

(1981) 07 OHC CK 0017
In the Orissa High Court
Case No : Original Jurn. Case No. 844 of 1981

Kapilendra Pothal

APPELLANT

Vs

Dy. Registrar, Co-operative Societies, Balasore Division and
Others

RESPONDENT

Date of Decision : 29-07-1981

Acts Referred:

Citation : AIR 1981 Ori 194 : (1981) 52 CLT 319

Hon'ble Judges : R.N. Misra, C.J.; J.K. Mohanty, J

Bench : Division Bench

Advocate : G. Rath, for the Appellant; Additional Government Advocate and S. Misra-2, for the Respondent

Judgement

Misra, C.J.—This application under Article 226 of the Constitution calls in question the election of opposite party No. 3 as a Director of the Balasore District Co-operative Central Bank Limited (hereinafter referred to as the "Bank") on 18-4-1981.

2. The Bank consists of 12 Zones out of which the Nilgiri-Oupada Zone is one and it also happened to be a constituency for electing a Director for the Board of the Bank. The said zone has 12 co-operative societies and from among the 12 representatives each representing one society out of these 12, a Director had to be elected. The Deputy Registrar of Co-operative Societies, Balasore Division (opposite party No. 1), issued notice u/s 28 of the Orissa Co-operative Societies Act (hereinafter referred to as the "Act") for holding election to the Board of Directors of the Bank in a General Body Meeting of the Bank which was scheduled to be held on 20-7-1980 for the said purpose. An election programme was published as per Annexure-1, Only two representatives out of the 12 relating to the relevant zone -- petitioner and opposite party No. 3 -- filed their nominations for the election to be held on the 20th of July, 1980. The nomination of opposite party No. 3 was rejected by the Deputy Registrar who was also the Election Officer by order dated 16th July, 1980, and since petitioner was the only

remaining candidate, he was notified to have been elected from the constituency as an uncontested Director. Against the order of rejection of his nomination, opposite party No. 3 filed an appeal being Appeal Case No. 6 of 1980 before the Registrar (opposite party No. 2). By order dated 18-9-1980, the Registrar allowed the appeal and set aside the order of the Election Officer rejecting the nomination of opposite party No. 3 vide Annexure-2. The appellate authority directed :--

"..... .This being so, his decision on the legality or otherwise of the second meeting and of the resolution passed at the second meeting amounts to an exercise of jurisdiction which he really did not possess under the law. In view of the above his order dated 16-7-1980 is hereby set aside."

In terms of the appellate order, the Dy. Registrar (opposite party No. 1) gave the following notice:--

"Notice No. 1720/Dated 23-3-1981. IEIII-Dk.2/80

In continuation of this office Notice No. 678 dated 5-2-1981, which was published in the daily Oriya Newspaper (Matrubhumi) on 13-2-1981, the programme of election of members to the Committee of Management of Balasore District Co-operative Central Bank Ltd. from Nilgiri-Oupada Constituency which is scheduled to be held on 18-4-1981 at 2 p.m. in the premises of Balasore District Co-operative Central Bank Ltd. is given below. All the members of Nilgiri-Oupada Constituency are requested to attend and participate in the election General Body Meeting according to the programme.

Sd/- 23-3-1981, Deputy Registrar, Co-operative Societies, Balasore Division, Balasore Cum Election Officer, Balasore District Co-operative Central Bank Ltd.

Programme of election of member to the Board of Management of Balasore District Co-operative Central Bank Ltd. from Nilgiri-Oupada Constituency on 18-4-1981 at 2 p.m.

Particulars of programme Place Date Time

1.

Final Publication of list of contesting candidates and allotment of election symbol.

Office of the Deputy Registrar of Co-operative Societies, Balasore Division, Balasore.

15-4-1981 1 P.M. to 4 P.M.

2.

Voting if necessary in the Election in General Body Meeting.

In the office premises of Balasore District Co-operative Central Bank Ltd.

18.4.1981 2 P.M. to 2.45 P.M.

3.

Counting of votes and declaration of election result.

-Do- 16.4.1981 3 P.M.

As would appear from Annexure-8, election being held, opposite party No. 3 received 7 votes while petitioner received 5,

Petitioner has contended that the appeal to the Registrar was not maintainable; the election of the petitioner having not been set aside, a fresh election could not be held; at any rate, when the Election Officer proceeded to give effect to the appellate order for holding of the election, in the absence of any provision that the election process could be conducted from the stage of scrutinizing nominations, the entire gammock should have been repeated from the beginning of the election process.

3. Opposite party No. 3 alone has filed a counter-affidavit wherein inter alia it has been contended that Section 68 of the Act provides for raising a dispute against the election. It has also been contended that an appeal lay against the rejection of the nomination u/s 109 (1) (e-1) and, therefore, the appeal by opposite party No. 3 was maintainable and the direction given by the Registrar is unexceptionable. Petitioner has been contending that an appeal was not maintainable and a dispute should have been raised. His own contention should be utilised against the petitioner and in view of the fact that a special provision has been made by the statute for challenging the election, the writ application should not be entertained.

4. Section 109 (1) (e-1) of the Act inserted into the statute by Amending Act 21 of 1970 provides that an appeal shall lie against an order touching the election of members of the committee of any society. An order rejecting a nomination is certainly an order touching the election. Therefore, when the nomination of opposite party No. 3 was rejected, the remedy of appeal was certainly inviolable. Under Clause (j) of the same section, an appeal also lies from the decision or award u/s 70. The Fourth Explanation to Section 68 (1) of the Act provides: --

"Any dispute arising in connection with the election of any officer of the society shall be a dispute within the meaning of this section."

"Dispute" contemplated in Section 68 of the Act, therefore, covers an election dispute. Learned counsel for the petitioner contended that when in Clause (j) a right of appeal had been provided, the newly added Clause (e-1) could not be intended to cover the same field.

Clause (j) was already in the statute book when by Orissa Act 21 of 1970, Clause (e-1) was added to Section 109 (1) of the Act. The Legislature must be imputed with the knowledge that provision like Clause (j) was in the existing statute. Since Clause (e-1) was inserted into the statute by amendment later, it must have been the legislative intention that the two Clauses would cover two different

fields. Clause (j) refers to a decision" or "award" while Clause (e-1) refers to an "order". It is quite possible that Section 68 (1) read with its Explanation-IV referred to a situation where post-election challenge was raised to the election while orders touching the election covering pre-election disputes were made the subject-matter of appeal under Clause (e-1). The appeal filed by opposite party No. 3 in the premises cannot, therefore, be said to have been not maintainable in law. Petitioner was a respondent in the appeal and maintainability of the appeal was not questioned on the present ground. The appellate order of the Registrar was allowed to become final. Petitioner's contention that the appeal was not maintainable in the circumstances cannot be accepted.

5. There is also no force in the second submission advanced on behalf of the petitioner that unless there was a specific direction to set aside the declaration that the petitioner was the elected Director, a fresh election could not be held. As already pointed out, no election actually took place on account of the fact that out of the two candidates on the field, the nomination of opposite Party No. 3 was rejected. Petitioner was, therefore, notified to have been elected as the only residuary candidate. Once rejection of the nomination was vacated and opposite party No. 3's nomination became valid, automatically the declaration had to be annulled so that an election could be held,

6 The next question is as to whether opposite party No. 3's election is vitiated on account of the fact that the electoral process did not begin from the inception, but the Election Officer continued the election from the stage indicated in Annexure-3. Like elections held under the Representation of the People Act, 1951, it is conceded at the Bar, that the process should have started afresh. There is no provision in the Act or the Rules made there under as to how such a situation has to be dealt with. The appellate order also did not indicate from what stage the electoral process was to commence. In the premises, the question is, could the Election Officer continue the process from the stage of scrutiny? We do not propose to decide this aspect of the matter, particularly because the statute provided a machinery for challenging the election and the dispute when raised would be a comprehensive one where all aspects of the question can be gone into. It is the petitioner who has pressed in the writ application the fact that an election should also be permitted to be challenged by way of a dispute u/s 68 of the Ant. We see no reason as to why petitioner himself should not subject himself to that statutory discipline. We would accordingly decline to express any opinion on the third contention and leave it to be agitated in the dispute if raised.

7. As it appears, the writ application was filed within the period of limitation. By now of course the period of limitation to raise a dispute seems to have been over. The petitioner would do well, in case he is so advised, to raise a dispute quickly and apply to the authority before whom the dispute is raised to condone the delay on the ground that the matter was pending before us in a writ application instituted within the period of limitation. We think, the authority should liberally deal with this aspect and allow the dispute to be raised and the contention to be

examined before it. As the Deputy Registrar was the Election Officer, it, is proper that the dispute is raised before an authority higher to him for an impartial and fair adjudication. With these observations, we dispose of the writ application without any direction for costs.

J.K. Mohanty, J.

I agree.