
(1973) 08 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 488 of 1973

Jampa Tabiti and Others

APPELLANT

Vs

Devarsetty Venkateswar Rao and Others

RESPONDENT

Date of Decision : 24-08-1973

Acts Referred:

Constitution of India, 1950 — Article 345, 347

Orissa Municipal Act, 1950 — Section 16(1), 189, 19(2), 190

Citation : (1973) 39 CLT 1150

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Addl. Standing Counsel and Asok Das, for the Respondent

Judgement

R.N. Misra, J.—The Petitioner No. 1 and the opposite party No. 1 filed nominations for being elected as councillor from Ward No. 7 of the Notified Area Council of Gunupur in the district of Koraput. According to the election programme nomination papers were to be filed on 11-5-1973 and scrutiny was taken up on 15-5-1973. the polling date was fixed to 31-5-1973. From Ward No. 7 the Petitioner No. 1 and the opposite party No. 1 were the only contesting candidates. The Election Officer (opposite party No. 3) rejected the nomination of the Petitioner No. 1 and, therefore the only remaining candidate, that is, the opposite party No. 1 was declared elected without contest.

Before the Election Officer each of the parties had disputed the eligibility of the other to be a councillor. The Petitioner No. 1 had contended that the opposite party No. 1 was in arrears of dues payable to the Notified Area Council and as such suffered from the disqualification provided for in Section 16(1)(vi) of the Orissa Municipal Act of 1950 (hereinafter referred to as the Act). It was claimed that the opposite party No. 1 was the managing partner of M/s. Jayalakshmi Talkies, a partner firm, which was liable to pay professional tax under the Act and the tax for the year 1970-71 had remained unpaid. The necessary certificate

from the Executive Officer of the Notified Area Council was produced before the Election Officer.

The opposite party No. 1 alleged that the Petitioner No. 1 was unable to read and write either English, Hindi or the language of the State which according to the opposite party No. 1 was Oriya and, therefore, he suffered from the disqualification provided u/s 16(1)(iii) of the Act. The Election Officer held that the Petitioner No. 1 was disqualified-on the ground alleged, but negated the plea of the Petitioner No. 1 regarding the disqualification of the opposite party No. 1. In this writ application for certiorari the Petitioners challenge the election of the opposite party No. 1 and have asked us to quash the orders of the Election Officer disqualifying the Petitioner No. 1 and holding the opposite party No. 1 to be qualified.

2. The opposite party No. 1 has filed a counter affidavit. The other opposite parties have, however, not made any return to the rule nisi but have appeared to argue in support of the Election Officer's orders. The stand of the opposite party No. 1 is that:

(1) The firm is the Assessee in respect of professional tax and he has no liability in that matter;

(2) There was no notice of demand prior to the nomination and the demand was only dated 8-6-1973, that is after election;

(3) The Election Officer had been sufficient cause shown by him Section 16(1)(vi) of the Act.

In regard to the Petitioner No. 1 the stand taken in the counter affidavit is

(1) Admittedly the Petitioner No. 1 cannot read and write English and Hindi, Oriya being the language of the State as provided in Section 16(1)(iii) of the Act unless he could read and write that language he cannot be qualified. The Election Officer has found that the Petitioner No. 1 cannot read and write Oriya. That finding is not impugned;

(2) The Petitioner No. 1 claims that he can read and write Telugu, but Telugu cannot be considered as the language of the State.

3. The Election Officer passed two separate orders in regard to the allegation of disqualification of the two parties. In regard to the opposite party No. 1 in Annexure-3 he stated:

All the dues payable by the firm either to the N.A.C. or the Government are paid by the firm as a legal entity. So, Shri D. Venkateswar Rao (opposite party. No. 1) is not personally liable to the arrears of the Jayalakshmi Talkies as a firm, and even if the latter firm owes some dues to the N.A.C. that cannot operate as a disqualification to the candidature of Shri Venkateswar Rao for the N.A.C. election.

This Court has already indicated the legal position as regards a firm being a legal entity in *Messrs Jayanarayan Ramanandalal and Ors. v. Biswanath Bhagat and Ors.* I.L.R 1971 Cutt 1422. At page 1427 after referring to the decision of the Supreme Court in *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, , this Court said,

We have no doubt in our mind that a partnership is not a legal entity. For certain limited purposes it is treated as a unit and is allowed to institute suits or be used or get assessed both under the income tax Act and other taxation laws; or be deemed to hold property for limited purposes; yet a partnership firm cannot be envisaged in law as an artificial person.

Professional tax is payable u/s 189 of the Act and as provided therein a firm can be an Assessee for a professional tax. In regard to liability of professional tax any adult member of the firm can be liable as provided u/s 190 thereof. The Election Officer was, therefore, wrong in treating the firm as a legal entity and in holding that in regard to a demand against the firm the opposite party No. 1 can have no liability.

The Assessee admittedly is the firm u/s 189 of the Act. If there be default it can be collected from any adult partner. There is nothing on record to show that demand had been raised against the opposite party No. 1 for the default in payment of the tax by the firm. Therefore, while there may be liability to satisfy the demand, so far as the opposite party No. 1 is concerned it is difficult for us to hold that he would have the disqualification attached to him u/s 16(1)(vi) of the Act until it is shown that there had been a demand raised against him. Though the reasonings given by the Election Officer are somewhat inapt, the ultimate conclusion cannot be questioned. The opposite party No. 1, therefore, did not suffer from the disqualification as alleged.

4. Now we shall deal with the case of the Petitioner No. 1. So far as he is concerned, the disqualification as against him is the one provided u/s 16(1)(iii) of the Act which is to the following effect:

(iii) is unable to read and write either English, Hindi or the language of the State.

There is no dispute that the Petitioner No. 1 cannot read and write either English or Hindi. Admittedly the Petitioner No. 1 can read and write Telugu. The only question that remains for decision in regard to this part of the case is as to whether Telugu can be said to be the language of the State. "Language of the State" as such is not defined in the Act, nor is there a compendious definition available in the matter, Referring to Articles 345 and 347 and Schedule VIII of the Constitution it has been contended that those provisions relate to the official language of the State. Section 16(1)(iii) of the Act does not refer to the official language, but only refers to the language of the State. Reference was also made to us to Orissa Act 14 of 1954 regarding the official language of the State. In view of the difference in the phraseology it is difficult for us to hold that Section 16(1)(iii) of the Act must refer to the official language of the State.

As indicated by a Bench of this Court in *Kelei Mullick v. State of Orissa* 31 (1965) C.L.T. 148 the Municipal Act has insisted upon a test of literacy for a councillor. Mr. Mohanty relies upon the fact that within the district of Koraput use of Telugu as an alternate language is permitted and in fact even in the G.R. & C.O. issued by this Court, in the district of Koraput Telugu has been accepted as the alternate language. A proper construction, according to us, of the meaning of the words "language of the State" occurring in Section 16(1)(iii) of the Act would be to hold that it refers to the language prevalent in the State and not to the official language of the State. Our interpretation satisfies the legislative intention as indicated in *Kelei Mullick v. State of Orissa* 31 (1965) C.L.T. 148. Accordingly the Petitioner No. 1, who is able to read and write Telugu satisfies the requirement of the section and cannot be held to be disqualified u/s 16(1)(iii) of the Act. He was, therefore, qualified to contest for the councillorship, and the order of the Election Officer rejecting his nomination on the allegation of disqualification under Section-16(1)(iii) of the Act is bad. We hold that the Petitioner No. 1 is also qualified.

5. It had been contended before us that we should not interfere in the matter because a remedy under the statute is available. Section 19(2), however, indicates that an election petition is presentable by a candidate in whose favour votes have been recorded and who claims to be declared elected in place of the person whose election is questioned, or by twenty-five or more electors of the ward. The Petitioner does not satisfy that requirement. Originally the Petitioner No. 1 alone had applied for relief. Subsequently, however, some more persons were added. In the peculiar circumstances of the case we are not in a position to throw out the petition on the plea of alternate remedy under the Act being available.

6. On our finding that both the Petitioner No. 1 and the opposite party No. 1 are qualified to contest, the opposite party No. 1 could not have been declared as returned uncontested. An election becomes necessary. We quash the declaration made by the Election Officer holding that the opposite party No. 1 has been declared elected uncontested and direct the Election Officer to hold an election in Ward No. 7 of the Notified Area Council in accordance with law. We make no order as to costs.

K.B. Panda, J.

7. I agree.