

(2008) 09 OHC CK 0028
In the Orissa High Court
Case No : Writ Petition (C) No. 16475 of 2007

Smt. Dukhi Singh

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 25, 26, 30

Citation : (2008) 09 OHC CK 0028

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : Acharya, for the Appellant; Mishra, for State, for the Respondent

Judgement

M.M. Das, J.—Heard Mr. Acharya, Learned Counsel appearing for the Petitioner and Mr. Mishra, Learned Counsel for the State.

2. The Petitioner was the elected Sarpanch of Salgaon Gram Panchayat. An application u/s 26 of the Orissa Gram Panchayat Act, 1964 was filed by the opposite party No. 4, who was one of the contestant for the, post of Sarpanch in the election, inter alia, making a prayer before the Collector that the Petitioner was ineligible to contest in the election as he has a third child born after the cut off date, i.e., 21.04.1995.

3. The Petitioner's case before the Collector was that the second child of the Petitioner was adopted by him and not born to him and his wife and, therefore, it cannot be construed that the Petitioner has begotten a third child after the cut off date, The other point raised by the Petitioner is that the objector-opposite party No, 1 being the contestant of the Petitioner in the election for the post of Sarpanch cannot file an application u/s 26 of the Act but has may file an election dispute u/s 30 of the Act.

4. Coming to the first question raised as to whether in the event the Petitioner is found to have begotten a child after the cut off date but one of the two previous children of his being adopted by him, he would earn the disqualification u/s 25 of

the Act, Learned Counsel for the Petitioner submits that an inquiry was conducted by the B.D.O. at the behest of the Collector who recorded the statement of the villagers of Sorishakotha, who categorically stated that the second child of the Petitioner was found by the husband of the Petitioner near a burial ground, who was fostered by the Petitioner and her husband, as the others accompanying the husband of the Petitioner declined to take the child. The Collector, however, has ignored such statement of the villagers recorded by the B.D.O. on the ground that below the said statement the signatures of the Petitioner and her husband are found. The said statement recorded by the B.D.O. has been annexed to this writ application as Annexure-3.

5. It appears that the B.D.O. has prepared a concise statement of a number of villagers and the persons making such statements have also signed in the said statement. The Collector, therefore, has acted erroneously in raising the presumption that the villagers, who made such statement were persuaded by the Petitioner and her husband, even though there is No. prima facie material on record to show that such persuasion was made. Eliminating that finding from the order of the Collector what remains is that No. doubt the Petitioner has three children, one being born after the cut off date but one of the previous two children was an adopted child/fostered child.

6. Mr. Mishra, Learned Counsel for the State relying upon the decision in the case of *Basudev Sahoo v. Akhaya Kumar Pradhan and Ors.* 2004 (I) CLR 221 submitted that in the said case a similar allegation was made against the elected Sarpanch where defense taken was that he has given away the second child in adoption to one Rama Chandra Sahoo soon after her birth and, therefore, he was left with two children and has not earned the disqualification u/s 25 of the Act.

7. In such circumstances, this Court upon coming to hold that the intention of the Legislature in providing disqualification for membership of the Gram Panchayat u/s 25 of the Act on begetting a third child after the cut off date, who has already two children, living, will be declared disqualified and imposition of such restriction on the eligibility of a person who contest for the office of the Sarpanch is not unreasonable. However, the facts of the present case are totally different from the said facts. In the present case, it is not a question of giving one of the children in adoption, but having one child, out of three, who is an adopted child. Accepting the ratio of the decision in the case of *Basudev Sahoo* (supra), it is found that the legislative intention in imposing the disqualification clause u/s 25 to the above effect, was with the purpose that a person who will be acting as a representative of the people upon being elected as Sarpanch should be an example to the society and should not beget a third child giving rise to increase in population which IS considered as a problem faced by our country and different measures are being taken to control the population explosion.

8. In the facts of the present case, if it is accepted that one of the two children, living, of the Petitioner was brought on adoption or was being taken care by the Petitioner having been found to have been abandoned by the natural mother, it

cannot be said that begetting another child in any way frustrates the legislative intention. In such a situation, therefore, begetting the third child who is in effect the second child born to the Petitioner would not earn a disqualification u/s 25 of the Act.

9. With regard to the second question raised by Mr. Acharya, Learned Counsel for the Petitioner, he relies upon the decision in the case of Smt. Parbati Majhi Vs. Collector and Another, and submits that this Court has held in the said decision that Section 26 of the Act stipulates that a proceeding under the said section shall be initiated on the basis of an application filed by any member of the Gram Panchayat and/or the Sarpanch at the request of the Gram Panchayat or the person, i.e., Sarpanch, Naib Sarpanch or the member who entertains a doubt that he/she is or has become disqualified. A reading of Section 26(i) of the Act thus leads to an irresistible conclusion that a defeated candidate has No. locus stand to file an application u/s 26 of the Act. On the other hand, Section 30 of the Act clearly stipulates that a defeated candidate has to raise an Election dispute before the Civil Judge (Jr. Division), alleging any disqualification or irregularity said to have been committed during election process.

10. Applying the ratio of the aforesaid decision as well as on considering the provision of Section 26 of the Act, it is found that the opposite party No. 4 had No. locus stand to make allegation before the Collector u/s 26 of the Act for declaring the Petitioner as ineligible to contest the election to the Office of the sarpanch. In any view of the above, therefore, the order of the Collector declaring the Petitioner to be disqualified at the behest of the present opposite party No. 4 cannot be sustained. The impugned order under Annexure-6 dated 10.12.2007 passed in G.P. Misc. Case No. 2 of 2007 is, therefore, quashed and as a consequence, it is directed that the Petitioner shall continue as the Sarpanch of the said Gram pancnayat.

11. Liberty is, however, granted to the opposite party No. 4 to file an Election Dispute u/s 30 of the G.P. Act, if so advised.

12. The writ petition is accordingly disposed of.

13. Urgent certified copy of this order is granted on proper application.