudhury, learned Sr. counsel submits that since an election petition is pending before the Election Tribunal, the said Tribunal could have resolved the issue and the Joint Director of Health Services ought not to have issued the direction for cancellation of the duplicate certificate. I am afraid such an argument advanced by Mr. Choudhury, learned Sr. counsel for the petitioner cannot be accepted.

16. The issue involved in this writ petition is not the election of the petitioner to the particular Zila Parishad as its member. The issue involved is the legality or otherwise of the impugned decision adopted by the Joint Director of Health Services towards cancellation of the duplicate certificate in question. All the details in this regard have been noted above. The manner and method in which the duplicate certificate was issued, which is also contrary to the purported original certificate as well as the HSLC Admit Card, cannot be accepted to be a valid document. The petitioner all along accepted her date of birth on the basis of the HSLC Admit Card, which is dated 30.09.1985 and accordingly, sought for a ticket from the particular political party declaring her date of birth as September 1987. However, when the actual turn came to contest the election, she obtained the duplicate certificate by the aforesaid methodology and thereafter, placed reliance on the same so as to claim that her date of birth is 01.09.1985 and not 30.09.1987. On being asked to Mr. Choudhury, learned Sr. counsel for the petitioner as to whether the petitioner is ready to abandon the date of birth recorded in the HSLC Admit Card, Mr. Choudhury declined to make any comment on that. Thus, here is a case in which the petitioner merrily relied on two dates of birth, one on the basis of the HSLC Admit Card and another, on the basis of the aforesaid duplicate certificate obtained by her adopting dubious means.

17. Needless to say that the age recorded in the HSLCL Admit Card and/or HSLC certificate is normally accepted to be valid for all purposes i.e. for the purpose of employment or for the purpose of contesting election etc. The petitioner having obtained HSLC Admit Card recording her date of birth as 30.09.1987, the original certificate, even if, held to be pertaining to her, the said certificate got merged with the HSLCL Admit Card. She cannot now claim that her date of birth is 01.09.1985 and not 30.09.1987. In fact, the same is not also the case of the petitioner. She wants to place reliance on the two dates of birth i.e. one recorded in the HSLC Admit Card and the other recorded in the duplicate certificate.

cate issued by the said Sr. Medical & Health Officer.

18. As regards the argument advanced regarding the violation of the principles of natural justice, it will always have to be kept in mind that the principle involved and application thereof cannot lead to an useless formality. Whatever arguments the petitioner wanted to advance, have been advanced in this proceeding and, therefore, it cannot be said to be a case of violation of the principles of natural justice. The petitioner after doing the mischief by herself, cannot now take the plea of violation of the principles of natural justice.

19. For all the aforesaid reasons, I do not find any merit in this writ petition and accordingly, it is dismissed. Interim order passed on 11.4.2008 stands vacated.