

(2000) 05 OHC CK 0023

In the Orissa High Court

Case No : O.J.C. No's. 11344 and 12384 of 1998

Smt. Abanti Jena

APPELLANT

Vs

Smt. Priyambada Jena and Others

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 31 Rule 1
Evidence Act, 1872 — Section 74
Orissa Grama Panchayat Act, 1965 — Section 30

Citation : AIR 2000 Ori 156

Hon'ble Judges : P.K. Tripathy, J;P.C. Naik, J

Bench : Division Bench

Advocate : B. Routray, B. Dash, B. Parida and D.K. Mohapatra, for the Appellant; S.K. Ray, D.R. Mohapatra, S.K. Rout, Sabyasachi Jena, S.C. Puspalak and Pradeepta Kumar Nayak, for the Respondent

Judgement

P.K. Tripathi, J.—The above two writ petitions are directed against the two different interlocutory orders passed by the Civil Judge (Junior Division), Jaipur in Election Dispute Misc. Case No. 2 of 1997. Both the petitions were heard analogously and this common judgment will abide the result in both the writ petitions.

2. In the last Grama Panchayat Election, Smt. Abanti Jena (petitioner in the Election Dispute Misc. Case as well as petitioner in writ application No. 11344/98 and hereinafter described as (petitioner) and opposite party No. 1 Smt. Priyambada Jena (opposite party No. 1 in the Election Dispute Misc. Case and petitioner in C.J.C. No. 12384/98 and hereinafter referred to as the "opposite party") besides opposite party No. 2 Mataji Dei, contested for the office of Sarpanch of Mandari Grama Panchayat under Bari Block in the revenue district of Jaipur. In that election, as stated in the writ petitions opposite party No. 1 was declared elected by securing one vote more than the nearest rival candidate i.e. the petitioner, Petitioner thus filed the above mentioned Election Dispute Misc Case No. 2 of 1997, inter alia, on the ground of improper rejection of votes which

should have been counted in her favour and improper admission of votes in favour of opposite party. During the course of hearing of that election dispute the trial Court rejected petitioner's prayer for verification and recounting of ballot papers and that petition was rejected both on merit and also on the ground that similar prayer of the petitioner was rejected on 24-1-1998. That order is subject matter of consideration in O.J.C. No. 11344/98. In that respect petitioner's contention is that verification and recounting of the votes is necessary for a just decision in the case.

3. On 27-8-1998 learned Civil Judge allowed petitioner's prayer to mark certain documents as exhibits on the ground that such documents are public documents and due to non examination of the Election Officer as a witness from either side such documents could not be proved at the relevant stage of the proceeding. Documents which are proposed to be admitted in evidence waiving formal proof are result of counting of votes in Forms No. 8(A), ballot paper account in Form No. 7 in respect of Ward Nos. 1 to 12 and the Electoral Rolls used by the Presiding Officer (conducting the election) with respect to Ward Nos. 10, 11 and 12. That order of 27-8-1998 is subject matter of consideration in O.J.C. No. 12394 of 1998. In that respect it was argued that by virtue of order dated 24-1-1998 read with order dated 5-2-1998, learned Civil Judge permitted the petitioners to prove those documents by examining the Election Officer but ultimately vide the impugned order he has allowed those documents to be exhibited on behalf of the petitioner by dispensing with formal proof thereof. Apart from that the opposite party further contends that after closure of the evidence from both the sides induction of such evidence from the side of the petitioner without a chance of rebuttal to her (opposite party) is in gross violation of the procedural law as well as the principle of natural justice.

4. So far as the order dated 5-8-98 is concerned, we find that learned Civil Judge after due consideration of the merit of the contention as well as the position of law has passed a reasoned order rejecting the application for verification and recounting of ballot papers on the grounds that in the absence of specific instances and on the face of evasive stand taken by the petitioner there should not be a roving enquiry. While exercising writ jurisdiction, in the absence of any illegality in that order, we refused to interfere with the same. Accordingly, the O.J.C. No. 11344 of 1998 stands dismissed.

5. So far as the order dated 27-8-98 impugned in O.J.C. No. 12384 of 1998 is concerned, after hearing the parties, we are of the opinion that keeping in view the provision in Section 36 of the Orissa Grama Panchayat Act, 1965, we find that learned Civil Judge has not acted contrary to the provisions of law relating to admission of evidence and particularly the public documents. But as rightly argued by learned counsel for the opposite party (petitioner in O.J.C. No. 12384 of 1998) after closure of the evidence from both sides, when learned Civil Judge allowed acceptance of the documentary evidence from the side of the petitioner, the opposite party should have been granted an opportunity to adduce rebuttal

evidence. The order dated 27-8-98 does not spell out if such an opportunity was intended to be granted to the opposite party. Therefore, to resolve the dispute, we observe that after acceptance of the evidence from the side of the petitioners per order dated 27-8-98, learned Civil Judge shall afford a reasonable opportunity to the opposite party Smt. Priyambada Jena to adduce her rebuttal evidence, if any. With the aforesaid observations, we also do not interfere with the order dated 27-8-98. The O.J.C. No. 12384 of 1998 is accordingly disposed of.

6. Parties are to bear their respective costs of litigation.

7. Since the case before the lower Court relates to an election dispute learned Civil Judge may act when a certified copy of this judgment being produced in his Court. However, the opposite party is directed to file the requisites within a period of seven days for communication of this order to the lower Court.

P.C.P. Naik, J.

8. I agree.