

(2005) 02 OHC CK 0048

In the Orissa High Court

Case No : Writ Petition (Civil) No. 5065 of 2004

Shri Darasongh Kumbhar

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Orissa Grama Panchayat (Amendment) Act, 1994 — Section 25(1)

Orissa Grama Panchayat Act, 1965 — Section 31

Registration of Births and Deaths Act, 1969 — Section 17

Citation : (2005) 99 CLT 557 : (2005) OLR 623 Supp

Hon'ble Judges : Sujit Barman Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : A.K. Rath, C.R. Das, P.V. Ramdas and P.V. Balakrishna, for the Appellant; Additional Government Advocate, N.C. Pati, S. Misra, N. Singh, A. Das and B. Das for O.P. No. 2, for the Respondent

Judgement

M.M. Das, J.—This Writ Application was once disposed of by the Hon''ble Single Judge by Order dated 6.7.2002. Against the said order, W.A. No. 18 of 2004 was filed by the petitioner in which by Order dated 3.11.2004 it was held that as it was not pointed out by the Learned Council for the parties, before Hon''ble Single Judge that this matter as per the rules of this Court is to be taken up by a Division Bench, the matter was finally decided by the Hon''ble Single Judge but since as per the rules, this case was to be heard by a Division Bench, the said Writ Appeal was allowed and it was directed that this case should be listed before the Division Bench for disposal.

2. Accordingly, when the matter is taken up on the question of admission with consent of the parties, the case was heard on merit.

3. The petitioner, in this Writ Application, is the returned candidate who was elected as Sarpanch of Baladi Gram Panchayat. The election of the petitioner as Sarpanch was challenged by the Opp. Party No. 2 in Election Misc. Case No. 16 of 2002 before the Civil Judge (Junior Division), Sonapur, filed u/s 31 of the Orissa

Gram Panchayat Act, 1965 (hereinafter referred to as "the Act"). The Opp. Party No. 2 in the election petition, inter alia, alleged that the petitioner was disqualified to hold the post of Sarpanch as his third child, namely, Pragati was born in 1998 i.e., after the Orissa Gram panchayat (Amendment) Act, 1994 came into force, as provided under the proviso to Section 25(1)(v) of the Act. The petitioner in the election petition as defendant stated in his pleadings that his third child i.e., Pragati was born on 31.3.1995 and therefore, he was not disqualified to hold the office of Sarpanch.

4. The Learned Civil Judge (Junior Division), Sonepur proceeded with the trial of the said election dispute in which both the parties led oral and documentary evidence. The Opp. Party No. 2 besides examining himself also examined a co-villager as P.W. 2 and the Headmaster of the Government U.P. School, Baiadi as P.W. 3 to prove the date of birth of the first two children of the petitioner as recorded in the School Admission Register and the said entries were marked as Ext. 1 series. He also examined the A.N.M. of Bagabahali sub-centre under Naikenpali P.H.C. to prove that the third child of the petitioner i.e., Pragati was born on 12.5.1998 as entered in the immunization register under Ext. 2.

5. The petitioner during the course of hearing examined himself as Opp. Party No. 1 and a co-villager as Opp. Party No. 2 and also exhibited the birth certificates Exts. C, D and E relating to the date of birth of his three children.

6. On assessment of the oral and documentary evidence, the Learned Civil Judge (Junior Division) accepted the contention of the petitioner i.e., third child Pragati was born on 31.5.1995. Accordingly, by Order dated 27.9.2003, he dismissed the election petition filed by Opp. Party No. 2. The Opp. Party No. 2 thereafter challenged the same before the Learned Addl. District Judge, Sonepur in R.F.A. No. 73 of 2003, which was disposed of after hearing, by judgment dated 21.4.2004. The Learned Addl. District Judge on reassessment and re-appreciation of the evidence on record, reversed the findings of the Learned Trial Court on the ground that when the second son of the petitioner is shown to have been born in February, 1995, the case of the petitioner that the third child, Pragati, was born in March, 1995 is improbable. The Learned Lower Appellate Court found that Exts. C, D and E are not contemporaneous document and therefore no credibility can be attached to the said documents. He further found that Exts. 1 and 2 and the evidence of the P.Ws. 1 to 4 are reliable and sufficient to bring home the contention raised by the election petitioner. On the above findings, he held that the third child of the petitioner was born in 1998, which is after the cut off date and accordingly, the petitioner was declared disqualified from being elected as Sarpanch. On the above findings, the Learned Lower Appellate Court declared the election as invalid and further declared that a casual vacancy of the seat of the Sarpanch of the said Gram Panchayat has occurred.

7. Learned Counsel for the petitioner submitted before us that the findings of the Learned Addl. District Judge are erroneous, illegal and perverse on the face of the record as it would be apparent that the inferences drawn by the Learned

Lower Appellate Court are based on surmises and conjectures. He attempted to make out a case that there has been wrong appreciation of the evidence on record for which the Learned Addl. District Judge has erroneously concluded that the third child of the petitioner was born after the cut off date. He vehemently argued that the entry vide Ext. 2/a in Ext. 2 that is the immunization register, relates to his elder brother's daughter, namely, Pragatika and not his daughter who is named as Pragati. He submitted that the P.W. 4 having admitted in cross-examination that the letters "ka" in vernacular was erased so that the name would appear as Pragati, is a last nail in the coffin of the case of the election petitioner (Opp. Party No. 2).

8. For the above purpose, we thought it appropriate to go into the evidence of P.W. 4. On reading his deposition, we do not find that a case has been made out by the petitioner that the entry, Ext. 2/a relates to the daughter of the brother of the petitioner and not the daughter of the petitioner. Even if it is held that the latters "ka" appear to have been erased that by itself does not prove that the said entry relates to the daughter of the brother of the petitioner and not the daughter of the petitioner, since the names of the parents of the said child, as per Ext. 2/a, clearly shows that the petitioner is described as the father of the said child. We also find that the birth certificates produced by the petitioner issued u/s 17 of the Registration of Births and Deaths Act, 1969 were prepared after the petitioner filed application before the Sub-Collector in the year, 2001, indicating the dates of births of his children and making a prayer to direct the Medical Officer, P.H.C., Maikenpali to register the dates of births of the children of the petitioner as furnished by him. The said birth certificates, therefore, are on the basis of self-serving statement of the petitioner and the Sub-Collector, Sonapur issued the direction on mere application of the petitioner without any enquiry whatsoever. We, therefore, find no illegality in the conclusion of the Learned Addl. District Judge in holding that Exts. C, D and E cannot be relied upon and the dates of births of the children of the petitioner cannot be accepted to be the correct dates.

9. The petitioner has sought for issue of a Writ of certiorari to quash the judgment of reversal passed by the Learned Addl. District Judge in the appeal preferred by the Opp. Party No. 2 against the judgment of the Civil Judge (Junior Division), Sonapur, but has failed to show that the impugned judgment is either illegal or erroneous on the face of it or is perverse. We find no merit in the Writ Application and dismiss the same.

The L.C.R. be sent back to the Court below.

Sujit Barman Roy, C.J.

10. I agree.