
(2006) 05 OHC CK 0023
In the Orissa High Court
Case No : FAO No. 107 of 2002

Sanjukta Behera	Vs	APPELLANT
Rangalata Dalei and Others		RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Evidence Act, 1872 — Section 35
Representation of the People Act, 1951 — Section 35

Citation : (2006) 102 CLT 108 : (2006) 1 OLR 746 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Sanjeet Mohanty, N.C. Sahoo, S. Patnaik, P.K. Muduli and R.R. Swain, for the Appellant; S.P. Mishra, S.K. Mishra-2, M.R. Dash and S. Nanda for Respondent No. 1 and Addl. Standing Counsel for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This appeal is directed against the order dated 8.11.2002 passed by the Learned District Judge, Puri in Election Misc. Case No. 69 of 2002 declaring the petitioner disqualified to be a member of Puri Zilla Parishad from Zone No. 12.

2. Election to the post of Member of Puri Zilla Parishad from Zone No. 12 was held on 23.2.2002. The appellant before this Court contested as an official candidate of Biju Janata Dal whereas the respondent No. 1 before this Court contested for the said post as an official candidate of Congress Party. The present appellant was declared elected having obtained 10,106 votes whereas the respondent No. 1 obtained 6,033 votes and stood at the second position. The respondent No. 1 thereafter presented an application u/s 32 of the Zilla Parishad Act, 1991 (hereinafter called as "the Act") for declaration that the appellant having three living children was not qualified to contest for the said post and accordingly election of the appellant should be declared as illegal. Specific case

of the respondent No. 1 is that the appellant had three children and that the three children were born on 25.11.1993, 26.10.1995 and 6.2.1998 respectively. Present appellant contested the proceeding and took stand that she has two children and both were born after 1994. Accordingly to the appellant she got married on 16.4.1994 and was blessed with two children thereafter and therefore the question of birth of a child on 25.11.1993 i.e., prior to marriage does not arise.

3. Before the Learned District Judge the sole question required to be considered was that whether the present appellant had more than two children on the date of submission of nomination papers. In order to substantiate the plea the respondent No. 1 examined herself as P.W. 2, a clerk of Gop, C.H.C. was examined as P.W. 1 to prove documents relating to birth of children of the appellant. The present appellant also examined herself as O.P.W. 1 to prove that she did not have more than two children. Several documents were proved on behalf of both the parties. On consideration of oral and documentary evidence placed before the Court, Learned District Judge held that the present appellant had more than two children on the date of filing nomination and as such was disqualified to contest in the election.

4. Shri Sanjeet Mohanty, Learned Senior Advocate appearing for the appellant challenged the said finding of the Learned District Judge on the ground that the appellant got married on 16.4.1994 and admittedly two children were born after 1994. Since the petitioner was not married till April, 1994, the allegation of the respondent No. 1 that she was blessed with a child on 25.11,1993, that is prior to her marriage is absolutely false and there is no evidence on record in support of such claim. Shri Mohanty also challenged the impugned order on the ground that the entry vide Ext. 1 in the Birth Register of 1993 has been made on the basis of an information sheet supposed to have submitted by one Bijay Kumar Behera in Ext. 4. Referring to Exhibits 4 and 6 Shri Mohanty submitted that the signatures of the said Bijay Kumar Behera in Ext. 4 differs from "any admitted signatures in Exts. B and A respectively and since there is no similarity between the signatures the Learned District Judge should have taken help of a handwriting expert to find out as to whether said Bijay Kumar Behera had submitted information sheet or not. He further contended that while the Learned District Judge held that there is nothing on record to examine similarity between the signatures, he did not take help of handwriting expert and found that said Bijay Kumar Behera being brother of the present appellant avoided to sign the deposition in English and therefore the genuineness of the documents in Exts. 1 to 6 cannot be doubted. Referring to Section 35 of the Evidence Act Learned Counsel for the appellant submitted that in case of such dispute it was the duty of the Learned District Judge to refer the disputed signature to the handwriting expert for opinion and more so when similar signatures were not available before the Learned District Judge for comparison.

5. Shri S.P. Mishra, Learned Counsel appearing for the respondent No. 1, on the

other hand, referring to the evidence of P. Ws. 1 and 2 submitted that apart from the oral evidence adduced by the said respondent in support of her claim that the appellant has more than two children, documents are there to prove that the first child of the appellant was born on 25.11.1993. According to Sri Mishra, the entries in the Birth Register having been made on the basis of the information sheets supplied to the concerned office, reliance is to be placed on such entries and therefore the Learned District Judge has not committed any illegality to accepting such evidence to hold that the appellant had more than two children on the date of filing nomination and as such was disqualified to contest the election.

6. In order to appreciate the submissions made by Learned Counsel for both parties, it is necessary to refer to oral and documentary evidence adduced by the parties before the trial Court. P.W. 1 produced the Birth Register of Gop P.H.C. for the period from 20.10.1992 to 31.12.1993, 1.10.1995 to 31.5.1996 and 1.11.1997 to 31.8.1998. Said documents were produced pursuant to direction of the Court. At SI. No. 1438 dated 30.11.1993 vide Ext. 1 there is a mention of birth of a female child of the petitioner. Birth of other two children not being in dispute it is not necessary to discuss with regard to the same. This witness in cross-examination has stated that he has no personal knowledge with regard to recording of the entries in the said Register. Respondent No. 1 examined herself as P.W. 2. In her deposition she has stated that she was granted a certificate of M.O. of Gop P.H.C. reflecting names of the children of the appellant and that first child was born on 25.11.1993, second child was born on 26.10.1995 and third child was born on 6.2.1998. The appellant examined herself as O.P.W. 1 and stated in her deposition that she got married on 16.4.1994 and the first child was born on 26.10.1995 and the second child was born on 6.2.1998. Allegation that the appellant had three children and the first child was born on 25.11.1993 was denied. O.P.W. 2 is the brother of the appellant. He has supported the case of the appellant stating that the appellant had two children. Mr. Sanjeet Mohanty, Learned Senior Advocate appearing for the appellant drew attention of the Court to the finding of the Learned District Judge and submitted that the entries in the Birth Register were made on the basis of information given. It was further contended that the entry vide Ext. 1 was made on an information given. Shri Mohanty drew attention of the Court to Exts. 5 and 6 which are information sheets on the basis of which date of birth of other two children had been recorded in the Birth Register. Referring to the aforesaid three documents it was contended by Sri Mohanty that while Exts. 5 and 6 have been submitted in proper form, Ext. 4 is not in the prescribed form. It was also contended that signature appearing in Ext. 4 was denied by the O.P.W. 2 and therefore it was duty of the Learned District Judge to get the signatures compared by handwriting expert before forming an opinion against the appellant solely on the ground that the said O.P.W. 2 deliberately avoided signing the deposition in English, In this connection, Learned Counsel also relied on some decisions. Faced with the above submission of the Learned Counsel, Shri S.P. Mishra appearing for the

Respondent No. 1 submitted that Exts. 5 and 6 though have been submitted in prescribed form, Ext. 4 cannot be disbelieved solely on the ground that it is not in the prescribed form. Information required to be given in the prescribed form are written in Ext. 4 and it may be possible that at the time of submission of Ext. 4 the printed form in which information is required to be given was not available. However, there cannot be any dispute that Ext. 4, the information sheet, on the basis of which the entry in Ext. 1 was made had not been submitted in form No. 3 as required under the Rules.

7. Next question that comes up for consideration is as to whether signature of O.P.W. 2 appearing in Ext. 4 should have been directed to be examined by an handwriting expert ? Ext. 4 is supposed to have been signed by O.P.W. 2 who is brother of the appellant. While deposing in Court he denied the said signature in Ext. 4. The Learned District Judge instead of sending the same to an handwriting expert for opinion, observed that the said witness deliberately avoided signing the deposition in English and had he signed the deposition in English the Court could have compared the signature appearing in the deposition as well as in Ext. 4. In this connection, reference may be made to a decision of the Apex Court in the case of *Birad Mal Singhvi Vs. Anand Purohit*, . The Apex Court in the aforesaid case held that to render a document admissible u/s 35 of the Representation of People Act, 1951, three conditions must be satisfied. Firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public officer in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible u/s 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. In the case of *Mayadhar Nayak Vs. Sub-Divisional Officer, Jajpur and Others*, This Court held that the entries in Birth and Death Registers are public documents and are admissible u/s 35 of the Evidence Act and it is not necessary to prove who made the entries and what was the source of information. The register being a public document, presumption of correctness attaches to it and heavy onus lies on the party who wants to dispute the presumption to prove that the said entry is not correct. Similar view has also been expressed by this Court in the case of *Noorjahan Begum v. Life Insurance Corporation of India* reported in 1998 (I) OLR 95.

On perusal of the aforesaid three decisions it is clear that in respect of an entry made in a public document, the presumption is that such entry is correct unless the same is rebutted by strong evidence adduced by the party who disputes the same. In the present case, undisputedly entry in Ext. 1 has been made on the basis of an information given in Ext. 4. There is no dispute that Ext. 4 was available in the record maintained by the office of P.W. 1. There is also no dispute that the entry with regard to birth of a child on 25,11.1993 vide Ext. 1 has been made on the basis of information in Ext. 4. In view of the above, presumption is

that entry vide Ext. 1 is correct having been made in course of maintenance of official records by a public officer. The only evidence to rebut such presumption available on record is the evidence of O.P.W. 2 who denies his signature in Ext. 4, Mere denial of signature in Ext. 4 is not enough to discharge the onus, O.P.W. 2 having signed the deposition in Oriya there was no scope for the Court to compare the signature to arrive at a conclusion. Under the circumstances, it was duty of the appellant to pray for comparison of the signatures appearing in Ext. 4 with the admitted signature of O.P.W. 2 by a handwriting expert. The appellant never took such step as evident from the impugned order. Though I agree with the Learned Counsel Sri Mohanty appearing for the Appellant that the observation of the Court that the O.P.W. 2 deliberately avoided to sign the deposition in English should not be a ground to accept the entry in Ext. 4, at the same time the appellant failed to discharge onus on her in proving that the Entry in Ext. 1 had not been made in course of maintenance of official records by a public officer or that such entry had been made on the basis of wrong information or fraudulent document. I am, therefore, of the view that the appellant has failed to discharge the onus in disproving the entry vide Ext. 1 and, therefore, presumption is that the entry in Ext. 1 is correct. Once the Court arrives at the above conclusion, there cannot be any reason for disturbing the finding of the Learned District Judge that the appellant had three children at the time of filing of nomination and as such was disqualified to contest the election.

8. In view of the above observations made above, I do not find any merit in the appeal and the same is dismissed.