

A.F.R.

Judgment Reserved on 27.09.2019
Judgment Delivered on 16.12.2019

Court No. - 5

Case :- ELECTION PETITION No. - 8 of 2017

Petitioner :- Nawab Kazim Ali Khan

Respondent :- Mohd. Abdullah Azam Khan

Counsel for Petitioner :- Sayed Fahim Ahmad, Anurag
Asthana, Kalpana Sinha, N.K. Ali Khan (In Person), Raghav Nayar, Rahul
Agarwal, Syed Fahim Ahmed

Counsel for Respondent :- N.K. Pandey, Hridaya Narayan
Mishra, Nazia Rafiq Khan, R.P.S. Chauhan, Safdar Ali Kazmi

Hon'ble Surya Prakash Kesarwani, J.

1. Heard Shri Naveen Sinha, learned Senior Advocate, assisted by Ms. Kalpana Sinha and Shri Raghav Nayar, learned counsel for the election petitioner and Sri N.K. Pandey along with Sri S.A. Kazmi, learned counsel for the respondent - returned candidate.

Facts

2. Briefly stated facts of the present case are that notification under the Representation of the People's Act 1951 (hereinafter referred to as "the Act 1951") was issued notifying for election of U.P. State Legislative Assembly from 34-Suar, District – Rampur constituency. A public notice was also issued by the Returning Officer fixing the following programme for holding the election from the aforesaid constituency :-

(a) Date of filing nomination	25.01.2017
(b) date of scrutiny of nomination papers	28.01.2017
(c) Date of Withdrawal of nomination papers	30.01.2017
(d) Date of allotment of symbols	01.02.2017
(e) Date of poll	15.02.2017
(f) Date of counting	11.03.2017

3. After scrutiny and withdrawal of nomination papers, the election petitioner and six other persons including the respondent were the candidates who remained in the field for the election. Before the Returning Officer the Election petitioner filed an objection against the respondent alleging that the respondent is less than 25 years of age and, therefore, he is not qualified to contest the election in view of Article 173(b) of the Constitution of India. The objection was rejected by the Returning Officer. The election took place as per schedule in which the respondent - Mohd. Abdullah Azam Khan, son of Mohd. Azam Khan who had filed his nomination papers on 24.1.2017, was declared elected on 11.3.2017. He secured 1,06,443 votes. The petitioner stood 3rd and had secured 42,233 votes.

4. The election petitioner has filed the **present election petition** on the sole **ground** that “*the respondent was not qualified to contest the election for member of legislative assembly in view of Article 173(b) of the constitution of India, inasmuch as the respondent was less than 25 years of age when he filed his nomination papers and when he contested the election from 34 Suar, District- Rampur constituency.*”

5. The **concise statement of material fact** in respect of ground reproduced above, have been mentioned in paragraphs 25 to 28 of the election petition, which **are reproduced below :-**

25. That the concise statement of material facts, in respect of ground A are as follows:

(i) That the respondent was born on 01.01.1993, and, therefore, as on the date of the nomination of scrutiny, the said Mohd. Abdullah Azam Khan, respondent was much below 25 years of age.

(ii) That the said Mohd. Abdullah Azam Khan – respondent appeared in Secondary School (Class-X) Examination in the year 2007. When he appeared for Secondary School examination, his roll number was 5260139. He appeared from St. Paul's School, Rampur, which was affiliated with the Central Board for Secondary Education, New Delhi.

(iii) That the respondent Mohd. Abdulla Azam Khan himself filled-up the admission form and examination form, and in his own handwriting,

mentioned his date of birth as 01.01.1993. The record of the appearance and examination of respondent Mohd. Abdullah Azam Khan are available with the Central Board for Secondary Education, New Delhi.

(iv) That the Central Board for Secondary Education has issued the Secondary School Examination (Class-X) result bearing the roll number, name, mother's name and father's name and date of birth of respondent Mohd. Abdullah Azam Khan. As per the certificate, the mother of respondent is Tazeen Fatima and his father is Mohd. Azam Khan. The date of birth as recorded in the certificate for Secondary School Examination (Class-X) results of the respondent Mohd. Abdullah Azam Khan is 01.01.1993. A copy of the certificate for Secondary School Examination (Class-X) results of respondent Mohd. Abdullah Azam Khan obtained from the Central Board for Secondary Education is enclosed and marked as Annexure-4 to this petition.

(v) That the respondent Mohd. Abdullah Azam Khan appeared in Intermediate examination in the year 2009 from St Paul's School, Rampur. The said papers and records are available with St Paul's School, Rampur and the Central Board for Secondary Education (CBSE) Delhi.

(vi) That the petitioner has made best efforts to get the admission form, examination form as also documents pertaining to the Intermediate Examination of the respondent Mohd. Abdullah Azam Khan, but has not been able to get the same. The petitioner has only been able to get the certificate for Secondary School Examination (Class X) results of the respondent from the Central Board for Secondary Education.

(vii) That the respondent Mohd. Abdullah Azam Khan thereafter joined Galgotias University, Greater Noida for his Master's Degree where he has filled-up form for admission with the same date of birth. The record of respondent Mohd. Abdullah Azam Khan in respect of his Master's Degree is available with Galgotias University, Greater Noida.

26. That apart from the above facts, documents will be available to prove that the respondent Mohd. Abdullah Azam Khan was disqualified from contesting the election and, therefore, he should be treated as not eligible to contest the election.

27. That the election of the respondent Mohd. Abdullah Azam Khan is void on the facts and ground stated in the petition.

28. That in view of these facts and circumstances, it is abundantly clear that the respondent was not qualified to contest the election for being elected as member from 32-Suar assembly constituency as he was less than 25 years either on the date of scrutiny

or even on the date of the election; therefore, his election from 34-Suar assembly constituency in District Rampur is liable to be set aside by this Hon'ble Court.

6. It is admitted to the respondent that he is the son of Mohd. Azam Khan, who was MLA and the then Cabinet Minister (Urban Planning, Development and Local Bodies) in Government of Uttar Pradesh, during the year 2012 to 2017. The respondent filed written statement dated 11.11.2017 (paper No.A-7).

7. The **following issues** have been framed in the present election petition:-

ISSUES

(a) Whether as on the date of filing of nomination papers i.e. on 25.1.2017 and on the date of scrutiny of nomination papers i.e. 28.1.2017 and on the date of declaration of result i.e. 11.3.2017, the respondent had attained 25 years of age in terms of Article 173 (b) of the Constitution of India for contesting the election of Legislative Assembly from 34-Suar Constituency, District Rampur ?

(b) Whether under the facts and circumstances of the case, the respondent was eligible to contest the election of Legislative Assembly from 34-Suar Constituency of District Rampur on 25.1.2017 or 28.1.2017 or 11.3.2017 in terms of the provisions of Article 173(b) of the Constitution of India ?

(c) If the answer to Issue Nos. 1 and 2 are in negative, i.e. against the respondent, then its effect and to what relief the election petitioner is entitled ?

8. Both the parties have led documentary and oral evidences. Following papers have been admitted in evidence and have been marked as Exhibits as under :-

Petitioner's Evidences:

<u>Ex. No.</u>	<u>Paper No.</u>	<u>Brief particulars</u>
P1 (A-49/1 to A 53/1)	A 49/1-4	Pass port application dated 06.07.2012 of the respondent under his signature mentioning his date of birth 01.01.1993, and place of birth Rampur. Earlier Pass port No.F-8757022, was issued on 28.08.2006 which expired on 31.12.2010. The new passport No. K7951741 was issued by the Pass Port Officer, Bareilly on 13.07.2012 for the period till 12.7.2022. Some papers of Ex.P-1 are mentioned below.
	A 50/1 – A 50/4	Copy of Bank Pass Book of the respondent of his bank account in State Bank of India, Nawab Gate, Rampur.
	A 51/1	Copy of birth certificate No.3857 issued by Nagar Palika Parishad, Rampur mentioning date of birth of the respondent as 01.01.1993, Place of birth Rampur, Registration No. RNPB 2012 - 03857, date of Registration 28.06.2012 and date of issue 28.06.2012
	A 52/2 – A52/3	Copy of respondent's pass port no. F8757022, dated 28.08.2006 mentioning date of birth as 01.01.1993
	A 53/1	:Passport preview details of pass port No.K-7951741, dated 13.07.2012 mentioning respondent's date of birth as

01.01.1993 and old pass port No.F8757022, dated 28.08.2006

P-2 A-60/1-2 :Copy of the respondent's pass port application dated 10.01.2018 mentioning his date of birth as 30.09.1990 and place of birth Lucknow
(A-60/1 to A-78)

A-61/1 “on line appointment receipt” issued by Ministry of External Affairs, Government of India for the aforesaid Passport application dated 08.01.2018

A-62/1-3 Copy of the respondent's pass port No. **K7951741, dated 13.07.2012** bearing his date of birth as **01.01.1993** and entries of departure/arrival dated **30.04.2013, 05.05.2013, 09.06.2015 and 26.07.2016.** A-62/3 is respondent's Visa dated **09.07.2014** mentioning his date of birth as **01.01.1993**

A-63/1 **Birth certificate dated 21.1.2015** issued by Registrar Birth and Death, Lucknow, mentioning date of birth **30.09.1990**, place of birth – Queen Mary's Hospital, Lucknow, U.P., and Registration No.**NNLKO – B-2015-292611 and date of registration 21.01.2015**

A 64/1 **Order of registrar birth and death, Nagar Palika Parishad, Rampur, dated 30.1.2015, cancelling the birth certificate of**

the respondent dated 28.6.2012, as under :-

“श्री मोहम्मद अब्दुल्ला आजम खान पुत्र श्री मोहम्मद आजम खान निवासी मो0 घर मीर बाज खां, जेल रोड रामपुर को इस कार्यालय द्वारा दिनांक 28-06-12 को निर्गत जन्म प्रमाण पत्र आज दिनांक 30-01-15 को निरस्त किया जाता है।”

- A-65/1 Copy of respondent's U.P. Legislative Assembly Identity Card dated 14.03.2017
- A-66/1 Copy of Adhar Card of the respondent's dated 7.3.2015
- A-67/1 Copy of respondent's driving licence
- A-68/1 Copy of respondent's voter I.D. Card dated 18.07.2016.
- A-69/1 Copy acknowledgment dated 10.1.2018 issued by Regional Passport Officer, Bareilly for application dated 10.1.2018
- A-70/1 **Copy of respondent's application dated 10.1.2018 to the Regional Passport Officer Bareilly stating that “I had applied for reissue of passport due to change of date of birth and place of birth.”.**
- A-75/2 Letter of Regional Passport Officer, Bareilly, dated 11.01.2018 to Registrar birth and death, Municipal Corporation, Lucknow for verification of birth certificate of the respondent.
- A-76/1 Letter of the Registrar Birth and death, Nagar

Palika Parishad, Rampur, addressed to Regional Passport Officer, Bareilly, confirming issuance of letter dated 30.1.2015 about cancellation of birth certificate of the respondent.

- P3 A-80/1 Copy of birth certificate of Mohd. (A-79 Abdulla Azam Khan (Respondent) dated to 28.06.2012 bearing date of registration A-80/1) RNPB 9012-03857, dated 28.06.2012 issued by Nagar Palika Parishad, Rampur on the basis of original record of birth. This birth certificate was got cancelled by the respondent by order of the Registrar dated 30.01.2015**
- P4 A-25/1 Copy of Secondary School examination Class X result 2007, issued by Central Board of Secondary Education showing respondent's date of birth of as 01.01.1993**

Oral evidence of Election-petitioner

P.W. 1 - Kazim Ali Khan (Election-petitioner)

P.W. 2 - Mohd. Naseem, Passport Officer, Bareilly

P.W. 3 - Mohd. Ateer Ansari, Junior Passport Assistant, Bareilly

P.W. 4 - Tej Pal Singh Verma, Chief Sanitation and Food Inspector /Deputy Registrar Birth and Death, Nagar Palika Parishad, Rampur

Defendant's/respondent's Evidences**Documentary Evidence**

9.

Ex.No.	Paper No.	Brief Particular
R1	A 30	List of candidates who filed nomination papers
R2	A 31	Symbol allotment list issued by Returning Officer
R3	A32	Declaration of results by Returning Officer on 11.03.2017
R4	A100/1-2	Copy of page no.174 of EOT Register of Queen Mary's Hospital, Lucknow , containing entries of admission of patients dated 29.09.1990 , and thereafter entries dated 7th August 1990, 22.09.1990 and 24.09.1990
R5	A101/1-2	Copy of page No.225 of MLR Register of Queen Mary's Hospital bearing cuttings and overwriting and no date of admission of Mrs. Tazeen Fatima (mother of the respondent)
R6	A37	Duplicate birth certificate dated 21.04.2015 issued by Queen Mary's Hospital of K.G. Medical University containing baby's name "baby of Tazeen Fatima" born on 30.09.1990
R7	A38/1-2	Discharge ticket of indoor patient Tazeen Fatima in Queen Mary's Hospital admitted on 07.08.1990 and discharge on 24.10.1990
R8	A41/1-3	Information dated 12.09.2017 given by Professor Vineeta Das, HOD King George Medical University to the mother of the respondent under the RTI Act 2005 intimating that as

		per rules of the hospital, record of only 10 years is kept. Since matter is of 1990, therefore, true copy of admission register containing entries is not possible to be given. Admission slip is kept by the patient, discharge certificate (paper No. A38/1-2) as produced by Tazeen Fatima is attested.
R9	A42/1-5	Information given by King George Hospital by letter dated 19.09.2017 to the respondent under the RTI Act based on the information of Professor Vineeta Das, HOD King George Medical University by letter dated 12.09.2017 addressed to the Information Officer and mentioning that : “मोहम्मद अब्दुल्लाह आजम खान के जिस पृष्ठ पर जन्म का विवरण अंकित है उसकी सत्यापित प्रतिलिपि एवं उसके प्रथम पृष्ठ की सत्यलिपि इस पत्र के साथ संलग्न है। सूचनार्थ प्रेषित”(paper No.A100/2)
R10	A47/1-7	Copy of pay bill Register of Rajkiya Mahila PG College, Rampur for the month of August 1990, December 1992, January 1993 and February 1993
R11	A95/1-34	Copy of service book of Tazeen Fatima, lecturer, political science who was made permanent by Government Order dated 11.02.1997 w.e.f. 20.04.1988. She submitted her GIS nomination form under his own signature on 26.04.2001(A95/25) nominated Mohd. Azam Khan (husband) 53 years -50%, Mohd Adeel Ajam Khan (Bitu) (son) 15 years – 25% and Mohd. Abdullah Azam Khan (son) 8 years – 25 %
R12	A-96/1-5	Application of Dr. Tazeen Fatima, dated 17.01.2015 (mother of the respondent) to

		Nagar Swastha Adhikari, Nagar Nigam, Lucknow, requesting him to issue birth certificate of her son Mohd. Abdullah Azam Khan as per enclosed affidavit. Her son's birth may be got verified from the records of Queen Mary's Hospital.
	A96/3	Computer generated sheet of Nagar Nigam, Lucknow, mentioning date of birth registration 21.012015, date of birth 30.09.1990 and name Mohd. Abdullah Azam Khan, place of birth – Queen Mary's Hospital, dated 21.4.2015
	A96/4-5	Photostat copy of birth register of Nagar Nigam, Lucknow containing entry in the name of Abdullah Mohd. Azam Khan recorded in the register on 30.09.1990. Above it on A95/4 are two entries of birth recorded on 07.02.1992 and 25.06.1993 bearing order of some officer to record the birth. The next page (A95/5) starts with the date 02.10.1990 but at the bottom of the page dates are 26.09.1990 and 27.09.1990

Oral Evidence of Defendant/respondent

10.

D.W.-1 - Dr. Shailendra K. Tiwari, Assistant Director of Higher Education, U.P. Prayagraj

D.W.-2 - Dr. Archana Dwivedi, Additional Municipal Commissioner, Lucknow

D.W.-3 - Dr. Uma Singh, Sr. Gynecologist Queen Mary's Hospital
(Department of Obst. & Gyno.)

D.W.-4 - Dr. Vineeta Das - HOD Obst. & Gyno., Queen Mary's
Hospital, Lucknow

D.W.-5 - Dr. Tazeen Fatima, (mother of the respondent)

D.W.-6 - Dr. Vandana Sharma - Principal Rajkiya Mahila Post Graduate
Degree College, Rampur.

D.W.-7 - Arun Josheph Dayal. Director Saint Paul School, Civil Line,
Rampur

D.W.-8 - Dr. Satibir Sing Ken, Radiologist, District Hospital, Rampur

D.W.-9 - Shahzeb Khan, friend of father of the respondent

D.W.-10 - Mohd. Abdullah Azam Khan, respondent

11. The witnesses as aforementioned were examined and cross
examined by the parties.

Submissions on behalf of Election-petitioner

12. **Sri Navin Sinha, learned counsel for the petitioner
submits as under:**

(i) Article 173 (b) of the Constitution of India provides that person shall not be qualified to be chosen to fill a seat in the legislature of a State unless he is, in the case of a seat in the legislative assembly, not less than 25 years of age and, in the case of a seat in the legislative council not less than 30 years of age. Therefore, the respondent being less than 25 years of age as on the date of filing of nomination papers, on the date of scrutiny and on the date of declaration of result was not qualified to contest the election of the State legislative assembly. Therefore, his election is null and void.

(ii) The facts in support of the ground to challenge the election of the respondent are mentioned in paragraph 25 and sub paragraph of the election petition which are reiterated.

(iii) Ex. P-4 (Paper No. A25/1) is the Class X mark sheet/certificate of the respondent issued by the Central Board of Secondary Education in the year 2007 in which respondent's date of birth is recorded as 01.01.1993. As per Ex. P-1, P-2 and P-3, also the date of birth of the respondent is 01.01.1993. In paragraph 13 of the Election petition, the election petitioner has clearly stated that the date of birth 30.09.1990 as mentioned in the Adhar Card is not the correct date of birth of the respondent - Mohd. Abdullah Azam Khan and infact the certificate of Secondary School Examination (Class 10th) of the respondent issued by Central Board of Secondary Education New Delhi correctly reflects his date of birth. This paragraph has been replied by the respondent in paragraph 13 of the written statement in which he has not denied the Ex. P4 which has also been filed as Annexure 4 to the Election-petition and instead he merely stated that his date of birth is incorrectly mentioned or recorded as 01.01.1993 in the certificate for Secondary School Examination (Class 10th) issued by CBSE, New Delhi, for which he has already taken steps for correction. Thus, it has been well proved that the date of birth of the respondent has always been recorded as 01.01.1993 from the very beginning. He has also disclosed his date of birth as 01.01.1993 while obtaining passport in the year 2006 and in the year 2012. As per birth certificate issued by Registrar of Birth and Death, Nagar Palika Parishad, Rampur, the date of birth of the respondent is 01.01.1993. The witness have also proved his date of birth as 01.01.1993. Even her mother has filed a nomination form for group insurance scheme in the year 2001 in which she has mentioned age of the respondent to be 8 years which also shows the birth year of the respondent to be the year 1993. Thus, from the evidences it has been well established that the respondent was born in the year 1993 and not on 30.09.1990.

(iv) In paragraphs 54 and 55 of the written statement the respondent has stated that in the year 2015 while he was pursuing his studies of M.Tech and was forwarding towards his carrier/job, he scrutinised his educational records and then came to know that his date of birth is incorrectly recorded as 01.01.1993 in place of 30.09.1990 and then he took immediate steps for correction of the same by filing an application on 23.03.2015 under the provisions of the Examination bye laws of the CBSE, New Delhi. The CBSE has not accepted the application of the respondent. Thus, his date of birth as per Clause 10th mark sheet/certificate continues to be 01.01.1993 which is also supported by various documentary and oral evidences on record.

(v) The alleged Adhar Card and voter ID Card are not proof of age or birth. That apart all these papers being relied by the respondent were obtained after March 2015. The evidence of D.W. 3 – Dr. Uma Singh to prove the duplicate birth certificate dated 21.04.2015 and that a male child born to the mother of the respondent are wholly untrustworthy and has no basis. That apart D.W. 3 herself stated that she can not say that the child was born to Tazeen Fatima on 30.09.1990 is the respondent. She admitted that the register produced by her is not authenticated and does not bear signatures of any Officer or staff of the hospital. She also admitted that she has not made entries regarding birth of a child by Tazeen Fatima on 30.09.1990. As per witnesses of the respondent the entries in the birth register of Nagar Nigam, Lucknow, is made on the basis of intimation received from the hospital but no evidence has been led either that the hospital sent the intimation to the Nagar Nigam, Lucknow or the Nagar Nigam, Lucknow, received such an intimation. In any case if actually any intimation was given by the Hospital to the Nagar Nigam, Lucknow, regarding birth of the respondent then the birth would have been registered on 30.09.1990 or within one or two days of the receipt of the alleged intimation from the Hospital but the birth certificate of the

respondent has been issued by the Nagar Nigam, Lucknow, on mere asking by few lines affidavit of the mother of the respondent asking the Nagar Nigam, Lucknow, to issue birth certificate. The Birth certificate so issued is a complete nullity particularly in view of the provisions of Section 13 of the Registration of Birth and Death Act. The birth certificate issued by the Nagar Nigam, Lucknow dated 21.01.2015 is manipulated and bogus.

(vi) The copy of EOT register and MLR register as well as oral evidence led by the respondent are untrustworthy and does not prove that the respondent's date of birth is 30.09.1990. Infact these evidences are the result of manipulation and fabrication of record.

(vii) Father of the respondent Mohd. Azam Khan, was the Cabinet Minister in the U.P. Government in the year 2015 holding portfolio "Urban Planning and Development and Local Bodies" and the Nagar Nigam, Lucknow and Nagar Palika Parishad, Rampur both were under his ministry. The birth certificate issued by Nagar Nigam, Lucknow and cancellation order of the old birth certificate of Nagar Palika Parishad, Rampur are false, fabricated and procured manipulated piece of papers. These papers have been procured in breach of the Provisions of the Act. The alleged birth register shown by D.W. 2 is based on manipulation. After the birth certificate was procured by the respondent from the Nagar Nigam, Lucknow, then the entire papers relating to his birth certificate issued by Nagar Palika Parishad, Rampur were shown to have been burnt in an alleged fire on 08.05.2015 in the office of the Nagar Palika Parishad, Rampur.

(viii) The Nagar Nigam, Lucknow has shown the date of registration of birth of the respondent on 21.01.2015 but shown the receipt of information of birth of the respondent in the month of April 2015 which shows that the birth certificate issued by the Nagar Nigam, Lucknow is false and is the result of manipulation and influence.

(ix) No conclusion can be drawn regarding the age of the respondent on

the basis of Medical Board report dated 27.01.2017 (paper No.A-40 filed by the respondent alongwith list of papers). D.W. 8 - Dr Satibir Singh in his cross examination could not explain the conclusion of average age of 26 years. Therefore, no conclusion can be drawn about the age of the respondent on the basis of opinion of the medical board and that too against the documentary evidences.

(x) Entire family of the respondent is well educated. He himself is M.Tech. Her mother was a Professor of Political Science in a Degree College. His father is also highly educated and is a very active politician and has been Cabinet Minister in the State Government. From the very beginning his date of birth has always been recorded in various Government record as 01.01.1993. The respondent himself has applied for various certificates, PAN and Pass Port mentioning his date of birth as 01.01.1993. Therefore, the stand taken by the respondent in the present election-petition that while scrutinising his educational certificate in the year 2015 he came to know that his date of birth is incorrectly mentioned in Class 10th marksheet/certificate as 01.01.1993 is false. It is merely to contest the election that the respondent got falsely changed his date of birth.

(xi) The question of burden of proof has become academic inasmuch as both the parties have led their evidences on the point of age of the respondent.

(xii) Section 35 of the Evidence Act only provides for presumption of relevant fact of entries made by a public servant to discharge his official duty. Entries of such record can be proved by producing in evidence the person responsible for maintaining the register and for making entries therein. No such person responsible for maintaining the register and for making entries in EOT register, MLR register and birth register of the Nagar Nigam, Lucknow, were produced by the respondent in evidence. Even D.W. 4 is the head of the Department of Obst. & Gyno. of King George Hospital/Queen Mary's Hospital and she has stated

in a letter addressed to the Information Officer that no record is kept by the Hospital beyond 10 years and, therefore, it is not possible to give copy of entries of the year 1990. However, surprisingly unauthenticated unsigned EOT and MLR registers were produced by D.W.-3 and D.W.-4 in evidence. D.W.-2 Dr. Archana Dwivedi, Assistant Municipal Commissioner is not the person who has maintained or made entries in the birth register of the Nagar Nigam, Lucknow. The alleged birth register also does not bear signature of any Officer or employee. It is not an authenticated register. It has not been maintained in terms of the provisions of the Registration of Birth and Death Act and the Rules framed thereunder. Therefore, the birth certificate issued by the Nagar Nigam, Lucknow on the basis of such a register is of no consequence, unproved and totally irrelevant. Even the procedure as stated by D.W.-3 and D.W. 4 was not adopted while issuing duplicate birth certificate of Queen Mary's Hospital.

13. Lastly, he submitted that as per documentary evidences on record the date of birth of respondent is 01.01.1993 and he was below 25 years of age at the time of filing of his nomination papers, scrutiny of the nomination papers and declaration of the result. Therefore, his election is null and void as he was not qualified to contest the election. Consequently, his election deserves to be set aside.

14. Sri Sinha has relied upon judgments of Hon'ble Supreme Court in the case of **Sushil Kumar Vs. Rakesh Kumar 2003 8 SCC 673**, (paras 23 to 41, 44, 51, 79 and 80), **Mukarrab and others Vs. State of U.P. (2017) 2 SCC 210** (paras 26 to 29) on the point of Ossification test and the judgment of this Court in **Misc. Bench No.13419 of 2018 (Smt. Parwati Kumari and others Vs. State of U.P. and others, judgment dated 09.01.2019** (paras 8 and 13) and in **Zeba Haseeb @ Ankita Vs. State of U.P. And others 2015 (2) ADJ 215** (paras 16 and 17).

Submissions on behalf of the respondent

15. Sri N.K. Pandey, learned counsel for the respondent submits as under:-

(i) Onus is on the election petitioner to adduce evidence in support of Issue Nos.(a) & (b) in view of the provisions of Order XVIII Rule 2(1) of the CPC.

(ii) The election-petitioner has failed to file a certified copy of the Class 10th marksheet/certificate of the respondent issued by CBSE. Therefore, such a certificate can not be relied. It is an internet copy downloaded from the website of the CBSE Board and not a copy issued by the CBSE Board.

(iii) The news paper cutting etc. as alleged in the election petition, have neither been filed in evidence nor could be proved by the election-petitioner.

(iv) The respondent has clearly stated in paragraph 16 of the written statement that his date of birth was incorrectly recorded as 01.01.1993 in the certificate of Class 10th examination.

(v) In paragraph 51 of the written statement it was explained that four issues were born to the mother of the respondent out of which only two survived, namely, the respondent and his elder brother Mohd. Adil. Complete details in this regard has been given in paragraphs 48 and 49 of the written statement.

(vi) Document No.1 filed alongwith the election petition contains some document which were not even part of nomination papers.

(vii) The date of birth mentioned in the pass port of the respondent issued on 10.01.2018 correctly records his date of birth as 30.09.1990 and the date of birth was lawfully got corrected.

(viii) The P.W.- 4 is which the authorised Officer/Deputy Registrar of Nagar Palika Parishad, Rampur, who has stated that entire records relating to birth of the respondent were burnt in fire on 28.05.2015.

(ix) Respondent has well proved by documentary as well as oral

evidence that he was born on 30.09.1990 and not on 01.01.1993.

(x) The birth of the respondent on 30.09.1990 is further proved from the facts that mother of the respondent's took maternity leave from 07.08.1990 to 04.11.1990(Ex R11).

16. In support of his submissions Sri Pandey has relied upon the judgments of Hon'ble Supreme Court in **Brij Mohan Singh Vs. Priya Brat Narain Sinha**, AIR 1965 SC 282 (para 20 and 21) regarding mentioning of wrong date of birth in School Certificate, **Birad Mal Singhvi Vs. Anand Purohit**, 1988 Suppl. (1) SCC 604, regarding burden of proof to be on the election-petitioner, **Thiru John Vs. The Returning Officer**, AIR 1977 SC 1724 (paras 13,17,21,32,33) holding that since birth certificate was lost it could not be produced and, therefore, it must be held to be a neutral circumstances, **Ravinder Singh Gorkhi Vs. State of U.P.** (2006) 5 SCC 585 on the point of Section 35 of the Evidence Act and the judgment of Hon'ble Supreme Court in **Sushil Kumar Vs. Rakesh Kumar** 2003, 8 SCC 673 (paragraphs 28 to 36).

Discussion, Analyses of Evidences and Findings

17. I have carefully considered the submissions of learned counsels for the parties and perused the records of the case and evidences led by the parties. Since issues No. (a) & (b) are interlinked, therefore, both these issues are being decided together.

Issue No. (a) & (b)

18. The whole controversy involved in the present election-petition is as to whether the respondent-winning candidate was below 25 years of age and thus not qualified to contest election from legislative assembly 34-Suar, District – Rampur, assembly constituency, under Article 173(b) of the Constitution of India, as on the date of filing nomination paper i.e. 25.01.2017, on the date of scrutiny of nomination paper i.e. 28.01.2017 or

on the date of declaration of result i.e. 11.03.2017.

19. The respondent-winning candidate has set up the case in defence that his date of birth in Secondary School examination Class X result 2007 mark sheet was incorrectly mentioned as 01.01.1993 instead of 30.09.1990 and he came to know about it for the first time in the year 2015 while he was pursuing his studies of M.Tech. and was forwarding towards his carrier/job. Therefore, he took steps for correction of his date of birth as 30.09.1990 in place of wrongly mentioned date of birth 01.01.1993. However, date of birth has not yet been corrected in Class X CBSE Marksheet certificate 2007. On the other hand the election-petitioner has taken the stand that the respondent was born in the year 1993 and thus being below 25 years of age, he was not qualified to contest election of legislative assembly in view of provisions of Article 173(b) of the Constitution of India and, therefore, his election as member legislative assembly from 34-Suar, District – Rampur, assembly constituency, is liable to be set aside and be declared null and void. The election petitioner as well as the winning candidate/respondent have led various oral and documentary evidences as aforementioned.

Evidence of Birth Year 1993

20. **Following documentary evidences, record birth year of the respondent to be the year 1993 (01.01.1993) :-**

- (i) Ex. P4 - paper No.A-25/1 - **Copy of secondary school examination Class 10th result 2007** issued by Central Board of Secondary Education.
- (ii) Ex. P1 - paper No.A-52/2-3, copy of respondent's **pass port no. F8757022, dated 28.08.2006** mentioning his date of birth 01.01.1993.
- (iii) Ex. P1 - paper No.A-51/1 - copy of **birth certificate No.3857 of the respondent issued by Nagar Palika Parishad, Rampur**, showing date of birth of the respondent as 01.01.1993 and date of Registration 28.06.2012.

(iv) Ex. P1 - paper No.A-49/1-4, **respondent's pass port application dated 06.07.2012, filed by him under his signature** mentioning his date of birth as 01.01.1993, and place of birth Rampur.

(v) Ex. P-1 - paper No.53/1, **Pass port preview details of respondent's pass port No. K-7951741, dated 13.07.2012** and Ex. P-2 - paper No.A62/1-3, copy of respondent's pass port No. K-7951741, dated 13.07.2012 bearing date of birth as 01.01.1993 and entries of departure/arrival dated 30.04.2013, 05.05.2013, 09.06.2015 and 26.07.2016 and **Visa dated 09.07.2014** all mentioning date of birth as 01.01.1993.

(vi) Ex.R-11 (Paper No.A95/1-34) is the copy of service book of the respondent's mother filed by the respondent in evidence and proved by the D.W.-1. It contains **G.I.S. Nomination form signed and submitted by the respondent's mother (D.W.-5) on 26.04.2001** mentioning respondent's age to be 8 years.

(vii) Ex. P3 - paper No.80/1, copy of respondent's birth certificate dated 28.06.2012, issued by Nagar Palika Parishad, Rampur, issued on the basis of original record of birth. This birth certificate was subsequently cancelled by the Registrar on 30.01.2015 on the application of the respondent.

Burden of Proof

21. The law with regard to burden of proof in election-petitions with regard to the age of a person and Section 103 of the Indian Evidence Act, has been authoritatively pronounced by Hon'ble Supreme Court in paragraphs 28 to 32 of the judgment in the case of **Sushil Kumar (supra)** which is reproduced below:-

*“28. It is no doubt true that the **burden of proof** to show that a candidate who was disqualified as on the date of the nomination would be **on the election petitioner**.*

29. It is also true that the initial burden of proof that nomination paper of an elected candidate has wrongly been accepted is on the election petitioner.

30. In terms of Section 103 of the Indian Evidence Act, however, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

31. Furthermore, in relation to certain matters, the fact being within the special knowledge of the respondent, the burden to prove the same would be on him in terms of Section 106 of the Indian Evidence Act. However, the question as to whether the burden to prove a particular matter is on the plaintiff or the defendant would depend upon the nature of the dispute. [See Orissa Mining Corporation and another vs. Ananda Chandra Prusty, AIR 1997 SC 2274].

32. The age of a person in an election petition has to be determined not only on the basis of the materials placed on record but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of Section 106 of the Evidence Act. It is also trite that when both parties have adduced evidence, the question of the onus of proof becomes academic [See Union of India and Others vs. Sugauli Sugar Works (P) Ltd., (1976) 3 SCC 32,(Para 14) and Cox and Kings (Agents) Ltd. vs. Their Workmen and Others, AIR 1977 SC 1666, (Para 36)]. Furthermore, an admission on the part of a party to the lis shall be binding on him and in any event a presumption must be made that the same is taken to be established.”

(Emphasis supplied by me)

22. Applying the aforesaid settled principles of law, I find that the election-petitioner has discharged the initial burden of proof with regard to the age of the petitioner as has already been discussed in earlier paragraphs of this judgment. That apart in the present set of facts both the parties have adduced evidence on the question of age, therefore, the question of onus of proof becomes academic as held by Hon'ble Supreme Court in Union of India and others Vs. Sugauli Sugar Works (P) Ltd. (1976) 3 SCC (para 36) which have been relied by the Hon'ble Supreme Court in para 32 of the judgment in the

case of **Sushil Kumar (supra)**.

Educational Certificate, Passports & Visa

23. The petitioner has set up case that the respondent was below 25 years of age when he filed nomination to contest the aforesaid assembly election. To prove this fact the election-petitioner has filed in evidence Ex.P-1, P-3 and P-4 as mentioned in Para 20 above in which respondent's date of birth is mentioned as 01.01.1993. The respondent has not disputed this fact but stated in paragraph 54 and 55 of the written statement that while scrutinising his Educational records in the year 2015 he came to know that his date of birth is incorrectly recorded as 01.01.1993 in place of 30.09.1990. The respondent and his parents are highly educated and socially and politically active. His father was Cabinet Minister in the U.P. State Government, His mother has been Professor and is sitting Member of Rajya Sabha. He himself is M.Tech. He has travelled to foreign countries several times on the basis of his passport obtained in the year 2006 and 2012 and visa in the year 2014 in which his date of birth was recorded as 01.01.1993 as disclosed by him. He obtained the pass port by moving an application under his own signature in the year 2006 and thereafter in the year 2012 (Ex. P-1 – Paper No.A-49/1-4) in which he himself mentioned his date of birth as 01.01.1993. He obtained visa and travelled to foreign countries prior to and subsequent to the year 2015 and always mentioned his date of birth as 01.01.1993. **His parents got registered his birth with the Registrar of Birth Nagar Palika Parishad, Rampur, mentioning his date of birth as 01.01.1993.** When the Officer-in-charge/Sub-Registrar, Birth and Death, Nagar Palika Parishad, Rampur, appeared in witness box as P.W.4, he did not produce the original records on the basis of which the birth certificate of the respondent bearing **Registration No. RNPB-03857, dated 28.06.2012 Rampur** was issued and instead merely produced the computer generated copy of birth certificate of the respondent. He stated that the entire record of the aforesaid birth certificate has burnt in

fire on 08.05.2015 after the Registrar Birth and Death, Nagar Palika Parishad, Rampur, cancelled it on 30.01.2015. Thus, the stand taken by the respondent in paragraph 54 and 55 of the written statement is not true. **The respondent Has always been aware of the fact that in educational certificates and pass port etc. his date of birth is mentioned as 01.01.1993.**

24. In his cross examination the respondent i.e. D.W.-10 has stated that he came to know in the year 2015 that his date of birth is mentioned as 01.01.1993 in Class 10th mark sheet. This is wholly unbelievable and apparently untrue in view of the fact that the respondent has obtained passport in the year 2006 and thereafter in the year 2012 and also obtained visa in the year 2014 and in all these papers his date of birth is mentioned as 01.01.1993. He travelled several times to foreign countries on the basis of the aforesaid passport and visa in which his date of birth is clearly mentioned as 01.01.1993. Facts in detail in this regard have already been discussed in earlier paragraphs of this judgment. In his evidence the respondent has not denied the passport obtained by him in the year 2006 and in the year 2012 or the visa obtained in the year 2014.

Birth Certificate issued by Nagar Nigam, Lucknow

25. **Now, I proceed to examine whether birth certificate bearing Registration No.NNLKO – B-2015-292611 and date of registration 21.01.2015, issued by Registrar Birth and Death, Lucknow, on 21.01.2015 showing date of birth of the respondent as 30.09.1990, is a valid piece of paper/reliable evidence?**

26. **D.W.-2 - Dr. Archana Dwivedi**, Additional Municipal Commissioner, Municipal Corporation, Lucknow, produced the complete original file relating to issuance of birth certificate of the respondent dated 21.01.2015 which contains merely the application of the respondent's mother and her affidavit both dated 17.01.2015 and a computerised sheet

bearing particulars of registration of birth of the respondent. Copy of the aforesaid application and affidavit both dated 17.01.2015 submitted by the mother of the respondent before the Nagar Nigam Lucknow and filed in evidence as Ex.R-12 are pasted below (scanned copy):-

A-96
1

दिनांक: 17.01.2015

सेवा में,

नगर स्वास्थ्य अधिकारी,
नगर निगम लखनऊ।

विषय: तत्काल एवं अपरिहार्य आवश्यकता के दृष्टिगत जन्म प्रमाण-पत्र निर्गत करने हेतु प्रार्थना-पत्र।

महोदय,

निवेदन है कि मेरे पुत्र मोहम्मद अब्दुल्लाह आजम खाँ का जन्म लखनऊ महानगर में दिनांक 30 सितम्बर, 1990 को क्वीन मेरीस हास्पिटल, (किंग जॉर्ज मेडिकल यूनिवर्सिटी) में हुआ था। किन्हीं अति आवश्यक एवं अपरिहार्य कारणों से मुझे अपने पुत्र के जन्म प्रमाण-पत्र की तत्काल आवश्यकता है।

अतः अनुरोध है कि कृपया प्रार्थना-पत्र के साथ संलग्न शपथ-पत्र के आधार पर मुझे मेरे पुत्र मोहम्मद अब्दुल्लाह आजम खाँ का जन्म प्रमाण-पत्र निर्गत करने का कष्ट करें। यह भी अनुरोध करना है कि यथा आवश्यकता क्वीन मेरीस हास्पिटल के अभिलेखों में मेरे पुत्र के जन्म की पुष्टि करायी जा सकती है।

पुनः अनुरोध है कि कृपया यथाशीघ्र जन्म प्रमाण-पत्र निर्गत करने का कष्ट करें।

संलग्नक: शपथ-पत्र
(मूल रूप में)

भवदीय,

Shashi Mishra / Khandelwal
19/1/15

Tazeen Fatma

(डा० तजीन फात्मा)
पत्नी श्री मोहम्मद आजम खाँ
नि०- मस्जिद-ए-रब्बी, जेल रोड
रामपुर (उ०प्र०)

Attested
10/07/19
अपट राजत आमुक्त
राजत निगम लखनऊ

EX. R-12
Paper No. A-96/1 to A-96/5
Jurya Secarwal
Honble Judge



उत्तर प्रदेश UTTAR PRADESH

शपथ- पत्र

27AA 436307

सम्पा: नगर स्वास्थ्य अधिकारी,
नगर निगम लखनऊ ७०५०१

मे डा० तज़ीन फात्मा पत्नी श्री मोहम्मद आज़म खां निवासी मस्जिद ए-रब्बी जैल
रौड जनपद रामपुर ७०५०१ निम्नलिखित शपथपूर्वक ब्याज करती हूँ कि:-

- 1- यह कि हालिफा उपरोक्त नाम व पते की स्थायी निवासी है।
- 2- यह कि हालिफा के पुत्र मोहम्मद अब्दुल्लाह आज़म खां का जन्म लखनऊ महा नगर
में स्थित 'क्वीन मेरीस' हॉस्पिटल में दिनांक 30 सितम्बर 1990 को हुआ था।
- 3- यह कि हालिफा के पुत्र का जन्म लखनऊ महा नगर में होने के कारण नियमानुसार
लखनऊ नगर निगम द्वारा जन्म प्रमाण- पत्र निर्गत किया जाना उचित होगा।
- 4- यह कि हालिफा को अपने पुत्र मोहम्मद अब्दुल्लाह आज़म खां के जन्म प्रमाणपत्र की
तत्काल आवश्यकता है।
- 5- यह कि आवश्यकता होने पर हालिफा के पुत्र मोहम्मद अब्दुल्लाह आज़म खां के 'क्वीन
मेरीस' हॉस्पिटल ॥ किंग जार्ज मेडिकल यूनिवर्सिटी ॥ में जन्म लेने की प्रिंस्ट हॉस्पिटल के
अभिनेता से कराया जा सकती है।

Tazreen Fatma
डा० तज़ीन फात्मा

उपरोक्त कथन मेरी जानकारी अनुसार पूर्णतया सत्य है न कुछ झूठ है और न ही कुछ
छिपाया गया अपनी मर्जी से बिना किसी दबाव के व तन्दुरुस्ती की हालत में किया गया

Identified by
[Signature]

DEPONENT

S. No. 14 Date: 17.7.2015
I Certified the Shri. Tazreen Fatma
I identified by Shri. [Signature]
Swore to / solemnly affirmed that
contents of this affidavit being true
dated: 17.7.2015 at: [Signature] LKN/PN
at or for under standing in witness

[Signature]
NOTARY
Md. Iqbal Farooq
ADVOCATE
Poh Sadar Raebour

Attested
[Signature] (श्री अमना अली)
10/07/19
अपट-101C आंगुल
101C निगम लखनऊ

27. **The D.W. -2 Dr. Archana Diwedi**, Additional Municipal Commissioner, Municipal Corporation, Lucknow produced a birth register which is neither authenticated nor certified by any competent Officer nor paginated. In her cross examination she stated that the birth register is maintained by a clerk which is not in prescribed form as provided in the Registration of Birth and Death Act, 1969. She stated that list of Queen Mary's Hospital on the basis of which entry of the respondent's birth has been made in the birth register is not available. She stated that birth of the respondent was registered on 21.01.2015. Copy of the **relevant two pages of the aforesaid birth register filed and attested by the D.W.-2 has been marked as Ex.12 (paper No.A-96/4-5)** which are pasted below (scanned copy):-

तारीख	नाम मुहल्ला	नाम पिता मय वदियत	जाति	ईसाई	हिन्दू	मुसल-	अन्य	योग
				लड़की	लड़का	लड़की	लड़का	लड़की
2.10.90	श्री गरी	श्री सुकृष्ण - सोहन ल	१०					
~	~	ममता - वीरेंद्र	५					
~	~	गामा - सुनील	५					
~	~	विभा - शैल कुमार	५					
~	~	मधु - राजीव	५					
~	~	बुधुमा - धनश्याम	५					
~	~	सुधा - हरनाम सिंह	५					
~	~	प्रमोदा - अशोक	५					
~	~	सुनी - जगदीश	५					
~	~	कुलपति उमाशंकर	५					
~	~	निमोला - श्री राम	५					
3.10.90	~	रीना - श्री पाल	५					
~	~	संगीता - राजेश कुमार	५					
~	~	शशिवा - विजय कुमार	५					
~	~	शशिवा - हरेश	५					
~	~	सुधा - रवी शंकर	५					
~	~	शशिवा - RASNAM गांधी	५					
3.10.90	~	शशिवा गांधी 310 ली	मातृ					
26/9/90	~	मल्लिका (मातृ)						
27/9/90	~	शशिवा गांधी सुरेंद्र कुमार						

Affected
 10/07/19
 2017
 राजेश कुमार
 राजेश कुमार

2017

28. The entry made in the aforesaid birth register of Nagar Nigam, Lucknow (Ex. R-12 – paper No. A 96/4-5) is a clear case of manipulation and interpolation. The entry of the respondent's birth has been inserted in the very little space at the bottom of the page showing it to have been

made on 30.09.1990 mentioning the name of the respondent Mohd. Abdullah Azam Khan as HINDU male baby of Mrs. Tazeen Fatima, wife of Mohd. Azam Khan. **Just one entry above the aforesaid entry of the respondent, is the entry in the name of one Sangeeta wife of Pankaj Gupta which as per endorsement of some officer, was made on 25.06.1993.** Above the aforesaid entry dated 25.06.1993 is another entry in the name of one Vandana wife of R.N. Srivastava, made on 24.07.1992. The entries subsequent to the entry of the respondent's birth, appearing on the next page are the entries dated 02.10.1990, 03.10.1990, 26.09.1990 and 27.09.1990. The entries of the respondent's birth made in the aforesaid alleged birth register does not bear signature or order of any authority of the Nagar Nigam, Lucknow, or a Sub-Divisional Magistrate. Thus, entry in the aforesaid birth register in the name of the respondent was not made on 30.09.1990

29. In paragraph No.5 of her affidavit (Ex. R-12) the **D.W. -5 Mrs. Tazeen Fatima (mother of the respondent) herself stated that the birth of the respondent may be got verified from Hospital record of Queen Mary's Hospital. This clearly indicates that as on 17.01.2015 there was no entry in the name of the respondent in the alleged birth register of Nagar Nigam Lucknow (Ex. R-12 – paper No. A-96/4-5), otherwise she would have merely asked to issue birth certificate on the basis of the alleged entry in the birth register.**

30. **These facts leave no manner of doubt that the entry of respondent's birth in the alleged Birth Register of Nagar Nigam, Lucknow, showing his birth on 30.09.1990, was inserted much after 25.06.1993 and in all probabilities in the year 2015.**

31. Facts aforesaid leave no manner of doubt that the entry of the respondent's birth in the aforesaid birth register (Ex. R-12 – Paper No. A-96/4-5), was made by interpolation at the instance or under pressure of

the interested parties. It was manipulation and fabrication. It shall not be out of place to mention that when the birth certificate dated 21.01.2015 of the respondent was got issued from Nagar Nigam, Lucknow, at that time the respondent's father was the Cabinet Minister of the Department of Urban Development and Local Bodies. Nagar Nigam, Lucknow, was under his ministry. Thus, the evidence of D.W.-5 - Mrs. Tazeen Fatima (mother of the respondent) and D.W. 10 (respondent) are false and wholly untrustworthy in so far as it relates to the entries of birth of the respondent on 30.09.1990.

32. That apart the respondent's mother Mrs. Tazeen Fatima (D.W.-5) moved the aforesaid application dated 17.01.2015, supported by an affidavit of the same date (Ex. R-12) to obtain birth certificate of the respondent from Nagar Nigam, Lucknow, in which she very **conveniently concealed the fact of the then existing birth certificate of the respondent issued by the Registrar Birth and Death, Nagar Palika Parishad, Rampur** (Ex. P-3 paper No.A-80/1), which she got cancelled subsequently on 30.01.2015.

33. **The aforesaid application dated 17.01.2015 for issuance of birth certificate of the respondent was submitted by the mother of the respondent before the Nagar Swastha Adhikari, Nagar Nigam, Lucknow, after about 25 years of the alleged date of birth of the respondent which was endorsed by the some Officer of the Nagar Nigam, Lucknow, on 19.01.2015 and a day thereafter birth certificate was issued to the respondent by the Registrar (Birth & Death) Nagar Nigam, Lucknow, without observance of mandatory provisions of Section 13 of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as the Act, 1969) and Rule 9 of the U.P. Registration of the Birth and Death Rules 2002 (hereinafter referred to as the U.P. Rules 2002).** Copy of the computer generated sheet of birth registration filed by the D.W.-2 and marked as Ex. R-12

(Paper No.A-96/3) is pasted below (scanned copy):-

RegNo	294612	RegDate	21-Jan-15	Sex	M	BirthDate	30-Sep-90	Name	MOHAMMAD MOHAMMAD	Frame	MOHAMMAD TAZEEN	Mname	TAZEEN	Place	0	Addr1	QUEEN MARY'S HOSPITAL, LUCKNOW	Addr	(U.P.) 17079 DT	Iname	RAJENDRA M	Religion	M	Sex.H	M	Mresa.H		EntryDate	21-Apr-15	DelNode	H
2015-	294611..							ABDULLAH AZAM KHAN	AZAM KHAN	FATIMA																					

Attached
 (5) 10/10/19
 21/1/15
 21/1/15

Delayed Registration of Birth

34. The relevant provisions for delayed registration of birth or death are the provisions of Section 13 of the Registration of Births and Deaths Act, 1969 and Rule 9 of the U.P. Registration of Birth and Death Rules, 2002 which are reproduced below:

"Section 13. Delayed registration of births and deaths- (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefore, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorized in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action."

"Rule 9. Authority for delayed registration under Sec. 13 and fee payable therefor-

(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified in Rule 5, but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.

(2) Any birth or death of which information is given to the registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the Additional District Registrar (Deputy Chief Medical Officer for Urban Areas and District Panchyat Raj Officer for Rural areas) and on payment of a late fee of rupees five.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of Sub-Divisional Magistrate and on payment of late fee of rupees ten."

35. Sub Section (3) of Section 13 of the Act, 1969 specifically provides that **any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of Ist Class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee. Sub Rule 3 of Rule 9 specifically provides that any birth or death which has not been registered within one year of its occurrence shall be**

registered only on an order of Sub Divisional Magistrate and on payment of late fee of Rs. 10.

36. In Judgment dated 21.11.2014 in **Zeba Haseeb @ Ankita and another Vs. State of U.P. And others 2015(2) ADJ 215 (Para 17, 24 & 26)**, this court considered question of validity of registration of birth after one year and issuance of birth certificate without following provisions of Section 13 of the Act 1969 and Rule 9 of the U.P. Rules 2002 and held/directed as under:-

“17..... Thus the birth certificate of petitioner No.2 of 8th September, 2014 was issued by the Birth/Death Registrar Kanpur Nagar Nigam, without following the due procedure of law. No verification of the correctness of the birth was made by the authorized officer i.e. S.D.M. Even the prescribed fee was deposited about a month after the birth certificate was issued. The application for issuing birth certificate was allegedly moved by the petitioner No.2 before an unauthorized officer on 4th September, 2014 and the certificate was issued in haste by an unauthorized officer. Thus the birth certificate dated 8.9.2014 of the petitioner No.2 is a complete nullity. The authorities have acted unlawfully and in complete defiance of the provisions of the Act and the Rules. Even after filing of the affidavits no action has been taken by the Birth/Death, Registrar, Kanpur Nagar Nigam to delete immediately the entry of alleged birth recoded on the basis of the alleged birth certificate of the petitioner No.2 dated 8th September, 2014. The manner in which the authorities acted to issue birth certificate of petitioner No.2 shows that the delayed birth certificates are issued by the authorities on mere asking. This not only violates the provisions of Section 13 (3) of the Act and Rule 9 of the Rules but also may facilitate misuse of birth certificates.

24. In view of the above discussions, the writ petition is dismissed. Looking into the facts and circumstances of the case, the arguments advanced by the learned counsel for Nagar Nigam Kanpur and the averments made by District Magistrate, Kanpur Nagar in her affidavits, following directions are issued:

(I) delayed registration of birth or death be made only on an order of the prescribed authority and strictly in accordance with the provisions of Section 13 of the Act and Rule 9 of the Rules.

(ii) The prescribed authority for the purposes of sub Section 3 of Section 13 of the Act read with Rule 9 (3) of the Rules is the Sub Divisional Magistrate of the area concerned and only he can pass an order for delayed registration of birth or death which has not been registered

within one year of its occurrence. He can pass order for registration of birth or death only after verifying the correctness of the birth or death and on payment of the prescribed fee.

(iii) Chief Secretary of the State Government shall issue strict instructions to all the District Magistrates, Sub-Divisional Magistrates and Local Bodies in the State for compliance of the above directions.

26. Let a copy of this judgment be sent by the Registrar General of this Court to the Chief Secretary of the Government of U.P. for strict compliance of the directions given in para 24 above. ”

(Emphasis supplied by me)

37. Thus, the Nagar Nigam, Lucknow, was having no jurisdiction to register birth of the respondent after 25 years of the alleged birth and to issue birth certificate of the respondent dated 21.01.2015 (Ex. R-12) without an order of a Sub-Divisional Magistrate under Section 13(3) of the Act, 1969 readwith Rule 9(3) of the U.P. Rules, 2002 and on payment of prescribed late fees but the aforesaid birth was registered and the birth certificate was issued without any order of the Sub-Divisional Magistrate. **Therefore, the aforesaid birth certificate of the respondent dated 21.01.2015 (Ex.P-2-Paper No.A-63/1) issued by the Registrar (Birth & Death), Nagar Nigam, Lucknow, registering 30.09.1990 as birth of the respondent is null and void. Apart from this, the entries of birth of respondent in the aforesaid birth register is the result of manipulation. Therefore, it is nullity and liable to be ignored.**

Proving of Birth on 30.09.1990 by Entries in Hospital Papers & Oral Evidences

38. Ex. R-4 (paper No. A100/1-2) E.O.T. Register of Queen Mary's Hospital, Lucknow, showing entry of admission of **TANZEEM FATIMA** and birth of a male baby, is not trustworthy inasmuch as the entry at Annual No.5097 at Page 174 bears cuttings and overwriting and does not match with the entries of MLR Register (labour room register), (Ex. R-5-paper No.101/2). **The fact of cuttings and overwriting**

and non matching of entries of the aforesaid two registers of Queen Mary's Hospital have also been admitted by the D.W.3 - Dr. Uma Singh, Sr. Gynecologist Queen Mary's Hospital (Department of Obst. & Gyno.), in her oral evidence dated 31.07.2019. She also admitted in her evidence that the aforesaid two register are neither authenticated nor have been counter signed by any Officer or Doctor of the Hospital nor she has signed entries regarding birth of a baby on 30.09.1990. She further stated that she can not say that the baby born as mentioned in the aforesaid two register on 30.09.1990 is the respondent. She admitted that it is the responsibility of the Chief Medical Superintendent to give information of births to Nagar Nigam and she was never given this responsibility and there is no post of Chief Medical Superintendent in the Hospital and the aforesaid register has been maintained by a clerk. The concerned clerk has not been produced in evidence by the respondent to prove alleged entries of the aforesaid two register. The D.W. 3 also stated in her oral evidence the procedure for issuance of duplicate birth certificate but could not produce the application of the respondent's mother for issuance of duplicate birth certificate. **D.W.4 - Dr. Vineeta Das - HOD Obst. & Gyno., Queen Mary's Hospital, Lucknow,** has stated that she has not made entries at Annual No.5097 page No. 174 of E.O.T. Register and she was never related to that delivery. She also stated in her cross examination that duplicate birth certificate is issued on the application received by the Chief Medical Superintendent. She neither named the medical consultant nominated to prepare the duplicate birth certificate nor could produce any document relating thereto.

39. The respondent could not prove that he was born on 30.09.1990. The evidence of his mother (D.W.-5) regarding his birth on 30.09.1990 in Queen Mary's Hospital, Lucknow, can not be relied in the absence of any corroborative evidence. Dr. Uma Singh (D.W.-3) whose evidence has been heavily relied by the respondent, has stated in her

cross-examination that she can not say that the baby born on 30.09.1990 in Queen Mary's Hospital is the respondent. That apart, **the mother of the respondent (D.W.-5) has her self submitted her G.I.S. Nomination form dated 26.04.2001 (Ex. R-11-Paper No.A95/25) under her own signature which is part of her service book, and which has been proved by the respondent's own witness D.W.-1 Sri Shailendra Kumar Tiwari, Assistant Director, Higher Education Directorate, U.P. Prayagraj. In her aforesaid nomination from dated 26.04.2001 D.W.-5 (mother of the respondent) has mentioned age of the respondent to be 8 years. Therefore, as per Ex.R-11 Paper No.A95/25, the respondent was born in the year 1993.**

40. Ex. R-4 is the photostat copy of a page No.174 Emergency O.T. (E.O.T.) Register and Ex.R-5 is the photostat copy of the page No.225 Labor Register (MLR). Original of the aforesaid two registers were produced by the D.W.-3 Dr. Uma Singh.

41. Six questions put to the D.W. -3 by the petitioner's counsel with regard to the E.O.T. and MLR Registers (Ex. R-4 and Ex. R-5) and the answer given by her are reproduced below:-

प्रश्न— क्या आप अपने साथ लाये हुए ई0ओ0टी0 रजिस्टर के पृष्ठ संख्या 174 के एनुअल नं0 5097 की प्रविष्टि देखकर यह बता सकती है कि इसमें ओवर राइटिंग की गयी है या नहीं?

उत्तर— जी हाँ इसमें ओवर राइटिंग की गयी है। इसके कालम नं0 3 में ओवर राइटिंग दिख रही है।

प्रश्न— क्या आप उक्त रजिस्टर के कालम सं0 16 में अंकित विवरण को देखकर यह बता सकती है कि क्या यह उक्त रजिस्टर के शेष कालम में अंकित सूचनाओं से मेल खाती है?

उत्तर— जी नहीं।

प्रश्न— क्या ई0ओ0टी0 रजिस्टर के पृष्ठ संख्या 174 के एनुअल नं0 5097 के कालम संख्या 10 में अंकित पीरियड आफ प्रेगनेंसी,एम0एल0आर0 रजिस्टर (लेबर रजिस्टर) के पृष्ठ संख्या

225 एनुअल नं० 1826 के कालम संख्या 10 में अंकित पीरियड ऑफ प्रोगनेंसी से भिन्न है?

उत्तर— जी हाँ।

प्रश्न— क्या एम०एल०आर० रजिस्टर के पृष्ठ संख्या 225 के एनुअल नं० 1826 में जिस प्रकार से प्रविष्टियां की गयी है क्या वह उक्त पृष्ठ में अन्य एनुअल नं० पर की गयी प्रविष्टियों से मेल खाती है?

उत्तर— पूर्णतया मेल नहीं खाती है।

प्रश्न— क्या यह आप अपने साथ जो रिकार्ड हास्पिटल से सम्बन्धित लायी है और जिसे न्यायालय के समक्ष प्रस्तुत किया है उसके आधार पर क्या केवल यह कहा जा सकता है कि 30.09.1990 को एक मेल बेबी का जन्म हुआ था?

उत्तर— जी हाँ उक्त रजिस्टर यह बताता है कि सम्बन्धित महिला ने एक मेल बेबी को जन्म दिया था।

प्रश्न— क्या जो रजिस्टर आप आज लाई है और न्यायालय के समक्ष प्रस्तुत किया है उसके आधार पर आप निश्चित रूप से यह कह सकती है कि 30.09.1990 को जिस मेल बेबी का जन्म हुआ था वह इस मुकदमें में रिसपान्डेन्ट मोहम्मद अब्दुला आजम खान ही है?

उत्तर— जी नहीं।

प्रश्न— ई०ओ०टी० रजिस्टर एवं एम०एल०आर० रजिस्टर जो आप अपने साथ आज न्यायालय में लाई है और न्यायालय में प्रस्तुत किया है वो क्या क्विन मैरी हास्पिटल या किंग जार्ज मेडिकल के किसी भी अधिकारी अथवा विभागाध्यक्ष द्वारा सत्यापित अथवा हस्ताक्षरित है और क्या इसमें अंकित प्रविष्टियाँ अथवा कोई भी पृष्ठ किसी भी हास्पिटल के किसी भी अधिकारी अथवा डाक्टर द्वारा हस्ताक्षरित अथवा प्रतिहस्ताक्षरित है एवं क्या उक्त दोनो रजिस्टर हास्पिटल के किसी अधिकारी या विभागाध्यक्ष द्वारा अथेन्टीकेटेड है?

उत्तर— उपरोक्त दोनो रजिस्टर क्विन मैरी हास्पिटल अथवा किंग जार्ज यूनीवर्सिटी के अधिकारी द्वारा अथेन्टीकेटेड नहीं

है। उक्त दोनो रजिस्टर सत्यापित भी नहीं है। परन्तु कुछ पृष्ठों पर हास्पिटल के कन्सलटेन्ट द्वारा हस्ताक्षर किया गया है।

प्रश्न— क्या उक्त रजिस्टर में सभी प्रविष्टियाँ आपके द्वारा की गयी है? या आपके द्वारा हस्ताक्षरित की गयी है? यदि नहीं तो आप किस आधार पर यह कह रही है कि उक्त दोनो रजिस्टर की समस्त प्रविष्टियाँ जेनुइन है?

उत्तर— न तो मैंने उक्त दोनो रजिस्टर में प्रविष्टियाँ की है और न ही मेरे द्वारा हस्ताक्षरित है। मैं अस्पताल की कार्यशैली पर विश्वास करते हुए यह कहा कि यह जेनुइन हैं।

42. Perusal of the Page 174 of **E.O.T. Register (Ex. R-4)** shows cutting and overwriting in the entry made in the name of **“TANZEEM FATIMA”**. Column 13 (labour record) and column 16 (sex, weight and condition of child at birth) also do not contain material particulars as have been noted in the matter of other patients appearing on the same page i.e. page No.174. **Page 225 of the MLR Register (Ex R-5)** is the entry in the name of one **“TAZEEM FATIMA”** also contains cutting in annual number, does not contain date of admission and Registration Number. It records the period of pregnancy of 38 weeks as against the pregnancy of 32 weeks noted in the Ex. R-4. The D.W.-4 has stated that neither she has made the entries nor she was ever related to the said delivery. She stated that entries are made in both the registers by resident doctor on duty after delivery. Therefore, if it was so, there was no occasion to make entries in question in EOT register and MLR register in different names with different particulars and non matching of particulars etc. The D.W. -3 although supported the entries of the aforesaid two registers but admitted in her cross examination, the overwritings and non matching of the entries etc. **She also stated that the register only says that a male baby was born but it can not be said that the baby born on 30.09.1990 is the respondent.** She also admitted in her cross examination that both the aforesaid registers are neither authenticated nor verified by any Officer or the Head of the

Department nor the entries made therein bear signature of any Officer or Doctor of the Hospital. She also admitted that she has neither made the entries in the aforesaid two registers nor that has been signed by her. The aforesaid entry in E.O.T. Register (Labour room) is in the name of one "TANZEEM FATIMA" while in the MLR Register it is in the name of "Mrs. TAZEEM FATIMA" which is written in a different hand writing with a different pen as compared to other particulars. The discharge Ticket is shown in the name of "TAZEEN FATIMA". Thus, entries of Ex. R-4 and R-5 could neither be proved by the respondent to be genuine nor it could be established that the baby shown in the aforesaid two registers to have born on 30.09.1990 is the respondent. The evidence of the D.W.-5 (respondent's mother) also does not inspire confidence inasmuch as she herself has submitted her GIS nomination form dated 26.04.2001 under her own signature which shows that the respondent was born in the year 1993. Ex.R-11 (paper No. A95/14-15 which is part of the service book of the respondent's mother reflects that she was on medical leave for 60 days from 17.08.1993 to 15.10.1993. For major period between 12.07.1993 to 23.12.1993 she took either medical leave or earned leave.

43. The discharge ticket (Ex. R-7- paper No. A38/1) is the photostat copy of some paper which is said to have been verified by Professor Vineeta Das (D.W.-4), Head of the Department Obst. & Gyno., King George Hospital, Lucknow. Ex. R-8 (paper No. A-41/1) is the letter of the Public Information Officer/Chief Medical Superintendent of the King George Medical University, Lucknow, dated 21.09.17 whereby the information asked by the respondent's mother has been replied by the D.W.-4 by letter dated 12.09.2017 (Ex. R-8-Paper No. A-41/2). Perusal of this letter of the D.W. -4 shows that she stated that the hospital maintains records of only 10 years and, therefore, it is not possible to give copy of admission

register. She also stated that the discharge ticket (Ex. R-7) as produced by the respondent's mother is being enclosed. Therefore, the Ex. No. R-7 i.e. photostat copy of discharge ticket Gandhi Memoria and Associated Hospital for indoor patient in the name of "TAZEEN FATIMA" is the paper which was produced by the respondent's mother before the D.W.-4 and in the absence of availability of admission register of the year 1990 it was not possible for the D.W.-4 to verify it.

44. The respondent also sought information from the King George Medical University, Lucknow, regarding his birth which was replied by the Public Information Officer vide letter dated 19.09.2017 (Ex. R-9- paper No. A42/1) enclosing therewith the information submitted by D.W.-4 in her letter dated 12.09.2017 (Ex. R9 - paper No.A42/3). Although there is no mention of name of the baby in the alleged E.O.T. Register (Ex. R-4) and MLR Register (Ex. R-5) yet the D.W.-4 stated in her aforesaid letter dated 12.09.2017 as under:-

पत्रांक—OG/1881/17

दिनांक 12/9/17

सेवा में,

जन सूचना अधिकारी/मुख्य चिकित्सा अधीक्षक,
गॉंधी स्मारक एंव सम्बद्ध चिकित्सालय,
किंग जार्ज चिकित्सा विश्वविद्यालय,
लखनऊ।

विषय:— सूचना का अधिकार अधिनियम –2005 के सम्बन्ध में।

महोदय,

कृपया आप अपने कार्यालय के पत्र संख्या 17176/आर0टी0आई0एक्ट/सी0एम0एस/2017 दिनांक 31/08/17 का सन्दर्भ ग्रहण करने का कष्ट करें जो सूचना का अधिकारी अधिनियम-2005 के अन्तर्गत श्री अब्दुल्लाह आजम खॉ, विधायक 34 स्वार, नि0 घेर मीर बाज खॉ, जेल रोड, रामपुर द्वारा मांगी गयी सूचना उपलब्ध कराने के सम्बन्ध में है।

उक्त के सम्बन्ध में अवगत कराना है कि मोहम्मद अब्दुल्लाह आजम खॉ पुत्र श्री मोहम्मद आजम खॉ, का जन्म 30 सितम्बर 1990 को क्वीन मेरी अस्पताल में हुआ था।

उक्त के सम्बन्ध में बिन्दुवार सूचना निम्न है—

1. आप द्वारा प्रेषित मोहम्मद अब्दुल्लाह आजम खॉ के जन्म प्रमाण पत्र की सत्यापित प्रतिलिपि इस पत्र के साथ संलग्न है।

2. मोहम्मद अब्दुल्लाह आजम खाँ के जिस पृष्ठ पर जन्म का विवरण अंकित है उसकी सत्यापित प्रतिलिपि एवं उसके प्रथम पृष्ठ की सत्यालिपि इस पत्र के साथ संलग्न है। सूचनार्थ प्रेषित।

भवदीया
/
(प्रो० विनीता दास)

विभागाध्यक्ष

संलग्नक: उपरोक्तानुसार।

45. The correctness of the contents of the aforequoted letter of the D.W.-4 - Professor Vineeta Das, dated 12.09.2017 stand completely lost in view of the fact that in the relevant page of the E.O.T. Register (Ex. R-4) and MLR Register (Ex. R-5) there is no mention of the name of the respondent. The D.W.-4 admitted in her cross examination on 31.07.2019 that she was neither related to the case of delivery nor entries in EOT Register at page 174 was made by her. **She has stated in her letter dated 12.09.2017 (Ex.R-8) as under:-**

पत्रांक OG/1882/17

दिनांक 12.9.17

सेवा में,

जन सूचना अधिकारी/मुख्य चिकित्सा अधीक्षक
गाँधी स्मारक एवं सम्बद्ध चिकित्सालय,
किंग जार्ज चिकित्सा विश्वविद्यालय,
लखनऊ।

विषय:- सूचना का अधिकार अधिनियम – 2005 के सम्बन्ध में।

महोदय,

कृपया आप अपने कार्यालय के पत्र संख्या 17174/आर० टी० आई० एक्ट/सी० एम० एस०/2017 दिनांक 31/08/17 का सन्दर्भ ग्रहण करने का कष्ट करें जो सूचना का अधिकार अधिनियम – 2005 व अन्तर्गत डा० तजीन फातिमा, सांसद राज्यसभा, नि० घेर मीर बाज खाँ, जेल रोड रामपुर द्वारा मांगी गयी सूचना उपलब्ध कराने के सम्बन्ध में है।

1. चिकित्सालयों के नियमों के अनुसार केवल 10 वर्ष का रिकार्ड रखा जाता है। अतः आपका प्रकरण सन् 1990 का है इसलिए एडमिशन रजिस्टर की इण्ट्री वाले पृष्ठ की सत्यापित प्रतिलिपि दे पाना सम्भव नहीं है।

2. एडमिशन स्लिप मरीज के पास होती है।

3. आपके द्वारा प्रस्तुत की गई डिस्चार्ज टिकट को सत्यापित कर इस पत्र के साथ संलग्न किया जा रहा है। सूचनार्थ प्रेषित।

ह 0 अप 0

11.9.17

संलग्नक: उपरोक्तानुसार

भवदीय

ह 0 अप 0

(प्रो० विनीता दास)

विभागाध्यक्ष

46. The D.W.-3 who is said to be attending Doctor has herself stated in her Cross-examination that she can not say that the baby born as shown in the Ex. R-4 and Ex. R-5 is the respondent. Therefore, without there being any record before the D.W. -4 it was not possible for her to certify on 12.09.2017 (Ex. R-8) that the respondent was born in Queen Mary's Hospital, Lucknow, U.P., on 30.09.1990 and that true copy of page of the register containing particulars of birth of the respondent is enclosed. The copy enclosed with Ex. R-8 is the photostate copy of page 174 of the E.O.T. Register (Ex. R4) as admitted by the D.W.-4 in her cross examination in which there is no whisper of the birth of a baby mentioning name of the respondent. It is well know that a man may lie but the circumstances do not.

47. For all the reasons aforesated, I find that Ex. R-4, R-5, R-6, R-7, R-8 and R-9 and the evidences of D.W.-3 and D.W.10 do not established that the respondent was born on 30.09.1990 in Queen Mary's Hospital, Luknow.

Medical Examination Report

48. The respondent filed a copy of medical report dated 27.01.2017 issued by the Chief Medical Officer, Rampur, to contend that the Medical Board has determined the respondent's average age of 26 years on

27.01.2017. To prove this paper, he produced D.W.-8 - Dr. Satya Veer Singh Ken. In his cross examination the D.W.-8 stated that he is merely a Radiologist and has given merely X-Ray report. He also could not produce original report or records. Thus, the aforesaid medical report could not be proved. That apart, in **Mukarrab and others Vs. State of U.P. (2017) 2 SCC 210 (paras 20 to 29)**, Hon'ble Supreme Court referred to its earlier judgments and held that “***the age determination based on ossification test though may be useful is not conclusive. An X-ray ossification test can by no means be so infallible and accurate a test as to indicate the correct number of years and based of a person's life.***” Hon'ble Supreme Court further held that the **age determination using ossification test does not yield accurate and precise conclusions. The general rule about age determination is that it can vary plus or minus two years.** The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. **The medical evidence may be useful as guiding factor but it is not conclusive and has to be considered along with other cogent reasons.** Thus, even if the aforesaid medical Board dated 27.01.2017 could be looked into then applying the plus minus two years factor, the age of the respondent in 2017 would come to 24 indicating birth year of the respondent to be the year 1993.

Evidence of D.W.-7 AND D.W.-9

49. The respondent's mother (D.W.-5) has been Reader of Political Science in Government P.G. College at Rampur between 09.07.1994 till the year 2004 and even thereafter (Ex. R-11) while father was M.L.A. yet the respondent in para 53 of the written statement and the mother (D.W.-5) in para 12 of her examination-in-chief have stated that D.W.-9 Sri Shahzeb Khan, has got admitted the respondent in nursery class in the year 1995 in St. Paul School, Rampur and inadvertently furnished/written

date of birth of the respondent in the admission form whereas the D.W.-9 has stated in para 5 of his examination-in-chief that teacher has written date of birth of the respondent in the admission form. When the D.W.-7 (Arun Josheph Dayal. Director Saint Paul School) was cross-examined and a question was asked whether he has brought original record of admission, he replied: No, since he was not informed about it. He has not produced even school register. Thus, the evidence of the D.W.-7 and D.W.-9 do not prove the case of the respondent that the respondent was born on 30.09.1990.

Own declaration of respondent's mother while submitting GIS Nomination Form

50. As already discussed above, the respondent has filed in evidence **Ex.R-11 (paper No.A95/1-34)** which is copy of service book of the respondent's mother. The said Ex. R-11 has been proved by D.W.-1 Dr. Shailendra K. Tiwari, Assistant Director of Higher Education, U.P. Prayagraj. **Paper No. A95/25 (part of Ex. No.R-11) is the GIS Nomination form submitted by the respondent's mother under his own signature on 26.04.2001** whereby she nominated the respondent and two others. **She has specifically declared and mentioned the age of the respondent to be eight years in the aforesaid GIS nomination form on 26.4.2001.** Thus as per her own declaration of the respondent's mother (D.W.-5) the year of the birth of the respondent comes to the year 1993. The arguments in this regard was also specifically raised by the Election-petitioner as noted in paragraph 12(iii) above and yet the respondent has not made any submission in this regard. **Thus, the Ex. R-11 (paper No. A-95/25) is an undisputed piece of own evidence of the respondent which established that the respondent was born in the year 1993.**

51. In view of the facts and evidences noted in the

aforesaid paragraphs, it stands established that declaration of age of the respondent in Ex. R-11 (paper No.A95/25) is an admitted piece of evidence on the part of the respondent. Therefore, an admission on the part of the respondent to the facts shall be binding on him and in any event the presumption has to be made that the same is taken to be established. This principle also find support from the judgment of Hon'ble Supreme Court in the case of **Sushil Kumar Vs. Rakesh Kumar** 2003 (8) SCC 673, (paras 32).

Adhar Card, Voter I.D. Card and Driving Licence

52. Ex. P-2 (paper No. A66/1, A67/1 and A68/1) are copies of Adhar Card, driving licence and Voter I.D. Card respectively. The Adhar Card of the respondent's is dated 07.03.2015. The voter I.D. Card is dated 18.07.2015. The driving licence was corrected subsequently. All these papers are not evidence of date of birth of the respondent. Besides this the basis of date of birth mentioned in these papers is the respondents birth certificate dated 21.01.2015, issued by Nagar Nigam, Lucknow, which has been held to be nullity. Therefore, the date of birth of the respondent mentioned in paper Nos. A66/1, A67/1 and A68/1 is not the proof date of birth of the respondent. **Adhar Card is means of identity and not proof of date of birth** as has also been held by a Division Bench of this Court in judgment dated 09.01.2019 in Misc. Bench No.13419 of 2018 (Smt. Parvati Kumari and Ors. Vs. State of U.P. Thru. Principal Secretary Home & Ors.) in which several judgments of Hon'ble Supreme Court including the judgment of Hon'ble Supreme Court dated 24.08.2017 in **S.G. Vombatkere & Anr. Vs. Union of India**, has been relied. In **Sushil Kumar (supra)** (para 51) Hon'ble Supreme Court held that **date of birth of a voter contained in the voter list and the Election Identity Card issued by the**

Election Commission of India is not conclusive since they are recorded as per the statements made by the person concerned. Therefore, these papers do not conclusively establish that the respondent was above 25 years of age as on the date of filing of nomination paper or the declaration of result of legislative assembly election in question.

Effect of False Statements

53. The consequence of false statement is that adverse inference should be drawn. The discussion made in various paragraphs of this judgment particularly in relation to the procurement of birth certificate from Nagar Nigam, Lucknow, leaves no manner of doubt that the respondent has knowingly made false averment in the written statement. Hon'ble Supreme Court vide paragraphs 64 and 65 of the judgment in the case of **Sushil Kumar (supra)** has held as under:-

*“64. Even otherwise, making a false statement before the court whether on affidavit or not is not to be treated lightly. The court acts on the basis of the statement made by a party to the lis. **Whether such defence has been accepted or not is not of much importance but whether a false statement to the knowledge of the party has been made or not is.** In any view of the matter, the court must draw an adverse inference in this behalf against the respondent.*

65. Furthermore, a person should not be permitted to take advantage of his own wrong. He should either stand by his statement made before a court of law or should explain the same sufficiently. In absence of any satisfactory explanation, the court will presume that the statement before a court is correct and binding on the party on whose behalf the same has been made.”

(Emphasis supplied by me)

54. In **A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam and others**, [(2012) 6 SCC 430] (Para-43.1 to 43.5)), Hon'ble

Supreme Court held as under:-

"43.1. It is the bounden duty of the Court to uphold the truth and do justice.

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

(Emphasis supplied by me)

55. The upshot of all the discussions made above is that the materials on record taken in their entirety together with the circumstantial evidence establishes that the respondent was less than Twenty Five Years of age on the date of filing nomination in State Legislative Election 2017 from 34 Suar Constituency of District Rampur.

56. In **Amrit Lal Ambalal Patel Vs. Himathbhai Gomanbhai Patel**, 1968 AIR 1455 1969 SCR (1) 277, Hon'ble Supreme Court held that the effect of Article 173 is that a candidate is not qualified unless he has attained the age specified in the clause on the date fixed for scrutiny of nominations.

57. In **Durga Shanker Mehta Vs. Thakur Raghuraj Singh**, AIR 1954 SC 520 Hon'ble Supreme Court held that it is beyond any cavil that in the event a person is elected who does not fulfill the constitutional requirements, the election would be void despite the fact

that the Returning Officer has accepted his nomination paper.

58. In Sushil Kumar Vs. Rakesh Kumar (2003) 8 SCC 673 (para 79) Hon'ble Supreme Court held that Article 173(b) of the Constitution of India provides for a disqualification. A person can not be permitted to occupy an office for which he is disqualified. The endeavour of the Court therefore should be to see that a disqualified person should not hold the office but should not at the same time unseat a qualified person therefor.

Conclusion on Issue No.(a) and (b)

59. For all the reasons aforesaid, I answer issues No.(a) and (b) in Negative, i.e. against the respondent that as on the date of filing of nomination paper on 25.1.2017 and on the date of scrutiny of nomination paper on 28.01.2017 and on the date of declaration of result of Legislative Assembly Election of 34-Suar Assembly Constituency of District Rampur on 11.03.2017 the respondent was less than Twenty Five Years of age and thus was not qualified to be chosen to fill the seat in legislature of the State in terms of Article 173 (b) of the Constitution of India.

Conclusion on Issue No.(c)

60. In view of my answer to issues No.(a) and (b) in NEGATIVE i.e. against the respondent, the Election Petition is **allowed**. The election of the respondent from 34-Suar Assembly Constituency is declared void and consequently it is set aside.

Order

61. In view of the aforesaid, the Election-Petition is **Allowed**. The election of the respondent from 34-Suar Assembly Constituency of District Rampur is declared void and consequently it is set aside. Let the substance of this decision be intimated by the Registrar General of this Court to the Election Commission and the Speaker of the Uttar Pradesh Legislative Assembly . A certified copy of this decision be sent to the Election Commission of India forthwith.

There shall be no order as to costs.

Order Date :- 16.12.2019/vkg