

(2013) 04 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 19596 of 2012

Kanti Bundki

APPELLANT

Vs

Sindhusuta Pradhan The Election Officer-cum-Block
Development Officer

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 33, 33(2), 83, 90

Citation : (2013) 116 CLT 2 : (2013) 1 OLR 845

Hon'ble Judges : S. Panda, J

Bench : Single Bench

Advocate : Ajodhya Nath Sahu and Associates, for the Appellant; Trilochan Nanda and Associates for Opp. Party No. 1 and Addl. Standing Counsel for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

S. Panda, J.—In this writ petition, the petitioner has challenged the order dated 13.8.2012 passed by the learned Civil Judge (Junior Division), Bolangir in Election-Petition No. 3/2012 allowing the application filed by the opp. party No. 1 dated 16.7.2012 without affidavit and verification. The facts as narrated in the writ petition reveals that opp. party No. 1 (election petitioner) challenged the election of the present petitioner as Ward Member of Ward No. 7 of village Jaljadpali of Bandhapada Gram Panchayat under Puintala Block in the district of Bolangir, before the learned Civil Judge (Junior Division), Bolangir with a pleading of misconduct of the election officer in counting number of votes in favour of the petitioner and declaring her as elected Ward Member in respect of the aforesaid village. Accordingly, the application was registered as Election Petition No. 3 of 2012. She also prayed to call for the ballot papers in respect of Ward No. 7 of village Jaljadpali of Bandhapada Grama Panchayat for recounting and further to set aside the election of the petitioner as Ward Member of Ward No. 7. After receiving the notice, the present petitioner appeared and filed her show cause traversing the allegation made by the opp. party No. 1 taking a specific stand

that the election petition is not filed in accordance with Section 33 of the Orissa Grama Panchayat Act (hereinafter referred to as the "Act") and election petitioner has failed to plead material facts in support of her claim as well as due to improper verification, as such the said application is not maintainable. After receiving the copy of the show cause, the opp. party No. 1 filed an application stating that list of documents which was filed along with the election petition on 5.3.2012 was not verified as prescribed u/s 33(2) of the Act. Therefore, she filed a petition on 16.7.2012 before the Court below to treat the same as "verification" which would be treated as part of the list of document by allowing the application. An objection was filed by the present petitioner to the said application of the opp. party No. 1 taking a specific stand that neither the application filed on 16.7.2012 was properly verified nor any affidavit was sworn to as required under the statute. However, without taking into consideration the objection raised by the petitioner, the application was allowed by the impugned order.

2. Learned counsel for the petitioner submitted that an election petition, being defective on various grounds, is liable to be rejected at the threshold, such as, absence of cause of action irredeemable vagueness and improper verification/ affidavit etc. Since the defect is incurable, the application is liable to be rejected. However, the Court below without considering the gravity of the matter allowed the application and accepted the verification as a part of the list of documents. In support of his contention, he has cited a decision of the Hon'ble Apex Court reported in *Ishwardas Rohani Vs. Alok Mishra and Others*, .

3. Learned counsel for the opp. party No. 1 submits that though opp. party No. 1 has filed list of documents on 5.3.2012 along with the election petition, however, it was not verified as per statutory provisions. Since the said defect is curable one, she has filed the application at a later stage with a prayer to accept the same as a part of the list of documents. In support of his contention, he has cited the decision reported in *AIR 1964 SC 1545 (Murka Radhey Shyam Ram Kumar v. Roop Singh Rathore and others)*.

4. Considering the rival submission of the parties and after going through the record, it appears that the election petitioner (opp. party No. 1) has not verified the list of documents which was filed along with the election petition for which she has filed application to accept the verification as a part of said documents. However, the application filed by the petitioner was not verified which was defective. But so far as cause of action of triable issues are concerned, the election petitioner has pleaded the material facts. However, the list of documents was not verified by the election petitioner, for which she has filed the application at a later stage to accept the verification as a part of list of documents and her application was allowed.

5. Law is well settled that verification is to be made in the manner as prescribed in the Civil Procedure Code, 1908 for verification of the pleadings. The said procedure is a statutory requirement u/s 33(2) of the Act also.

6. The Hon''ble Apex Court in the decision reported in Muraka Radhey Shyam Ram Kumar (supra) held as follows:

A defect in verification in the matter of election petition is a matter which comes within clause (c) of Sub-section (1) of Section 83. The defect can be removed in accordance with the principles of the Code of Civil Procedure, 1908. Such a defect does not attract Sub-section (3) of Section 90, in as much as that Subsection does not refer to non-compliance with the provisions of Section 83 as a ground for dismissing an election petition. Hence reading the relevant sections in Part-VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by clause (c) of Sub-section (1) of Section 83 is fatal to the maintainability of the petition.

7. The apex Court in the case of Ishwardas Rohani (supra) considered the objection to the election petition regarding absence of cause of action and irredeemable vagueness of the election petition. Accordingly, the apex Court had taken two different views and referred the matter to be placed before the third Judge of the Supreme Court, as the allegation was with regard to corrupt practice and non-disclosure of cause of action. The said decision is clearly distinguishable and is not applicable to the present case. In the present case, as the defect is regarding verification of the list of documents, the same is curable one as held by the Apex Court in the decision Muraka Radhey Shyam Ram Kumar (supra). In view of the above, this Court disposes of the writ petition with observation that in case of opp. party No. 1 files an application within a period of two weeks from today before the Court below to accept the verification as a part of the application dated 16.7.201.2, the same be accepted.