
(1994) 06 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 3282 of 1994

Rama Narayan Badapanda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Citation : (1994) 78 CLT 712 : (1994) 2 OLR 201

Hon'ble Judges : K.L. Issrani, J;A. Pasayat, J

Bench : Division Bench

Advocate : B.P. Ray, S.K. Mund, D.P. Das and J.K. Panda, for the Appellant;
Additional Government Advocate (for Opp. party Nos. 1 and 2), for the
Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—The importance of a symbol in a ballot paper is the pivotal question that needs adjudication in this writ application

2. The factual position is undisputed and has a very secondary role to play in the dispute, and therefore, the essential features are indicated as follows :

Petitioner and Chittaranjan Misra (opp. party No. 3) were the contesting candidates for election as member of Dungripalli-Binika Agricultural Co-operative Society (Zone 4). Necessary steps for such election in terms of Section 28-A of the Orissa Co-operative Societies Act, 1962 (in short, the "Act").and.Rule 5 of the Orissa Co - operative Societies (Elections to the Committees) Rules, 1992 (in short, the "Election Rules") were taken by the concerned authorities. Petitioner and opp. party No. 3 were allotted symbols "tubewell" and "fish" respectively, but in the ballot papers given to the electors the symbols were printed wrongly. Against the name of petitioner, "fish" symbol was printed, and against name of opposite party No. 3 "tubewell" symbol was printed. The Assistant Election Officer (leave reseve)-cum-Assistant Registrar of Co-operativa Societies, attached to the office of Deputy Registrar of Co-operative Societies, Bolangir

noticed the change at about 12 noon on 22-4-1994 and reported the matter to the Election Officer (opp. party No. 2). An objection was also filed by the petitioner before the Election Officer of Bolangir District Central Co-operative Bank Limited and the Deputy Registrar of Co-operative Societies, Balangir Division, Balangir that on account of change he has been materially prejudiced; the electors were confused and there was unfairness in the election. The objection was overruled by the concerned Election Officer primarily on the ground that though the change as claimed was there, the electors being literate persons and the names of candidates having been printed in the ballot papers no prejudice was caused to the petitioner.

3. It is the stand of the petitioner that because of the change he has been materially affected. The electors were told about the symbol that was allotted to him and they have cast their votes by indicating their choice on the symbol. The stand of opp. party Nos. 1 and 2 in essence is that though there was unintended change, that has not affected the election and in any event the names of candidates having been printed on the ballot papers, the electors, have exercised their franchise correctly, as they are supposed to have read the names of the candidates.

4. Opp. party No. 3 has not entered appearance in spite of notice.

5. Some of the provisions of the Election Rules throw light on the controversy. The relevant Rules, i.e., Rules 9 (4), 10, 18 and the Form II (Part B) read as follows :

"9. Scrutiny of nomination-

(1) to (3) xxx xxx xxx xxx

(4) The Election Officer shall be the final authority to accept or reject a symbol proposed in any nomination and to allot any symbol to any candidate.

10. Valid nomination and symbols-The list of valid nominations and symbols allotted to the candidates shall be displayed on the notice boards of the Head Office of the Society concerned by the Election Officer in Form II on the date immediately next to the last date of disposal of objections to the nominations."

"18. Form of ballot papers-(1) Every ballot paper shall be in Form VI or Form VI-A, as the case may be.

(2) The names of the candidates shall be arranged on the ballot paper in alphabetical order.

(3) If two or more candidates bear the same name, they shall be distinguished from each other by the addition of their occupations or residences or in some other manner."

FORM II

"PART B"

Election to the office of Member of the Committee of the aforesaid Society.

----- SI. Name of the Name
of the Address of Symbol allotted No. Constituency candidate. the candi- to the
candidate. 1 2 3 date 5

Date..... Signature of the Election Officer.

It is no doubt true th3t the name of the candidate is printed, but allotment of a symbolis not without a purpose. The candidates usully tell the electors about their symbol. That is why in terms of Rule 10. Form II is published specifying the symbol allotted to a particular candidate. It is not improbable that without looking at the name of the candidate an elector may indicate his choice by looking at the symbol only. Therefore, the change of symbol cannot be said to be of no consequence. It is certainly a factor which has affected validity of the election. In the circumstances, we set aside the election so far as Zone 4 is concerned, and direct re-election to be held. It is stated by the learned counsel for petitioner that an early election would be in the interest of all conce- rned. The learned counsel for the State does not dispute this position. Accordingly, we direct that the election be held on 26th July, 1994. The Election Officer shall notify the time, and shall take necessary steps for conduct of election. The election shall be restricted to the petitioner and opp. party No. 3, and only the 18 persons who had cast their votes earlier shall be permitted to vote. The petitioner shall be allotted the symbol "tubewell" and opp. party No. 3 the symbol "fish" as wa9 originally done. Each of such electors shall be notified individually by the Election Officer, latest by 19th July, 1994.

The writ application is allowed to the extent indicated above. No, costs.

K.L. Issrani, J.

I agree.