
(2008) 03 OHC CK 0048
In the Orissa High Court

Bhagyadhar Khatei

APPELLANT

Vs

Kubera Pradhan and Others

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Citation : (2008) 2 OLR 82

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The petitioner contested the election held in the year 2007 for the post of Sarpanch of Sagada Grama Panchayat under Nimapara police station in the district of Puri. He polled 1,436 votes and was elected. An election dispute was raised by opposite party No. 3 who had polled 1,429 votes and was defeated. Other candidates were also impleaded as opp. parties. The said election dispute was registered as Election Petition No. 12 of 2007 in the Court of the learned Civil Judge (JD), Nimapara.

2. In course of hearing of the Election Petition, a petition was filed by the election petitioner (present opposite party No. 3) praying to call for the used ballot papers for inspection and recounting of votes. Such prayer was made mainly on the ground that many fictitious persons impersonating dead voters had cast votes taking the advantage of the fact that the names of such dead voters were found in the voters' list. The said prayer was resisted by the present petitioner. The Court below after going through the pleadings and evidence adduced, as well as the death certificates with regard to the alleged dead voters, by order dated 7.12.2007, Annexure-4, came to the conclusion that inspection of used ballot papers and recounting of votes by Court would meet the ends of justice as fake votes cast for dead voters would materially affect the result of the election.

3. Mr. Mohanty, learned Counsel for the petitioner, submitted that no steps having been taken by the election petition in course of polling for identification of

voters, provision in that regard being very much available under Rule 44 of the Orissa Grama Panchayat Election Rules, 1965 and as adequate materials were neither pleaded nor produced before the Court below, the order calling for used ballot papers and recounting the same was not justified. He further submitted that the averments made in the Election Petition were based on surmises and conjectures, which clearly appear to be after-thought and would amount to roving enquiry, inasmuch as no prima facie case was made out.

4. The aforesaid submissions are strongly repudiated by Mr. H.N. Mohapatra, learned Counsel for opposite party No. 3. According to him adequate pleadings were made in the Election Petition to satisfy the Court that in fact votes were cast impersonating some dead voters whose names were erroneously found in the voters' list. The names of a few dead voters on whose behalf votes were cast, were also specifically mentioned. He further submitted that all the relevant materials in support of the prayer for calling for the used ballot papers and recounting the same were furnished in the petition and the Court below being prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, calling for the used ballot papers and recounting the same was necessary, had allowed the petition. Therefore, Rule 44 of the Election Rules shall not stand in the way of the election petitioner. In support of his arguments Mr. Mohapatra relied upon a decision of this Court reported in 2003 OLR 744 (Rabinarayan Hati v. Nityananda Patra and Anr.) and also a decision of the Supreme Court Reported in Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, .

5. There is no quarrel with regard to the legal provision about the guidelines stipulated for issuance of an order for inspection of the used ballot papers. The Supreme Court in the case of Ram Sewak Yadav (supra) has laid down two conditions (i) that the petition for setting aside the election must contain an adequate statement of the material facts on which the petitioner relies in support of his case; and (ii) the tribunal must be prima facie satisfied that in order to decide the dispute and do complete justice between the parties, inspection of used ballot papers is necessary.

But then law is very clear that an order for inspection of used ballot papers cannot be granted for asking, or just to support vague pleas made in the petition which are not otherwise supported by material facts, or such prayer appears to have been made to fish out evidence to support such pleas. In the case at hand, the only ground on which calling for used ballot papers and recounting the same was prayed for was that certain fictitious persons had cast votes impersonating some dead voters.

6. Rule 44 of the Orissa Grama Panchayat Rules, 1965 stipulates as follows:

44. (1) Any contesting candidates or his authorised polling agent may object to the identity of a voter on the only ground that he is not the person he claims to be as per entry in the electoral roll. For every objection a fee of Rs. 2 shall be

deposited with the Presiding Officer. The Presiding Officer shall decide the objection summarily and his decision shall be final. If the objection is rejected the deposit shall be forfeited. If, on the other hand, the objection is allowed, the deposit shall be refunded to the person who deposited the same.

(2) In case of forfeiture of deposit under Sub-rule (1), a receipt in Form No. 5 prescribed under the Orissa Grama Panchayat Rules, 1968 shall be issued to the person who has made the deposit.

Thus a provision is in built in the Election Rules to raise objection as to identity of a voter on the ground that he is not the person he claims to be as per the electoral roll. Such objection has to be made by the polling agents at the first instance. The modality for raising objection is stipulated in the Rules. The Rules also specify the consequences.

In the case at hand, admittedly resort to Rule 44 were not taken at the relevant time. That apart, the only ground on which the learned Civil Judge has ordered to call for the used ballot papers for recounting as noted earlier, was that there were allegations to the effect that some votes had been cast in the names of dead voters by impersonation. Such aspect cannot be ascertained by recounting the votes. On the other hand, such controversy can be properly decided on appreciation of evidence, as has been held by a Division Bench of this Court in the case of Sunadhar Kakari Vs. B.V. Rabana Murty and Others, .

7. In view of the discussions made above, this Court feels that the Court below has not properly appreciated the issue and has committed illegality by improper exercise of jurisdiction in calling for used ballot papers for recounting the same. The order Annexure-5 challenged in this Writ Petition is, accordingly, unsustainable in law and, therefore, this Court has no hesitation to quash the same. While doing so, this Court allows the Writ Petition.