

(1970) 09 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 493 of 1970

Lokanath Behera

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 03-09-1970

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 39(1), 39(2)

Citation : (1970) 36 CLT 1294

Hon'ble Judges : G.K. Misra, C.J.; B.C. Das, J

Bench : Division Bench

Advocate : S. Misra and B.N. Das, for the Appellant; Govt. Advocate for Opp. Party Nos. 1 and 2, for the Respondent

Judgement

G.K. Misra, C.J.—There were three candidates contesting the Grama Panchayat election from Ward No. 5 of Khuntuni Grama Panchayat in the subdivision of Athagarh in the District of Cuttack. The nomination papers of the Petitioner and opposite party No. 4 were rejected because one Nabakishore Das proposed opposite party No. 4 and seconded the Petitioner. It is on this ground that the nomination papers of both were rejected.

2. Mr. Misra contends that there is no provision either in the Orissa Grama Panchayat Act or the Rules thereunder that if one person proposes one candidate and seconds another, the nomination papers should be rejected. The learned Government Advocate appearing for opposite party Nos. 1 and 2 does not contest this legal position. We are therefore satisfied that the Election Officer acted contrary to law in rejecting the nomination papers of the Petitioner and opposite party BO. 4.

3. u/s 39(1)(c) of the Orissa Grama Panchayat Act, 1964 the Munsif shall declare the election of a returned candidate void, if he is of the opinion that any nomination paper has been improperly rejected. But this is subject to Sub-section (2) thereof whereunder the election shall not be declared void merely on the ground of any mistake, error or irregularity on the part of an officer unless

such mistake error or irregularity has materially affected the result of the election. Though this writ application is not filed against the order of the Munsif, the aforesaid provision should be kept in view before the election is declared void. Law is now well settled that where nomination papers of all candidates excepting one are rejected, the result of the election is materially affected inasmuch as there was no contest and the question of voting does not arise in favour of one candidate or another. In this case, out of the three candidates the nomination papers of two were rejected. Consequently, the third one was declared to have been automatically elected though the result has not been published on account of the stay order issued by this Court.

4. On the aforesaid analysis, we set aside the election of opposite party No. 3 and direct that the nomination papers of all the three (Petitioner, opposite parties Nos. 3 & 4) be accepted and a fresh election be held.

5. In the result, the writ application succeeds. The impugned order of the Election Officer (opposite party No. 2) is quashed. A writ of certiorari be accordingly issued. In the circumstances, there will be no order as to costs.

B.C. Das, J.

6. I agree.