



**HIGH COURT OF ANDHRA PRADESH**  
FRIDAY ,THE FOURTH DAY OF NOVEMBER  
TWO THOUSAND AND TWENTY TWO  
**PRESENT**  
**THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**  
**WRIT PETITION NO: 5617 OF 2022**

**Between:**

1. CHAKALI MANIKANTA S/o Veeraiah Chakali,  
aged. 23 Years, Occ. Elected as Sarpanch,  
R/o. D.No.4/290, Veerapunayanipalle Village and Post,  
Veerapunayanipalle Mandal, Kadapa District.

**...PETITIONER(S)**

**AND:**

1. THE HONBLE ELECTION TRIBUNAL CUM JUNIOR CIVIL JUDGE  
Kamalapuram, Kadapa District.
2. The High Court of Judicature of Andhra Pradesh, Rept. By Registrar  
General, High Court, at Amaravathi.R2 is Deleted as per  
C.O.dt.07/03/2022
3. Peruri Veera Venkata Naga Prasad S/o Rama Rao,  
Age. 35 Years, Occ. Agriculture, R/o. D.No.4-254, Maruthi Nagar,  
Veerapunayanipalle Village and Post, Veerapunayanipalle Mandal,  
Kadapa District-516 321
4. The State Election Commission, Rept. By its State Election  
Commissioner,  
1st Floor, New RandB Building, M.G.Road,  
Opp. Indira Gandhi Municipal Stadium, Punammathota,  
Labbipet, Vijayawada, Krishna District-520 010.
5. The District Collector-cum-District Election Authority, Kadapa, Kadapa  
District.
6. The District Panchayat Raj Officer, Kadapa, Kadapa District.
7. The Mandal Parishad Development Officer, Veerapunayanipalle,  
Veerapunayanipalle Mandal,  
Kadapa District.
8. The Returning Officer for Gram Panchayat Elections, Veerapunayanipalle  
Gram Panchayat,  
Veerapunayanipalle Village and Post, Veerapunayanipalle Mandal,  
Kadapa District.
9. Kokku Ganga Devi W/o Srinivasulu,  
Aged. 52 Years, Occ. Defeated Candidate in Elections,  
R/o. 4/117, BC Colony, Veerapunayanipalle Village and Post,  
Veerapunayanipalle Mandal, Kadapa District.
10. C.Ramachandra S/o Obulesu,  
Aged. 42 Years, Occ. Defeated Candidate in Elections,  
R/o. 4, BC Colony, Veerapunayanipalle Village and Post,  
Veerapunayanipalle Mandal, Kadapa District.
11. Kokko Ravi Prasad S/o Srinivasulu,  
Aged. 30 Years, Occ. Coolie, R/o. 4/117, BC Colony, Veerapunayanipalle  
Village and Post,  
Veerapunayanipalle Mandal, Kadapa District.
12. Nareddy Ravindranatha Reddy S/o Shambu Reddy,  
Aged. 53 Years, Occ. Ex-sarpanch,  
R/o. Maruthinagar, Veerapunayanipalle Village and Post,  
Veerapunayanipalle Mandal, Kadapa District.



...RESPONDENTS ~~102~~:APHC:36130

**Counsel for the Petitioner(s): HARINATH REDDY SOMA**  
**Counsel for the Respondents: PRIYANKA SONKAMBLE**  
**The Court made the following: ORDER**



\* **HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

**+ WRIT PETITION No.5617 OF 2022;**  
**WRIT PETITION No.6145 OF 2022**  
**and**  
**WRIT PETITION No.4527 of 2022**

**% 4<sup>th</sup> November, 2022**

**W.P.No.5617 of 2022**

# Chakali Manikanta

... Petitioner..

AND

\$ The Hon'ble Election Tribunal-cum-Junior  
Civil Judge, Kamalapuram, Kadapa District  
and 11 others.

... Respondents.

! Counsel for the Petitioner : Mr. T.D.Phanikumar  
Mr. Harinath Reddy Soma

^ Counsel for the 1<sup>st</sup> respondents: Standing counsel

^ Counsel for the 3<sup>rd</sup> respondent : Mr. Peeta Raman  
Ms. Priyanka Sonkamble

^ Counsel for the 4<sup>th</sup> respondents: Mr. Vivek Chandra Sekhar  
Standing Counsel

^ Counsel for the 5<sup>th</sup> respondent : Government Pleader for Revenue

^ Counsel for the 6<sup>th</sup> respondent: Government Pleader for Panchayat Raj

^ Counsel for the 7&8<sup>th</sup> respondents: Mr. Vinod K. Reddy, Standing counsel

< Gist:

> Head Note:

? Cases referred:

- 1) (1990) 2 SCC 173
- 2) (2001) 6 SCC 260
- 3) (2004) 7SCC 654
- 4) (2003) 8 SCC 673
- 5) (201) 10 SCC 715
- 6) (2010) 4 SCC 491
- 7) (2020) 4 SCC 659
- 8) (2005) 3 SCC 702
- 9) AIR 1971 SC 1944
- 10) AIR 1983 CAL 337
- 11) AIR 1961 CAL 359
- 12) (2003) 1 SCC 240
- 13) (2003) 8 SCC 752
- 14) (2006) 5 SCC 173

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****WRIT PETITION No.5617 OF 2022;****WRIT PETITION No.6145 OF 2022****and****WRIT PETITION No.4527 of 2022****COMMON ORDER:**

W.P.No.5617 of 2022 is filed seeking a certiorari and challenging the order dated 28.01.2022 passed in Election O.P.No.3 of 2021 by the Election Tribunal-cum-Junior Civil Judge, Kamalapuram, Kadapa District.

W.P.No.6145 of 2022 is filed to call for records of Order dated 28.01.2022 passed in E.O.P.No.3 of 2021 by the Election Tribunal-cum-Junior Civil Judge, Kamalapuram, Kadapa District and assailing the action of the official respondents in not declaring the 2<sup>nd</sup> petitioner i.e., 9<sup>th</sup> respondent in EOP, as Sarpanch of Veerapunayanipalle Gram Panchayat, Veerapunayanipalle Mandal, Kadapa District, in place of the disqualified Sarpanch i.e., 6<sup>th</sup> respondent.

W.P.No.4527 of 2022 is filed challenging the action of the respondents in not declaring the petitioner as elected to the post of Sarpanch as the elected candidate was declared disqualified by the order dated 28.01.2022 passed in



E.O.P.No.3 of 2021 by the Election Tribunal-cum-Junior Civil Judge, Kamalapuram, Kadapa District.

2. Since the subject matter in all the writ petitions is one and the same, they were heard together with the consent of all the learned counsel. Main arguments were heard in W.P.No.5617 of 2022.

3. This Court has heard Sri Phani Kumar for Sri Harinath Reddy Soma, learned counsel for the petitioner (W.P.No.5617 of 2022), who is the 6<sup>th</sup> respondent in E.O.P.No.3 of 2021. Sri Peeta Raman, learned counsel argued for the main contesting respondent (3<sup>rd</sup> respondent). Sri Vinod K. Reddy, learned standing counsel and the learned Government Pleader for Panchayat Raj have also made their submissions.

4. The record was summoned for from the lower Court by this Court's order dated 10.08.2022.

5. The crux of the matter is about the age of the 6<sup>th</sup> respondent in Election O.P.No.3 of 2021, who is the Writ Petitioner in W.P.No.5617 of 2022, and the core issue is – Is he disqualified to stand for election because he is under aged and not 21 years old as required under Section 17 of the A.P.



Panchayat Raj Act, 1994? Along with this an issue is raised about the actual name of the 6<sup>th</sup> respondent in the E.O.P.

6. The parties will be referred to as they are arrayed as in Election O.P.No.3 of 2021 for the sake of convenience. The prayer in the Election Petition filed before the Junior Civil Judge-cum-Election Tribunal is as follows:

“...to pass an order declaring the action of respondents in not declaring the 6<sup>th</sup> respondent as intelligible for contesting in elections as under aged by considering petitioner’s objections before scrutinizing the nominations and allowing him to contest in elections and also declaring him as elected and allowing him to administer oath as “Sarpanch” for Veerapunayunipalle (V.N.Palli) Gram Panchayat, Veerapunayunipalle Mandal, Kadapa District, Andhra Pradesh as illegal, arbitrary, discriminative, mala fide, unjust, void *ab initio* besides violative of the Sec.17 of A.P. panchayat Raj Act, 1994 and also violative of the Art.14 of the Constitution of India.”

7. In the course of the pleading it is stated that the 6<sup>th</sup> respondent has hidden all the correct details to hide his “original identity and Date of Birth”. In the counter filed by the 6<sup>th</sup> respondent it is asserted that the 6<sup>th</sup> respondent is always known as “Chakali Manikanta” and is not known as “Konduru Veera Manikanta”. In the cause title the 6<sup>th</sup>



respondent is described both as Chakali Manikanta and Konduru Veera Manikanta. Petitioner's case is that the real name of the candidate is Konduru Veera Manikanta and that he is underaged.

8. The parties went to trial and introduced evidence. Exs.A1 to A10 were marked and PWs 1 to 4 were examined for the petitioner in the EOP. Exs.B1 and B2 were marked RWs.1 to 3 were examined for the respondents. After considering the oral and documentary evidence the trial court came to the conclusion that Konduru Veera Manikanta and Chakali Manikanta are one and the same person. The trial Court also came to the conclusion that as per Ex.A1 the Date of Birth of the 6<sup>th</sup> respondent is 05.06.2000. Therefore, the Court held that as per Ex.A1 the 6<sup>th</sup> respondent was disqualified to contest the election as he is under aged since he has not completed the age of 21 years as required by the law.

9. This Court notices that in the Election O.P. that is filed the pleadings are not very proper. No clear or categorical pleadings are there raising the issues which were considered by the Election Tribunal. Nevertheless, both the parties went to trial, introduced evidence, cross-examined witnesses and



invited the findings on the age / on the alleged impersonation / identity of the 6<sup>th</sup> respondent. Very extensive arguments were also advanced before this Court also about the respective merits and demerits of each of the documents that were marked in the evidence and also the conclusions reached by the Court below which lead to filing of the current writ petitions before this Court. This Court notices on a reading of the findings of the Court below that the trial Court Judge was convinced that both Konduru Veera Manikanata and Chakali Manikanta are one and the same. The trial Court also came to the conclusion that the entries in Ex.A1 and A2 regarding the Date of Birth of the 6<sup>th</sup> respondent constitute good proof of age. The Court also held that the Date of Birth Certificate, dated 02.02.2021 (which is a part and parcel of nomination form Ex.B1 / Ex.A7) which was signed by the Tahsildar is not correct. The Date of Birth mentioned in this certificate of Chakali Manikanta is 01.01.1999 and this was held to be incorrect by the trial Court.

10. The issue that has to be decided by this Court while exercising power in a writ of certiorari is whether the trial Court acted in accordance with law or contrary to the





law? However, before doing so Court wishes to refer to some of the important cases (amongst the great many cited during the hearing) to fix the parameters / boundaries for deciding the *lis*.

(a) ***Laxmi Narayan Nayak v Raratan Chaturvedi and others***<sup>1</sup>

“5. This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] and *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442] .

(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh* [(1973) 2 SCC 599: (1974) 1 SCR 52] , *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442] and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] .

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide *Jumuna Prasad Mukhariya v. Lachhi Ram* [(1955) 1 SCR 608: AIR 1954 SC 686] and *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660] .

(4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* [(1984) 4 SCC 649] .

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<sup>1</sup> (1990) 2 SCC 173



(5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660] , *M. Narayana Rao v. G. Venkata Reddy* [(1977) 1 SCC 771: (1977) 1 SCR 490] , *Lakshmi Raman Acharya v. Chandan Singh* [(1977) 1 SCC 423: (1977) 2 SCR 412] and *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260].

(6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660], *Mohan Singh v. Bhanwarlal* [(1964) 5 SCR 12: AIR 1964 SC 1366] and *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260].”

(b) ***Tarlochan Dev Shara v State of Punjab and***

***Others***<sup>2</sup> (Para 7)

7. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of “abuse of his powers” (of President), inter alia. This is the phrase with which we are concerned in the present case.

relied on by the petitioner; and

(c) ***Rupadhar Pujari v Gangadhar Bhatra***<sup>3</sup> (para-8)

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<sup>2</sup> (2001) 6 SCC 260



“8. True it is that the relief clause in the election petition in the present case is not very happily worded. The election petitioner would have been better advised to specifically seek a declaration to the effect that he was elected. However, we cannot be oblivious of the fact that panchayat elections are part of Gram Swaraj system. Most of the provisions relating to election and election petitions in the laws governing Panchayats are in *pari materia* with the provisions contained in the Representation of the People Act, 1951. Yet the procedural laws relating to panchayat elections and election petitions cannot be allowed to be interpreted with too much of rigidity and by indulging in hair-splitting. A recent decision by a Constitution Bench in *Sardar Amarjit Singh Kalra v. Pramod Gupta* [(2003) 3 SCC 272] once again reminds us to remember that laws of procedure are meant to regulate effectively, assist and aid the object of doing substantive and real justice. Procedural laws must be liberally construed to really serve as handmaid of justice, make them workable and advance the ends of justice. Technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of the law inevitably necessitates it.”

(d) ***Sushil Kumar v Rakesh Kumar***<sup>4</sup> (Para 25)

25. It is beyond any cavil that in the event a person is elected who does not fulfil the constitutional requirements, the election would be void despite the fact that the Returning Officer has accepted his nomination paper. (See *Durga Shankar Mehta v. Thakur Raghuraj Singh* [AIR 1954 SC 520 : (1955) 1 SCR 267].)

(e) ***Rajendra Kumar Meshram v Vanshmani Prasad Verma and another***<sup>5</sup> (Para-10)

“10. Under Section 100(1)(d), an election is liable to be declared void on the ground of improper acceptance of a nomination if such improper acceptance of the nomination has materially affected the result of the election. This is in distinction to what is contained in Section 100(1)(c) i.e. improper rejection of a nomination which itself is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such rejection on the result of the

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<sup>3</sup> (2004) 7 SCC 654

<sup>4</sup> (2003) 8 SCC 673

<sup>5</sup> (2016) 10 SCC 715

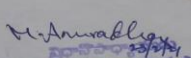


election. The above distinction must be kept in mind. Proceeding on the said basis, we find that the High Court did not endeavour to go into the further question that would be required to be determined even if it is assumed that the appellant returned candidate had not filed the electoral roll or a certified copy thereof and, therefore, had not complied with the mandatory provisions of Section 33(5) of the 1951 Act.”

11. These cases lay down the parameters / yardsticks for this Court in deciding this matter.

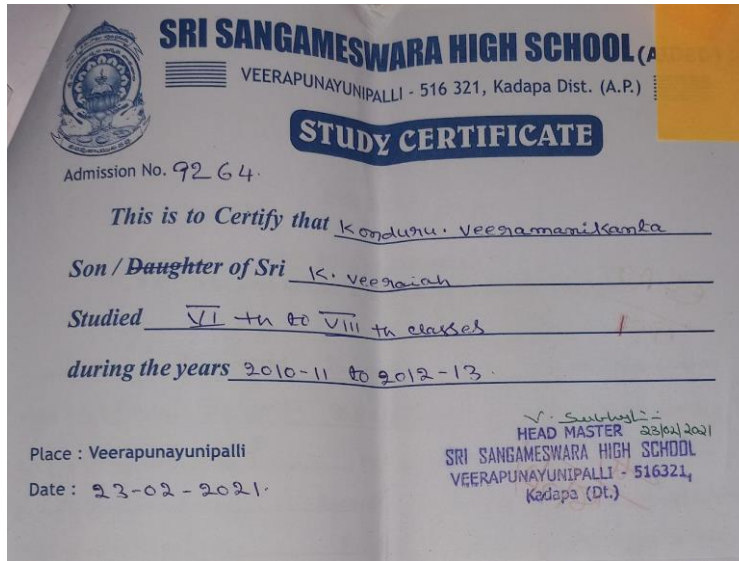
12. The issue before the Election Tribunal and this Court is the Date of Birth of the 6<sup>th</sup> Respondent/writ petitioner. The question is whether his Date of Birth is 05.06.2000 (in which case he would be disqualified) or 01.01.1999 as per the certificate filed with his nomination form (which would qualify him).

13. This Court notices that Exs.A1 and A2 were relied on by the trial Court. They were marked through P.W.1, who is the petitioner before this Court. Ex.A1 is as follows:

<b>STUDY CERTIFICATE</b>	
S.No.	
Admission No.	3041
This is to certify that	Randuru, Venu Manikanta
Son / Daughter of	K. Venaiiah
studied / is studying	1 <sup>st</sup> to 5 <sup>th</sup> classes
during the years / year	2005-06 to 2009-10
Date of Birth	05-06-2000
Caste	chakali
(As per Our School Records)	
Aadhaar No.	<input type="text"/> <input type="text"/> <input type="text"/>
 Headmaster / Principal 513 321	



14. Ex.A2 is as follows:



15. Exs.A1 and Ex.A2 were marked through P.W.1. In the cross-examination of PW1 on 20.10.2021 a suggestion was put that Ex.A1 does not belong to Chakali Manikanta and it is a created document. A suggestion was also put that Ex.A2 does not belong to Chakali Manikanta and it is a created document. Similarly, with regard to Ex.A3 also certain cross-examination is there.

16. Thereafter, one M.Anuradha was examined as P.W.3. In her chief-examination she deposed that she has issued Ex.A1 as per the School Admission Register for 2005-2006. As per this Ex.A1 the Date of Birth of Konduru Veera Manikanata is 05.06.2000. In the cross-examination she admits that since the year 2020 she has been maintaining the School Admission Register. She also states that she does not



know the procedure that was adopted by her predecessors during their respective tenures. She clearly admits in the further cross-examination on behalf of the 6<sup>th</sup> and 10<sup>th</sup> respondents that she has no personal knowledge whether at the time of admission of a student during 2005-06 a certificate issued by Karanam or Sarpanch was taken to enter the age of the student. She also clearly admits that she has no personal knowledge about the entries in the School Admission Register during the tenure of her predecessors. She admits that she is giving evidence as per the School Admission Register brought by her to the Court.

17. Ex.A2, which is reproduced above in the order, does not talk of the Date of Birth or mention about the Date of Birth. Therefore, this Court notices that the only evidence available before the trial Court from the petitioner's side with regard to the Date of Birth is Ex.A1.

18. Sri Phani Kumar, learned counsel for the 6<sup>th</sup> respondent and current writ petitioner had argued that when the truth of the contents of the document is an issue the mere marking of the document is not enough. He relies upon the



case in ***Life Insurance Corporation of India and another v Ram Pal Singh Bisen***<sup>6</sup> for this proposition.

19. ***C. Doddanarayana Reddy v C. Jayarama Reddy***<sup>7</sup> was also relied upon by Sri Phani Kumar to argue that Ex.A1 is not enough to non-suit the 6<sup>th</sup> respondent. This judgment also supports his contention about the proof of the entries in School Admission Register and holds as follows:

**“14.** We do not find any merit in the arguments raised. The public document in terms of Section 74 of the Evidence Act, 1872 includes the documents forming records of official bodies or tribunals. Section 76 of the said Act gives a right to any person to demand a copy of a public document on payment of a fee together with the certificate written at the foot of such copy that it is a true copy of such document. Certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. The plaintiff has produced photocopy of the certificate (Ext. P/1) on the records of this appeal. Such certificate does not show that it is said to be a certified copy of a public document as contemplated by Section 76 of the said Act.

**15.** School leaving certificate has been produced by the plaintiff and said to be signed by his father. The person who has recorded the date of birth in the school register or the person who proves the signature of his father in the school transfer certificate has not been examined. No official from the school nor any person has proved the signatures of his father on such certificate. Apart from the self-serving statement, there is no evidence to show that the entry of the date of birth was made by the official-in-charge, which alone would make it admissible as evidence under Section 35 of the Evidence Act, 1872. However, the High Court has not found any other

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<sup>6</sup> (2010) 4 SCC 491

<sup>7</sup> (2020) 4 SCC 659



evidence to prove the truthfulness of the certificate (Ext. P/1).

**16.** .....

**17.** In *Birad Mal Singhvi* [*Birad Mal Singhvi v. Anand Purohit*, 1988 Supp SCC 604] , the date of birth was sought to be proved by the Principal of the school. Though, the Principal could not produce the admission form in original or its copy. It was held therein that the entries contained in the school's register are relevant and admissible but have no evidentiary value for the purpose of proof of date of birth of the candidates. A vital piece of evidence was missing as no evidence was placed before the court to show on whose information the date of birth was recorded in the aforesaid document. It was held as under : (*Birad Mal Singhvi case* [*Birad Mal Singhvi v. Anand Purohit*, 1988 Supp SCC 604] , SCC p. 618, para 14)

“14. ... No doubt, Exts. 8, 9, 10, 11 and 12 are relevant and admissible but these documents have no evidentiary value for purpose of proof of date of birth of Hukmi Chand and Suraj Prakash Joshi as the vital piece of evidence is missing, because no evidence was placed before the court to show on whose information the date of birth of Hukmi Chand and the date of birth of Suraj Prakash Joshi were recorded in the aforesaid document. As already stated, neither of the parents of the two candidates nor any other person having special knowledge about their date of birth was examined by the respondent to prove the date of birth as mentioned in the aforesaid documents. Parents or near relations having special knowledge are the best persons to depose about the date of birth of a person. If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. The testimony of Anantram Sharma and Kailash Chandra Taparia merely prove the documents but the contents of those documents were not proved. The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to





be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned.”

**18.** In *Madan Mohan Singh* [*Madan Mohan Singh v. Rajni Kant*, (2010) 9 SCC 209 : (2010) 3 SCC (Civ) 655] , this Court held that the entries made in the official record may be admissible under Section 35 of the Evidence Act, 1872 but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded. The Court held as under : (SCC pp. 216-17, paras 20-22)

“20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

21. For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc. the entry in the school register is to be discarded. (Vide *Brij Mohan Singh v. Priya Brat Narain Sinha* [*Brij Mohan Singh v. Priya Brat Narain Sinha*, AIR 1965 SC 282] , *Birad Mal Singhvi v. Anand Purohit* [*Birad Mal Singhvi v. Anand Purohit*, 1988 Supp SCC 604] , *Vishnu v. State of Maharashtra* [*Vishnu v. State of Maharashtra*, (2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] and *Satpal Singh v. State of Haryana* [*Satpal Singh v. State of Haryana*, (2010) 8 SCC 714 : (2010) 3 SCC (Cri) 1081] .)”

20. In addition, learned counsel for the 6<sup>th</sup> respondent also relied upon a compilation of judgments including the



judgment reported in ***State of Punjab v. Mohinder Singh***<sup>8</sup>. (This judgment is also referred to by the learned trial Judge). In para-8 of the judgment, the Hon'ble Supreme Court of India noted that the Court had directed the respondent to produce the original school leaving certificate. In the School Leaving Certificate it was noticed that a particular date of birth was indicated. This was examined vis-à-vis horoscope which is other material available to determine the issue. When these two were compared the Hon'ble Supreme Court of India came to conclusion that the entry in a school record, regarding Date of Birth is more than authentic evidence vis-à-vis horoscope. In the opinion of this Court, this judgment is not in a strict sense applicable to the facts of this case.

21. Ex.A1 is the only document which contains the Date of Birth of Konduru Veera Manikanta and states that the date of birth is 05.06.2000. As per the settled law on the subject including the case in ***Bholanath Amritlal Purohit v State of Gujarat***<sup>9</sup>, merely marking a document without examining the author etc., is not enough to prove the “truth” of the contents. It is also clear that Ex.A1 is not a “certified copy”. The citation in ***C. Doddanarayana Reddy case (7***

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<sup>8</sup> (2005) 3 SCC 702

<sup>9</sup> AIR 1971 SC 1944



**supra)** relied on by learned counsel for the petitioner supports this contention.

22. The original school record is not produced before the Court. The person who gave the information to record that his Date of Birth as “05.06.2000” is not examined. Neither the original School Register nor proper extract of the school register is marked as a document. Therefore, as the proof of the contents of the document is an issue in this case, this Court is of the opinion that Ex. A1 by itself cannot be accepted as the gospel truth to hold that “05.06.2000” is the correct date of birth of the 6<sup>th</sup> respondent. In contradiction, to this the 6<sup>th</sup> respondent along with his nomination paper has filed his Date of Birth which is recorded as 01.01.1999. This certificate dated 02.02.2021 is part and parcel of Ex.B1 (equal to Ex.A7). Ex.B1 was marked through the evidence of R.W.1, who is the returning officer who accepted the nomination papers. She relied on this Date of Birth to decide his age. In the cross-examination of R.W.1 nothing was elicited about the Date of Birth of R.W.2 (6<sup>th</sup> respondent). Her satisfaction about the Date of Birth of the 6<sup>th</sup> respondent is not raised in the cross-examination. Thereafter, R.W.2 filed his chief examination and was cross-examined on



23.11.2021. Even in the said cross-examination nothing was mentioned about the contents of the Date of Birth Certificate, which is a part and parcel of Ex.B1, which shows that his Date of Birth is 01.01.1999. No cross-examination is there on this Date of Birth or on the contents of the document, particularly as this Date of Birth (01.01.1999) was accepted by the Returning Officer during the Scrutiny of the Nominations.

23. The law on the subject is very clear and failure to cross-examine on important aspects means that the opposite party accepts the contentions. The relevant case law is ***Traders Syndicate v Union of India***<sup>10</sup>. The learned single Judge of the Calcutta High Court relied on ***A.E.G.Garapiet v A.Y. Dardarian***<sup>11</sup> and held as follows:

“AIR 1961 Cal 359 is an authority on this point. In para 10 of this report at p. 362 it was held:—

“Whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that, this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witness. It has been stated on high authority of the House of Lords that this much a

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<sup>10</sup> AIR 1983 Cal 337

<sup>11</sup> AIR 1961 Cal 359



counsel is bound to do when cross-examining that he must put to each of his opponent's witness in turn, so much of his own case as concerns that, particular witness or in which that witness has any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety.”  
(Emphasis supplied)

24. This case is cited with approval in **Sarwan Singh v State of Punjab**<sup>12</sup>.

25. The trial Court had two different dates of births i.e., 05.06.2000, which is as per Ex.A1, and 01.01.1999, which is as per Ex.A7. Ex.A1 is filed through P.W.1 and sought to be proved through P.W.3. Neither P.W.1 nor P.W.3 has any knowledge about the correctness of the said data/date which is mentioned in Ex.A1. The original document on the basis of which Ex.A1 was prepared is not produced or exhibited. Ex.A1 was issued on 23.02.2021 by Smt.M.Anuradha, who was examined as P.W.3. Ex.A1 pertains to the year 2005-06. As per the case law on the subject unless and until a person concerned with the information in / about the document is examined or the original entry is exhibited and evidence is given about the contents thereof it cannot be said to have been proved. In addition, Ex.B1 is issued the Revenue Authorities. It carries a presumption in its favour as it is an official record (Section

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<sup>12</sup> (2003) 1 SCC 240



114 (e) of the Evidence Act). There is also no cross-examination on the contents of this document. Therefore, in the light of the case law, which is referred to above, this Court has to hold that the findings of the trial Court in paragraphs 26 to 29 are not correct. This is a manifest error and is in disregard of the law on the subject which resulted in the failure of justice. This Court also holds that the trial Court should not have disbelieved the contents of the Date of Birth Certificate filed along with the nomination by the 6<sup>th</sup> respondent or accepted Ex.A1 and its contents. The petitioner in the lower Court was also unable to establish that the Aadhaar / PAN Card / Voter ID of the 6<sup>th</sup> respondent are fake or false. In fact there is no evidence at all about the “fake documents”. The trial Court also wrongly concluded that as per Ex.A1/Ex.A2 the father of the 6<sup>th</sup> respondent admitted him in the above schools.

26. The other major issue that is raised is about the alleged impersonation or Chakali Manikanta being also known as Konduru Veera Manikanta. The oral and documentary evidence shows that there is confusion about the “surname” and the “name of the candidate”. The trial Court rightly noticed this aspect in paragraphs 23 and 24.



The Serial No.1475 and 1477 of voters list show that names of the persons mentioned therein are “Konduru” Lakshmi Devi and “Konduru” Veerayya. These were identified by R.W.2 as the photographs of his mother and father in his cross-examination, but he states that he does not know whether surname of his mother and the surname of his father at Sl.No.1475 and 1477 are shown as Konduru. Witness also identifies the names of his father and mother in the photographs affixed in Ex.A.9 but states further that he does not know whether the aadhaar numbers at page 9 and 10 are of his parents or not.

27. Ex.A4 clearly shows that it is issued to Chakali Lakshmi Devi. On the reverse of the Card the names of Chakali Jyothi, “KONDURU” Satish and also Chakali Satish are as family members. Konduru Satish, stated to be born on 01.01.2001, is recorded as the son Chakali Lakshmi Devi. Chakali Lakshmi and Chakali Veerayya are the executants of Ex.A9. Similarly, the door number, in which the 6<sup>th</sup> respondent/writ petitioner resides, is house No.4/290. This is in Ex.B1 Nomination form. A “No Dues” certificate from the Panchayat is filed and the house bearing D.No.4/290 is identified as the house of the 6<sup>th</sup> respondent “Chakali”



Manikanta. This is also the door number of the executants of Ex.A9 sale deed and the door number in the voters list in S.No.1475/1477 with the surname “KONDURU”. Therefore, there is any amount of confusion about the Chakali and Konduru surnames. However, the question before Court is whether “Chakali” Manikonda is the same person as “Konduru” Veera Manikanta.

28. Learned counsel for the respondents also took great pains to argue about Ex.A8, which is an attested copy of a Job card of the 6<sup>th</sup> respondent family. Learned counsel took pains to link the data in Ex.A8 with Exs.A9, A10 etc. But this Court notices that Ex.A8 has been marked “subject to proof, relevancy and admissibility”. The examination-in-chief of P.W.1 on 01.10.2021 and the appendix of evidence in the impugned judgment bear testimony to this objection being raised. Once a document has been marked subject to proof, admissibility and relevancy it cannot be treated as a document that is validly exhibited in evidence. Unfortunately, the learned counsel arguing the matter in the trial Court and the learned Judge of the trial Court have lost sight of this issue and have not argued on this crucial aspect. The objection raised about its admissibility has not been answered





by the trial Court either. In fact after hearing the learned counsel this Court reopened the hearings and heard the learned counsels about this particular point but it could not clarify on the same.

29. Learned counsel for the petitioner has relied upon the judgment in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple***<sup>13</sup>, wherein in para-19 the Hon'ble Supreme Court of India held that for every document admitted in evidence under Order XIII Rule 4 of CPC in the suit being endorsed by or on behalf of the Court before such an endorsement is made an objection should be raised about the admissibility. The Supreme Court of India clearly held that there are two types of objections:

- a) An objection for the document sought to be proved is itself inadmissible in evidence; and
- b) An admissibility about the mode of proof.

30. Sri Phani Kumar submits that once an objection is raised about the mode of proof and is taken up at an appropriate stage the party tendering the evidence must cure the defect by examining somebody who is connected with the document or the like to prove the contents of the documents.

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<sup>13</sup> (2003) 8 SCC 752



The same was not done as needed by the law. As noticed on 01.10.2021 an objection was raised about Ex.A8. Nobody connected with the document was examined. On the other hand, P.W.3 was examined on 05.11.2021 with reference to the contents of Ex.A1 (which was marked on 27.09.2021). No such step was taken to examine anybody connected with Ex.A8. Although a duty was cast both on the learned counsel appearing in the lower Court and also upon the Court to address this issue, it was left unaddressed. The lower Court overlooked the legal issues arising out of this objection and considered the document and its contents. Therefore, this Court has to hold that Ex.A8 is not validly proved. Even otherwise, this Court notices that Ex.A8 is an attested copy of a job card, which is issued by the Mandal Praja Parishad Officer on 29.09.2021. It is a Xerox copy which is signed by the said officer. It is a copy of online application of a computer record. Since it is an electronic record it also requires appropriate certification before it is received in evidence (Section 65-B of the Indian Evidence Act). The same is also missing from Ex.A8. Therefore, for all these reasons, this Court holds that Ex.A8 has not been validly received in evidence. If it is not validly received in evidence its contents



cannot be considered for the purpose of the decision. The lengthy arguments were advanced by the learned counsel for the respondents cannot be taken into consideration. The lower Court committed a patent error in relying on Ex.A8 and its contents. This is visible from a reading of the impugned order itself. The pleading and evidence in the election OP has to be of a high standard. ***Laxmi Narayan Nayak case (1 supra)*** makes it clear. In the absence of a clear foundation being laid in the pleading about the alleged impersonation or change of name etc., the evidence introduced cannot be looked into. Paras 5 (1) to 5 (4) reproduced earlier hold the field.

31. This Court finds that the trial Court committed manifest errors in relying on Exs.A1 and A8. The objection as to “admissibility” etc., was not at all answered or dealt with. These errors are visible / discernible from the record without a detailed process of argument / reasoning. Neither Ex.A1 nor Ex.A8 can be deemed to be documents proved in evidence. Para 11 of ***Municipal Council, Sujanpur v Surinder Kumar***<sup>14</sup> which is as follows fully applicable:

“11. The High Court's jurisdiction to issue a writ of certiorari though is limited, a writ of certiorari can be

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<sup>14</sup> (2006) 5 SCC 173



issued if there is an error of law apparent on the face of the record. What would constitute an error of law is well known. In *Judicial Review of Administrative Action*, IVth Edn., pp. 136-37, S.A. de Smith has summed up the position:

“(5) The concept of error of law includes the giving of reasons that are bad in law or (if there is a duty to give reasons) inconsistent, unintelligible or, it would seem, substantially inadequate. It includes also the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence.”

32. The finding in para-19 of the impugned judgment that the self declaration is not attested by two witnesses is also not pleaded with clarity in the petition. Para-7 of the petition refers to the lack of declaration of educational qualification etc., but not about the lack of attesting witnesses etc. Para 5(1) of ***Laxmi Narayan Nayak case (1 supra)*** is again applied.

### **CONCLUSION:**

33. Hence, this Court opines that it is a fit case to exercise the power under Article 226 of the Constitution of India. The order dated 28.01.2022 is set aside and the Writ Petition No.5617 of 2022 is allowed.



34. As a consequence of this order, both the Writ Petition Nos.6145 of 2022 and 4527 of 2022 are dismissed.

35. As a sequel, pending miscellaneous petitions in all these Writ Petitions, if any, shall stand closed.

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**D.V.S.S.SOMAYAJULU, J**

Date:04-11-2022.

Note: LR copy to be marked.

Issue CC today.

B/o

SSV