
(2010) 05 OHC CK 0059
In the Orissa High Court
Case No : Writ Petition (C) No. 13097 of 2009

Anil Kumar Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Orissa Zilla Parishad Act, 1991 — Section 36, 36(2), 9(3), 9(4)

Citation : (2010) 1 ILR (Ori) 87

Hon'ble Judges : S.K. Mishra, J; L. Mohapatra, J

Bench : Division Bench

Judgement

L. Mohapatra, J.—The Petitioner, who is an elected member of the Zilla Parishad, Balasore, has filed this writ petition for a declaration that opposite party Nos. 6 and 7 who had been elected as President and Vice-President have ceased to hold office in such capacity having not taken oath/affirmation as required under Sub-section (2) of Section 36 of the Orissa Zilla Parishad Act, 1991 and a further declaration that the Petitioner being the number one in the panel of elected members is entitled to assume the office of the President of Zilla Parishad in terms of Sub-sections (3) and (4) of Section 9 of the said Act.

2. The case of the Petitioner is that the elected members of the Balasore Zilla Parishad took oath/affirmation as members of the said Zilla Parishad on 13.3.2007. The first meeting was convened for the purpose of election of President and the nomination was scheduled to be filed between 10.30 A.M. to 12.30 A.M. The nomination papers were scrutinized at 12.30 A.M. and the process for withdrawal of candidature started from 1.00 P.M. One Nityananda Sahu, who had filed nomination submitted an application for withdrawal of his candidature and thereafter the voting process for the post of President was done between 2.30 P.M. to 5.00 P.M. At 5.15 P.M. the counting of votes started and opposite party No. 6 having secured a maximum number of votes was declared elected as President of the Zilla Parishad. Similarly on 22.3.2007, the second meeting of the Parishad was convened for election to the post of Vice-President

and opposite party No. 7 having secured the maximum number of votes was also declared elected as the Vice-President of the Parishad. On 19.9.2007 in the fifth meeting of the Parishad under Agenda No. 2, a panel of Members for the post of President was prepared in terms of Sub-sections (3) and (4) of Section 9 of the Act and the name of the Petitioner was at sl. No. 1 in the said panel. Referring to Section 36 of the Act, it is contended by the Petitioner in the writ petition that both the opposite party Nos. 6 and 7 having not taken oath as President and Vice-President respectively, they ceased to hold office any further and therefore, the Petitioner being number one in the panel is required to be declared as President of the Zilla Parishad.

3. Counter affidavit has been filed on behalf of opposite party Nos. 3 and 4 wherein it is stated that consequent upon election to the post of members of Zilla Parishad, Balasore in the year 2007, all the 45 elected members were administered oath of allegiance to the Constitution of India by the Collector, Balasore in a special meeting convened on 13.3.2007. Soon thereafter the election for the post of President was undertaken and opposite party No. 6 was declared to have been elected as President of the Zilla Parishad on 13.3.2007. Later on 22.3.2007 opposite party No. 7 in an election was declared to have been elected as the Vice-President of the Zilla Parishad. In paragraph-6 of the counter affidavit, it is stated that there is no specific provision in the Act specially in Section 36 for taking oath or affirmation twice by the elected members including the President and Vice-President and therefore, there is no necessity of administering oath or affirmation to the President and Vice President again. Opposite party No. 6 has also filed a counter affidavit taking the same stand as opposite party Nos. 3 and 4 and learned Counsel appearing for opposite party No. 7 in course of hearing of the application also took the same stand as taken in the counter affidavit filed by the said opposite party. Therefore, the Court is now called upon to decide as to whether u/s 36 of the Act it is necessary for the members of the Zilla Parishad who have taken oath once as members to take oath again after being elected as President or the Vice President as the case may be. Section 36 of the Act is quoted below:

36. Oath of allegiance - (1) Every elected member including the President and the Vice-President of the Parishad shall, before taking his seat, make at a meeting of the Parishad an oath or affirmation of his allegiance to the Constitution of India in the following form, namely:

I...having become a member/the President/ the Vice-President of the Parishad, swear in the name of God/Solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established that I will faithfully discharge the duty upon which I am about to enter.

(2) Any such member, President or Vice-President who fails to make, within three months of the date with effect from which he holds office or at any one of the first three meetings of the Parishad whichever is later, the oath or affirmation as aforesaid, shall cease to hold office as such and thereupon the seat shall become

vacant.

(3) No such member, President or Vice-President shall take his seat at a meeting of the Parishad or do any act as such unless he has made the oath or affirmation as provided in this section.

As is evident from Sub-sections (1) and (2) every elected member including the President and the Vice-President of the Parishad before taking his seat, must take oath or affirmation of his allegiance to the Constitution of India in the form prescribed in Sub-section (1) itself. Sub-section (2) provides that any such member, President or Vice-President who fails to take within three months of the date with effect from which he holds office or at any one of the first three meetings of the Parishad whichever is later, the oath or affirmation as aforesaid, shall cease to hold office as such and thereupon the seat shall become vacant. As is evident prior to 1993 there was no necessity for the President or the Vice-President to take oath and by Orissa Act 17 of 1993, Section 36 has been amended and it provides that every elected member including the President and the Vice-President has to take oath in the form prescribed in Sub-section (1) of Section 36.

4. The learned Counsel for the State referring to the counter affidavit submitted that under Sub-section (2) of Section 36, a member elected to the Parishad can take oath within 90 days from the date he holds office and therefore, before taking oath as a member of the Parishad, one can participate in the election for the post of President and Vice-President and it may so happen that all the members after such election may take oath but within 90 days from the date of holding office. With the above reasons, it is submitted by the learned Counsel for the opposite parties that in such event, it is not necessary to take oath twice, once as member and again as President or Vice-President as the case may be. Admittedly, in the present case prior to election to the post of President and Vice-President, oath had been administered to all the members of the Zilla Parishad and therefore, the question of taking oath as President or Vice-President did not arise at that stage. After amendment of the provision in Section 36 by Orissa Act 17 of 1993, it became mandatory for the elected members including the President and Vice-President of the Parishad to take oath of allegiance to the Constitution of India in the form prescribed under Sub-section (1) of Section 36. The oath itself clearly shows that it has to be taken either as a member or as President or as Vice-President as the case may be, and therefore, even if an elected member of the Zilla Parishad has taken oath as member thereof, has to take oath again after being elected as President or Vice-President as the case may be. Admittedly, in this case neither opposite party No. 6 nor opposite party No. 7 has taken oath as President and Vice-President respectively within 90 days from the date of assumption of office as President and Vice-President of the Zilla Parishad and therefore, in terms of Sub-section (2) of Section 36, they ceased to hold office as such and consequently both the seats are declared to be vacant on expiry of 90 days from the date of assumption of office as such. We, therefore,

allow this prayer of the Petitioner and declare that both opposite party Nos. 6 and 7 having not taken oath as President and Vice-President of the Parishad in terms of Sub-section (1) of Section 36 within 90 days from the date of assumption of office, have ceased to hold such office and the posts are declared to be vacant.

So far as the second prayer of the Petitioner is concerned, reference was made by the learned Counsel for the Petitioner to Section 9 of the Act. But on perusal of the said Section, we find that fresh election is required to be held for the said posts and the Petitioner cannot be automatically declared as President being number one in the panel prepared in terms of the said Section. Therefore, the second prayer of the Petitioner for declaration that he is deemed to be holding the office of the President cannot be allowed and accordingly the said prayer is turned down.

5. The writ application is disposed of accordingly.