
(2009) 11 OHC CK 0015
In the Orissa High Court

Prabhat Kumar Biswal

APPELLANT

Vs

Election Officer, Dungripalli Regulated

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Orissa Agricultural Produce Markets Act, 1956 — Section 6

Citation : (2010) 109 CLT 574 : (2010) 1 OLR 891 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.; Sanju Panda, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—In this Writ Petition, the Petitioner has prayed for a direction to the Opp. Parties to declare the voter list published by the Election Officer, Dunguripali Regulated Market Committee-cum-Sub-Collector, Subarnapur as illegal & arbitrary & injunct the Election Officer permanently from holding the election basing on the said voter list.

2. The brief facts of the case are as follows:

The Petitioner is an agriculturist under Dunguripali market area & also a member of the organization of agriculturists i.e. Orissa Krushak Samaj. The Dunguripali Regulated Market Committee (in short, "the Market Committee") was established under the Orissa Agricultural Produce Markets Act, 1956 (hereinafter referred to as "the Act"). The State Government made rules for implementation of the provisions of the Act. The aim & object of the Act is to save the agriculturists from being victim of the unfair practice & undue extraction of the host of middleman for marketing their produces & establish a market for the said purpose. The Market Committee has been functioning, dealing with & controlling the agricultural produces as per the provisions of law. It has been constituted as per Section 6 of the Act. As per the provisions of Section 6, every Market Committee shall be consisting of 17 members of whom 4 should be from among the licensed traders, 8 members should be elected by the organization of

agriculturists in the market area recognized by the State Government, 2 persons should be from the urban local bodies under the market area of whom one should be elected by the councillors of the Municipality & the other shall be elected by the members of the Grama Panchayat. The Sub-Collector of the market area is the Chairman of the Market Committee. The Secretary of the Committee is the deputationist from the Government to discharge day to day work. As per the statutory provision, a notification was issued on 20.2.2009 for election of members of the Market Committee. The election programme was published in the local daily "The Samaj". The Election Officer was appointed by the State Government under the Cooperation Department. He requested the Secretary of the Market Committee to submit the voter list. After receiving the said request from the Election Officer, the Secretary of the Market Committee requested the Chairman of Bharat Krushak Samaj to supply the list of members/ voters relating to Dunguripali Block & Binika Block under Dunguripali market area. In his turn, the Secretary, Orissa Krushak Samaj, Bhubaneswar vide his letter dated 7.1.2009 submitted a list of 54 valid members. The provisional voter list of agriculturists under Dunguripali Market Area was prepared & published on 20.1.2009.

3. The grievance of the Petitioner is that in the provisional voter list, apart from the valid members of 54 agriculturists, many other members' names had been inserted pursuant to the request made by the Orissa Krushak Samaj, Bhubaneswar & those names had been inserted after the cut off date with an ulterior motive for the purpose of the said election. Hence, the Petitioner & one Chitta Ranjan Mishra who is an agriculturist made an objection to the provisional voter list prepared by the Election Officer but the latter without considering the same published the final voter list thereby violated the provisions contained in the statute. The Petitioner finding no alternative remedy for redressal of his grievance has filed this Writ Petition.

4. The Opp. Parties appeared & filed their counter affidavit stating therein that this Court issued notice & passed an interim order on 2.4.2009 directing that till next listing the result of the election of Dunguripali Regulated Market Committee shall not be declared without leave of the Court. Before receiving the said interim Order Dated 2.4.2009; as per the schedule of election the result was immediately declared after the counting was over on 30.3.2009. The Opp. Parties specifically stated in the counter affidavit that the objection to the provisional list was duly considered. As per Section 6(iii)(a) of the Act, 2 members shall be the persons elected by the local authorities within whose limits the market area is situated of whom one shall be elected by the Councillors of the Municipality. The Chairperson of Dunguripali NAC intimated that he had sponsored the name of one Shri Mahavir Prasad Agrawalla, Councillor, Ward No, 7 whose name had been selected as the member of Regulated Market Committee under Binika NAC under the provision of Section 6(iii)(a) of the Act. The said proposal could not be accepted since he was selected but not elected as provided under the law. The objection with regard to inclusion of additional voters after the cut off date was

also not correct as the fact that name of Shri Janardhan Bhukta of Sonapur, (serial No. 40 of the provisional voters list of Agriculturists) was excluded from the voters list was not correct since the names of the agriculturists was received on 9.1.2009 & 15.1.2009 from Orissa Krushak Samaj. On verification, it was found that the names of agriculturists received on 12.1.2009 & 16.1.2009 from Bharat Krushak Samaj (Orissa Branch) & Orissa Krushak Samaj, had been enlisted in the provisional voters list of agriculturists as the same was received within the stipulated period. Therefore, no illegality had been committed by inclusion of those persons. On 13.04.2009 they received the notice from this Court through special messenger. That apart, the Petitioner himself filed his nomination paper for the election & his nomination was accepted. He was a candidate in the said election & his serial number was 10. The election symbol "Apple" was allotted to him for contesting the-election & he was not estopped to challenge the election.

5. On the above factual background, it is to be determined whether the authorities have committed any illegalities.

For better appreciation, Section 6(1)(iii)(a) of the Act is quoted below:

6. Constitution of Market Committee (1) Every Market Committee shall be constituted in the manner prescribed & shall consist of seventeen members, of whom-

(i) & (ii) xxx xxx xxx

(iii) two shall be persons elected by the local authorities within whose limits the market area is situated, of whom--

(a) one shall be elected by the Councillors of the Municipality;...

6. From the aforesaid provision of the Act, it is crystal clear that one of the member shall be elected by the Councillors of the Municipality. Therefore, since Shri Mahavir Prasad Agrawalla was selected by the Chairperson of Dunguripali NAC, we are of the view that the authorities rightly rejected the name of said Shri Mahavir Prasad Agrawalla & delisted his name from the select list.

7. The Petitioner participated in the election by filing the nomination papers & an election symbol was allotted to him. Suppressing the said fact, he cannot challenge the process of election & the declaration of result thereof. Since before passing the interim order the result was declared on 30.9.2009, this Writ Petition has become infructuous & besides that, there is no provision in the aforesaid statute to declare the election as illegal.

8. In the result, the Writ Petition is dismissed.

I.M. Quddusi, A.C.J.

I agree.