
(2013) 07 OHC CK 0018
In the Orissa High Court
Case No : Writ Petition (C) No. 5224 of 2013

Jagabandhu Bank

APPELLANT

Vs

Smt. Kumudini Nayak

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2014) 117 CLT 220

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Advocate : S.P. Mishra, S. Mishra, S.K. Sahoo, A.K. Das, B.K. Panda, B.S. Panigrahi and J.K. Mohapatra, for the Appellant; Bhaktahari Mohanty, R.K. Navak, B. Das, T.K. Mohanty, P.K. Swain and M. Pal, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Parija, J.—This Writ Petition has been filed challenging the Judgment dated 26.02.2013, passed by the Learned District Judge, Jajpur, in G.P. Election Appeal No. 01 of 2013, dismissing the same & confirming the Judgment dated 04.01.2013, passed by the Learned Civil Judge (Jr. Division), Jajpur, in Election Case No. 03 of 2012, holding the Petitioner disqualified for the post of Sarpanch of Mangarajpur Grama Panchayat & declaring the Opp. Party as the Sarpanch of the said Grama Panchayat. The brief facts of the case as detailed in the Writ Petition is that the Petitioner & the Opp. Party contested the election for the post of Sarpanch of Mangarajpur Grama Panchayat, which was held on 13.02.2012. In the said election, after counting of votes, the Petitioner was declared elected. The Opp. Party challenged the election of present Petitioner in Election Case No. 03 of 2012, before the Civil Judge (Jr. Division), Jajpur, mainly on the ground that the Petitioner has three children after the cut-off date, i.e. 18.04.1994, namely, Smitaranj Barik, Jyotismita & Bhakti C23 Prasad, who were born on 10.04.2000, 20.05.2002 & 07.07.2009 respectively & therefore he is disqualified for being elected as Sarpanch, as per the provisions of Section 25(1)(v) of the Orissa Grama Panchayat Act, 1964 (the "Act" in short). Accordingly, Opp. Party

prayed for declaring the Petitioner disqualified for the post of Sarpanch of Mangarajpur Grama Panchayat & to declare the Opp. Party as the elected Sarpanch.

2. The Petitioner contested the case by filing objection & pleaded that the marriage between him & Manorama was solemnized on 08.03.2000 & out of their wedlock one daughter, namely, Jyotismita was born on 20.02.2002 & subsequently he was blessed with a son, namely, Bhakti Prasad on 07.07.2009. It was specifically pleaded by the Petitioner that he has no third child as has been alleged & that Smitarani Barik is the youngest daughter of Jaydev Barik, who is his brother & that he had only got Smitarani Barik admitted in the school in the absence of his brother & had signed the admission register of the school as the guardian. It was pleaded by the Petitioner that as he married Manorama on 08.03.2000, it was not possible for her to give birth to Smitarani on 10.04.2000. Accordingly, the Petitioner prayed for dismissal of the election petition.

3. On the pleadings of the parties Learned Trial Court framed as many as five issues for consideration, out of which Issue Nos. III & IV were the vital issues, which are as follows:

(III) Whether the Opp. Party has more than two children after the cut-off date i.e. 18.04.1994 & his nomination paper was improperly accepted by the Election Officer.

(IV) Whether the Petitioner can be declared as the Sarpanch of Mangarajpur G.P. in place of O.P.

4. During trial of the case the present Opp. Party examined four witnesses & relied upon the documents marked as Exts. 1 to 7 series. The present Petitioner examined fourteen witnesses & relied upon the documents marked as Exts. A to L series.

5. Learned Trial Court after considering the evidence on record, both oral & documentary, came to find that the Petitioner has more than two children after the cut-off date & therefore he is disqualified for the post of Sarpanch of Mangarajpur Grama Panchayat, as provided u/s 25(1)(v) of the OGP Act. As there were only two candidates in the election fray, Learned Trial Court proceeded to declare the present Opp. Party as the Sarpanch of Mangarajpur Grama Panchayat, in place of the present Petitioner.

6. Being aggrieved by the Judgment of the Trial Court, the present Petitioner moved the Learned District Judge, Jajpur, in G.P. Election Appeal No. 01 of 2913. The Learned Appellate Court, after re-appreciating the evidence on record & considering the findings of the Learned Trial Court, as recorded in the impugned Judgment & the reasons assigned in support of the same, has come to hold that there is no infirmity or illegality in the impugned Judgment of the Trial Court, so as to warrant any interference & has accordingly dismissed the appeal.

7. Learned Counsel for the Petitioner submits that the Trial Court erred in not

accepting the documentary evidence under Exts. A, F, K, H & H/1, which clearly reveals that the Petitioner was not the father of Smitarani Barik. It is further submitted that the Learned Trial Court should not have accepted the entries in the school register under Exts. 5, 5/a & 6, which does not conclusively prove that Smitarani is the daughter of the Petitioner. It is further submitted that the appreciation of the oral evidence of the P.Ws. 6, 7 & 8 by the Learned Trial Court is improper & incorrect & therefore the conclusion arrived at by the Learned Trial Court on the basis of such oral evidence is wholly erroneous & misconceived. Accordingly, a prayer has been made to quash the Judgment of the Trial Court & the Appellate Court & dismiss the election petition filed by the Opp. Party.

8. Learned Counsel for the Opp. Party submits that as the documents under Exts. 5, 5/a & 6 are the admission register & school leaving certificate, which clearly shows that Smitarani Barik is the daughter of the present Petitioner & Manorama, Learned Trial Court has rightly relied upon the said documents in coming to hold that the Petitioner has more than two children after the cut-off date & is therefore disqualified for being elected to the post of Sarpanch of Mangarajpur Grama Panchayat. It is further submitted that as the oral evidence of OPW-6, who is the wife of the present Petitioner & OPW-8, who is the wife of Jayadev Barik, clearly goes to show that the Petitioner & Manorama had two children by the year 2007 & admittedly the male child, namely, Bhakti Prasad Barik was born to the Petitioner & Manorama in the year 2009, Learned Trial Court has rightly appreciated the said oral evidence of OPWs-6 & 8 in coming to hold that the Petitioner had more than two children after the cut-off date & is therefore disqualified for the post of Sarpanch, as provided u/s 25(1)(v) of the OGP Act.

9. On a perusal of the impugned Judgment of the Trial Court it is seen that Ext. A is the information supplied by local ANM (OPW-13), under the RTI Act, which shows that Smitarani Barik, who was born on 10.04.2000 is the daughter of Jaydev Barik & Sukanti Barik. OPW-13 in her deposition has stated that she had supplied information under Ext. A to the present Petitioner as per the direction of the Medical Officer of Bramha Barada PHC. She had obtained the information from the original immunization register maintained at Mangarajpur sub-centre. Ext. A has been issued on 31.03.2012. In her cross-examination, OPW-13 has stated that she has not provided the photocopy of the entry related to Ext. A & that the doctor had sent the letter to supply such information. OPW-14, who is the Medical Officer in charge of Madhusudan CHC, in his cross-examination has stated that he is the authorized officer & Public Information Officer under the RTI Act to provide any information related to health which is maintained by any person in the department under the jurisdiction of Madhusudan CHC. He further stated that any person desirous of obtaining any information in respect to any register maintained at Mangarajpur sub-centre, then he should apply before him.

10. Learned Trial Court referring to the document (Ext. A) & the deposition of OPW-13, has come to hold that the information given under Ext. A is not admissible as evidence because of the fact that same is not prepared by any

public servant during discharge of the official duty. Learned Trial Court has further found from the Order Dated 05.10.2012 that the immunization register was produced but the present Petitioner did not choose to prove the same & subsequently the Medical Officer (OPW-14) has deposed that the said register is not available at Mangarajpur sub-centre, as the same is damaged. Learned Trial Court has accordingly observed that though the register was produced before the Court on 05.10.2012 & OPW-14 was examined on 18.10.2012, how within such a short period of time the original register could be damaged has not been satisfactorily explained. Accordingly, the Learned Trial Court has proceeded to hold that the information under Ext. A does not carry much value.

11. Coming to the Birth Certificate (Ext. F), it shows that Smitarani Barik is the daughter of Sukanti Barik & Jaydev Barik & her date of birth is 10.04.2000. The said Birth Certificate has been issued on 19.03.2012, which is also the date of registration of the birth of Smitarani vide serial No. 0213. Learned Trial Court has come to hold that this document (Ext. F) having been prepared after filing of the election petition & during pendency of the proceeding, the same cannot be relied upon as evidence in favour of the present Petitioner.

12. As regard the entries in the Live Birth Register of Dharmasala CHC for the year 2009 (Exts. K & K/1), Learned trial Court on verification of the original register has come to find that the digit "2" mentioned therein is found to be different in comparison to other entries where same digit "2" is mentioned. On perusal of that entry in the original register, Learned Trial Court has also come to find that the same digit has been tampered with. Another Live Birth Register of Madhusudan CHC of the year 2001-02. (Ext. 7) & the relevant entry vide serial No. 843, dated 01.06.2002 (Ext. 7/a) relates to birth of a female child of the Petitioner, who was born on 20.05.2002. On perusal of the said register Learned Trial Court has come to find that the order of birth has been mentioned as "2" in column No. 19. The entry in the Live Birth Register (Ext. K/1), which is made after preparation of Ext. 7/a, also indicates that the order of birth as "2". Therefore, Learned Trial Court has disbelieved the entry in the Live Birth Register (Ext.K/1), with regard to the order of birth, which appeared doubtful.

13. Learned Trial Court has considered the entries made in the Birth Report of the year 2009 of CHC Dharmasala (Ext. L) visa-vis the entry made in Ext. K/1 with regard to the order of birth. The doctor (OPW-12) has stated in his evidence that the entry in Ext. L is contrary to the entry made in Ext. K/1. Accordingly, Learned Trial Court has come to hold that the genuineness of the entries in Ext. L is doubtful & therefore the same cannot be accepted.

14. Coming to the entries made in the School Admission Register (Ext. 5/a) & the School Leaving Certificate (Ext. 6) coupled with the admission by the Petitioner in para-6 of his objection clearly goes to show that Smitarani is the daughter of the present Petitioner & he has failed to adduce any evidence to rebut the same. Accordingly, Learned Trial Court has relied upon Exts. 6 & 5/a, which are found to be relevant & admissible in evidence.

15. As regard the oral evidence of OPW-6, who is the wife of the present Petitioner, she has stated in her evidence that in the last election in 2007, she had filed her nomination for "Samiti Sabhya" & in the nomination paper she had written that she had two children. OPW-8, who is the wife of Jaydev Barik has stated in her evidence that they are staying together with the Petitioner & that in the last Panchayat election, the wife of the Petitioner (OPW-6) contested the election for "Samiti Sabhya" & by then she had two children.

16. From the aforesaid oral evidence of OPWs-6 & 8, Learned Trial Court has come to find that the wife of the Petitioner has admitted in her evidence that she had two children by the year 2007. Further it is admitted that a male child, namely, Bhakti Prasad Barik was born to the Petitioner & Manorama in the year 2009. Accordingly, on the basis of the oral & documentary evidence on record, Learned Trial Court has come to find that Smitarani Barik is the daughter of the Petitioner, who was born on 10.04.2000. The birth of other two children, namely, Jyotismita & Bhakti Prasad were on 20.05.2002 & 07.07.2009 respectively, which is admitted by both parties. Accordingly, Learned Trial Court has come to hold that it is well established that the Petitioner has more than two children after the cut-off date, i.e. 18.04.1994 & therefore he is disqualified for being elected or nominated as Sarpanch of Mangarajpur Grama Panchayat, as per Section 25(1) (v) of the OGP Act.

Accordingly, the election of the Petitioner as Sarpanch of Mangarajpur Grama Panchayat has been declared to be void. As there were only two contesting candidates in the election & the Petitioner was found to be disqualified, Learned Trial Court has proceeded to declare the Opp. Party as Sarpanch of Mangarajpur Grama Panchayat.

17. On an analysis of the evidence on record, both oral & documentary, as discussed above, the findings recorded by the Learned Trial Court cannot be faulted. It is well settled that in exercising power under Articles 226/227 of the Constitution, the High Court does not act as an Appellate authority. It will not review or reweigh the evidence upon which the findings of the inferior Court purports to be based, unless the findings are perverse or patently erroneous & de hors the factual & legal position on record.

18. In the present case, the Petitioner has not been able to establish that the findings of fact recorded by the Learned Trial Court are not based on any evidence or the findings are totally perverse. This Court cannot re-appreciate the evidence nor can it substitute its subjective opinion in place of the findings of the Court below, unless such findings are shown to be so perverse or so unreasonable that no Court would have ever reached them. For the reasons aforestated, I do not find any infirmity or illegality in the Judgment of the Trial Court as well as the Judgment of the Appellate Court, so as to warrant any interference in this Writ Petition.

The Writ Petition being devoid of merits, the same is accordingly dismissed. No

costs.