

(2005) 08 OHC CK 0027

In the Orissa High Court

Case No : Writ Petition (C) No. 5385 of 2004

Smt. Pabani Gajendra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Grama Panchayat Act, 1964 — Section 24, 25, 25(1), 26, 26(1)

Citation : (2005) 708 CLT 100 : (2005) 100 CLT 708 : (2005) 2 OLR 686

Hon'ble Judges : S.B. Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : D.P. Dhal, B.B. Mishra, A. Rath and S.K. Tripathy, for the Appellant; Additional Government Advocate For O.Ps. 1 and 2 and S.P. Mishra, S. Mishra and B. Mohanty for opp. party No. 3, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioner was elected as Ward Member of Ward No. 7 in Baku Grama Panchayat under Kanas Block defeating the opp. party No. 3. After formation of the Grama Panchayat, the petitioner was elected as Naib Sarpanch of the said Grama Panchayat by the Ward Members. While the petitioner was discharging her duties as Naib Sarpanch. the opp. party No. 3 made a representation to the Collector, Puri-opp. party No. 2 herein, inter alia, alleging that the petitioner having more than two children was disqualified u/s 25(1)(v) of the Orissa Grama Panchayat Act, 1964 (hereinafter referred to as "the Act") from being elected as the Ward Member. When the said representation was pending before the Collector, the opp. party No. 3 filed W.P.(C) No. 5183 of 2002 and by order dated 16.12.2003 this Court disposed of the said writ application directing the Collector, Puri to consider the said representation if it is pending, after giving opportunity of hearing to all concerned and dispose of the same by the end of February, 2003. The case of the petitioner is that after the above order, was passed by this Court, the Collector, Puri without following the procedure as laid down under the Act and without giving due opportunity to the petitioner by his

order dated 15.3.2004 has declared the petitioner disqualified by exercising power purported to be u/s 26 of the Act and thereafter published the said order in the notice board. Being aggrieved by the said order dated 15.3.2004 vide Annexure-1, the petitioner has preferred this writ application under Article 226 of the Constitution of India for appropriate relief.

2. By order dated 21.5.2004 passed in Misc. Case No. 5444 of 2004 in the present writ application, it was directed that as an interim measure the petitioner shall not be terminated till the next date if not already done in the meantime. It appears that the said order was continued from time to time but the petitioner was removed from the post of Naib Sarpanch prior to the passing of the said order.

3. Mr. Dhal, learned counsel for the petitioner submitted that though Section 26 of the Act empowers the Collector to decide as to whether the Sarpanch, Naib Sarpanch or any other member of a Grama Panchayat is disqualified from holding such post but such decision can only be taken after a proper enquiry and after giving the person concerned an opportunity of being heard. He relied upon a decision of this Court in the case of Sri Kasteswar Khatua Vs. State of Orissa and Others, in support of his contention.

4. Mr. S. P. Mishra, learned counsel for the opp. party No. 3 submitted that the order of the Collector impugned in this writ application is not liable to be interfered with as it is evident from the said order that the Collector conducted a discreet enquiry with regard to the allegation made by the opp. party No. 3 against the petitioner and after receiving the reports from the District Inspector of Schools, Puri, District Inspector of Schools, Khurda, D.P.O., Puri and Revenue Inspector, Garabarapada and taking the said reports into consideration has categorically found that the petitioner had more than two children on the stipulated date and, as such, she was disqualified for being elected.

5. The Orissa Grama Panchayat Act, 1964 provides various methods for removal of a person elected as Sarpanch, Naib-Sarpanch or Ward Member. Section 24 of the Act provides for removal of a Sarpanch or a Naib-Sarpanch by vote of no confidence. Section 25 thereof prescribes the conditions on which such, elected representative would be held to be disqualified for being elected or nominated. Section 26 of the Act lays down the procedure following which the Collector of the District can declare such elected representative disqualified to hold the said post and Section 30 of the Act provides for filing an election petition calling in question the election of a returned candidate. Thus, it is clear that the above provisions of the Act all relate to removal of an elected candidate either from the post of Sarpanch or Naib-Sarpanch or Ward Member, as the case may be. It is trite to mention that when wide powers are bestowed on the authority more restraint should be observed while exercising such powers. A person is elected as a representative of a section of the inhabitants of a Grama Sasan by the will of the people and while unseating such a person, the procedure prescribed under the Act, to do so, must be strictly followed and should not be lightly dealt with. It

is for this reason, the legislature in its wisdom has provided for observing the principles of natural justice before taking such a decision u/s 26 of the Act. Section 26(2) of the Act reads as follows :

26. Procedure of giving effect to disqualifications-(1)

XXX XXX XXX (2) The Collector may, suo motu, or on receipt of an application under Sub-section (1), make such enquiry as he considers necessary and after giving the person whose disqualification is in question an opportunity of being heard, determine whether or not such person is or has become disqualified and make an order in that behalf which shall be final and conclusive.

(3) xxx xxx xxx

The above provision clearly lays down that the Collector on receipt of an application under Sub-section (1) of Section 26 of the Act is required to make such enquiry as he considers necessary and thereafter, give the person an opportunity of being heard before determining whether or not such person is or has become disqualified. Only after following this procedure; it is open to the Collector to make an order in that behalf.

6. The provisions of the Act i.e., Section 26, clearly expresses the intention that before declaring a person disqualified from holding the post of a Sarpanch, Naib-Sarpanch or Ward Member of a Grama Panchayat, ample opportunity is to be afforded to such person to nullify the allegations made against him. In other words, the above provision of the Act is in compliance with the principles of natural justice which means the person against whom allegations are made has a right to fair hearing and a decision regarding his disqualification should not be taken unless he has been given prior notice of the case against him and a fair opportunity to answer the same and to present his own case. Such person must, therefore, have the opportunity to present his version of the facts. We are of the view that a person against whom allegations are, made u/s 25 of the Act and the Collector concerned proposes to proceed against him u/s 26 of the Act, such person should be provided with the particulars of allegations made against him and when an oral hearing is conducted by the Collector, he must be allowed to call witnesses, make submissions and cross-examine the witnesses on whose statements or reports, the other party relies. Copies of such reports should also be provided to such person against whom allegations are made so that he can be given a fair opportunity to answer the case against him by contradicting or correcting all allegations and by adducing evidence in support of his own case.

7. In the case of Sri Kasteswar Khatua (supra) a Bench of this Court posed with a similar question has held that if the Collector wanted to base his finding on such evidence like the report of the Sub-Collector and the statement of the doctor etc. in the interest of justice, he should have afforded an opportunity to the petitioner in the said case to cross-examine the witnesses whose reports or statements have been accepted as evidence besides providing opportunity to tender rebuttal evidence.

8. In the present case, on perusal of the order of the Collector impugned by the petitioner, it would be seen that the conclusion of the Collector that the petitioner had more than two children on the date when she filed the nomination to contest as a Ward Member and was, therefore, disqualified u/s 25 (1) (v) of the Act is based on the reports of the District Inspector of Schools, Puri, Sub Inspector of Schools, Kanas Block, District Inspector of Schools, Khurda, certified copies of School registers and school leaving certificates and the report of the Revenue Inspector, Garabarapada. A reading of the order of the Collector also discloses that copies of the said reports were not supplied to the petitioner nor the said officials were produced to be cross-examined by the petitioner so as to give an opportunity to her for testing the veracity of the said reports. It is also found that the petitioner was not afforded with opportunity for producing any evidence as rebuttal evidence.

9. Applying the ratio of the decision in the case of Sri Kasteswar Khatua (supra) and also keeping in view the provisions of Section 26 (2) of the Act, we have no hesitation to hold that the order dated 15.3.2004 of the Collector, Puri under Annexure-1 to the writ application cannot be sustained in law. We, therefore, quash the said order dated 15.3.2004 under Annexure-1 and remit the matter back to the Collector, Puri-opp. party No. 2 to take a fresh decision in the matter by giving opportunity of hearing to the petitioner as per the provisions of Section 26(2) of the Act and giving her further opportunity to cross-examine the officials on whose reports the Collector intends to rely upon and further giving opportunity to the petitioner to adduce rebuttal evidence. This exercise shall be completed within a period of three months from the date of receipt of this order.

10. The writ application is, accordingly, allowed but in the circumstances there shall no order as to costs.

S.B. Roy, C.J.

I agree.