
(2003) 08 OHC CK 0051
In the Orissa High Court
Case No : Writ Petition (C) No. 1368 of 2003

Bishnu Prasad Das

APPELLANT

Vs

Election Officer-cum-Block Development Officer and Others

RESPONDENT

Date of Decision : 25-08-2003

Acts Referred:

Orissa Panchayat Samiti Act, 1959 — Section 44A, 44C, 45B

Citation : (2004) 97 CLT 745 : (2003) OLR 651 Supp

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Sanjit Mohanty, P.K. Mohanty-2, S. Singh and R.N. Parija, for the Appellant; B.P. Roy and I. Mohanty, for the Respondent

Judgement

A.K. Patnaik, J.—The petitioner and opposite party No. 3 contested for the post of Chairman of Rairakhol Panchayat Samiti. Opposite party No. 3 was elected as Chairman of Rairakhol Panchayat Samiti. The petitioner presented Election Misc. Case No. 51/2002 in the Court of the learned Civil Judge (Senior Division), Sambalpur under Sections 44-A and 44-B of the Orissa Panchayat Samiti Act, 1959 (hereinafter referred to as "the Act"). Opposite party No. 3 filed an application before the learned Civil Judge (Senior Division), Sambalpur contending that the election petition was not maintainable as the petitioner has not complied with the mandatory provision of Section 44-B of the Act while presenting the election petition inasmuch as the petitioner has not made the security deposit along with the election petition within the time prescribed u/s 44-B of the Act and as the petitioner and opposite party No. 3 were not the candidates from the same area for the post of Member, Panchayat Samiti and an election petition challenging the election to the post of Chairman of the Panchayat Samiti cannot be filed in view of the provisions of Section 44-C of the Act. In his order dated 7.1.2003 the learned Civil Judge (Senior Division), Sambalpur held that the petition of opposite party No. 3 questioning the maintainability of the election petition does not appear to have any merit and accordingly rejected the same. Aggrieved by the said order dated 7.1.2003,

opposite party No. 3 filed Civil Revision No. 3/2003, before the learned District Judge, Sambalpur. The petitioner appeared before the learned District Judge, Sambalpur and pleaded that the revision was not maintainable u/s 115, CPC. The learned District Judge rejected the said contention of the petitioner and instead admitted the Civil Revision and allowed the stay petition filed by opposite party No. 3 staying further proceeding in Election Misc. Case No. 51/2002 in the Court of the learned Civil Judge (Senior Division), Sambalpur. Aggrieved by the said order dated 30.1.2003 passed by the learned District Judge, Sambalpur, the petitioner has filed this writ petition under Article 226 of the Constitution.

2. Mr. Sanjit Mohanty, learned counsel for the petitioner submitted that the contention of opposite party No. 3 before the learned Civil Judge was that the election of opposite party No. 3 as Chairman of Rairakhol Panchayat Samiti was challenged by the petitioner in the said Election Misc. Case but an election petition challenging the election to the post of Chairman of a Panchayat Samiti was not maintainable under Sections 44-A and 44-B of the Act. Mr. Mohanty submitted that this contention of opposite party No. 3 before the learned Civil Judge is misconceived as it has been held by two judgments of this Court in Gobind Ch. Panda Vs. Darsan Ch. Rout and Others, and Suresh Kumar Azad v. State of Orissa and Ors. 1993 (I) OLR 563 that the election of a Chairman of Panchayat Samiti can be challenged u/s 44-A of the Act,

3. Mr. Ray, learned counsel for opposite party No. 3, on the other hand, submitted that the Division Bench judgment of this Court in Suresh Kumar Azad v. State of Orissa and Ors. (supra) is per incuriam as it has not taken into consideration the provisions of Section 44-C of the Act. He submitted that a plain reading of Section 44-C of the Act would show that only an election of a Member of a Samiti and not the Chairman of a Panchayat Samiti can be challenged under Sections 44-A read with 44-B and 44-C of the Act.

4. Sections 44-A and 44-C of the Act are quoted herein below :

"44-A. Election petitions : No, election of a person as a Member of Samiti held under this Act shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.

44-B xxx xxx xxx 44-C. Parties to the petition : (1) An election petition may be presented by any candidate as such election.

(2) A person whose election is questioned and where the petition is to the effect that any other candidate is to be declared elected in place of such person, every unsuccessful candidate who has polled more votes than such candidate shall be made opposite party to the petition."

In the case of Suresh Kumar Azad v. State of Orissa and Ors. (supra), the Division Bench has held following an earlier Division Bench decision in the case of Gobind Ch. Panda v. Darsan Ch. Rout and Ors. (supra) that a member of a Samiti in Section 44-A would include the Chairman of the Panchayat Samiti and,

therefore, the election of Chairman of a Panchayat Samiti can be challenged by an election petition presented in accordance with the provisions of the Act. Now reading Section 44-A with Section 44-C quoted, above, an election petition may be presented challenging the election of a Chairman of a Panchayat Samiti by any candidate for the post of Chairman of the Panchayat Samiti and in such an election petition, the Chairman whose election is questioned is to be arrayed as an opposite party to the petition, and if in such an election petition a declaration is further sought that some other candidate is to be declared elected as Chairman, every unsuccessful candidate who has polled more votes than the person whose election is questioned, shall also be arrayed as an opposite party in the election petition. We, therefore, fail to see as to how Section 44-C of the Act, if taken into consideration, would alter the position of law laid down by the Division Bench of this Court in the case of Suresh Kumar Azad v. State of Orissa and Ors. (supra) that an election of a Chairman of a Panchayat Samiti can also be challenged in accordance with the provisions of the Act.

5. Mr. Ray next submitted that a reading of the provisions of Section 45-B of the Act would show that the power is vested really on the District Judge to decide in election dispute with regard to election of the Chairman of the Panchayat Samiti. Section 45-B is quoted hereunder:

"45-B. District Judge to decide question of disqualification : (1) Whenever it is alleged that any member of a Samiti is or has become disqualified, or whenever any such member is himself in doubt whether or not he is or has become disqualified such member or any other member may, and the Chairman at the request of the Samiti shall, apply to the District Judge, having jurisdiction over the place where the office of the Samiti is situated, for a decision on the allegation or doubt.

(2) The District Judge after holding an enquiry in the prescribed manner shall determine whether or not such member is or become disqualified and his decision shall be final.

(3) Pending such decision the member shall be entitled to act as if he was not disqualified."

A plain reading of the said Section would show that u/s 45-B, the District Judge is not empowered to decide an election dispute with regard to election of the Chairman of the Panchayat Samiti but is vested with the power to decide allegations relating to disqualification of a member of a Samiti including that of the Chairman. Hence the contention of Mr. Ray that it is the District Judge who has power u/s 45-B to decide an election dispute relating to election of a Chairman of a Panchayat Samiti, in our considered opinion, is misconceived.

6. Regarding the other point raised by opposite party No. 3 before the learned Civil Judge (Senior Division) that the security deposit has not been made along with the election petition within the time prescribed by Section 44-B of the Act, this is a mixed question of fact and law and can be decided by the learned Civil

Judge (Senior Division) only with all other issues at the trial. Accordingly, the finding in this regard in the impugned order by the learned Civil Judge (Senior Division) that the security deposit has been made by the petitioner in accordance with Section 44-B of the Act is set aside and the matter is left open to be decided afresh by the learned Civil Judge (Senior Division) after evidence is led by the parties along with all other issues.

7. In the result, the impugned order of the learned District Judge, Sambalpur in Revision Case No. 3/2003 is set aside and the order dated 7.1.2003 passed by the learned Civil Judge (Senior Division), Sambalpur in Election Misc. Case No. 51/2002 stands modified to the extent indicate. The learned Civil Judge (Senior Division), Sambalpur will dispose of the Election Misc. Case by the end of December, 2003.

The writ petition is disposed of.

M. Papanna, J.

8. I agree.