
(2008) 04 OHC CK 0035
In the Orissa High Court

Smt. Parbati Majhi

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 26, 30

Citation : (2008) 106 CLT 525 : (2008) 2 OLR 198

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—Heard.

2. The order dated 1.2.2008 passed by the Collector, Kalahandi in G.P. Case No. 9/2007 is assailed in this Writ Petition. The petitioner admittedly contested the Grama Panchayat Election held in the month of February, 2007 and was elected as Sarpanch of Gadiajore Grama Panchayat under Dharmagarh Panchayat Samiti in the district of Kalahandi. The defeated candidate, it appears filed an application before the Collector to initiate a proceeding u/s 26 of the Orissa Grama Panchayat Act mainly on the ground that the petitioner had not attended the age of 21 years on the date of filing of nomination for the post of Sarpanch. Thus she was not qualified to contest. It appears that the Collector on the basis of such petition registered G.P. Case No. 9/2007 and issued notice to the petitioner to show cause; Thereafter relying, upon the-documents like Xerox copy of the School Leaving Certificate issued by the Government UGME School, Gadiajore and a Xerox copy of birth certificate issued by the Registrar, Births and Deaths and Medical Officer, PHC, Parla produced by opposite party No. 2, came to the conclusion that the date of birth of the petition was 22.5.1987 and thus on the date when he filed nomination i.e. on 16.1.2007 he had not attained the age of 21 years. The Collector further held that the petitioner was in the family way and had conceived for the third time at the time of filing of nomination, thus she was disqualified and directed as such. Being aggrieved the petitioner has approached this Court.

3. The first submission of Mr. Dash, learned Counsel for the petitioner is that at the instance of opposite party No. 2, who is a defeated candidate, a proceeding u/s 26 of the Orissa Grama Panchayat Act should not have been registered.

Section 26 of the Grama Panchayat Act clearly stipulates that a proceeding under the said Section shall be initiated on the basis of an application filed by any member of the Grama Panchayat and/or the Sarpanch at the request of Grama 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 had to raise an Election dispute before the Civil Judge (Jr. Division), alleging any disqualification or irregularity said to have been committed during election process.

4. Mr. Dash, learned Addl. Government Advocate however submitted that in consonance with Section 26(2) of the Act, the Collector has a suo motu power to initiate a proceeding and as such no irregularity has been committed. But then in the case at hand, the Collector had not exercised his suo motu power, he has entertained a petition filed by a defeated candidate (opposite party No. 2), issued notice and had also accepted the document basing upon which the order was passed. Thus, the submissions made by learned Addl. Government Advocate cannot be accepted.

5. The Second ground of attack to the order is that the Collector has passed the order of disqualification relying upon only the authenticated Xerox copies, without causing any enquiry was not enquired into. This Court finds some force in the submissions. Law is well settled that an order cannot be passed only on the basis of a Xerox copies. Endeavor should not have been made by the Collector to procure the originals from the concerned authorities and to verify as to whether the Xerox copies supplied are genuine or not.

6. The 3rd ground on which the order is assailed is that in the show cause notice the petitioner was not called upon to show cause with regard to her 3rd pregnancy and the said allegation being over and above the show cause notice the Collector should not have considered the same. This Court also finds some force in the said submissions.

7. After going through the impugned order, in view of the infirmities pointed out above, this Court finds that the impugned order dtd. 1.2.2008 passed by the Collector, Kalahandi cannot be sustained and the same is accordingly quashed. But then liberty is granted to the Collector to exercise the powers conferred upon him under Sub-section (2) of Section 26 cause an enquiry and pass necessary orders strictly in accordance with law.

8. The Writ Petition is disposed of accordingly.