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**(1985) 03 OHC CK 0023**  
**In the Orissa High Court**  
**Case No : O.J.C. No"s. 40 and 41 of 1984**

Dwija Bhoi and etc.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 14-03-1985

**Acts Referred:**

Orissa Grama Panchayat Act, 1964 — Section 11, 25  
Orissa Grama Panchayat Rules, 1965 — Rule 29B

**Citation :** AIR 1986 Ori 88

**Hon'ble Judges :** D. Pathak, C.J;S.C. Mohapatra, J

**Bench :** Division Bench

**Advocate :** Ashok Mohanty, for the Appellant; Govt. Advocate and Addl. Standing Counsel, for the Respondent

**Final Decision :** Allowed

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## Judgement

Pathak, C.J.—Both these writ applications arise out of an election under the Orissa Gram Panchayat Act, 1964 (Orissa Act 1 of 1965) (hereinafter referred to as the "Act") and the Orissa Gram Panchayat Election Rules, 1965 (hereinafter referred to as the "Rules").

2. The Election Officer, opposite party No. 3, by notice dt. 19-12-1983 invited nominations for election to the office of Ward Member for Wards Nos. 8 and 9 of the Balipada Gram Panchayat in the district of Puri. Dwija Bhoi, petitioner in O.J.C. No. 40/84, filed his nomination for election to the office of Ward Member for Ward No. 9 while Purnachandra Nanda, petitioner in O.J.C. No. 41/84 filed his nomination for election in respect of Ward No. 8 in Form No. IV under Rule 29 of the Rules. The Election Officer rejected their nominations on the ground that the petitioners did not mention their age in the declaration in Form No. IV. Form No. IV is quoted below :

"FORM No. 4

(See Rule 29)

Nomination paper for election of Sarpanch/Naib-Sarpanch and Members of the ..... Grama Panchayat

.....

Name of the Grama Sanan..... Ward No. ....

Election to the ..... Grama Panchayat .....

Police Station .....

District .....

\*(To be filled by the proposer)

\* I hereby nominate ..... as a candidate for election as ..... from the Ward No. .... of ..... Grama Sanan.

1. Full name of proposer in Electoral Roll ..... Serial No.

2. Full Name of seconder in Electoral Roll ..... Serial No.

3. Name of candidate's father/ husband .....

4. Full postal address of candidate .....

.....

.....

5. Electoral roll number of candidate .....

Date .....

Signature of seconder

or

thumb impression

Signature of proposer

or

thumb impression

(to be filled by the candidate)

I, the above nominated candidate, assent to this nomination and hereby declare that I have completed..... years of age.

Date .....

Signature of candidate

or

thumb impression "

3. By these writ applications the petitioners challenge the action of the Election Officer, opposite party No. 3, in rejecting their nomination papers on the grounds that the order of rejection is arbitrary and illegal.

4. The Election Officer has filed a counter affidavit stating that the identity of the petitioners was not in dispute, but their nomination papers were rejected as they failed to furnish their age in the declaration in Form No. IV

5. Mr. Mohanty, the learned counsel for the petitioner, submits that supplying the age of the candidate in the declaration in Form No. IV is not mandatory provided the other required particulars are given in the nomination paper. According to the learned counsel, the nomination papers of the petitioners could not be rejected because there was no omission in Form No. IV of the other required particulars.

6. Mr. Ray, the learned Government Advocate submits that here is a case where the petitioners have filed their nomination papers without filling up the relevant columns in Form No. IV.

Mr. Mohanty, the learned counsel for the petitioners, submits that under Rule 29 of the Rules, if the Election Officer finds that a candidate is duly qualified in accordance with the provisions of Section 11 and not disqualified under any of the clauses of Section 25 of the Act, he shall approve his candidature. According to him, what is required to be looked into by the Election Officer is that there is compliance with the provisions of Sections 11 and 25 of the Act and the candidate is not disqualified u/s. 25 of the Act. The learned counsel further submits that supply of other particulars could not be taken to be mandatory. He brings to our notice the provision of Clause (b) of Rule 29 of the Rules which reads : --

"The Election Officer shall not reject a nomination paper merely on account of some discrepancy between the age, name, or other particulars of a candidate or his proposer or seconder as given in the nomination paper and in the Electoral Roll provided that the Election Officer is otherwise satisfied that the identity of a candidate is not in doubt and the question of eligibility is not involved."

6A. We have already adverted that the Election Officer has categorically stated in the counter affidavit that there was no dispute about the identity of the petitioners. Mr. Mohanty submits that Clause (b) of Rule 29 clinches the matter and the Election Officer did not have any scope for rejecting the nomination papers filed by the petitioners.

7. This question is no longer res Integra. In two reported decisions of this Court

it has been categorically held that under Rule 29 of the Rules if the Election Officer finds a candidate duly qualified in accordance with Section 11 and not disqualified under any of the clauses of Section 25 of the Act, he shall approve his candidature.

In *Surendra Kumar Rout v. State of Orissa* (1971) 37 C LT 391 : AIR 1971 Ori 257 the Court has further emphasized:

"Neither in the Act nor in the Rules, there is any provision for rejection of a nomination if an error is committed in respect of any particulars required to be mentioned in the nomination application in Form No. 4."

Admittedly, the petitioners had the requisite qualification as required by Section 11 and they did not suffer from any disqualification enumerated in Section 25 of the Act. Therefore, it was incumbent on the part of the Election Officer to approve the candidature of the petitioners.

To the same effect is the decision in *Abhan Singh Vs. Election Officer, Raighara Grama Panchayat and Others*, where while interpreting Clause (b) of Rule 29 it has been succinctly held as follows : --

"A bare reading of Rule 29 would show that a nomination paper shall not be rejected merely on account of some discrepancy between the age, name or other particulars of a candidate as given in the nomination paper and in the electoral roll provided that the Election Officer is otherwise satisfied that the identity of the candidate is not in doubt and his eligibility is not in question."

8. For the reasons stated above, we hold that the rejection of the nomination papers of the petitioners was completely in violation of the provisions of law as indicated above and accordingly the order of rejection cannot be sustained. Consequently, the election after illegally eliminating the petitioners from contest must be held to have been materially affected.

9. In the result, we allow both the writ applications, quash the order of the opposite party No. 3 rejecting the nomination papers filed by the petitioners and set aside the declaration electing the opposite party No. 4 in each of the writ applications to the office of Ward Member.

We direct issue of a writ of mandamus to opposite parties 1 to 3 to hold a fresh election to the office of Ward Member for Wards Nos. 8 and 9 accepting the nomination papers filed by the petitioners as valid.

In the circumstances of the case, we make no order as to costs.

S.C. Mohapatra, J.

I agree.