

(2022) 05 OHC CK 0107
In the Orissa High Court
Case No : Writ Petition (C) No. 4012 Of 2022

Dr. Pabitra Mohan Mallik

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2022) 05 OHC CK 0107

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : K.K. Rout, R. Acharya, S.S.K. Nayak, A.K. Sharma

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Rout, learned advocate appears on behalf of petitioner and submits, central election committee was wrongfully constituted by the appellate authority. The constitution of Odisha Medical Services Association provides for appealing body. Here an appellate authority purporting to be the appealing body had constituted central election committee, which in turn purportedly notified election by notification dated 1st February, 2022. He submits, the petition was moved on 14th February, 2022 and on him having demonstrated that the notification was issued without authority, interim order was granted.

2. Mr. Nayak, learned advocate appears on behalf of opposite party no.5 and relies on judgment of the Supreme Court in Shaji K. Joseph v. Viswanath reported in 2016 (I) CLR (SC) 688, paragraph-14 to submit, once the process of election has commenced, the writ Court should not interfere, was the declaration of law. Petitioner must avail remedy provided under the association's constitution but cannot move the Court to obstruct the process of election, already commenced. Mr. Acharya, learned advocate appears on behalf of opposite party nos. 3 and 4 and submits, the election is in respect of an unregistered

association and, therefore also, the writ petition is not maintainable. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and refers to clause-35 in the association's constitution to submit, said clause bars any matter relating to the association being taken to Court of law without permission of the appealing body.

3. In reply Mr. Rout relies on clause-29 in the association's constitution. It provides for the central executive committee to appoint an election committee called as central election committee, consisting of three members. He reiterates, the appellate authority purporting to be the appealing body constituted central election committee. Drawing attention to clause-35 in the association's constitution regarding appealing body he submits, the body is for conciliation and its role is to allow contesting parties to represent their cases and try to bring about an amicable solution. In that context the clause says that no matter can be taken to the Court of law without permission of the appealing body. There can be no fetter on a citizen's right to move Court under article 226 in the Constitution of India. He refers to page-8 in his client's rejoinder, being memo dated 14th January, 1991 issued by the Home Department to the Health and Family Welfare Department, granting recognition to the association. He submits, the writ petition is maintainable. He relies on views expressed by a learned single Judge of this Court in *Dillip Kumar Nayak v. State of Odisha* reported in 2021 (I) ILR-CUT-373. Inter alia, a passage there from is reproduced below.

"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.”

4. On query from Court regarding petitioner’s contention of the notification having had been issued without authority, Mr. Nayak submits, same may be subject matter of dispute to be raised by petitioner after the election process is completed pursuant to the notification. He reiterates, the election process has commenced. There should not be interference by the writ Court.

5. Facts in this case are that the association’s constitution provides for appealing body to engage in conciliation. The appealing body, calling itself the appellate authority, in its meeting held on 25th January, 2022, constituted central election committee. Clause-29(a)(i) clearly provides for constitution of the election committee by the central executing committee. Clause 35 is reproduced below.

“35. Appealing body of OMSA is not above the Central Executive Committee (CEC) and General body (GB) of OMSA. It is only next to Central Executive Committee (CEC). It is conciliatory body and its role is to allow both the consisting parties to represent their case and try to bring out an amicable solution. No matter can go to Court of law without the permission of appealing body. It comprises 7 (seven) members-Chairman (Director of Health Services), Convener (Senior most Zonal Vice-State President of OMSA), Members five (5); Immediate Ex-State Gen. Secretary, CMO, Capital Hospital, Bhubaneswar, CDMOs of Cuttack, Khurda & Puri Districts.”

Paragraph-9 from minutes dated 25th January, 2022 of the appellate authority is reproduced below.

“9.The appellate body constituted Central Election Committee (CEC) comprising following members.

- i. Dr. Kamalakanta Das, AD (SM), Convenor
- ii. Dr. Dillip Kumar Biswal, AD(P&ID), Member
- iii. Dr. Dhananjaya Das, Dy. Supdt. Capital Hospital, Member

The CEC will follow the prescribed guidelines for notification of election and the whole election process. The CEC will function at Capital Hospital, Bhubaneswar. Dr. L.D. Sahu, Director Capital Hospital, Bhubaneswar was requested to provide the required logistic support for office of CEC.”

6. In Shaji K. Joseph (supra) the facts were that a person had complained on not being allowed to contest the election by filing nomination. In relied upon paragraph-14 the Court said that so far as the issue with regard to eligibility of the person, for contesting the election is concerned, though prima facie it appeared said person could contest the election, the Court did not propose to go into the issue because in its opinion, as per settled law, the High Court should not have interfered with the election after the process of election had commenced. The Court went on to say that the judgments referred clearly show

settled position of law to the effect that whenever the process of election starts, normally Court should not interfere with the process. The Court said further that very often, for frivolous reasons candidates and others approach the Court and by virtue of interim orders passed by Court, the election is delayed or cancelled and in such a case the basic purpose of election and getting a elected body to run the administration, is frustrated.

7. As aforesaid, facts in this case go to show that the process of election was commenced by a committee not duly constituted under the association's constitution. In the circumstances, it cannot be said that the process of election had commenced. This situation on facts was not before the Supreme Court in Shaji K. Joseph (supra) yet, the Court said that normally Courts should not interfere.

8. This Bench is in respectful agreement with views expressed in Dillip Kumar Nayak (supra) on authority to conduct elections, as must be on basis of law so far as the association is concerned. Basis of law is its constitution. There is clear indication that the provisions therein were not complied with and followed in issuance of impugned notification.

9. Mr. Acharya submits, there should be direction upon the central executive committee to immediately constitute central election committee for purpose of holding elections in the association. Mr. Nayak submits, such a direction be made. However, there is no submission made on behalf of petitioner nor State.

10. The writ petition succeeds. Impugned notification is set aside and quashed.

11. The writ petition is disposed of.

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