
(1971) 12 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 120 of 1969

Smt. Ajmat Begum

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-12-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Municipal (Councillors) Election Rules, 1950 — Rule 22, 22(4), 23, 25, 26
Orissa Municipal Act, 1950 — Section 12, 13, 16, 16(1), 19

Citation : (1972) 38 CLT 271

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; A.G., for the Respondent

Judgement

G.K. Misra, C.J.—The Election Officer of Bolangir Municipality. (Opposite party No. 2) gave a notice for holding elections to the Municipal Council on 31-1-1969. For Ward No. 4 only the Petitioner and the opposite party No. 3 filed nomination papers. 14-1-1969 was fixed as the date for scrutiny of the nomination papers. The Petitioner objected to the candidature of the opposite party No. 3 on the ground that he was a Government servant and his resignation had not been accepted, and he was disqualified to stand as a candidate u/s 16(1)(xi) of the Orissa Municipal Act, 1950 (hereinafter to be referred to as the Act). The opposite party No. 3 objected to the candidature of the Petitioner alleging that she was disqualified u/s 16(1)(iii) of the Act as she was unable to read and write either English, Hindi or Oriya which is the language of the State. The opposite party No. 2 without deciding the matter referred the objection to the Government. It appears from the order (Annexure- B) dated 17-1-1969 of the Election Officer that Government gave a decision that the nomination of the Petitioner should be rejected and that of the opposite party No. 3 should be accepted for the time being subject to further enquiry as to whether his resignation had been accepted or not. On receipt of the Government order the Election Officer rejected the nomination of the Petitioner and accepted that of the

opposite party No. 3 who being the sole uncontested candidate was declared to be elected on 17-1-1969. This writ application has been filed under Articles 226 and 227 of the Constitution challenging the impugned order Annexure- B.

2. Rule 27 of the Orissa Municipal (Councilors) Election Rules, 1950 hereinafter to be referred to as the Rules) runs thus:

27. Scrutiny of nomination papers : (1) On the date appointed for the scrutiny of nomination, the candidates, one proposes and one secondary of each candidate and one other person duly authorised in writing by each candidate, and except for the purpose of assisting the Election Officer no other person, may attend at such time and place as may be specified under Rule 26 and the Election Officer shall give such person all reasonable facilities to examine the nomination papers of all candidates which have been received as aforesaid.

(2) The Election Officer shall then examine the nomination papers and shall decide all objections which may be made at the time to any nomination and may either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:

(1) that the candidate is ineligible for election under Sections 12, 13 and 16 of the Act;

(ii) that the proposes or secondary is a person whose name is not registered on the electoral roll for the ward;

(iii) that there has been any failure on the part of the candidate or his proposes or secondary to comply with any of the provisions of Rule 23 or 25; or

(iv) that in case the election is solely for a seat or seats reserved for Scheduled Tribes and Scheduled Castes the candidate does not belong to the Scheduled Tribes or Scheduled Castes.

(3) The Election Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection. The scrutiny shall be completed on the date appointed in this behalf under Rule 22 and no adjournment of the proceedings shall be allowed.

(4) The decision of the Election Officer shall be final.

It would thus appear from this rule that on the date fixed for scrutiny of nomination papers the Election Officer shall examine the nomination papers and shall decide all objections which may be made at the time to any nomination and reject or accept the nomination after such scrutiny. Under Sub-rule (4) the decision of the Election Officer shall be final.

3. Section 16(1)(xi) of the Act refers to a case where a candidate is a Government servant, either whole time or part time or has been dismissed from Government service for corruption or disloyalty to the State. He is disqualified

from filing his nomination unless a period of five years has elapsed since the dismissal. There is a proviso to this clause that if any question arises, either before or after an election, whether any person is or is not disqualified under this clause, the question shall be referred to the State Government whose decision shall be final.

It would thus appear that the Election Officer was competent to finally decide matters regarding disqualification u/s 16(1)(iii) of the Act by virtue of Rule 27 of the Rules. The reference made by the Election Officer to the Government as to whether the Petitioner was eligible to stand as a candidate or whether his nomination paper was liable to be rejected was, therefore, without jurisdiction.

4. Our aforesaid conclusion, however, does not dispose of the writ application. Admittedly, as it appears from Annexure A and B, the Petitioner was unable to read and write either English, Hindi or the language of the State as prescribed in Section 16(1)(iii) of the Act. On the admitted facts the Petitioner's nomination could not have been accepted. Though the reference to the State Government made by the Election Officer was without jurisdiction, the Petitioner cannot succeed in this writ application as she failed to establish that she was able to read and write either English, Hindi or Oriya as required in law. We are, therefore, not bound to exercise our jurisdiction under Articles 226 and 227 of the Constitution to quash an illegal order which otherwise would be valid in the facts and circumstances of this case.

5. That apart, it is open to the Petitioner to file an election petition u/s 13. u/s 19 the form and requirements of the petition have been prescribed. Sub-section (2) thereof says down that the petition may be presented by any candidate in whose favour votes have been recorded and who claims to be declared elected in place of the person whose election is questioned, or by 25 or more electors of the ward. The Petitioner's case does not come within the first part of this sub-section. Accordingly, an election petition at the instance of the Petitioner is not maintainable, even though the order of the Election Officer accepting the nomination of the opposite party No. 3 may be without jurisdiction. Mr. Ram contends that an application by 25 or more persons should not be insisted upon in a writ application as it is prescribed only in respect of an application filed before the Tribunal. The contention has no force. Our entertaining an application at the instance of one of the electors would render Section 19(2) of the Act nugatory. Therefore, it will not be a fit case where this Court would interfere in setting aside an election unless an application is made by 25 or more persons.

6. u/s 16(1)(xi) proviso, a reference could be made by the Election Officer to the Government. On reference the Government gave peculiar answer that the nomination of Shri Debaraj Misra was to be accepted for the time being. Such a direction is not a decision and was not a proper exercise of jurisdiction. The order of the Government could not have come to the protection of the opposite party No. 3 if an election petition had been filed by 25 persons or more challenging such election.

7. In the result, therefore, this writ application is dismissed on the aforesaid analysis, but in the circumstances there will be no order as to costs.

S. Acharya, J.

8. I agree.