

J. Pushpalatha Vs. Election Tribunal and ors.

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Court : Andhra Pradesh

Decided On : Dec-10-2002

Reported in : 2003(1)ALD488; 2004(5)ALT386

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 - Rule 3(1); Andhra Pradesh Panchayat Raj Act, 1994 - Sections 19(3); [Constitution of India](#) - Article 226

Appeal No. : WP No. 21979 of 2002

Appellant : J. Pushpalatha

Respondent : Election Tribunal and ors.

Advocate for Def. : Government Pleader for Panchayat Raj for Respondents Nos. 1 to 3 and ;A. Rajasekhar Reddy, Adv. for Respondent No. 4

Advocate for Pet/Ap. : N. Shoba, Adv.

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The office of Sarpanch of Rusthapur Gram Panchayat, Turkapally Mandal, Nalgonda District, was reserved in favour of women. The elections to the Gram Panchayat were held on 20-8-2001. The writ petitioner, the respondent No. 4 and another candidate contested in that election. The petitioner was declared as elected. Challenging the election of the petitioner, the 4th respondent filed OP No. 4 of 2001 before the 1st respondent-Tribunal (for short 'the Tribunal'). The main ground of challenge to the election of the petitioner was that she incurred disqualification under Section 19(3) of the A.P. Panchayat Raj Act, 1994 (for short 'the Act') and that, she has given birth to third child on 19-2-1996. Though there was a general allegation of irregularity and corrupt practice, the same was not pressed during the trial.

2. The petitioner resisted the O.P. It was her case that she gave birth to third child on 19-2-1995 and she did not incur any disqualification under Section 19(3) of the Act. It was her case that she did not suppress any material fact and the Returning Officer has accepted her nomination having been, duly satisfied about the compliance with the various provisions of the Act and the Rules made thereunder.

3. Taking into account the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the petitioner has proved that R1 has violated conditions laid down under Section 19 (3) of A.P. Panchayat Raj Act, 1994 and resorted to several irregularities, illegalities and corrupt practices including manipulation of date of birth of her 3rd issue, filed false nomination, to enable her to grant relief No. 1 in her favour as prayed for?

2. Whether the petitioner is entitled to be declared as having been elected as Sarpanch of Rustapur (V), Turkapally (M) Nalgonda District ?

3. To what relief?

4. On behalf of the 4th respondent, PWs. 1 to 4 were examined and documents Exs.A1 to A5 were marked. On behalf of the petitioner herein, RWs.1 to 6 were marked and Exs.B1 to B7 were marked. In addition to the same, the Court had

taken on record the documents in Ex.C1 and Exs.X1 and X2.

5. On appreciation of the oral and documentary evidence placed before it, the Tribunal through its order dated 25-10-2002 has taken the view that the petitioner has incurred the disqualification under Section 19(3), and accordingly, has set aside her election. It was declared that the 4th respondent shall be treated as having been elected. Hence, the writ petition.

6. When the writ petition came up for admission on 1-11-2002, the learned Counsel for the 4th respondent took notice and insisted that instead of granting any stay and keeping the matter pending, the writ can be disposed of finally by hearing the parties at the admission stage. The matter was accordingly heard extensively at the admission stage and taken up for disposal with the consent of the parties.

7. Smt. N. Shoba, learned Counsel for the petitioner submits that the date of birth of the third child of the petitioner, by name, Omprakash, is 19-2-1995 and the allegation of the 4th respondent that his date of birth is on 19-2-1996, is not correct. It is her contention that the sole basis for the Election Tribunal in recording a finding that the petitioner gave birth to third child on 19-2-1996, is the extract of Register of Births and Deaths, marked as Ex.C1 and the same does not contain the name of the petitioner at all. She contends that the name of the person entered in Ex.C1 is different from that of the petitioner and there was neither pleading nor evidence to connect the same to the petitioner. It is also her contention that the 4th respondent had miserably failed to establish that the entry in Ex.C1 relates to the petitioner, and at any rate, the petitioner herein has clinchingly established through documents such as Ex.B1, that the date of birth of her child is 19-2-1995.

8. Sri A. Rajasekhar Reddy, learned Counsel for the 4th respondent on the other hand submits that the petitioner gave birth to a child after the lapse of one year from the notified date under the Act and thereby incurred disqualification under Section 19(3) of the Act. He submits that even though there was no pleading or issue alleging that the name entered in Ex.C1 is that of the petitioner, the evidence on record indicates both the parties have addressed themselves to the said question and the Tribunal below had appreciated the same in its proper

perspective. It is his contention that once the Tribunal has recorded a finding on the basis of the evidence before it, the same cannot be disturbed by this Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#). According to the learned Counsel, the scope of interference under writ of Certiorari is very limited and as long as the findings are based on evidence, this Court does not interfere with such finding. He has also addressed arguments touching upon the evidence that was adduced on behalf of the petitioner and states that Ex.C1 being extract of a register maintained under a statute, would override the other documents that have been relied upon by petitioner.

9. Since it was mostly a contest between the petitioner on the one hand and the 4th respondent on the other, that too, in relation to the disqualification or otherwise of the petitioner, the learned Additional Advocate General appearing for the respondent Nos. 1 and 3 did not, rightly, touch the aspects on the basis of which the election of the petitioner was set aside.

10. As a measure to control the growth of population, the A.P. State Legislature has included the incidence of giving birth to more than two children as one of the grounds of disqualification. It is in the form of a disincentive. Sub-section 3 of Section 19 reads as under:

'A person having more than two children shall be disqualified for election or for continuing as member:

Provided that the birth within one year from the date of commencement of the Andhra Pradesh Panchayat Raj Act, 1994 hereinafter in this clause referred to as the date of such commencement, of an additional child shall not be taken into consideration for the purposes of this clause:

Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this clause for so long as the number of children he had on the date of such commencement does not increase:

Provided also that the Government may direct that the disqualification in this Section shall not apply in respect of a person for reasons to be recorded in writing.'

11. From a reading of the same, it is evident that exemption is provided in respect of a child, who is born within one year from the date of commencement of the Act, namely 21-4-1994. Therefore, any person, who gives birth to a third child after the date of 21-4-1995, shall stand disqualified either to be elected or to continue in the office under the Act. While it is the case of the 4th respondent that the third child of the petitioner by name, Omprakash, was born on 19-2-1996, it is the case of the petitioner that the said child was born on 19-2-1995, it is around this fact that the entire controversy revolves.

12. In support of her contention, the 4th respondent had examined herself as PW1, one Smt. K. Ramulamma, alleged midwife as PW2, the Mandal Revenue Officer through whom the birth extract Ex.C1 was marked; as PW3, and the Village Administrative Officer, who has made the entries in Ex.C1 as PW4. Ex.A4 is equivalent to Ex.C1. Other documents do not have much of relevance to the issue.

13. Ex.C1 is the extract of Register of Births and Deaths of Rusthapur Village for the year 1995-96. It contains the entries of the births, which are said to have taken place in January and February, 1996. At Sl. No. 6 of the said extract it is shown that on 19-2-1996 a child was born to one Pushamma, W/o. Jinna Nandamu. The same was registered on 20-2-1996 and Mr. Pochaiah is said to have furnished the information as regards the said birth. PW4 has recorded it. It is the evidence of PW1 that the said entry at Sl. No. 6 relates to the petitioner and the Pushamma referred to therein is none other than the petitioner herein. PW2, the mid-wife claims to have performed the delivery of the petitioner on the relevant date. The evidence of PW3 only relates to the furnishing of Ex.C1. PW4 is an important witness in this regard. According to him, one Mr. Pochaiah, who is a Village Servant, has furnished him the evidence and on the basis of the same he made entry.

14. Coming to the evidence that has been adduced by the petitioner, she deposed as RW1 and marked Exs. B1 to B7. Ex.B1, dated 21-9-2000 is the date of birth

certificate issued to her by the Headmaster of the school where the child was studying and attested by PW4. His date of birth as certificated under Ex.B1 is 19-2-1995. Ex.B2 is the voter election identity card showing the name of the petitioner as Pushpalatha, Ex.B3 is such a card relating to her husband on Mr. Jinna Anandam. Ex.B4 is the voters' list of the Gram Panchayat for the year 2000. Ex.B5 is the show-cause notice issued to her by the District Panchayat Officer, Nalgonda. Ex.B6 is the conduct certificate issued to her husband. Ex.B6 is the extract of admission register issued by the Headmaster of the school where the third child of the petitioner has been studying. While Exs. B1 and B7 are marked by the petitioner to contradict the evidence of Ex.C1, Exs. B1 to B6 appear to have been filed to establish that the persons referred to in Ex.C1 are other than the petitioner and her husband. The petitioner has also examined RW2, the midwife, who is said to have conducted the delivery. RW3 is the Headmistress, who issued the certificate and RW4 is another Headmaster of the same school, who made entries in the admission register. RWs.5 and 6 are officials, whose evidence does not have much of bearing on the issue. This is the conspectus of the evidence that has been adduced by the parties.

15. The Tribunal is constituted under the provisions of the Act as well as the Rules made thereunder. The Act attaches finality to the decisions rendered by the Tribunal and in that view of the matter, the decision rendered by them are not appealable. The only remedy for an aggrieved person is to file a writ petition.

16. The learned Counsel for the 4th respondent strenuously contends that the scope of interference with the orders passed by the Tribunal is very limited and except where the findings were recorded on the basis of no evidence or where the Tribunal has functioned without jurisdiction, this Court cannot substitute its own judgment for that of the Tribunal. He placed reliance upon several judgments of the Supreme Court as well as this Court in support of his contention.

17. One of the earliest decisions which he placed reliance upon is the one in *Syed Yakoob v. K.S. Radhakrishnan*, : [1964]5SCR64 , wherein the Supreme Court observed as under:

'A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals: these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned findings.'

18. The subsequent judgments have reiterated the same proposition. Reference to them would only add to the length of the judgment. Suffice to refer to the judgment of this Court rendered in *Panchumarthi Anuradha v. Avala Nagarani*, : 2002(1)ALD521 .

19. Learned Brother Justice B. Sudershan Reddy, had aptly summed up the law as under:

'It is true that it is not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. 'Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been

misconstrued or contravened.' (For the proposition see: Syed Yakoob v. Radhakrishnan, : [1964]5SCR64).

That it may not be necessary to reiterate the well known principle that re-appreciation of evidence by this Court in exercise of its certiorari jurisdiction is totally impermissible, since the certiorari jurisdiction of this Court is not akin to that of the appellate jurisdiction. Only such errors, which are self-evident, are liable to be quashed. A pure error of fact, however, grave, cannot be corrected by a writ of certiorari. But a writ of certiorari can be issued on findings of fact where the Tribunal has acted on legally inadmissible evidence, or it has refused to admit admissible evidence, or if the finding is based as no evidence at all, because in such cases the error amounts to an error of law. (For the proposition see: Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1956 SC 233).'

20. It is true that while dealing with the orders of inferior Tribunals, in its certiorari jurisdiction, this Court cannot sit in appeal against such orders. Even where a different view is possible on the same set of facts and evidence, the finding recorded by the Tribunal cannot be disturbed. It is rather a decision making process, and not the decision itself, that will be the concern of this Court. In one after the other cases, attempts were made to delineate and circumscribe the jurisdiction. Concepts, such as, 'error apparent on the face of the record', cases having been decided, 'on no evidence', 'eschewing admissible evidence' etc., emerged. While the purport of all these concepts indicated towards the restraint to be maintained, the extent of exercise or restraint, by its very nature, was left to be felt by the Courts, guided by the broad principles. Even if, all the principles laid down in authoritative precedents are put together, it cannot be said that they represent the law on the subject as a whole.

21. It is in this context, the Supreme Court in Syed Yakoob v. K.S. Radhakrishnan (supra) observed as under:

'It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the

conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record.'

22. Undoubtedly, this Court has the power to review the decision making process of the Tribunal. The various steps involved in the cases before the Tribunal till they culminate in the rendering of decision are part of the whole process. It cannot be denied that examination of pleadings, appreciation of evidence which includes acceptance or rejection of the oral or documentary evidence that may have been adduced before the Tribunal constitutes one of the facts of the decision making process. Examination as to whether it has taken into account inadmissible or irrelevant evidence has been taken into account or whether relevant or admissible evidence has been eschewed is a recognised area of judicial review. It is in undertaking such review, the Court has to be cautious, not to play the role of an appellate authority and to concede the freedom of the Tribunal to act within the framework of the law under which it was constituted. Therefore, in matters of this nature this Court can neither sit as an appellate authority nor can feel such a restraint as not to examine the order of the Tribunal at all. It is rather a striking of balance between these two, guided by certain principles of law that needs to be maintained.

23. Further, Election Petitions are to be tried by Courts, though called as Tribunals, and the procedure under CPC is made applicable to them. An element of discretion, which is available to administrative and quasi-judicial authorities, is

not available to such Tribunal. Their decision is expected to be on the basis of the findings on the contingencies provided for under the relevant statute, supported by sound and cogent reasoning and relevant evidence. Viewed from this angle, the scope of judicial review of such decisions is required to be slightly different compared to the one of purely administrative or discretionary in nature. It is in this context that a modicum of examination of the evidence, in contrast to the reappreciation of it is to be undertaken. The exercise would be to ascertain whether any inadmissible evidence was accepted and admissible evidence eschewed. If this much is not undertaken under the pretext of existence of 'some evidence', the Court can simply close the consideration of the matter, the moment it finds an appendix of evidence comprising list of witnesses examined and documents marked before the lower Tribunal.

24. One other legal aspect, which needs to be dealt with before proceeding to discuss the merits of the matter, is the one relating the importance of pleadings and issues. The learned Counsel for the petitioner contends that the 4th respondent did not plead that the petitioner is also known as Pushamma and there is no averment to that effect. She contends that no issue was framed on this aspect and that being the situation it was no way possible for the 4th respondent or for that matter the Tribunal to connect the petitioner with Ex.C-1. She places reliance upon the judgments of the Supreme Court as well as this Court in support of her contention. The learned Counsel for the 4th respondent on the other hand submits that where the parties have understood the purport of the controversy and have adduced evidence on the same, mere absence of pleading or issue is not fatal. He too relies upon certain decided cases.

25. The pleadings constitute an important aspect in an adversarial system of adjudication, in contrast to inquisitorial patterns. Pleadings are required to be precise, unequivocal and to the point. Order 6, Rule 2 of Civil Procedure Code, mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. Almost to the same effect is Rule 3(ii) of the A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads)

Rules, 1995. The origins of such requirements are to be found in the ancient Indian jurisprudence. In his Dharmakosa, Brihaspati indicated as to how a plaint should be:

'Alpaksharah, Prabhutartho, Nissandigdoh,Nirakulah!
VirodhikaranaityktyoVirodhiprathishedhakah !!'

It means--'a plaint should be brief in words, rich in content, unambiguous, free from confusion, devoid of improper arguments and capable of being traversed by the defendant and it should set out the prayer sought against the opponent'.

26. The purpose of requiring the pleadings to be precise, unambiguous and capable of being understood and dealt with by the opponent; is to ensure that the opposite party will have an opportunity to put forward his case effectively, and not taken by surprise during the trial or at subsequent stage.

27. The issues are required to be framed on the questions that arise for consideration in the case. Even to address itself to the case effectively, the Court should be in a position to understand the exact controversy. If there is no pleading on a particular aspect, the necessary to frame an issue does not arise, and consequently, the parties cannot adduce the evidence, pointed to that aspect.

28. Instances, however, are not lacking where the absence of a pleading or absence of an issue has been condoned; where the parties have gone to evidence, mutually understanding the respective cases.

29. In *Nedunuri Kameswaramma v. Samtati Subba Rao*, : [1963]2SCR208 , it was held that though existence of an issue would be more useful to the parties, absence of the same is not fatal, where the parties went to trial fully knowing the rival cases and led all evidence, not only in support of their contentions, but in refutation of these on the other side.

30. In *Kali Prasad v. Bharat Coking Coal Limited*, AIR 1989 SC 1530, the Supreme Court made the following observations:

'It was, however, urged for the appellant that there is no proper pleading or issue for determination of the aforesaid question and the evidence let in should not be looked into. It is too late to raise this contention. The parties went to trial knowing fully well what they were required to prove. They have adduced evidence of their choice in support of the respective claims. That evidence has been considered by both Courts below. They cannot now turn round and say that the evidence should not be looked into. This is a well accepted principle.'

This principle was followed by a Division Bench of this Court, in Mohd. Kareemuddin Khan (died) v. Syed Azam, 1997 (4) ALD 816 (DB).

31. While this is the general rule as to pleadings, issues and evidence, matters involving election disputes, be it under the Representation of People Act, or under various enactments, are treated on a slightly different plane. The reason appears to be that the standard of proof required in election petitions is different from ordinary civil cases. While in civil cases the standard of proof is on the touchstone of probabilities, the one in criminal cases is required to be beyond reasonable doubt. In election petition, the required standards of proof is slightly higher than those in the civil cases, but not equal to the one in criminal cases. The meticulous examination of the pleadings, affidavits, where they are required to be filed, the appreciation, extent to which such allegations are required to be proved, as evident from various decided cases by the Hon'ble Supreme Court, as indications in this regard.

32. Dealing with the importance of pleadings and the consequences of their not being up to required standard, the Supreme Court in K. Narayanaswamy v. C.P. Thirunavukkarasu, : [2000]1SCR292 , held as under:

'To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was effected. It cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences, the pleadings of corrupt practice must fail.'

33. It is true that the parameters of adjudication of allegations of corrupt practices in the proceedings under the Representation of People Act are not applicable with the same rigour and force to those under the other enactments. Their importance, however, cannot be ignored and the law governing the same can certainly provide guidance to the other similar matters. It is by keeping these principles in mind, that the matter needs to be examined.

34. In the election petition, the 4th respondent alleged that the petitioner had given birth to third child on 19-2-1996. She did make a reference to the extract of births and deaths Register, which came to be marked as Ex.C1. It is also not in dispute that the name of the petitioner herein does not figure in Ex.C1. The 4th respondent did not plead that the person referred to in the relevant column at Sl. No.6 of Ex.C1 is the writ petitioner herself. Obviously, because there is no pleading, the Tribunal did not frame an issue as to whether the person referred to in column No. 6 in Ex.C-1 is the writ petitioner at all. In her chief-examination, the respondent No. 4, as PW1, deposed that the petitioner herein is also called as 'Pushamma' and her husband is called as 'Nandam'. It was elicited from her in the cross-examination that the name of the writ petitioner was Jinna Pushpalatha and the same name was entered in the voters' list and that the name in Ex.C1 was Pushamma. It was also suggested to her that the petitioner is not the person referred to in Ex.C1; she admitted that no person by name Pushamma resided in that village. PW2 is one K. Ramulamma, who claims to have performed the delivery of the third child of the petitioner as mid-wife. She too has claimed that the petitioner is known as Pushamma also. She claims to have attended one-lakh deliveries. It was her case that her daughter-in-law has also gave birth to a child three or four days after the petitioner is alleged to have given birth to her child in February, 1996. She does not speak about Ex.C1. Even according to her, the entry was made from the information submitted by a Kavalicar (village servant) to the Village Administrative Officer. Ex.C-1 does not contain the registration of the birth of the child said to have been born to the daughter-in-law in the same village with a difference of 3 to 4 days from the date of delivery of the third child of the petitioner. The tone, tenor and content of the evidence of this witness, leaves any Court with no option, but to discard the same, PW3 is the Mandal Revenue Officer with whom Ex.C1 was marked. It was elicited through him in the cross-

examination that there is no mention of the name of the petitioner in Ex.C1. PW4 is an important witness. He is the person who worked as Village Administrative Officer at the relevant point of time. He claims to have made the entries in Ex.C1 on the information furnishing to him by the village servant. He admitted that he has attested Ex.B1, which is a date of birth certificate issued by the school; where the date of birth of the third child of the petitioner is shown as 19-2-1995. He offers no explanation as to why there are no entries of the year 1995 or the other months in 1996 in Ex.C1, which are said to be the extracts of births in 1995 and 1996. Once he has attested Ex.B1, he cannot vouch for the correctness of the entry in Ex.C1.

35. Reference to the deposition of these witnesses is not made with a view to reappreciate the same and to examine whether a different finding is possible at all. The effort is to see as to even by relaxing the requirement as to pleadings and issues, it can be said that the petitioner could be connected to Ex.C1 at all. It needs to be noted that neither the 4th respondent nor other witnesses examined by her, particularly PW2 and PW4 have deposed to the effect that the person by name Pushamma figuring in Ex.C1 is none other than the writ petitioner. The only person who could have thrown light on this aspect was the village servant, who is said to have furnished the information leading to entries in Ex.C1. Neither he is examined nor any explanation is offered for his non-examination. If she could not be connected, the findings arrived at by the Tribunal can be a result of error apparent on the face of the record.

36. In important public records, such as, the voters' list, the voter identification card etc., the name of the petitioner was recorded as Jinna Pushpalatha and the name of her husband was recorded as Jinna Anandam. That being the situation, to connect the petitioner and her husband to Ex.C1 would result in drawing inference by adopting an involved process of reasoning. The Supreme Court in V. Narayanaswamy v. C.P. Thirunavukkarasu (supra) held that the same is not permissible. The Tribunal did nothing but the same, when it recorded the following finding:

'As a matter of fact, the school authorities are necessarily required to obtain CC of birth certificate of child at the time of admission, but in the instant case the school

authorities have not obtained such a certificate or Janmapatrika and without any basis accepted the date of birth mentioned in admission form on 3rd issue or and RW4 has specifically admitted that there is no basis for date of birth mentioned in Ex.B7 and its original except admission form.

Though Ex.C1 contains Pushamma w/o. Nandam but for that there is cogent and convincing evidence of PWs2 and 4 supporting the evidence of PW1 that R1. J. Pushpalatha is called as Pushamma and her husband Anandam is called as Nandam and the said alias names are identical to their names. Further RW1 and PW2 & 4 have categorically stated that there is no person by name Pushamma w/o Nandam in their village, therefore there is strong presumption to believe that Ex.C 1 and extract of it Ex.A4 pertains to the date of birth of 3rd issue of R1, irrespective of lack of pleadings of petitioner to that effect.'

37. The petitioner herein had placed before the Tribunal Ex.B1, which is the date of birth certificate issued by the school. Ex.B1 is the date of birth certificate issued by the Headmaster of a Government School where the 3rd child of the petitioner has been admitted. Ex.B7 is the extract of the admission register of the school. The Headmaster, who made the entries in Ex.B7 and the Headmistress, who issued Ex.B1, are examined. Ex.B1 was attested by PW4, the Village Administrative Officer. The Tribunal below appears to have refused to act on these documents in view of the judgment in Anant Ram v. The State of Punjab, . It was cited on behalf of the 4th respondent. That case dealt with the entries in non-governmental schools. The Tribunal below recorded a finding that the entry in Ex.B7, the admission register, cannot be connected upon on the ground that there was no basis to entry made therein. The relevant observation reads as under:

'As a matter of fact, the school authorities are necessarily required to obtain C.C of birth certificate of child at the time of admission, but in the instant case the school authorities have not obtained such a certificate or Janmapatrika and without any basis accepted the date of birth mentioned in admission form on 3rd issue or R1 and RW4 has specifically admitted that there is no basis for date of birth mentioned in Ex.B7 and its original except admission form.'

38. No provision of law is referred to in support of this finding. Ex.B7, which is the admission register of the school, was proved when the Headmaster made the entries was examined, as witness. Refusal to accept the same amounted to discarding admissible evidence. Ex.B1, which is a certificate emanating from a Government School and which was attested by PW4, who, incidentally, is the author of Ex.C1, could not have been ignored at all. This Court does not feel the necessity to go into the other inconsistencies that can be discerned from the order of the Tribunal for the simple reason that the proceedings before this Court are not in the form of a regular appeal.

39. An aspect, which needs to be kept in mind is that the election process, is the lifeline of democracy. The result of the elections indicates the mandate given by the electorate. In setting aside the election, a Tribunal or the Court, as the case may be, would not only be depriving of the elected candidate of his or her elected office, but also would be reversing the mandate of the electorate. The same can be resorted to only when the contingencies provided for under the relevant statutes are firmly and clinchingly established. Extension of logic and reasoning have very little place in such cases. The disqualification attached under Section 19(3) of the Act visits the concerned individual with unfavourable and disadvantageous, if not, punitive consequences. In a way, it deprives such persons, of the rights vested in them, or denies to them, which others are entitled to. Even this would result in drastic consequences, so far as such person is concerned. Such deprivation also should be on strong footing and findings, which should be unequivocal and where no second view is possible. Even where two views are possible, the one, which respects the verdict of the electorate and sustains the rights of the individual, should be preferred to the one, which reverses the mandate of the electorate or deprives the elected person of his office.

40. If the findings recorded by the Tribunal are examined, with reference to the parameters of writ of Certiorari and other principles referred to above, it is evident that the Tribunal had recorded findings, which suffer from error apparent on the face of the record and are opposed to other settled principles of election law. When the 4th respondent has failed to establish that the petitioner had given birth to the third child on 19-2-1996, the election of the petitioner cannot be set aside on

the basis of surmises or probabilities.

41. The order of the Tribunal in OP No. 4 of 2001 is accordingly set aside. The writ petition is allowed. In the circumstances of the cases, there shall be no order as to costs.

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