
(2006) 01 OHC CK 0024
In the Orissa High Court
Case No : Writ Petition (C) No. 9035 of 2004

Brundaban Mohanty

APPELLANT

Vs

Dushasana Jena and Seven Ors.

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 102
Orissa Grama Panchayat Act, 1964 — Section 30, 31

Citation : (2006) 101 CLT 323 : (2006) 1 OLR 272 Supp

Hon'ble Judges : P.K. Tripathy, J;A.K. Parichha, J

Bench : Division Bench

Advocate : Manoj Mishra, P.K. Das and D. Mishra, for the Appellant; S.K. Nanda and K.R. Pradhan for O.P. No. 1, J. Pattnaik, B. Mohanty, S. Das, T.K. Pattnaik, P.K. Nayak, S. Pattnaik, A. Pattnaik and K. Pradhan, A.K. Mishra-3, S.C. Panda and S.N. Rath for O.P. No. 4, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Writ petitioner is the elected Sarpanch of Khairapalli Gram Panchayat under Ranpur block in the district of Nayagarh. Opposite party No. 1 and opposite party Nos. 2 to 7 were contesting for the said post together with the writ petitioner. After the writ petitioner became successful in the election and declared elected, opposite party No. 1-Dushasan Jena filed Election Petition under Sections 30 and 31 of the Orissa Gram Panchayat Act, 1964 (in short "the Act") inter alia on the ground that petitioner does not belong to other backward caste as notified by the State Government. The other contesting candidates in the election, such as the opposite parties 2 to 7 did not contest that Election Case registered as Election Petition No. 3 of 2002 in the Court of Civil Judge/(Jr. Division), Nayagarh. It is the writ petitioner who alone contested that case and inter alia advanced the contention that he is a member of other backward caste. Considering the rival pleadings of the parties, learned Civil Judge framed as many as eight issues, accepted oral and documentary evidence adduced from

both sides, and on appreciation thereof he held that the writ petitioner is a member belonging to the O.B.C. Category and therefore opposite party No. 1 was not entitled to any relief. Accordingly he dismissed the election petition. That judgment was delivered by learned Civil Judge on 25.09.2002. Opposite party No. 1 challenged that order before the appellate forum, and learned Addl. District Judge, Nayagarh heard and disposed of that Election Misc. Appeal No. 6 of 2002, vide impugned judgment dated 20.8.2004. Learned Addl. District Judge held that opposite party No. 1 could prima facie prove that the writ petitioner is not a member of the O.B.C. and that fact situation could not be rebutted by the writ petitioner in as much as he did not produce the caste certificate granted by the competent authority. Accordingly he set aside the order of learned Civil Judge, declared the election of the writ petitioner to the post of Sarpanch as invalid and void and simultaneously declared that the opposite party No. 1 having secured the second largest vote is duly elected. That judgment of learned-Addl. District Judge has been assailed before us by the writ petitioner and is defended as prope by opposite party No. 1.

2. After going through the judgment delivered by both the Courts below and the evidence adduced both oral and documentary, we find that, learned Addl. District Judge did not discharge his jurisdiction as the final Court of facts in accordance with law in as much as though he has referred to some of the exhibited documents and stray oral evidence, but all the relevant evidence, both oral and documentary which are on record, were not referred to and discussed properly. Besides that, the oral and documentary evidence, which was referred to by him, were not properly evaluated either for acceptance or rejection. While exercising the writ jurisdiction, be it under Article 227 or 226, it is not proper for us to reassess the evidence and to decide the case as the Court of fact. Under such circumstance, we think it to be proper to remand the appeal and therefore we refrain from deliberation on the lacuna more elaborately so that learned Addl. District Judge would be able to decide the issues on appreciation of evidence properly without being influenced by anything stated herein. Nonetheless we feel it proper to indicate that the provision in Part-III, Chapter-VII of the Indian Evidence Act should be appropriately considered with due reference to Section 102 and the other Sections in that chapter. Apart from that, learned Addl. District judge shall bear in mind that a document like Records of Right is a public document and any entry therein has presumptive value unless rebutted by direct or circumstantial evidence. When that is so, the same standard is to be, adopted when the Court is considering similar type of public documents adduced from both the parties. In the case at hand Records of Right have been relied on by both the parties and such documents have been marked as Exhibits from their respective side. Besides that, the writ petitioner has relied on several other documents and some of them have not at all been referred to in the context of determining the crucial issue. Whether or not such documents are reliable , they must be referred to and the reason for acceptance or rejection must be indicated in the judgment. Learned Addl. District Judge has squarely failed to discharge

such legal obligations while exercising his jurisdiction as the appellate authority.

3. Therefore, as already indicated, instead of ourselves deciding the case on re-appreciation of fact and evidence, we set aside the judgment of learned Addl. District Judge and remand the appeal for fresh disposal according to law,

4. At this juncture we may indicate that when there are more than two candidates contesting for a particular post, on declaring the election of the elected candidate as null and void, the candidate securing the second highest vote cannot automatically be declared as elected. In such a case only a casual vacancy is to be notified. That position has been settled by the Apex Court in the case of Prakash Khandre Vs. Dr. Vijaya Kumar Khandre and Others, . We further take note of the fact that the decisions in the case of Nityanand Sharma and another Vs. State of Bihar and others, and Sushil Kumar Vs. Rakesh Kumar, , which are relied on by the opposite party No. 1 before us while arguing on the merit of the election dispute, those decisions may be considered subject to relevancy by the appellate authority, if relied upon by either of the parties.

5. In view of the nature of the dispute and the consequence to flow therefrom either way, we feel that the appeal should be heard and disposed of expeditiously. Under such circumstance, we direct learned Addl. District Judge, Nayagarh to hear and dispose of the appeal within a period of six weeks from the date of receipt of the L.C.R. together with a copy of the order. Since it is the writ petitioner and the opposite party No. 1 who are now contesting each other in the case, we direct both of them to appear before Learned Addl. District Judge, Nayagarh on 3rd of February, 2006 and on their appearance learned Addl. District Judge, Nayagarh shall provide them a date of hearing of the appeal.

Registry is directed to immediately send back the L.C. Rs. of both the courts below to the Court of Addl. District Judge, Nayagarh together with a copy of this judgment so that it is received by that Court by 3rd of February, 2006.

A.K. Parichha, J.

6. I agree.