
(2007) 12 OHC CK 0020
In the Orissa High Court

Maina Tandia

APPELLANT

Vs

Election Officer-cum-B.D.O. and Others

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 30, 31

Citation : (2008) 105 CLT 407 : (2008) 1 OLR 364

Hon'ble Judges : N. Prusty, J;I.M. Quddusi, J

Bench : Division Bench

Judgement

I.M. Quddusi, J.—The petitioner had filed Election Petition registered as M.J.C. No. 9 of 2002 before the Civil Judge (Junior Division), Kantamal in the district of Boudh under Sections 30 and 31 of the Orissa Gram Panchayat Act read with the latest amendment to cancel the nomination paper of opposite party No. 2 for the post of Sarpanch of Khatkatia Gram Panchayat and to declare the acceptance of nomination paper of opposite party No. 2 by opposite party No. 1 as illegal, improper, invalid and void and to give a direction to hold fresh election for the post of Sarpanch, Khatkatia Gram Panchayat which was allowed and acceptance of nomination paper of opposite party No. 2 Alladin Mahalik and declaring her as the returned candidate for the office of Sarpanch of the said Gram Panchayat was declared as illegal and she was declared disqualified to be elected as Sarpanch vide judgment and order dated 22.1.2005 against which opposite party no. 2 Smt. Alladin Mahalik had filed an election appeal which was registered as Election Appeal No. 1 of 2005 before the Additional District Judge, Boudh which was heard and decided by the learned Additional District Judge, Boudh vide order dated 31.3.2005 setting aside the order of the learned Civil Judge (Junior Division), Kantamal. Being aggrieved, the petitioner has filed the instant writ petition.

2. The brief facts of the case are that the office of Sarpanch, Khatkhatia Gram Panchayat in the district of Boudh was reserved for Scheduled Caste female candidate. Opposite party No. 2 who allegedly belonged to Scheduled Caste filed

nomination paper as a candidate in the said election. In fact, there were six candidates in the fray but four had withdrawn their nomination papers and, as such, the petitioner and opposite party No. 2 remained in the field. She was declared as elected and, as such, election petition was filed, as mentioned above.

3. The learned trial Judge framed the following issues:

1. Whether the Election dispute is maintainable?
2. Whether the petitioner has got cause of action to file the case?
3. Whether the M.J.C. petition is barred by limitation?
4. Whether the O.P. No. 2, Alladin Mahalik belongs to S.C. at the time of filing of nomination paper for the post of Sarpanch of Khatkhatia G.P. and her declaration as Sarpanch is void?
5. Whether the nomination of Alladin Mahalik was accepted properly and was qualified to contest the election?

4. It appears that the election petition was filed on 6.11.2002, which should have been filed within fifteen days from the declaration of the result of the election of Sarpanch which was declared on 28.2.2002. The petitioner had taken the plea that a writ petition was filed in this Court and thereafter she became ill. In the above regard, it has to be mentioned that Writ Petition bearing number W.P.(C) No. 2489 of 2002 was filed in this Court against the acceptance of nomination paper by the Election Officer at that stage before declaration of result on 26.2.2002 which was disposed of vide order dated 29.4.2002 with the observation that since the election was already over the only remedy available to the petitioner was to raise an election dispute as provided under the relevant statute. At that time, learned counsel for the petitioner apprehended that the election dispute would be dismissed on the ground of limitation. Therefore, this Court made it clear that since the petitioner approached this Court without exhausting the statutory remedy, if election petition was filed before the summer vacation, the designated authority/Court would take notice about the pendency of the writ petition in this Court and pass appropriate orders.

5. The petitioner filed an application for condonation of delay on 6.11.2002. Paragraphs 2, 3, 4 and 5 of the same are liable to be perused which are reproduced below:

2. That the election result to the post of Sarpanch Khatkhatia G.P. was declared on 28.2.2002 and as such the election petition which should have been filed within fifteen days could not be filed as the O.J.C. No. 2489 of 2002 was pending before the Hon"ble High Court of Orissa.

3. That as per the direction of the Hon"ble High Court in the aforesaid O.J.C. although the petitioner was obliged to file the petition before the summer vacation yet it could not be done as the petitioner was ill from 25.4.2002 to 5.11.2002.

4. That after getting cured from the ailment the petitioner has filed the petition today, the 6th day of November, 2002.

6. That the delay thus caused in filing the election dispute was beyond the control of the petitioner.

In reply to the delay part, opposite party No. 2 while showing cause raised objection in paragraph-7 which is also reproduced as under:

7. That in reply to the contents of paras 7, 8 and 9, the O.P. No. 2 begs to say that the petition is not filed by the petitioner immediately after the disposal of the O.J.C. in the Hon"ble High Court and after the disposal of the said O.J.C. also there is a delay of more than six month in filing the petition. So, the delay should not have been condoned and the petition should have been rejected.

It is to be noticed that the learned Trial Judge framed issue No. 3 as mentioned above regarding the delay and decided the same as under:

The O.P. No. 2 has challenged the maintainability of the case on the ground that the M.J.C. is barred by limitation. Although Section 31 of O.G.P. Act provides that the Election petition should be filed within 15 days of publication of the name of elected candidates in the Notice Board, but in this case, after the publication of election result, the petitioner has preferred a writ petition before the Hon"ble High Court. As per the direction of the Hon"ble High Court the petitioner should have filed the petition in this case before commencement of Summer Vacation. But as the petitioner was ill, so she filed this petition on 6.11.2002 along with the petition to condone the delay. So, the MJC petition has been accepted after condonation of delay which is not barred by limitation, as such the suit is maintainable. So, this issue is answered accordingly.

6. Perusal of the above quoted finding on issue No. 3 would show that the learned trial Judge allowed the application for condonation of delay but the same was allowed before issuing notice to the other side on the condonation of delay as well as election petition. In the election petition, the delay could not have been condoned without first providing opportunity to raise objection by the other side. The learned trial Judge did not care to issue notice and condoned the delay ex parte even before the stage of issuing notice to the opposite party of the election petition, i.e., opposite party No. 2 of the instant writ petition. The delay condonation petition was allowed on 25.2.2003 ex parte. The order allowing the application for condonation of delay is quoted as under:

Advocate for the petitioner is present. Office objection No. 6 is complied. Heard the petition through his advocate in the matter of limitation. Petition is allowed. Accordingly, the election petition u/s 30 and 31 of OGP Act is in order and the same is admitted, Office to check and issue notice to all the OPs fixing the case to 12.3.2003 for S/R and counter.

7. Therefore, it is a fact that the application for condonation of delay was decided ex parte without providing an opportunity of hearing to the other side and that

too without a speaking order. In an election petition delay of more than six months of the time limit prescribed by the Statute was not liable to be condoned in this manner. The parties should have been given an opportunity of hearing and the application should have been decided by a reasoned order. It is noticed that while deciding issue No. 3, the learned trial Judge had made an observation that the petitioner was ill but no such observation was made while accepting the application for condonation of delay, more particularly when the order condoning the delay was passed ex parte without any notice to the other side.

8. The above aspect of the matter has not been considered by the learned trial Judge. Hence, while setting aside the impugned order passed by the appellate Court as well as the order passed by the trial Court in the election petition, we would have remitted the matter to the learned trial Court to decide first the delay condonation application after providing opportunity of hearing to the parties but as a new election has already been held during the pendency of this writ petition no fruitful purpose would be served by remanding the matter.

9. Therefore, at this stage, we allow this writ petition in part and quash the orders passed by the learned trial Court and the learned appellate Court. No order as to costs

N. Prusty, J.

10. I agree.