

(2011) 02 OHC CK 0021

In the Orissa High Court

Case No : Writ Petition (C) No"s. 5049 of 2009 and 988 of 2010

Gunanidhi Seth

APPELLANT

Vs

Shyama Kumar Meher
 Gourahari Seth Vs State of
Orissa and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Orissa General Clauses Act, 1937 — Section 2(23), 3, 3(31)
Orissa Grama Panchayat Act, 1964 — Section 93
Orissa Grama Panchayat Rules, 1968 — Rule 212
Orissa Panchayat Samiti Act, 1959 — Section 45(1)(L)

Citation : AIR 2011 Ori 128 : (2011) 1 OLR 727 : (2011) 6 RCR(Civil) 1999

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Judgement

R.N. Biswal, J.—The facts and points of law involved in both the writ petitions being the same, they were heard analogously and the following common order is passed thereon.

2. In W.P.(C) No. 988 of 2010, the Petitioner has challenged the judgment dated 16.12.2009 passed by the learned Addl. District Judge, Bargarh in Election Appeal No. 7 of 2008, wherein he allowed the appeal and set aside the judgment dated 1.9.2008 passed by the learned Civil Judge (Senior Division), Padampur in Election Dispute Case No. 2 of 2007. In W.P.(C) No. 5049 of 2009, the Petitioner has called in question the judgment dated 13.3.2009, passed by the Addl. District Judge, Bargarh, wherein he allowed the appeal and set aside the judgment dated 1.10.2008 rendered in Election Dispute Case No. 5 of 2007 by the Civil Judge (Senior Division), Padampur.

The case of the Petitioner (Shyama Kumar Meher) in Election Dispute Case No. 2 of 2007 is that he and opp.party, Gunanidhi Seth contested for the office of Panchayat Samiti Member of Bijepur Panchayat Samiti from Bijepur Gram Panchayat. They filed their respective nominations. The Petitioner therein challenged the nomination of Opp. party on the ground that he was dismissed

from the post of Secretary of Bijepur G.P. a local authority and as such was disqualified u/s 45(1)(L) of Orissa Panchayat Samiti Act, 1959 (hereinafter referred as Act), to contest for the office of Panchayat Samiti member, but it was not taken into consideration by the Returning Officer. Accordingly, he was allowed to contest the election and on 24.2.2007 was declared elected as member of Bijepur Panchayat Samiti. So, the Petitioner filed Election Dispute Case 2 of 2007 before the Court of Civil Judge (Senior Division), Padampur with prayer to declare the election of opp. party (Gunanidhi Seth) as null and void. In his show cause opp. party admitted the allegation that he was removed from the post of Secretary of Bijepur Panchayat Samiti, but contended that, for that reason he would not be disqualified u/s 45(1)(L) of the Act, to contest for the office of Panchayat Samiti member. Both the parties examined one witness each. After hearing learned Counsel for the parties, the trial Court held that Gram Panchayat is not a local authority and as such dismissed the case on 30.8.2008. Being aggrieved with the said judgment, the election Petitioner preferred Election Appeal No. 7 of 2008 before the Addl, District Judge, Bargarh, who after hearing learned Counsel for the parties allowed the appeal on 16.12,2009 and set aside the judgment of the trial Court holding that Bijepur G.P. is a local authority. Being aggrieved with the said judgment, the Respondent (Gunanidhi Seth) has preferred W.P.(C) No. 988 of 2010.

3. In Election Dispute Case No. 5 of 2007, the case of the Petitioner (Gourahari Seth) is that he was elected as member of Bijepur Panchayat Samiti, so also the opp. party No. 1 (Gunanidhi Seth). Both of them contested for the office of Chairman of the Panchayat Samiti. The Petitioner challenged the nomination of opp. party No. 1 on the ground that he was disqualified to contest for the said office as he was dismissed from the post of Secretary of Bijepur G.P., a local authority, but the same was not taken into consideration. Ultimately, opp. party was elected as Chairman of Bijepur Panchayat Samiti. Hence the Petitioner filed the aforesaid Election Dispute. Opp. party No. 1 contested the case. The Petitioner examined two witnesses including himself as P.W. 1 Opp.-party did not prefer to examine any witness, but proved the certified copy of the judgment passed in election Case No. 2 of 2007 by the Civil Judge (Sr. Division) Padampur which was marked Ext. A. After assessing the evidence and hearing the counsel for the parties, the trial Court held that opp. party No. 1 was disqualified to contest the election as he was removed from the post of Secretary of Bijepur G.P., a local authority. So, his election for the office of Chairman of Bijepur Panchayat Samiti was declared void. Being dissatisfied with the said judgment, opp. party No. 1 preferred Election Appeal No. 8 of 2008 before the Addl. District Judge, Bargarh which was allowed and the impugned judgment passed by the learned Civil Judge (Senior Division), Padampur in election Dispute Case No. 5 of 2007 was set aside. So, Respondent No. 1 preferred the writ petition bearing No. 5049 of 2009.

4. Admittedly Gunanidhi Seth, the Petitioner in W.P.(C) No. 988 of 2010 and opposite party No. 2 in W.P.(C) No. 5049 of 2009 who was serving as Secretary

of Bijepur G.P. was removed from the office. He preferred appeal against the removal order and ultimately it was held by this Court that his removal was justified.

5. As per Section 45(1)(L) of the Act, a person can not be eligible to contest for the office of member/chairman of a Panchayat Samiti if he has been dismissed from service of State or the Central Government or any local authority.

Mr. S.P. Mishra learned senior counsel appearing for Gunanidhi Seth, the Petitioner in W.P.(C) No. 988 of 2010 and opp. party No. 2 in W.P.(C) No. 5049 of 2010 submitted that local authority has not been defined in the Orissa Panchayat Samiti Act or Rules framed thereunder. Section 2(23) of Orissa General Clauses Act 1937 defines local authority, which reads as follows:

Local authority" shall mean a Municipal Committee, District Board, or any other authority entrusted by any government with or legally entitled to, the control of management of a municipal or local fund.

As per Section 3(31) of the General Clauses Act, 1897;

local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund.

According to Mr. S.P. Mishra, learned senior counsel, since Grama Panchayat would not come under State Govt., Central Government or local authority, Gunanidhi Seth cannot be disqualified to contest for the office of member or Chairman of Panchayat Samiti, only because he was removed from the post of Secretary of Bijepur G.P. on the other hand, Mr. Biswa Mohan Patnaik, learned senior counsel appearing for the opp. party in W.P.(C) No. 988 of 2010 and Petitioner in W.P.(C) No. 5049 of 2009 contended that, once it is hold that Gunanidhi Seth held the post of Secretary of a Grama Panchayat, it would be deemed that he held that office under the Government since Government had a major role in his appointment under Rule 212 of Orissa Grama Panchayat Rules, 1968 which stipulates that no person shall be appointed as Secretary of Grama Sasan, except with the previous approval of the District Panchayat Officer. In support of his submission, he relied on the decision in the case of Nabaghan Sahu v. Election Officer, Mukundapur Grama Panchayat and Ors. 1971 (1) CWR 23, where this Court while considering whether an Extra-Departmental Agent in a Branch Post office held an office of profit under the Central Govt. held:

To determine whether an office is one held under the Government, various tests have been laid down. They are (i) whether the Government makes the appointment; (ii) whether it has the right to remove or dismiss the servant; (iii) whether it pays the remuneration and (iv) whether it exercises control over the work of the incumbent. In certain cases some of the indica may be absent. The main test is whether the work is controlled by the government and it has a voice in the removal or dismissal of the employee.

6. Only because approval of the District Panchayat officer is required for appointment of a Secretary of the G.P., it cannot be said that the secretary holds the post under the Government. In the decisions *Dava Gram Panchayat Vs. Pandeswar Sahu and Others*, , and *Sri Adwait Chandra Jena Vs. Khandahata Grama Panchayat and Others*, , this Court held that Secretary of a Grama Panchayat does not hold a civil post under the State Government and he is not a Government servant. So, it cannot be said that Gunanidhi Seth, was holding any post under the government, because he was Secretary of Bijepur G.P.

7. Mr. Patnaik, learned Counsel further contended that Grama Panchayat is a Local authority. In support of his submission, he relied on the decision *Kishan Singh and Another Vs. State of Punjab and Others*, and *Dharampal Singh and Others Vs. A.K. Banerji and Others*, .

8. As per the definition of local authority as quoted earlier, besides the Municipal Committee, District Board and Body of Port Commissioners, any other authority which has been entrusted by the Government with the control or the management of a municipal or local fund or which is legally entitled to the control over the same is a local authority. Pursuant to Section 93 of Orissa Grama Panchayat Act, in every Gram Sasan, there is a Gram Fund under the control of the concerned Gram Panchayat. So, Gram Panchayat is a local authority.

In the decision *Kishan Singh (supra)*, it has been held that:

The Gram Panchayat Act makes provision for local funds which are managed by the village Panchayats, and a "Panchayat", therefore, clearly falls within the meaning of "local authority" given in Clause 31 of Section 3 of the General Clauses Act.

Similarly, in the case of *Dharmapal Singh (supra)*, it has been held that Grama Panchayat is legally entitled to control or manage the local fund known as Gram Panchayat Fund and hence it is a local authority as defined in General Clauses Act.

9. Since Gunanidhi Seth was removed from the post of Secretary of Bijepur Gram Panchayat, which is a local authority, he is disqualified for becoming a member of Panchayat Samiti. So, W.P.(C) No. 988 of 2010 is dismissed and the judgment passed by the learned Addl. District Judge, Bargarh allowing Election Appeal No. 7 of 2008 setting aside the judgment passed by the learned Civil Judge (Senior Division), Padampur in Election Dispute Case No. 2 of 2007 is hereby confirmed. On the other hand, W.P.(C) No. 5049 of 2009 is allowed and the order passed by the learned Addl. District Judge, Bargarh in Election Appeal No. 6 of 2008 is hereby set aside and judgment passed by the Civil Judge (Senior Division), Padampur in Election Dispute Case No. 5 of 2007 is hereby confirmed. No cost.