

(1954) 11 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. 42 of 1954

Madhab Behera

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 19-11-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Grama Panchayat Act, 1964 — Section 114(3)
Orissa Grama Panchayat Rules, 1949 — Rule 19, 24, 25, 26, 27

Citation : (1955) 21 CLT 61

Hon'ble Judges : Panigrahi, C.J.;Narasimham, J

Bench : Division Bench

Advocate : M.N. Das, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Panigrahi, C.J.—This is an application under Article 226 of the Constitution praying for the issue of an appropriate writ, restraining the opposite parties namely the Collector of Ganjam and Deputy Collector, Chatrapur, from proceeding with the election of members to the Grama Panchayat, Chatrapur, as directed by the State Govt. The facts are not in dispute. The Petitioner, Madhab Behera, and one D. Ramaswamy were rival candidates for election to the Grama Panchayat and they filed their nomination papers. The nomination papers were scrutinised by the Tahsildar on the 3rd April 1954 and that of D. Ramaswamy was rejected on the ground that his name did not tally with that given in the voters list. At the intervention of certain Members of the Legislative Assembly, Government issued a Circular dated 17th April, 1954 explaining the procedure to be followed by the Election Office and particularly pointing out that nomination papers should not be rejected on trivial grounds such as inaccuracy in the description of names and the like, It appears that a number of similar objections reached Government from other areas. Government thought that in several cases the Election Officers had been over-technical and improperly rejected many nomination papers. By a Notification No. 3011/GP dated the 19th April 1954,

Government directed fresh elections to be conducted in respect of certain Grama and Adalati Panchayats in Ganjam. The Notification reads as follows

Whereas the Government of Orissa are satisfied that an irregularity has been committed in the conduct of elections of

(i) Panchs of the Adalati Panchayats at Chatrapur, Gondala and Hinjili in the Chatrapur Subdivisions of the District of Ganjam and of the Adalati Panchayat at Bhanjanagar in the Ghumsur Subdivision of the said district

(ii) Members of (a) Ward Nos. VII and XVII of the Chatrapur Grama Sabha, (b) Ward No. XXI of the Purusottampur Grama Sabha, (c) Ward No. 1 of the Narendrapur Grama Sabha, (d) Ward No. XII of the Durbandho Grama Sabha, (e) Ward No. V of the Gondala Grama Sabha, (f) Ward Nos. I, II, III, VI, VII, VIII and IX of the Bhatakamarada Grama Sabha and (g) Ward Nos. II, III, VII, VIII, and XIII XXI of the Sindiripur Grama Sabha in the Chatrapur Subdivision of the said district and

(iii) Members of Ward No. XXV of the Bhanjanagar Grama Sabha in the Ghmusur Subdivision of the said district on account of the rejection of some nomination papers on trivial and technical grounds which should have been overlooked,

Now, therefore, in pursuance of Rule 29 of the Orissa Grama Panchayat Rules, 1949, the Governor of Orissa is pleased to direct that the proceedings in respect of the said elections be conducted afresh from and including the stage of scrutiny of nomination papers.

Sd/- B. Sivaraman Additional Secretary to Government.

The present dispute relates to the Election in Ward No. XVII of the Chatrapur Grama Sabha, which was one of the wards in respect of which the election was set aside and a fresh election ordered.

2. It is contended for the Petitioner that he is entitled to be declared elected as the Government has no power to set aside an election, under Rule 29 of the Orissa Grama Panchayat Rules, 1949. It is argued that the Language of Rule 9 warrants the view that the decision of the Election Officer is final d shall not be called in question in any proceeding whatsoever. It is accordingly contended that the Government has no power to disturb the order of the Election Officer. We are unable to accept this view as sound. Rule 19 opens with the expression, "Notwithstanding anything contained in these rules". We have therefore to interpret all the other preceding rules as subordinate to Rule 29. The only provision in the Rules, relating to the decision of any dispute arising in the course of an election, is to be found in Rule 24 which vests the power in the Subdivisional Magistrate. Rules 24 to 31 are grouped under "Miscellaneous" and purport to provide for contingencies which have not otherwise been provided for. It is obvious, therefore, that the State Government have retained the power, as the ultimate deciding authority, in all disputes arising out of Panchayat elections and as such have the right to interfere whenever any irregularity committed in

the course of an election is brought to their notice. Whether the State Government's interference in any particular case is bona fide and proper or not, may be a ground for review by this Court, but no allegation of mala fides has been made in the present case and we do not see any reason for taking that view. After having gone through the papers, it seems to us that the Election Officers in several cases rejected nomination papers on trivial grounds and it is this which has occasioned Government's interference. We would accordingly over-rule the contention of Learned Counsel for the Petitioner and hold that Government have the power, under Rule 29 of the Orissa Grama Panchayat Rules, to interfere and order fresh elections.

3. The second point raised by Mr. Das is that the Notification of 19th April, 1954 should have been placed before the Assembly and he has invoked Section 114(3) of the Orissa Grama Panchayat Act in support of this argument. All that this Sub-section says is that all the rules made under that Section shall be laid before the Orissa Legislative Assembly for a period of fourteen days. There is no dispute that the Orissa Grama Panchayat Rules 1949 were placed before the Assembly before they were notified. There is no justification for the contention that every order of Government, passed under these Rules, should be likewise placed before the Assembly for approval. It is the Rules as such that require the approval of the Assembly and not any action taken in pursuance of the Rules. We are, therefore unable to appreciate the second contention also.

4. We are of opinion that the Petitioner has no grievance and we find no justification for interfering with the order of the Government.

The petition is rejected.

Narasimham, J.

5. I agree.