
(2010) 12 OHC CK 0027

In the Orissa High Court

Case No : Writ Petition (C) No. 15556 of 2008

Chakamana Naik

APPELLANT

Vs

Collector, Kalahandi and Others

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 35
Orissa Grama Panchayat Act, 1964 — Section 25(1)
Orissa Registration of Births and Deaths Rules, 1970 — Rule 10, 10(3), 11, 9
Registration of Births and Deaths Act, 1969 — Section 12, 18, 30, 7, 7(2)

Citation : (2011) 111 CLT 718 : (2011) 1 OLR 893

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—A preliminary objection has been raised by the Opp. Party No. 3 to the Writ Petition on the ground that the case involves disputed question of facts & this Court in exercising power under Article 227 of the Constitution should not interfere with the impugned judgment.

2. The Opp. Party No. 3 filed Election Petition No. 13 of 2007 before the Civil Judge (Junior Division), Bhawanipatna challenging the election of the Writ Petitioner to the office of the Sarpanch of Belkhandi Grama Panchayat in the district of Kalahandi on the ground that the 6th child of the Petitioner was born on 8.6.1996 i.e. after the cut-off date 1.10.1995 & therefore, he was disqualified to contest the election as per the provisions of Section 25(1)(b) of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the Act"). Two witnesses were examined on behalf of the election Petitioner, P.W. 1 being a clerk of the P.H.C., Pastikudi & the election Petitioner being P.W. 2. Ext. 1, a birth certificate said to be issued by P.W. 1 was exhibited in support of the case of the Opp. Party No. 3-election Petitioner that the 6th child of the Writ Petitioner was born on 8.6.1996. On the other hand, the Writ Petitioner, who was the Opp. Party No. 2

in the election petition, filed a birth certificate issued by the Medical Officer-cum-Registrar of Birth & Death of the P.H.C. prepared on the basis of an enquiry & order of the Learned Magistrate. The said certificate was marked as Ext. A. the Writ Petitioner also examined himself & two other witnesses in support of his case that his last child was born on 8.6.1994 that was before the cut-off date.

3. The Learned Election Tribunal accepted the birth certificate (Ext. 1) issued by the Clerk (P.W.1) & discarded Ext. A, which was issued by the Medical Officer on 6.2.2002. The said Exts. 1 & A have been annexed to the rejoinder affidavit as Annexures-6 & 7 respectively.

4. With regard to the preliminary objection raised by the Opp. Party No. 3, it would be seen that the Supreme Court in the case of Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others, held that the power of superintendence conferred under Article 227 of the Constitution of India is to be exercised sparingly & only in special circumstances in appropriate cases in order to keep the subordinate Courts within the bounds of their authority. In Baby Vs. Travancore Devaswom Board and Others, the Supreme Court considering that revisional jurisdiction being not available to the High Court to interfere in a matter, the Court can exercise its power under Article 227 of the Constitution & quash an order passed by a Court/Tribunal if there is an apparent error or the findings of fact have been arrived at by non-consideration of the relevant & material documents, the conclusion of which would have" led to an opposite conclusion. In regard to patent error interpreting the said phrase, the Supreme Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, , laid down that a patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving any lengthy or complicated argument or a long-drawn process of reasoning & may be corrected by the High Court exercising its power under Article 227 of the Constitution. However, such an error should be manifest & apparent on the face of the proceeding, such as when it is based on clear ignorance or utter disregard of the provisions of law, & grave injustice or gross failure of justice has been occasioned thereby. Though the Apex Court held that while doing so, the High Court may not substitute its own order rather it should provide proper guidelines & issue suitable direction to the subordinate Courts as to the manner in which it would act or proceed thereafter or afresh, but it also held that the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Courts as the Court should have done it in the facts & circumstances of the case, (emphasis supplied)

5. No doubt, while exercising the power of superintendence under Article 227 of the Constitution, this Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. To interfere in the matter, a case of flagrant abuse of fundamental principles of law or where the order of the Tribunal/ Court has been given rise to grave injustice must be shown.

6. In relation to finding of facts recorded by the Tribunal/ Court for interference

under Article 227 of the Constitution, such finding if perverse or patently erroneous & dehors the factual & legal position on record, power under Article 227 can be exercised.

7. Keeping the above principles of law in view, this Writ Petition filed under Article 227 of the Constitution calling in question the judgment dated 12.11.2007 passed by the Civil Judge (Junior Division), Bhawanipatna in Election Petition No. 13 of 2007, which has been confirmed by the Learned District Judge, Kalahandi-Bhawanipatna in a judgment dated 26.9.2008 passed in FAG No. 17 of 2007 is to be examined.

8. The question to be decided in this Writ Petition is as to whether any illegality has been committed by the Learned Courts below in exhibiting Ext. 1 & discarding Ext. A while coming to the conclusion that the date of birth of the sixth child of the Petitioner is 8.6.1996 & not 8.6.1994 as claimed by the Petitioner.

9. To decide the above question, it would be appropriate to refer to the statement of P.W. 1 who produced Ext. 1 before the Learned Election Tribunal & gave his deposition. P.W. 1 stated before the Learned Election Tribunal that he is the custodian of the register for births & deaths at P.H.C. Pastikudi from January, 1996 till 15.11.1996 which was produced by him. He exhibited entry No. 678 of the said register in respect of birth of Sovabati Nayak & entered the date of birth as 8.6.1996. He has stated that the said entry was made by him upon receiving information from the Health Worker. With regard to mentioning the name of the child in respect of which entries are made in the said register, he has stated that he entered the said name as Sovabati Nayak after getting information from one Bira Prasad Singh Babu & he enters such names whenever application is made for issuance of birth certificate. With regard to Ext. A, the Petitioner gave his statement as D.W. 1 stating that Ext. A was issued by filing a Misc. Case before the Executive Magistrate. Certified copy of Ext. A produced as Annexure-7 before this Court shows that the Medical Officer has issued the said certificate in the year. 2002 where the date of birth of the sixth child of the Petitioner has been entered as 8.6.1994.

10. Perusal of the judgments of the Courts below shows that the Learned Election Tribunal holding that Ext. 1 is admissible u/s 35 of the Evidence Act & Ext. 2 which is an entry in the school register shows that the date of birth of Sovabati Nayak is 8.6.1996 & that Ext. A has been prepared by filing a Misc. Case before the Executive Magistrate, reliance cannot be placed on Ext. A in comparison to Ext. 1, came to the conclusion that the date of birth of the sixth child of the Petitioner is 8.6; 1996. The Appellate Court with regard to Ext. A (birth certificate) observed that the same was entered in the register on 25.1.2002 (7 & 1/2 years after the alleged birth) u/s 18 of the Registration of Births & Deaths Act, 1889 & holding that the statement of the Petitioner that Sovabati Nayak was born on 8.6.1994 is a bald statement has discarded Ext. A. The Appellate Court fell into the error in referring to Section 18 of the

Registration of Births & Deaths Act, 1889, even though, the said Act stood repealed by the Registration of Births & Deaths Act, 1969 (for short, "the Act").

11. The State of Orissa as per Section 30 of the said Act has framed the Orissa Registration of Births & Deaths Rules, 1970 (for short, "the Rules"). Section 7 of the Act provides that Registrars are to be appointed by the State Government for each local area comprising the area within the jurisdiction of a municipality, Panchayat or other local authorities or any other area of a combination of any two or more of them. The duty of the Registrar is provided under Sub-sections (2) (4) & (5) of Section 7 of the Act. Rule 10 of the Rules provides Authority for delayed registration & fee payable thereof. Sub-rule (3) of Rule 10 provides that any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of a Magistrate of the First Class or a Presidency Magistrate & on payment of late fee of Rs. 5. In the instant case, no document has been produced before the Courts below to show that the P.W.1, who is working as a Clerk in the P.H.C. was appointed as a Registrar under the Act. Ext. A, which is a properly constituted birth certificate has been prepared pursuant to an order of the Magistrate under Sub-rule (3) of Rule 10 by the Medical Officer in-charge of registration of births & deaths in the P.H.C. Pastikudi, Kalahandi. P.W. 1 has admitted that the entries have been made by him. Rule 9 prescribes that extracts of the registration entries to be given u/s 12 of the Act should be in form No. 9 or form No. 10, as the case may be. Form No. 9 relates to the certificate of births & Form No. 10 relates to certificate of death. Ext. A, certified copy of which has been produced before me shows that the said certificate was issued in Form No. 9. Rule 11 provides that where the birth of any child has been registered without a name, the parents or guardian of such child shall, within 12 months, from the date of registration of the birth of a child given information regarding the name of the child to the Magistrate either orally or in writing.

12. In view of the above rule, statement of P.W.1 that he entered the name in the register maintained by him on the information of one Singh Babu could not have been accepted by the Courts below. Further, the Courts below without examining the question with regard to the authority of P.W. 1 to make such entries in the register of births & deaths under the Act could not have placed reliance on Ext. 1 in preference to Ext. A, which has been given by the competent authority in accordance with the rules in the Form prescribed by such rules.

13. For the discussions as made above, this Court finds that both the Learned Courts below have committed an illegality resulting in grave injustice by throwing out the Petitioner from the office of the Sarpanch to which he was democratically elected, in accepting Ext. 1 in preference to Ext. A. Hence, this Court finds that the date of birth of the sixth child of the Petitioner should have been held to be 8.6.1994 & not 8.6.1996 & the Petitioner should not have been held to be ineligible to contest for the office of Sarpanch on the ground that his sixth child

was born after the cut off date. The impugned orders passed by the Learned Election Tribunal as well as the Appellate Court under Annexures-3 & 4 are accordingly quashed. The Petitioner shall continue as the Sarpanch of the Belkhandi Grama Panchayat as the elected Sarpanch. In the event, charge of Sarpanch has been given to the Naib-Sarpanch in the meanwhile, the same shall be restored to the Petitioner.

14. The Writ Petition is accordingly allowed, but in the circumstances without cost.