

(2021) 02 OHC CK 0025

In the Orissa High Court

Case No : Writ Petition (Civil) No. 33381 Of 2011

Jhuna Nayak

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Indian Penal Code, 1860 — Section 34, 294, 323, 341, 354, 506
Orissa Scheduled Area Transfer Of Immovable Properties (By Scheduled Tribes)
Regulations, 1956 — Section 3, 3(1), 4

Citation : (2021) 02 OHC CK 0025

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Advocate : S. Mohanty, S.S. Mohapatra, S.K. Das, S.R. Dash, Y.S.P. Babu

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J

1. The petitioner, who was a candidate for selection of Anganwadi Helper of Jamugaon-III Anganwadi Centre under Child Development Project

Officer (CDPO), Naugaon in the district of Jagatsinghpur, has filed this writ petition seeking to quash the selection of opposite party no.5-Smt.

Swagatika Mallick and issue direction to the State opposite parties to give her appointment against the said post.

2. The factual matrix of the case, in hand, is that Jamugaon village consists of nine wards and out of the same in respect of wards no. 8 and 9 a notice

was issued by the Child Development Project Officer (in short CDPO), Nuagaon on 28.08.2010 for selection of Anganwadi Helper. It was indicated

therein, so far as Jamugaon-III Anganwadi Centre is concerned, that Mahila Sabha would be convened on 03.09.2010 at 12 noon and all the

candidates would be present on the scheduled date, time and place. Pursuant to such notice, Mahila Sabha was held on 03.09.2010 at Jagulai Temple

premises, wherein seven applicants were present. Due to difference of opinion, the selection process could not be completed and the meeting was closed.

2.1 One of the intending candidates, namely, Pravati Bhoi filed objection before opposite party no.1 alleging irregularity in the scrutiny of application of

one of the candidates for the post of Anganwadi Helper. As Mahila Sabha could not be held on 03.09.2010, the CDPO, Naugaon-opposite party no.4

issued another notice on 02.04.2011 for selection of Anganwadi Helper for which Mahila Sabha was scheduled to be held on 15.04.2011 at about 12

noon at Jagulai Temple and the candidates were informed to be present on the scheduled date and time. Pursuant to such notice, though Mahila Sabha

was conducted, but it was cancelled due to non-cooperation of the members.

2.2 Again for the 3rd time, the CDPO issued notice on 09.09.2011 for the self same center and Mahila Sabha was scheduled to be held on

17.09.2011. In the said Mahila Sabha, out of seven intending candidates, three candidates were present. The candidature of Khiralata Dei was

rejected on the ground of non-submission of relevant papers. Sebalata Das, Niralata Panda and Golap Bhoi withdrew their applications as they were

not interested to serve as helper. Therefore, out of seven candidates since three candidates withdrawn and one had not furnished documents, rest

three applicants, namely, Jhuna Nayak- petitioner, Pravati Bhoi and Swagatika Mallick-opposite party no.5 were present in the meeting itself, but due

to misunderstanding and non-cooperation of the members once again for the 3rd time the selection process could not be finalized. Due to untoward

situation created by Swagatika Mallick-opposite party no.5 and her supporters, Parvati Bhoi lodged FIR against Swagatika Mallick and others, which

was registered as Naugaon P.S. Case No.80(11) dated 17.09.2011 under Sections 341/294/354/323/506 and 34 IPC, corresponding to GR Case No.

631/2011, which is pending in the Court of learned SDJM, Jagatsinghpur.

2.3 The petitioner also filed complaint before opposite parties no. 1 to 3 regarding unusual happening in the Mahila Sabha. Out of three available

candidates, two of them belonged to scheduled caste and present petitioner is the only backward class candidate. As per the guidelines provided for

the selection of Anganwadi Helper, the CDPO, Naugaon issued a letter on 08.11.2011 fixing the date of meeting on 15.11.2011 and the selection

committee unilaterally decided Smt. Swagatika Mallik-opposite party no.5 to be appointed as Anganwadi Helper, who had created disturbances for

last consecutive meetings and against her FIR was lodged for creating disturbances. But without considering her conduct and by flouting the specific

guidelines for selection of the Anganwadi Helper, Smt. Swagatika Mallik was selected on 15.11.2011. Hence this application.

3. Mr. S.S. Mohapatra, learned counsel for the petitioner contended that the Government of Odisha, Women & Child Development Department issued

guidelines for selection of Anganwadi Helper for Anganwadi Centers vide letter dated 24.11.1997 under Annexure-7, wherein it has been specifically

mentioned that though the Orissa Reservation of Vacancies Rules are not applicable for the selection of Anganwadi Helper in the villages

predominantly occupied by SC, ST and OBC population, the Anganwadi Helper selected may be from any of these communities which is in majority.

It is further contended that the area of selection consists of 244 women, out of whom 67 belonged to SC category, 128 from backward classes and 49

from General Category. Therefore, the selection of Anganwadi Helper should have been made from among the backward class candidates, who are

predominantly occupied, as per the guidelines issued by the Government. But, without following such guidelines, the opposite party no.5 was selected

by the authority, which cannot sustain in the eye of law and is liable to be quashed.

4. Mr. Y.S.P. Babu, learned Addl. Government Advocate appearing for the State opposite parties justified the selection of opposite party no.5 as

Anganwadi Helper in respect to Jamugaon-III Anganwadi Center and with reference to the counter affidavit filed in present application per contra

contended that the writ petition should be dismissed in limine.

5. This Court heard Mr. S.S. Mohapatra, learned counsel for the petitioner and Mr. Y.S.P. Babu, learned Addl. Government Advocate appearing for

the State opposite parties through virtual/physical mode, and perused the record. Pleadings having been exchanged between the parties and with the

consent of the learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6 On the basis of the facts, as delineated above, admittedly, for selection of Anganwadi Helper in respect of Jamugaon-III Anganwadi Centre a

selection committee was constituted. The CDPO, Naugaon invited applications pursuant to an advertisement issued by her and in response to the

same, seven applicants applied for and they were directed to remain present in the Mahila Sabha on the date and time specified in such advertisement,

but the Mahila Sabha could not be held due to non-cooperation of the women members. Even though there was some disruption in the Mahila Sabha,

but finally when the Mahila Sabha was held on 15.11.2011, on that date three eligible candidates were present, as out of seven applications, the

application of Khiralata Dei was rejected on the ground of age and non-submission of relevant papers, Sebalata Das, Niralata Panda and Golap Bhoi

withdrew their candidature as they were not interested to serve as helper, therefore, the rest three applicants, namely, the present petitioner-Jhuna

Nayak, Pravati Bhoi and Swagatika Mallick-opposite party no.5 were present in the Mahila Sabha held on 15.11.2011. The guidelines issued by the

Government of Orissa in Women and Child Development Department vide letter dated 24.11.1997 in Annexure-7 clearly specify that the ORV Rules

are not applicable for the selection of Anganwadi Helper, but, however, in the villages predominantly occupied by the SC, ST and OBC population the

Anganwadi Helper selected may be from any of these communities which is in majority. The total population of the Anganwadi Center area under

consideration is 668, out of which scheduled caste population is 192, other backward class is 55 and General 421. Thereby, following the above

guidelines, the Anganwadi Center area is predominantly occupied by the scheduled caste persons and, as such, opposite party no.5, who belonged to

scheduled caste category, was selected and engaged as Anganwadi Helper. Therefore, the selection of opposite party no.5 cannot be said to be illegal

or arbitrary or contrary to the provisions of law. The selection of opposite party no.5 being in consonance with the guidelines issued by the

Government vide Annexure-7, the contention so raised by the learned counsel for the petitioner cannot sustain in the eye of law.

7. So far as procedural aspect with regard to selection of Anganwadi Helper is concerned, notice was served on three eligible applicants fixing the

date for Mahila Sabha on 15.11.2011. As there were disturbances in holding of Mahila Sabhas and, as such, in three consecutive Mahila Sabhas, failed

to select the Anganwadi Helper in respect to Jamugaon-III Anganwadi Center the second rule with regard to selection was followed, as decided in

the Mahila Sabha held on 17.09.2011, and accordingly the selection committee sat in Project Headquarter on 15.11.2011 and selected opposite party

no.5 as Anganwadi Helper in respect of Jamugaon-III Anganwadi Centre as per the prevalent guidelines under Annexure-7.

8. In order to run the administration the Government has to frame rules, regulation and issue notification, administrative instruction and circular. They

are not absolutely unrelated. Sometimes one supplements the other. They dispense with the necessity of legislation in minor or detail matters. Rules

and regulations are all comprised in delegated legislation. The legislature is overburdened and the need of modern society is complex. The legislature

cannot foresee every administrative difficulty. So it lays down the policy and confers discretion on administrative agency to execute the policy.

9. In Nagpur Improvement Trust v. Yadaorao Jagannath, (1999) 8 S.C.C. 99 : AIR 1999 SC 3084, the apex Court held that in the absence of statutory

rule, executive instruction or decision will operate.

10. In view of such position, the guideline issued by the Government in Annexure-7 dated 24.11.1997, in absence of any statutory rule, will operate.

Applying the same, since decision has been taken in engaging opposite party no.5-Swagatika Mallick as Anganwadi Helper, this Court does not find

any illegality or irregularity so as to cause interference with the same in exercise of extraordinary power under Article 226 of the Constitution of India.

11. Consequentially, the writ petition merits no consideration and accordingly the same stands dismissed. No order to costs.