

(2021) 01 OHC CK 0002

In the Orissa High Court

Case No : Writ Petition (Civil) No. 29742 Of 2020

Dillip Kumar Nayak & Another

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 08-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 01 OHC CK 0002

Hon'ble Judges : Biswajit Mohanty, J

Bench : Single Bench

Advocate : D.D.Nayak, Akash Bhuyan, N.K. Mohanty, H.M. Dhal, P.K. Rath, A. Behera, S.K. Behera, P.Nayak, S.Das, S.Rath

Final Decision : Disposed Of

Judgement

Biswajit Mohanty, J.

1. Â The petitioners have filed the present writ petition questioning the order of Additional District Magistrate, Bhadrak (opposite party no.3) giving

various directions for holding election to various posts of office bearers of opposite party no.6 and consequential order of the Sub-Collector, Bhadrak

(opposite party no.4) on the same subject under Annexure-5 on the ground that the above noted orders/directions have been issued without jurisdiction

and by ignoring the relevant provisions of the bye-law of opposite party no.6 governing the field. Their further case is that holding of election prior to

outcome of audit of financial status of opposite party no.6 should not be permitted.

2. Mr. Dharanidhar Nayak, learned Senior Advocate submitted that the amended bye-law of Bhadrak Bus Syndicate under Annexure-2 lays down

detailed guidelines relating to election of office bearers of opposite party no.6. In

this connection, he relied on Clause-10 (Kha) of the bye-laws, which makes it clear that in a general body meeting if more than half of the permanent members desire that the election be held to elect the office bearers of the association only then, an election can be held. Further for the purpose of conduct of such election, three persons are required to be nominated by the majority in a general body meeting, who will act as a Committee for conducting the election. Such committee is mandated to complete the process of election within one month. Further, it makes it clear that the election should be conducted by following the procedure of secret ballot. In such background, he submitted that in the process of conduct of election as contained in amended bye-law under Annexure-2, which has been duly approved by the Addl. District Magistrate-cum-Registering Authority, no role has been assigned to the A.D.M., Bhadrak (opposite party no.3) or Sub-Collector, Bhadrak (opposite party no.4). He also submitted that none of these officers has been authorized either under the bye-law of opposite party no.6 or under the Societies Registration Act, 1860 to play any role in the matter of conduct of election to the office bearers of a society like opposite party no.6. Therefore, he submitted that the slew of directions issued by the Addl. District Magistrate, Bhadrak (opposite party no.3) under Annexure-4 with regard to holding of election to various posts of office bearers of opposite party no.6 and consequential orders in the same matter under Annexure-5 by opposite party no.4 are all without jurisdiction and are liable to be quashed. Further according to him, election should be held after the process of audit is complete.

3. Mr. Dhal, learned Addl. Government Advocate submitted that the Bhadrak Bus Syndicate suffers from intense group rivalries and both the parties had approached the Collector and District Magistrate, Bhadrak (opposite party no.2) and Additional District Magistrate, Bhadrak (opposite party no.3) requesting them to ensure financial discipline in opposite party no.6 and to help them in holding free and fair election as the tenure of earlier body expired on 31.3.2020. Accordingly, on 11.6.2020 an interim committee was constituted which included the petitioner no.1 to manage the day to day affairs of opposite party no.6. Further, on 1.7.2020 vide Annexure-E/4, the Collector and District Magistrate, Bhadrak was requested by Commerce and Transport Department of Government to facilitate holding of a free and fair

election of office bearers of the association under the supervision of a Senior Officer of the district administration by 31.7.2020. Copy of the same was also forwarded to the Superintendent of Police, Bhadrak with a request to take suitable actions against the unsocial elements, who were putting hindrances in holding the election. He, however, submitted that as per the said direction, election could not be held by 31.7.2020 on account of spread of COVID-19 pandemic. Sometime after, W.P.(C) No.23628 of 2020 was filed by certain persons with a prayer to direct the Addl. District Magistrate, Bhadrak to hold election to the posts of office bearers of opposite party no.6. The said writ petition was disposed of on 15.9.2020 with a direction to the Addl. District Magistrate, Bhadrak to consider and dispose of the representation of the petitioners therein by passing a reasoned order in accordance with law within a period of four weeks from the date of production of an authenticated copy of that order, if the same was still pending. In such background, directions were issued under Annexure-4 by the Addl. District Magistrate, Bhadrak (opposite party no.3) with regard to holding of elections. Accordingly, vide Annexure-5, the Sub-Collector, Bhadrak (opposite party no.4) also prepared the schedule for the election and issued other ancillary directions pertaining to the election. Therefore, in the facts and circumstances, Mr. Dhal contended that the directions contained in Annexures-4 & 5 with regard to holding of election cannot be faulted. He also submitted that there exists no prayer for quashing the directions relating to holding of election as contained under Annexure-4. Accordingly, he prayed for dismissal of the writ petition.

4. Mr. Rath, learned counsel appearing for opposite party no.6 submitted that the election should take place as quickly as possible as per law.

5. Heard Mr. Dharanidhar Nayak, learned Senior Advocate for the petitioners, Mr. Dhal, learned Addl. Government Advocate and Mr. Rath, learned counsel representing opposite party no.6.

6. The dispute in the present case mainly revolves around the question of jurisdiction of opposite party nos.3 & 4 in giving detailed directions with regard to holding of election to different posts of office bearers of Bhadrak Bus Syndicate. A perusal of the order under Annexure-4 issued by the Addl. District Magistrate, Bhadrak (opposite party no.3) inter alia shows that he

directed for holding of election to various posts of office bearers within four weeks. The Sub-Divisional Magistrate-cum-Sub-Collector was directed to act as observer for smooth conduct of election. The Deputy Collector, Emergency was nominated as Election Officer, who was required to conduct the election under the guidance of Sub-Divisional Magistrate-cum-Sub-Collector. Further, the opposite party no.3 directed that a detail procedure and schedule in consultation with Sub-Divisional Magistrate-cum-Sub-Collector be laid down so as to complete the election within the stipulated time. The interim committee members constituted in the meeting on 11.6.2020 were directed to assist the Election Officer for smooth and successful completion of the election and expenditure so incurred for conducting the election should be met from the account of Bhadrak Bus Syndicate (opposite party no.6). Though in the prayer portion, the petitioners have not prayed for quashing of the above noted directions of the Addl. District Magistrate, Bhadrak (opposite party no.3), however, a perusal of Paras-1, 10, 14, 15 and 20 of the writ petition clearly indicate that the petitioners are also questioning the order of Addl. District Magistrate, Bhadrak (opposite party no.3) with regard to his directions for conduct of election obviously under Annexure-4. Further, it is well settled that this Court has the power to modulate the reliefs considering the nature of lis pending before it. It may also be noted here that the petitioners have also invited this Court in their prayer to issue any other writ/writs as would be deemed fit and proper in the facts and circumstances of this case. In such background, this Court is of the opinion that it can examine whether the above noted directions of the Addl. District Magistrate, Bhadrak as contained under Annexure-4 with regard to holding of election of a registered society like opposite party no.6 were issued validly. To a query put by this Court, Mr. Dhal could not bring to the notice of this Court any legal provisions, which authorize the Addl. District Magistrate, Bhadrak (opposite party no.3) to issue the above noted directions for conducting election. It may be seen that the matter relating to conduct of election is clearly covered by Clause-10 (Kha) of the approved amended bye-law of opposite party no.6 under Annexure-2. A perusal of the same makes it clear that it is the general body in its meeting can decide to go for election and for conducting the same, majority of the members present in the general body have to nominate a Committee for conducting

election consisting of three members and this committee is required to conduct the election to the various posts within one month. Therefore, the

election to various posts of office bearers of opposite party no.6 has to be held in tune with the procedure prescribed by the approved bye-law and the

said bye-law does not envisage any role to be played either by opposite party no.3 or by opposite party no.4 in the matter of conduct of such election.

In this context, it may be noted here that it is well settled that when a particular procedure has been prescribed for doing a particular thing, the same

has to be done as per that procedure and not in any other manner. In such background, this Court has no hesitation in coming to a conclusion that all

the directions issued by the opposite party no.3 under Annexure-4 on conduct of election and the consequential directions issued by the Sub-Collector,

Bhadrak (opposite party no.4) under Annexure-5 on the same issue are clearly illegal. These have been issued without any authority of law. It may be

noted here that even in the order under Annexure-E/4, which could not be implemented, the Collector and District Magistrate, Bhadrak (opposite party

no.2) was never requested to facilitate free and fair election of office bearers of the association by ignoring the approved bye-law under Annexure-2.

It may also be noted here that though in W.P.(C) No.23628 of 2020, a prayer was made to direct the Addl. District Magistrate, Bhadrak to hold

election, however, this Court without expressing any opinion on the merits, only directed the Addl. District Magistrate, Bhadrak to consider and

dispose of the representation of the petitioners therein by passing a reasoned order in accordance with law. In the present case, by issuing a

slew of directions under Annexure-4 with regard to holding of election to the various posts of office bearers of Bhadrak Bus Syndicate, while

disposing of the representation, it cannot be said that the opposite party no.3 acted in accordance with law as he has no jurisdiction to issue such

directions. In such background, directions with regard to holding of election by the Addl. District Magistrate, Bhadrak under Annexure-4 and the

consequential directions on the same issue by the Sub-Collector, Bhadrak (opposite party no.4) under Annexure-5 are held to be of no legal

consequence and are hereby set aside.

7. With regard to the prayer for holding of election after completion of the audit is concerned, no legal provision has been

brought to the notice of this Court in support of such prayer. Accordingly, this Court is not inclined to accept such prayer of the petitioners.

8. Before saying omega, it is made clear that election, if any, to various posts of office bearers of Bhadrak Bus Syndicate can only be held following

the procedure laid down in the amended bye-law under Annexure-2 and in the event, such an election is held, the Collector and District Magistrate,

Bhadrak (opposite party no.2) is directed to see to it that the law and order is strictly maintained during the course of such election.

9. With such observations and directions, the writ petition is disposed of.

Records of W.P.(C) No.2362 of 2020 be de-linked from this file.