

(1986) 06 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1807 of 1984

Brundaban Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-06-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1986) 2 OLR 160

Hon'ble Judges : G.B. Pattnaik, J; B.K. Behera, J

Bench : Division Bench

Advocate : A.B. Misra, for the Appellant; Standing Counsel, B.M. Patnaik, M.K. Mallik, K.N. Jena and P.K. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

C.B. Pattnaik, J.—Petitioner who was elected as the President of the Committee of Management of the United Puri-Nimapara Central Co-operative Bank, a Society under the Orissa Co-operative Societies Act, has prayed for issuance of a writ of mandamus to quash the notification contained in Annexure-2 and to set aside the election of opposite parties 5 to 14 who have been elected as Directors to the Committee of Management of the Society. It has further been prayed that the petitioner should be restored to his position as President of the Society for the rest of the term.

After stating the facts and contentions of counsels, Their Lordships observed :

4. At the time of hearing of the writ petition, Mr. A. B. Misra, the learned counsel for the petitioner, however, does not press the point that was taken in the writ petition. On the other hand, learned counsel has urged a contention that the fixing of the date of the general meeting of the Society for holding the election on 1-8-1984 under Annexure-2 is illegal being contrary to the provisions contained in the proviso to Section 28-A (4)(a) of the Act and consequently, the election of opposite parties 5 to 14 held on 1-8-1984 pursuant to the said

notification is bad in law. Mr. Misra, the learned counsel for the petitioner though concedes that this point has not been taken in the writ petition, yet contends that this is a point which can be urged on the face of Annexure-2 and no disputed question of fact is involved and further this goes to the root of the matter and, therefore, even at the hearing this Court can entertain the point Mr. B. M. Patnaik, the learned counsel appearing for opposite parties 5 to 14 and the learned Standing Counsel appearing for the State, on the other hand, contended that since the petitioner did not take this point in the writ petition and the point in question is dependant upon some ancillary finding of facts as to the mode of publication, the petitioner should not be permitted to urge the point in question.

5. It is no doubt true that as a general principle the High Court should not permit a new point to be urged for the first time at the hearing if the point had not been taken in the writ petition, since the opposite parties will not have an opportunity to meet the same. (See, Arun Kumar Roy v. The State of West Bengal A. I. R. 1972 S C, 1958) It is more so, when the point urged requires determination of some questions of fact. (See, Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, ; S.R. Tewari Vs. District Board Agra and Another, ; and Fakir Mohammad Vs. Salahuddin and Others, . But at the same time if the point does not involve any investigation of facts and touches the question of jurisdiction, then the High Court may permit the point to be urged. To resolve the controversy, here and to find out whether the point in question can be entertained the time of hearing or not, it would be appropriate to note the relevant provisions of the Act and the Rules. Section 28-A of the Act, so far as relevant, is quoted herein below :

" (4) Upon receipt of the intimation as aforesaid or upon his own information as to the aforesaid date of the election, the election, officer shall forthwith-

(a) fix the date of the general meeting of the society for holding the election and publish such date in the prescribed manner :

Provided that in no case the period intervening between the date of -such publication and the date of the election meeting so fixed shall be less than two months."

Publication of the date "in the prescribed manner" used in Sub-section (4) (a) obviously would mean, in the manner prescribed under the Rules. Rule 30-A is the relevant provision with which we are concerned and may be extracted hereinunder in extenso.

"30-A. Election of the Committee Members :

(1) The election of the members of the Committee of a Society shall be held in the manner prescribed hereinafter.

(1-a) The Election Officer shall publish the date of the General Body Meeting of the Society for holding election two months prior to the date of such meeting in the newspaper circulated in the area of the concerned society or by affixing

notice in the Notice Board of the Society and its branches, if any.

xx xx xx

A plain reading of the aforesaid provision of the Rules would indicate that the Election Officer is entitled to publish the date of General Body Meeting of the Society for holding the election in the newspaper circulated in the area of the concerned Society, or by affixing notice in the Notice Board of the Society and its branches, if any. If, therefore, the notice is published by affixing the" same in the Notice Board of the Society two months prior to the date of holding of election, then it cannot be said that there has been an infraction of the provisions of the Act or the Rules, as contended by the petitioner This would necessarily involve question of fact to be gone into and since the petitioner did not urge this point, in our opinion, the point should not be permitted to be urged at the time of hearing.

6. That apart, since an application for production of documents had been made and the Bank was directed to produce the records, we have examined the records of the Bank and we find that the notice in question to hold the election was published in the Notice Board on 31-5-1934 at 10,00 A. M. and in that view of the matter, fixing 1-8-1984 to have the general meeting of the Society for holding election cannot be said to have been hit by the proviso to Section 28-A (4)(a) of the Act, inasmuch as the period intervening between the date of publication and the date of election is not less than two months as contemplated therein. We therefore, do not find any merits in the contention of the learned counsel for the petitioner.

7. In the ultimate result, therefore, the writ application is devoid of merits and the same is accordingly dismissed but in the circumstances without any order as to costs.