

(2007) 09 OHC CK 0041

In the Orissa High Court

Case No : Writ Petition (C) No"s. 11 and 180 of 2007

Sasmita Pradhan

APPELLANT

Vs

The District Collector-cum-District Election Officer and Others

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Grama Panchayat Act, 1964 — Section 38, 38(1), 38(2), 38(3), 38(4)

Citation : (2007) CLT 369 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Sanatan Das, M.K. Sahu, P.K. Kar and A.K. Parida, for the Appellant;
Additional Government Advocate for Opp. Party Nos. 1 to 3 and A.A. Das, for
Opp. Party Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The controversy in this Writ Petition is as to whether an interim order passed by a Civil Judge (JD) who is an Election Tribunal vested with power to hear disputes relating to Grama Panchayat Elections is appealable.

2. To resolve the controversy it would be prudent to quote Section 38 of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the Act"):

38. Decision of Civil Judge (Junior Division)-

(1) If the Civil Judge (Junior Division) after making such enquiry, as he deems necessary, finds in respect of any person, whose election is called in question by a petition that his election was valid, he shall dismiss the Petitioner as against such person and may award costs at his discretion.

(2) If the Civil Judge (Junior Division) finds that the election of any person was invalid he shall either-

(a) declare a casual vacancy to have been created; or

(b) declare another candidate to have been duly elected whichever course appears, in the circumstances of the case to be more appropriate and in either case, may award costs at his discretion.

(3) All orders of the Civil Judge (Junior Division) shall, subject to the provisions of Sub-section (4), be final and conclusive:

Provided that the Civil Judge (Junior Division) may, on application presented within one month from the date of any of the orders made under this Section by any person aggrieved, review such order on any ground and may, pending the decision in review, direct stay of operation of such order:

Provided further that no application for review under the preceding provision shall lie, if an appeal is preferred in accordance with the provision of Sub-Section 4.

(4) Any person aggrieved by an order of the Civil Judge (Junior Division) may within thirty days from the date of the order, prefer an appeal in such manner as may be prescribed before the District Judge having jurisdiction who shall after giving the parties an opportunity or being heard, confirm, reverse, alter or modify the order of the Munsif and pending disposal of such appeal may direct stay of operation of the said order.

3. Present opposite party No. 4 has filed Election Misc. Case No. 1 of 2007 before the Civil Judge (JD), Puri assailing the election of the present Petitioner as Sarpanch of Gopinathpur Panchayat under Kanas Block in the district of Puri. It is alleged that just before commencement of trial of the said Election Misc. Case petitions were filed to amend the objections/rejoinders. The Civil Judge (JD) who is the Election Tribunal by a reasoned order dated 9.7.2007 rejected the said petitions and posted the case for hearing. Being aggrieved by the said order opposite party No. 4 preferred an appeal before the District Judge which was registered as FAO No. 64 of 2007. The contesting Respondent raised a preliminary objection in the appeal to the effect that in consonance with Section 38 of the Orissa Grama Panchayat Act, no appeal against an interlocutory order. In support of such submission reliance was placed on a decision of this Court in the case of Niranjana Sahu Vs. Narasu Satpathy and Others, .

The plea taken was countenanced by the Appellant. It was argued that in fact appeal lay against an interlocutory order. In support of such submission the Appellant relied upon a decision of this Court in the case of Anirudha Jena v. Gopal Panda, reported in 2004 (Supp) OLR 259.

The learned District Judge after hearing learned Counsel for the parties and relying upon the case in Niranjana Sahu supra came to the conclusion that an appeal against an interlocutory order passed in a Grama Panchayat Election dispute was not maintainable and accordingly dismissed the appeal. The said order is assailed in this Writ Petition.

4. This Court heard learned Counsel for the parties patiently, perused the

pleadings and the documents annexed thereto meticulously, referred to the legal provisions carefully and considered the matter diligently. A cumulative reading of Section 38 of the Act vis-a-vis its Sub-sections leads to an irresistible conclusion that in consonance with Sub-section (4) of the Section 38 an appeal lies only against the final orders passed under Sub-sections (1) and (2) of the said Section, and that within the four corners of the said Section there is no provision to prefer an appeal against an interlocutory order. The First Proviso to Sub-section (3) fortifies my aforesaid view and makes it further clear that an appeal will lie only against a final order made u/s 38. In other words, there is no provision in Section 38 for entertaining an appeal against an interlocutory order passed by an Election Tribunal. It only stipulates that an appeal lies before the District Judge having jurisdiction only against a final order either dismissing or allowing an election petition. The same view was also expressed by this Court in the case of Niranjana Sahu (supra).

5. It appears that some conclusion arises with regard to the observation made by a Division Bench of this Court in the case of Anirudha Jena (supra). Facts of the said case reveal that no appeal was preferred before the concerned District Judge against an interlocutory order. On the other hand, the party aggrieved had approached this Court invoking jurisdiction under Articles 226 and 227 of the Constitution of India. In para-12 of the judgment in that case this Court observed as follows:

The provisions of the Orissa Grama Panchayat Act and Rules framed thereunder lead to an irresistible conclusion that a special machinery is constituted under the said Act to adjudicate the inter se disputes cropping up from an election. Law is well settled that a dispute of such nature has to be efficaciously adjudicated by the Tribunals constituted under the Act. The jurisdiction and modalities of such Tribunals should not be interfered with in a casual manner, that too at interlocutory stages. An election dispute has to be decided as expeditiously as possible. Section 38(4) of the Orissa Grama Panchayat Act therefore mandates that any person aggrieved by an order passed by an Election Tribunal has a right to prefer an appeal before the District Judge having jurisdiction, who shall, after giving opportunity to the parties, confirm, reverse, alter or modify the order of the Tribunal.

(Emphasis supplied)

6. In the aforesaid case this Court did not express any view nor did make any observation to the effect that an appeal lay to the District Judge against an interlocutory order passed by an Election Tribunal. Thus, in the considered opinion of this Court, there is absolutely no ambiguity and/or controversy with regard to the conclusion arrived at by this Court in Niranjana Sahu and Anirudha Jena cases (supra).

7. It should always be kept in mind that the intention of the Legislature in creating special Tribunal for hearing of election disputes is aimed at speedy and

efficacious disposal. Thus the reason for not providing an appeal against an interlocutory order is obvious. If any of the parties is aggrieved by an interlocutory order, it would always be open to that party to challenge the same in the appeal against the final order and the same would be dealt with by the appellate Court. Thus there will be no prejudice.

8. In view of the aforesaid discussions, this Court finds that the learned District Judge has not committed any error and the impugned order does not suffer from any infirmity or illegality. Accordingly this Court dismisses the Writ Petition with direction to the Civil Judge (JD), Puri to dispose of the Election Misc. Case as expeditiously as possible.