
(2017) 07 OHC CK 0036

In the Orissa High Court

Case No : 2587 of 2015

Smt. Punam Parida

APPELLANT

Vs

Sukanti Subudhi & others

RESPONDENT

Date of Decision : 28-07-2017

Acts Referred:

Orissa Municipal Corporation Act, 2003, Section 88, Section 88, Section 88, Section 88, Section 88, Section 88

Citation : (2017) 07 OHC CK 0036

Hon'ble Judges : Biswanath Rath

Bench : SINGLE BENCH

Advocate : S.K.Pratap, G.C.Paikaray, S.R.Pati, S.K.Mishra, K.K.Mishra

Judgement

1. This writ petition involves a challenge to the order dated 13.01.2015 passed by the District Judge, Khurda in the Election Petition No.43 of 2014 in exercise of power under the Orissa Municipal Corporation Act, 2003.

2. Short background involved in the case is that the election petition was filed under Section 88 of the Orissa Municipal Corporation Act, 2003 by the present petitioner-the unsuccessful candidate, challenging the acceptance of nomination paper of the return candidate-opposite party no.1 contesting for the post of Corporator from Ward No.18 of Bhubaneswar Municipal Corporation. Facts further reveal that the petitioner and the opposite party no.1 both filed nomination papers for the post of Corporator for Ward No.18 of Bhubaneswar Municipal Corporation being reserved for women belonging to other backward caste. Petitioner, the unsuccessful candidate filing election petition alleged that the opposite party no.1 the successful candidate filed her nomination paper before the Election Officer stating her name as Sukanti Subudhi, Wife of Gouranga Subudhi of Village-Pandara, Post-Garh Gopinath Prasad, P.S.- Mancheswar, District-Khurda. She again repeated same particulars in the form of affidavit, required to be filed accompanied with the nomination paper enclosing therein the

certificate issued by the particular School in support of her educational qualification, identity and also age. The transfer certificate accompanied therein appears to have been obtained from S.N. High School, situated in Patia, Bhubaneswar, District-Khurda where the student name has been described as Dhadi Jena, daughter of late Panu Jena of Village/Post-Patia, P.S.-Chandrasekharapur, District- Khurda and her date of leaving the School was shown as 31.05.1988 while she was prosecuting her study in Class-X, whereas the affidavit enclosing the transfer certificate described the candidate passing the examination in the year 1998. Petitioner, therefore, alleged that there is complete difference between the name of the candidate disclosed in the nomination paper, the affidavit appended thereto and the name indicated in the transfer certificate appended in support of the educational qualification of the opposite party no.1. There is also a great difference between the date of leaving the School and the affidavit indicating therein that the private opposite party no.1 had left School in the year 1988 and 1998 respectively. For these serious discrepancies, the petitioner raised the election dispute and claimed that there has been illegal acceptance of the nomination of the opposite party no.1. It is in the above premises, petitioner claimed that the election for the post of Corporator of Ward No.18 of Bhubaneswar Municipal Corporation may be held to be invalid and there may be a direction for fresh election.

3. Opposite party no.1 i.e. the elected Corporator on her appearance while seriously objecting the claim of the present petitioner in filing the election dispute contended that the election petition was not maintainable in the eye of law as there is no cause of action to file the same. While refuting the allegations made in the election dispute, the opposite party no.1 stated that she had not suppressed anything in filing the nomination for the post of Corporator from Ward No.18 in as much as Dhadi Jena and Sukanti Subudhi are one and single person. She further claimed that Dhadi is the nick name of Sukanti and as a matter of ordinary practice, during admission in the School, her parents entered her nick name in the School record resulting discrepancy in the School records. It is thus claimed that discrepancy, if any, is not a serious one. Further, for the evidence laid by the opposite party no.1 in the trial proceeding taking note of the indication in the voter list of Bhubaneswar Assembly Constituency, the opposite party no.1 has been able to establish that Dhadi and Sukanti are one. This aspect having been properly understood and accepted by the trial court, the opposite party no.1 claimed that there is no infirmity in the order of the Election Tribunal leaving no scope for interference by this Court in the order vide Annexure-1.

4. Upon completion of pleading, the Tribunal framed the following issues: (i) Whether the Election Petition is maintainable?

(ii) Whether there is cause of action to file the election petition?.

(iii) Whether the nomination and affidavit filed by opposite party no.1 are false and forged?

(iv) Whether there is corrupt practice adopted so as to declare the election of opposite party no.1 as null and void?

(v) To what other relief(s), the petitioner is entitled?

Both the parties entering into evidence, the election petitioner examined one witness, the contesting opposite party also examined one witness. While the election petitioner exhibited documents vide Ext.1 to Ext.3, the contesting opposite party exhibited only one document marked as Ext.A. Looking to the pleading, hearing the submissions of the parties and also scan of the evidence led by both the parties, answering the issue nos.3 and 4 in favour of the contesting opposite party therein, the election Tribunal dismissed the election petition for being devoid of merit.

5. Assailing the impugned order, learned counsel for the petitioner, the unsuccessful candidate reiterating the stand already taken in the election petition and the submission during hearing of the Election Proceeding contended that for the great discrepancy so far as name of the candidate in the nomination paper, the affidavit accompanying therein and the transfer certificate produced therein, the Election Officer has failed to exercise his power under Rule 28(2) of the Orissa Municipal Corporation (Division of City into Wards, Reservation of Seats, and Conduct of Election) Rules, 2003. No material produced or any evidence for the first time adduced during the trial in an attempt to regularize the defect in the nomination paper to cover up the discrepancy in the certificate accompanies the nomination could have been entertained and the trial should have been concluded on the basis of materials attached along with the nomination paper. For there being no disclosure regarding difference in the nomination paper and in the certificate enclosed at the time of filing of nomination, all such attempts become irrelevant. Learned counsel for the petitioner thus alleged that the trial court has failed appreciating all the above and as such, the impugned order remains unsustainable.

6. In his opposition, the contesting opposite party no.1-the successful candidate contended that the defects pointed out during trial involving the disclosure of name in the nomination paper, affidavit accompanied therein and the certificate produced was purely mechanical and claimed that even though the opposite party no.1 did not have any disclosure in the nomination paper or in the affidavit accompanied therein on the discrepancy in the transfer certificate, but she having been able to satisfy her claim by giving sufficient evidence during the trial, she could be able to justify her stand involving the discrepancy and for the materials available during the trial, the Election Tribunal had no other option than to accept the claim of the opposite party no.1 therein and the Election Tribunal thereby rightly dismissed the election petition. Further, the election petitioner having not raised any such objection at the time of scrutiny of nomination paper before the Election Officer, the Election Officer had no alternate than to accept the nomination paper. Further, for the clarification made during the evidence in the trial, the opposite party no.1 claimed there remains no doubt that Sukanti

Subudhi and Dhadi Jena are one, therefore, the claim that there has been false information in the nomination paper as well as in the affidavit accompanying the nomination paper was not justified. The opposite party no.1 further claimed that once the nomination paper is accepted and election is conducted, there is no scope for adjudicating the dispute involved herein. To justify her stand, the petitioner has taken reliance of the decisions in the cases of Laxman Siddappa v. Kattimani Chandappa Jampanna, AIR 1968 Supreme Court 292, Santosh Yadav v. Narendra Singh, AIR 2002 Supreme Court 241, Harsh Kumar v. Bhagawan Sahai Rawat & others, AIR 2003 Supreme Court 3693, Harikrishna Lal v. Babu Lal Marandi, AIR 2004 SC 1067, Ram Sukh v. Dinesh Aggarwal, (2009) 10 SCC 541 and in the case of Mangani Lal Mandal v. Bishnu Deo Bhandari (2012) 3 Supreme Court Cases 314,

7. Considering the rival contention of the parties, the pleadings available all through and the evidence available on record, this Court finds there is no dispute that the petitioner and the opposite party no.1 were the candidates for the post of Corporator from Ward No.18 of the Bhubaneswar Municipal Corporation. There is also no dispute that the nomination paper belonging to the opposite party no.1 described the name of the candidate in the nomination paper as Smt.Sukanti Subudhi. The affidavit accompanying therein also discloses the name of the candidate as Sukanti Subudhi. But the transfer certificate so accompanied was in response to the requirement of information under Clause no.5 (c) in the Format of affidavit at Annexure-3 to the nomination paper, as a matter of disclosure of educational qualification, at the time of filing of nomination paper as appearing at condition No.5(c) of the Information on filing of nomination paper available at page 34 of the writ petition. Further, looking to the Clause-5 available at page 47 of the writ petition again in annexure- 3, appears to be as a part of the nomination paper ensures the disclosures in consonance with the certificate so annexed. For the conditions indicated therein, this Court finds the filing of document pertaining to educational qualification and disclosure of the particulars of the candidate filing nomination paper required under Clause-5 of the affidavit Format at both page 34 and 47 this Court finds the filing of the transfer certificate is not an empty formality rather it had a great relevancy in filing of the nomination paper. Under the circumstance, this Court finds the discrepancy pointed out particularly on the discrepancy in the disclosure of the name of the candidate at different places is serious one. There being great difference found, the nomination paper itself was invalid and should have been rejected at the time of scrutiny itself.

Further, looking to the power of the Officer as envisaged under Rule 2003, this Court observes that in absence of any clarification on the discrepancies taken place during the filing of nomination, the returning officers are not empowered to make understanding of their own while involving in scrutiny of the nomination paper. On the other hand, for the power lying with the Election Officer, the Election Officer while exercising power under Rule 28 (2) of the Orissa Municipal Corporation (Division of City into Wards, Reservation of Seats, and Conduct of

Election) Rules, 2003 should have suo motu raised the doubt and depending on the clarification at the time of scrutiny, the Election Officer ought to have taken a decision depending on the availability of further facts. In absence of any clarification to that effect, at the time of scrutiny, the Election Officer should have rejected the nomination of the private opposite party at that point itself. What happened here is the Election Officer appears to have either not noticed the serious discrepancy indicated hereinabove or illegally accepted the nomination in spite of it's noticing such great discrepancy. Thus, it appears, the acceptance of the nomination of opposite party no.1 is not only contrary to the materials available on record but also on failure of exercise of power by the Election Officer under Rule 28 (2) of the Orissa Municipal Corporation (Division of City into Wards, Reservation of Seats, and Conduct of Election) Rules, 2003.

This Court further observes that since the dispute involves illegal acceptance of nomination paper, the power of the Election Tribunal is confined to examine the issue involved only taking into consideration the materials available on record at the time of scrutiny of nomination paper and not going beyond that. The materials produced in connection with the difference occurred so far as the name of the candidate in the nomination paper, affidavit and the certificate to clarify the discrepancy being produced only in the trial of the election dispute become immaterial and irrelevant. Thus, this Court observes the Election Tribunal acceded its power in taking into consideration a material appearing at Ext.2/g also available as part of Annexure-4 to the writ petition at page 67 of the writ petition obtained through the Public Information Officer on 22.1.2014 much after the filing of nomination on 20.12.2013 and also subsequent to the scrutiny of the nomination paper and even election taking place. Impugned judgment being based on such extraneous documents is not sustainable in the eye of law.

8. This Court considered the citations shown by the learned counsel for the opposite party no.1 but for the clear difference in the fact situation involving the case at hand, this Court finds, none of the decision has any application to the case at hand.

9. Under the circumstance, this Court interfering in the impugned judgment, sets aside the judgment vide Annexure-1 and as the opposite party no.1's election to the post of Corporator for Ward No.18 of Bhubaneswar Municipal Corporation is declared as bad, considering that the particular ward will have no elected representative, this Court directs for fresh election to the post of Corporator for the Ward No.18 of Bhubaneswar Municipal Corporation be held within two months hence. In the result, writ petition succeeds but in the circumstances, no cost.