

(1974) 10 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 696 of 1973

Narayan Samanta

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-10-1974

Acts Referred:

Orissa Municipal Act, 1950 — Section 11, 12, 12(2), 2(2), 4

Citation : (1975) 41 CLT 47

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : C.V. Murty, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The Petitioner, a resident of the Jajpur Municipality in the district of Cuttack, has asked for an appropriate writ for quashing of the elections of opposite parties 4 to 18 as Councillors of the Jajpur Municipality held on 31.5.1973 on the ground that the wards had been altered and constituted in contravention of the provisions of Section 4 of the Orissa Municipal Act, 23 of 1950 (hereinafter referred to as the "Act") and, therefore, the entire election was vitiated.

2. The Jajpur Municipal Council consisted of 12 Wards with 13 Councillors as in Ward No. 12 two Councillors were to be elected, the same being a reserved seat. By notification (Annexure. 2) issued on 7th of March, 1973, purporting to be in exercise of Section 2(2) of the Act, the State Government redivided the Municipality into 15 Wards and 17 Councillors were to be elected as Ward numbers 5 and 6 were to have two seats each with one reserved for the Scheduled Castes in each of them. Election was held on 31.5-1973. The Petitioner was a candidate from Ward No. 4 contesting against opposite party No. 18. He lost to him by a margin of 30 votes. The Petitioner challenges the entire election on the ground that the division made under Annexure.2 required steps to be taken u/s 4 of the Act as a condition precedent "and in the absence of such

statutory steps re-division of the Municipality and altering the number of Councillors are unauthorised.

3. For examination of this contention, reference has to be made to Sections 4 and 12 of the Act. Section 4 occurring in Chapter II of the Act with the heading "Constitution of Municipalities" provides:

The State Government may, by notification declare their intention

(a) to constitute any town, together with or exclusive of, any railway station, village, land or building in the vicinity of any such town, a municipality under this Act; or

xx xx xx xx

(h) to alter the number of councillors of a municipality in consideration, inter alia o? the increase or decrease in the population, income, number of votes and commercial and general importance of the place;

Provided....

Sub-section (2) of Section 4 provides:

Any inhabitant of the town or local area, or any ratepayer of the municipality, in respect of which any such notification has been published under Sub-section (1) may, if he objects to anything contained in the notification, submit his objection in writing to the State Government through the Magistrate of the district within six weeks from the date of the publication of the notification and the State Government shall take his objections into consideration.

The next stage is provided in Sub-section (3) with the following words:

When six weeks from the date of the publication of the notification have expired, and after considering any objection which may be submitted, the State Government may, by notification (a) constitute the town or any specified part thereof, a municipality under this Act; or

xx xx xx xx

after the number of councillors of a municipality in consideration inter alia of the increase or decrease in the population, income, number of voters and commercial and general importance of the place.

Explanation-Population with reference to any local area means the population according to the last census.

Section 12 of the Act occurring in Chapter III of the Act with he heading "Election and Election Petition" provides:

(1) There shall be a general election of councillors on the date of expiry of the period of four years and four months commencing from the date of the last general election:

Provided....

(2) For the purpose of election of councillors to a municipality, the State Government may, in the case of a new municipality, of their own motion and shall, in the case of municipalities already in existence at the time the notification is made after consulting the municipal council, by notification

(a) divide the municipality into wards; and

(b) determine the wards in which the seats, if any,

reserved u/s 11, shall be set apart.

Provided that in dividing a municipality into wards equitable distribution of population among the various wards and the compactness of the area forming each ward shall be taken into consideration.

Admittedly, the notification under Annexure-2 was in exercise of the power u/s 12(2) of the Act. According to Mr. Murty for the Petitioner, power conferred u/s 12(2) of the Act has to be exercised in consonance with the requirements of Section 4(1)(h) and Section 4(3)(f) of the Act. While learned Additional Government Advocate appearing for the State Government takes the stand that the two are independent provisions and when the alteration in the number of Councillors is done independent of any election, Section 4 applies and steps taken for the purpose of an election would be covered by Section 12. We are inclined to agree with the contention of learned Additional Government Advocate. The two provisions occur in different settings. The alteration in the number of Councillors contemplated in Section 4(1)(h) of the Act is related to increase or decrease of population, income, number of voters and commercial and general importance of the place. Exercise of jurisdiction under Clause (h) of Section 4(1) of the Act, therefore, appears to be co-related to those causes and not for election. The re-division of the Municipality into Wards contemplated u/s 12(2) of the Act is an action different from Section 4(1) of the Act. The other reasons given for exercising jurisdiction u/s 4(1)(h) are not relevant when action u/s 12(2) of the Act is taken. Re-division may be necessary for the purpose of equitable distribution of population or for maintaining compactness of the area forming each ward and similar other considerations unconnected with those that are specified in Clause (h) of Section 4(1) of the Act. When a Municipality is divided into wards in terms of Section 12(2) of the Act, more wards than were previously existing may emerge and while making this re-distribution, Government are required to determine as to in which wards reservation in terms of Section 11 of the Act would be made.

The notification under Annexure-2 is, therefore, in terms of Section 12(2) of the Act and has no connection with Section 4 thereof. The challenge offered by Mr. Murty to the election on the ground that Section 4 of the Act has not been complied with while Annexure-2 was brought into force thus merits no consideration.

4. The writ application is accordingly dismissed as devoid of merit. The opposite parties 4 to 18 have not entered appearance. The Petitioner must, therefore, pay the costs of this proceeding to learned Additional Government Advocate appearing for opposite parties 1 to 3. Hearing fee is assessed at rupees fifty.

P.K. Mohanti, J.

5. I agree.