
(1969) 08 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 258 of 1967

Banshidhar Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-08-1969

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 13, 14(1), 14(2), 15
Orissa Grama Panchayat Election Rules, 1965 — Rule 76

Citation : (1969) 35 CLT 1007

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : T. Dalai and G. Das, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—In Tarapur Grama Panchayat there are admittedly 20 members. The election of the Naib Sarpanch was to take place between 7 and 8 A.M. on 1-7-1967. The Petitioner's case is that he alone filed the nomination. The Presiding Officer declared at the meeting that he was elected, but did not subsequently notify that he was elected as required by Section 15 of the Orissa Grama Panchayat Act, 1964. An affidavit was filed on behalf of the opposite parties stating that out of 20 members only 5 were present in the meeting and as there was no majority no election could be held though the Petitioner was the only person who filed nomination which was found to be valid on scrutiny.

2. The only contention urged by Mr. Dalai is that once there was a single nomination filed by him, the Election Officer was bound to declare him elected under Rule 76(f) of the Orissa Grama Panchayat Election Rules, 1965. To appreciate this contention the relevant law on the point may be examined.

3. Section 14(2) of the Grama Panchayat Act runs thus : "No election of Naib Sarpanch shall be made unless a majority of the members of the Grama Panchayat be present at the meeting held under Sub-section (1)."

Rule 76(b) and (c) of the Orissa. Grama Panchayat Election Rules lay down:

76 (b). The Presiding Officer shall proceed to conduct the election, if a majority of the members of the Grama Panchayat are present on the date and at the time fixed for the purpose.

If, a majority of the members are not present, no election shall be made and a fresh notice shall be issued in accordance with the foregoing rules fixing another date. In case of failure of election for the second time, the Presiding Officer shall report the result to the Election Officer who shall thereupon move the Sub-divisional Officer for Domination of a Naib Sarpanch in pursuance of the provisions of Section 13. On the nomination of Naib Sarpanch by the Sub-divisional Officer, the Election Officer shall publish the name of the person so nominated in the notice board of the, Block Office as required u/s 15.

(c) If a majority of the members are present on the date fixed for the first or second meeting, as the case may be, the Presiding Officer shall call upon the members to elect a Naib Sarpanch from among themselves and allow time for one hour to receive Dominations in Form No. 4.

Rule 76(f) is to the effect:

(f) If only a single candidate is nominated, he shall be declared elected forthwith.

4. In the affidavit filed by the State, it was stated that only 5 members were present. In the rejoinder filed by the Petitioner, he relies upon the report of the Presiding Officer to the effect that out of 20 members of the Grama Panchayat including the Sarpanch 10 members were present during the period of election. Thus, even on the affidavit of the Petitioner there was no majority of members present during the election. Out of 20 the majority must be, at least, 11.

5. Mr. Dalai however places reliance on the aforesaid Rule 76(f) enjoining that if only a single candidate is nominated he shall be declared elected forthwith. This rule is to be read in the context of Section 14(2) of the Act and Rule 76(b) and (c) which lay down that if a majority of the members are not present, no election shall be made and a fresh notice shall be issued in accordance with the foregoing rules fixing another date.

6. The scheme of the Act and the Rule's obviously is that the election of the Naib Sarpanch will take place at a meeting where the majority of the members will be present and if in the presence of such majority a single nomination is filed then obviously the Election Officer must declare the person filing single nomination as elected, provided the nomination is not otherwise invalid. We are therefore satisfied on the construction of the statutory provisions that the Petitioner could not have been declared elected as Naib Sarpanch and rightly the Election Officer did not issue the necessary notification.

7. Mr. Dalai placed reliance on *N.P. Ponnuswami v. Returning Officer Namakkal* to show the entire election is a continuous process. We find nothing in that case,

throwing any light on the point in issue.

In the result, the application fails and is dismissed but in the circumstances without costs.

R.N. Misra, J.

8. I agree.