
(2008) 07 OHC CK 0063
In the Orissa High Court

Sarita Arya

APPELLANT

Vs

District Judge-cum-Election Tribunal and Another

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Citation : (2008) 106 CLT 424 : (2008) 2 OLR 237

Hon'ble Judges : L. Mohapatra, J;I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Both the writ, applications arise out of a common judgment dated 24.5.2008 passed by the learned District Judge cum-Election Tribunal, Bolangi,r in two election petitions.

2. Ambika Satnami, opposite party No. 2, in W.P.(C) No. 7913 of 2008 filed Election Petition No. 96 of 2003 challenging the election of the petitioner as Chair-person of Kantabanji N.A.C., she having been elected as Councillor from Ward No. 9. Shasikala Agrawala, opposite party No. 2, in W.P.(C) No. 7915 of 2008 filed Election Petition No. 97 of 2003 challenging election of the petitioner as Councillor of Ward No. 6 of Kantabanji N.A.C. Both the election cases were heard together and were disposed of in a common judgment by the learned District Judge-cum-Election Tribunal declaring the petitioner to be disqualified to contest for the post of Councillor of Ward No. 6 and consequently for the post of chair-person.

3. The sole ground taken in both the election petitions is that the petitioner was disqualified to contest for the post of Councillor of Ward No. 6 as well as Chair-person of the N.A.C. since she had three children on the date of filing of her nomination; third child having taken birth on 14.9.2002, i.e., after the cut-off date. Learned District Judge-cum-Election Tribunal on analysis of evidence of both oral and documentary evidence came to hold that the petitioner had been blessed with three children and the last child was born on 14.9.2002 after the

cut-off date and therefore she was disqualified to contest in the election.

4. Shri R.K. Mohanty, learned Counsel appearing for the petitioner assails the impugned judgment on the ground that there is no documentary evidence to show that the petitioner was blessed with third child on 14.9.2002 and in absence of any documentary evidence, solely on the basis of the evidence of the doctor learned District Judge-cum-Election Tribunal could not have given a finding that the petitioner was disqualified to contest election having given birth to the third child on 14.9.2002. Learned Counsel appearing for the contesting opposite parties in both the writ applications drew attention of the Court to the evidence adduced before the Election Tribunal and submitted that not only oral evidence but also documentary evidence have been adduced before the Election Tribunal on the basis of which such a finding has been arrived at.

5. We have carefully perused the reasons given by the Election Tribunal as well as the deposition of witnesses examined in the election petitions. One Dr. Gouri Shankar Panda was examined on behalf of the election petitioner in Election Misc. Case No. 97 of 2003 as P.W.1. This witness in his deposition has stated that he was attached to Kantabanji C.H.C. as Gynec Specialist from 10.8.1994 to 7.7.2004. He has also stated that on 26.4.1997 the petitioner had delivered a female child in the hospital at about 5.15 A.M. and he had assisted in delivery of that child. Relevant entry in the Admission Register maintained by the Hospital as well as bed-head ticket were exhibited as Exts. 1 and 2. Exts.2 shows that the child born on 26.4.1997 was second pregnancy. This witness has further stated that the petitioner was again admitted in the said hospital on 14.9.2002 at about 8 A.M. and gave birth to a female child at 9.04 A.M. and he had assisted in delivery of the said child. The bed-head ticket was exhibited as Ext. 3. As per the said bed-head ticket (Ext. 3) the child born on 14.9.2002 was the third child. Ext. 4 is the relevant entry made in the Admission Register pertaining to delivery of third child of the petitioner. It further appears that pertaining to this issue, a question was raised in the Assembly and the extract of the Register of Birth maintained at C.H.C. Kantabanji/N.A.C. Kantabanji was produced before the Assembly. Said extract of birth register shows that on 14.9.2002 the petitioner had given birth to a female child in the hospital. Shri R.K. Mohanty, learned Counsel appearing for the petitioner submitted that on 14.9.2002 the sister of the petitioner namely Radhadevi Choudhury had given birth to a female child and the same has been misconstrued to be the child of the petitioner. Evidence has been adduced on behalf of the petitioner to show that said Radhadevi Choudhury had given birth to a female child on 14.9.2002 in her residence, Even accepting such evidence adduced on behalf of the petitioner, we find that P.W. 1 who was attached to the Kantabanji C.H.C. as a Gynec Specialist has specifically stated in his deposition that he assisted in delivery of a female child on 26.4.1997 and another child on 14.9.2002 given birth by the petitioner. Ext. 2 clearly shows that the child born to the petitioner on 26.4.1997 was pursuant to her second pregnancy and Ext. 3 shows that the child born on 14.9.2002 was pursuant to her third pregnancy. Evidence of P. W. 1 gets corroboration from the extract of

the Registers of Births maintained in C.H.C. Kantabanji as well as N.A.C. Kantabanji produced before the Assembly pursuant to a question raised. Nothing is there in the evidence adduced on behalf of the petitioner to discredit the evidence of either P.W. 1 or the document i.e. extract of Register of Births. The petitioner had given birth to the first child earlier to 26.4.1997 and therefore on the date of filing of nomination the petitioner had three children. The third child having taken birth on 14.9.2002, after the cut-off date, the petitioner was disqualified to file nomination for contesting election to the post of Councillor of Ward No. 6 of Kantabanji N.A.C.

6. In view of the reasons stated above, we do not find any justification to interfere with the impugned judgment of the learned District Judge-cum-Election Tribunal, Bolangir. The writ application is accordingly dismissed.

7. Urgent certified copy of the order is given on proper application.