
(2008) 07 OHC CK 0034
In the Orissa High Court

Alekha Kumar Jena

APPELLANT

Vs

Akshaya @ Akshaya Kumar Jena and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Orissa Panchayat Samiti (Amendment) Act, 1969 — Section 45

Citation : (2008) 106 CLT 742 : (2008) 2 OLR 960 Supp

Hon'ble Judges : I.M. Quddusi, C.J;N. Prusty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.M. Quddusi, C.J.—By means of this Writ Petition, the Petitioner has challenged the impugned Judgment and Order Dated 24.2.2005 passed by the District Judge, Cuttack in Election Appeal Nos. 22 of 2003 and 24 of 2003 which appeals were filed against the Judgment and Order Dated 20.11.2003 passed by the Civil Judge (Senior Division), Kendrapara in Election Misc.Case No. 5 of 2002. Election Appeal No. 22 of 2003 was filed by Opposite Party No. 1 against the said Judgment declaring his election to the post of Member of Pattamundai Panchayat Samiti from Sanajaria Gram Panchayat as illegal and void and directing the Election Commissioner to do well to declare the instant Petitioner to be elected in his place. Election Appeal No. 24 of 2003 was filed by the instant Petitioner against that part of the Judgment passed by Learned Civil Judge (Senior Division), Kendrapara by which the Election Commissioner was directed to declare him as elected. Both the appeals were heard analogously and were disposed of by the impugned common Judgment.

2. The brief facts of the case are that the instant Petitioner had filed an Election Petition, registered as Election Misc. Case No. 5 of 2002 before the Civil Judge (Senior Division), Kendrapara alleging that the Opposite Party was having more than two children and as such he was disqualified for being a member of the Samiti. The Civil Judge (Senior Division), Kendrapara framed the following issues:

1. Is the present petition of the Petitioner maintainable in the eye of law in its present form?

2. Is the petition of the Petitioner barred by limitation?

3. Is the election of the Opposite Party No. 1 to the office of Pattamundai Panchayat Samiti is illegal and void for disqualification for filing the nomination being not in consonance of the provisions of Panchayat Samiti Act?

4. To what reliefs, if any; the parties are entitled for?

3. The Learned Civil Judge considering the oral and documentary evidence adduced in the case, answered all the issues except issue No. 2 which was not pressed in favour of the Petitioner and so holding allowed the election misc. case and declared the election of Opposite Party No. 1 as illegal and void as stated above. On appeal, the Learned District Judge set aside the Judgment of the Learned Civil Judge declaring election of Opposite Party No. 1 as illegal and void.

4. Here, at the very outset, we are considering the findings given on Issue No. 1 Section 45 of the Orissa Panchayat Samiti Act, 1969 prescribes the disqualification for becoming a member of a Panchayat Samiti according to Clause (v) of which a person shall not be eligible to stand for election if he has more than two children. It was alleged that at the time of filing nomination paper, the Opposite Party was having more than two children. However, such disqualification shall not apply to a person who has more than two children on the date of commencement of the Orissa Panchayat Samiti (Amendment) Act, 1994 or, as the case may be, within a period of one year of such commencement, unless he begets an additional child after the said period of one year. The Petitioner deposed that one child was born to Akshya Jena (Opp. Party No. 1) on 5.10.2000 at his village and he exhibited Entry 1435 of the Register of Births and Deaths of U.G.P.H.C, Pattamundai as Ext.7 which indicated that a male child was born to one Akshya Jena and Sovabini on 5.10.2000 as/informed by Malati Parida. Evidence adduced before the Learned Civil Judge (Senior Division) was to the effect that the Opposite Party was blessed with a male child on 5.10.2000. But the evidence produced was the entry made on the basis of the report of one Malati Parida, Auxiliary Nurse-cum-Midwife (ANM) on the basis of Ext. B which was an information sheet in Form No. 2, the details of which was that vide Serial No. 1435 dated 5.10.2000 a male child was born on 5.10.2000 to Akshaya Jena though the name of mother of the child has been reflected as Sobhabini and her educational qualification as M.E. But in fact the name of Akshaya Jena was proved to be the husband of Gurubari Rout. The election Commissioner had also issued a Voter Identity Card, which was exhibited in the case as Ext.A, which reveals that Gurubari Rout was the wife of Akshaya Jena. The Additional Tahasildar also issued certificate to that effect, which was exhibited as Ext.D. Further it had also come in the evidence that one Sobhabini, who was the wife of Ramesh Jena died on 15.1.2001. Therefore, on the basis of the aforesaid evidence, the District Judge set aside the Judgment and order passed by the

Learned.Civil Judge (Senior Division), Kendrapara.

3. (Sic) The burden was on the Petitioner to prove that the child was born to the Opposite Party No. 1 through his wife Gurubari Rout. But it could not be proved that the child was born through the wife of the Petitioner namely Gurubari Rout. Rather the evidence produced by the Petitioner revealed that the child was born from one Sobhabini, whose husband name was not mentioned in Ext.B. It was not the case of the Petitioner that Opposite Party No. 1 was having two wives at a time. Therefore, the child delivered by Sobhabini cannot be held to be the child of the Opposite Party No. 1. The death certificate of Sobhabini though shows that she died on 15.1.2001 but her husband's name was mentioned as Ramesh Ch. Jena. It is also not known that she was the same Sobhabini who delivered the child on 5.10.2000 or it was some other Sobhabini.

4.(Sic) Therefore, in the above circumstances, it cannot be said that Sobhabini delivered the child of Opposite Party No. 1 - Akshya Kumar Jena when it is proved that Sobhabini was not the wife of Opposite Party No. 1 rather Gurubari Rout was proved to be the wife of Opposite Party No. 1 - Akshya Kumar Jena.

5. Therefore, we decline to interfere with the impugned Judgment and the finding given by the Learned District Judge in the Election Appeals.

In view of the above, the Writ Petition is dismissed. There would be no order as to costs.

N. Prusty, J.

I agree.