

(2012) 01 OHC CK 0031

In the Orissa High Court

Case No : Writ Petition (C) No. 31039 of 2011

Dhruba Charan Panda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1), 243K
Orissa Grama Panchayat Act, 1964 — Section 4, 4(1)
Orissa Grama Panchayat Election Rules, 1965 — Rule 6, 6(1), 6(2)
Representation of the People Act, 1950 — Section 17, 18, 19

Citation : AIR 2012 Ori 100 : (2012) 114 CLT 219

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : Bibudhendra Dash, P.K. Mohanty and S. Dash, for the Appellant; Pitamber Acharya and Associates for Opp. Parties. 2 and M/s. S. Pattnaik, L. Mishra and T. Mishra for Opp. Parties 6, 7, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mishra, J.—The petitioner in this case prays to quash the order passed by the Electoral Registering Officer-Cum-Block Development Officer, Bhapur, District-Nayagarh, opposite party No. 4, including the names of Rabindra Kumar Sahoo, opposite party No. 6, and Saudamini Sahoo, opposite party No. 7, in the voter list of Ward No. 15 in respect of village Kendupalli which comes within the area of Salapada Grama Panchayat. Opposite party No. 2, i.e. the State Election Commission issued notification on 12.8.2011 which was latter on modified on 13.9.2011 for preparation of ward wise Electoral Rolls of all the Grama Panchayats for the purpose of conducting General Elections to the three tier Panchayati Raj Institutions (hereinafter referred to as "PRI" for brevity). On receipt of notification the Collector, Nayagarh, opposite party No. 3, appointed opposite party No. 4 to prepare the Electoral Rolls for the Block in question, for General Election, 2012.

During the preparation of ward wise Electoral Rolls, opposite party nos.6 and 7

applied for inclusion of their names in Ward No. 15 of Salapada Grama Panchayat in the prescribed Form No. 16 of the Orissa Grama Panchayat Election Rules, 1965 (hereinafter referred to as the "Election Rules" for brevity). Opposite party No. 6 had attached a residential certificate issued by the Tahasildar to his application in Form No. 16, but opposite party No. 7 had attached the copy of the Board Certificate, copy of R.O.R. with respect to Khata No. 367/54 of Mouza Kendupalli, rent receipts and a residential certificate to her application. Opposite party No. 4 after enquiry rejected their applications and prepared an additional list of newly added voters including the names of some other applicants, whose applications were allowed.

2. Being aggrieved by the said order opposite party nos.6 and 7 filed an application before opposite party No. 4 for inclusion of their names in the voter list of Salapada Grama Panchayat. At that stage the petitioner and other villagers made a representation to opposite party No. 4 on 11.11.2011 attaching the voter list of village Gohiriapada under Khandapara Block, 2011 and Siariapur of Pipili constituency not to include the names of opposite party nos.6 and 7 in the voter list of Ward No. 15 of village Kendupalli of Salapada Grama Panchayat on the ground that neither of the opposite parties were residing in village Kendupalli of Salapada Grama Panchayat, whereas the voter list of Gohiriapada shows that Saudamini is residing at Gohiriapada and her name has found place in the voter lists of Gohiriapada and Siariapur of Pipili. Similarly the name of Rabindra found place in the Electoral Rolls of Gohiriapada under Khandapara Block in 2011 voter list.

3. After receiving such representations of the villagers, opposite party No. 4 referred the matter to opposite party No. 3 for clarification. Opposite party No. 4 also wrote a letter to the Tahasildar, Bhapur for clarification. Opposite party No. 3 thereafter directed that the Electoral Rolls should be prepared as per the resident certificate issued by the Tahasildar. Aggrieved by such an order, the petitioner, therefore, come up with this writ petition.

4. Opposite party nos.6 and 7 have filed their counter affidavit. They denied that they are registered voters of Gohiriapada, Ramichheli Grama Panchayat under Khandapada Block. It is specifically stated that they have applied for deletion of their names from the voter list of village Gohiriapada and their applications have been duly acknowledged by the competent authority on 17.10.2011 and their names have been deleted from the voter list of village Gohiriapada coming under Khandapada Block. As far as the inclusion of the names of opposite party nos.6 and 7 appear also in the voter list of Pipili Assembly Constituency, it is submitted that they are no more the voters of the aforesaid Constituency, which is clear from the document, i.e. Form No. 17 dated 7.10.2011 duly filed and acknowledged by the competent authority.

5. The undisputed facts of the case are as follows:

(a) Opposite party nos.6 and 7 were originally registered as voters of village

Gohiriapada, Ramichheli Grama Panchayat under Khandapada Block and were also registered as voters of Pipili Assembly Constituency though, in the mean time during the process of the present exercise, they have applied for deletion of their names from those two constituencies.

(b) Opposite party nos.6 and 7 have been issued with certificates showing they are residents of village Kendupalli under Salapada Grama Panchayat.

(c) At the first instance opposite party No. 4 having considered the objection raised by the villagers and as well as on the facts found by him, rejected the application filed by the opposite party nos.6 and 7.

(d) Opposite party nos.6 and 7 were included in Electoral Rolls of Kendupalli in spite of certain facts found by opposite party No. 4. He found that opposite party nos.6 and 7 are not resident of village Kendupalli, but by virtue of the order passed by opposite party No. 3 to prepare the Electoral Rolls as per the resident certificate issued by the Tahasildar, name of those opposite parties were included in the voter list of Kendupalli.

(e) In the Electoral Rolls prepared for Kendupalli, no house number has been allotted to the entries of the names of opposite party nos.6 and

6. In course of hearing Learned Counsel for the opposite party nos.6 and 7 very emphatically submitted that the writ jurisdiction should not be invoked for interfering with the preparation of Electoral Rolls and in this connection he relies upon the case of Muhammad Ali Vs. State Election Commission, wherein a Bench of Kerala High refused to interfere with the preparation of Electoral Rolls on the ground that the petitioner has never raised any objection to the draft voter list and the right to be included in an Electoral Roll and to challenge the exclusion are, entirely, rights of the individual and if the individual has not initiated the prescribed statutory procedures, no right will lie in any one else to challenge the same. The observations made by the Kerala High Court are definitely on a different set of facts where no objection, as required, was raised and, therefore, the writ petition was not entertained. In the said case reference has been made to Lakshmi Charan Sen and Others v. A.K.M. Hassan Uzzaman and Others; AIR 1985 Supreme Court 1233, wherein the Hon'ble Supreme Court has held that; the fact that the revision of Electoral Rolls, either intensive or summary, is undertaken by the Election Commission does not have the effect of putting the electoral roll last published in cold storage. The revision of electoral rolls is a continuous process which has to go on, elections or no elections. The Hon'ble Supreme Court further held that if an electoral roll is not revised, its validity and continued operation remain unaffected, at least in a class of cases. Holding thus, the Hon'ble Supreme Court held that the election should not be vitiated on the ground that some persons have not been included in an electoral roll. The observation of the Hon'ble Supreme Court in that case is not applicable to the present case except to the extent that even when the revision of Electoral Roll is undertaken, it does not have the effect of putting the electoral roll last published

in cold storage.

7. Electoral Rolls for the PRI elections are prepared by the State Election Commission as mandated under Article 243K of Constitution of India. The said Article provides that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commissioner consisting of a State Election Commissioner to be appointed by the Governor. Thus, the authority to prepare the Electoral rolls for the PRI election flows from the Constitution of India.

8. Rule 6 of the Election Rules provides for the qualification etc. of a voter. Sub-rule (1) of Rule 6 provides that no person shall be eligible to be registered in the electoral roll for more than one ward in any Grama. Subrule (2) of Rule 6 provides that any person who is qualified under the provisions of the Representation of the People act, 1950 or the Orissa Grama Panchayats Act, 1964 to be registered as a voter in any Grama, shall be eligible to be registered in the electoral roll of a ward and the name of a person who is disqualified under the provisions of the said Acts shall be liable for removal from the electoral roll of the said ward. Sub-rule (3) provides for the right to claim for inclusion of and to object for inclusion of any person etc., which is not relevant for this case.

Chapter-II of the Orissa Grama Panchayat Act, 1965(hereinafter referred as the "G.P.Act" for brevity) provides for Grama, Grama Sasan, Grama Sabha, etc. Section 4 provides for Constitution and incorporation of Grama Sasan. Sub-section (1) of Section 4 provides that for every Grama there shall be a Grama Sasan which shall be composed of all persons registered by virtue of the Representation of the People Act, 1950 in so much of the electoral roll for any Assembly Constituency for the time being in force as it relates to the Grama and unless the Election Commission directs otherwise of the roll shall be deemed to be the electoral roll in respect of the Grama. Section 17 of the Representation of People Act, 1950(hereinafter referred to as the "R.P.Act" for brevity) provides that no person shall be entitled to be registered in the electoral roll for more than one constituency. Section 18 of the R.P.Act provides that no person shall be entitled to be registered in the electoral roll for any constituency more than once. Section 19 of the R.P. Act provides for the conditions to be fulfilled for being registered as a voter. The first condition is that the person should not be less than eighteen years of age on the qualifying date. Secondly, he must be an ordinarily resident in a constituency. Only when these two conditions are fulfilled a person is registered as a voter in any constituency.

9. From the foregoing paragraphs, it appears that the opposite party nos.6 and 7 were registered as voters of constituencies other than the village Kendupalli. The revision of the Electoral Rolls for the ensuing PRI election does not put the electoral roll last published in cold storage. In other words, the probative value of the last electoral roll remains and only when there is a change in the fact situation, the name of a person can be deleted from one electoral roll and can be

included in another electoral roll of a different constituency.

10. Learned Counsel for the opposite party nos.6 and 7 has very emphatically submitted that under Article 19(1)(d) of the Constitution of India a citizen is free to move throughout the territory of India and, therefore, they can be registered as voters in any place. The contention raised by Learned Counsel for opposite party nos.6 and 7 is correct, but a person can be registered as a voter in any place where he is ordinarily residing, but not in a place he owns property or for any other reason.

11. Thus, in this view of the matter, it is to be seen whether the opposite party nos.6 and 7 are actually the resident of village Kendupalli. As has been observed by the Supreme Court in the aforesaid case of Lakshmi Charan Sen and others (supra) the electoral roll prepared earlier is not put in cold storage. It means that the electoral roll was prepared in the last election shall continue to remain unless it is revised on change of facts. It is also seen sub-section (1) of Section 4 of the G.P. Act provides that in so much of the electoral roll for any Assembly Constituency for the time being in force as relates to a Grama, shall be deemed to be the electoral roll in respect of the Grama. Thus, the presumption is that the voters registered in the electoral roll prepared for the Assembly shall be registered as voters of the said Ward corresponding to that portion of the assembly constituency unless there are changes in the circumstances. For example there may be an additional member, who has attained the age of 18 years may be included in Panchayat voter list. Similarly, in case of a bonafide migration also the electoral roll can be revised, but the same has to be bona fide migration and the applicant should be an "ordinarily resident" of the area in question. In this case, there is singular lack of evidence that the opposite party nos.6 and 7 have actually started residing in village Kendupalli. It is borne out from the observations made by opposite party No. 4 in Annexure13 that there is no trace of Sri Rabindra Kumar Sahoo and his wife staying in village Kendupalli though they started constructing a building for the purpose of Dal and Oil Mill. But it is seen that on the basis of residential certificate issued by the Tahasildar, opposite party No. 3 directed inclusion of the names of opposite party nos.6 and 7 in the Electoral Rolls. The Electoral Rolls have been prepared including these two names, but no house number has been given thereto.

12. In such view of the matter, this Court comes to the conclusion that there is no positive evidence to the effect that actually opposite party nos.6 and 7 have migrated to Kendupalli from other constituency. In view of the presumption attached to the electoral roll prepared previously, the onus lies on the opposite party nos.6 and 7 to prove that they are not ordinarily resident of village Gohiriapada, Ramichheli Grama Panchayat under Khandapada Block and they are not the voters of Pipili Assembly Constituency. The only evidence that is coming forward is the resident certificate issued in their favour. The resident certificate issued in their favour has been so issued by taking into consideration the properties recorded in their names. There is no enquiry to the effect that they

are actually residents of village Kendupalli. More over, in a case of conflict between two documents like in electoral roll and a resident certificate, the electoral roll shall prevail in the sense that the authority to prepare the same flows from the Constitution of India and the Electoral Rolls are prepared by the enumerator, who move from house to house in the village and prepare the list by interviewing members of each house. Thereafter provisional list is published and objections are invited, then only a final list is prepared. So the entire process of preparing electoral stands at a much higher footing than preparation of a residence certificate, which is prepared under the Miscellaneous Certificate Rules and do not have the constitutional sanction behind it.

In view of the aforesaid discussion, this Court comes to the conclusion that inclusion of names of the opposite party nos.6 and 7 in Ward No. 15 of village Kendupalli is illegal and, therefore, is liable to be set aside and Annexurs-13 and 14 are hereby quashed. The name of opposite party nos.6 and 7 be deleted from the Electoral Roll in question. Accordingly, the writ petition is allowed. No costs.