
(2008) 09 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (C) No. 7706 of 2008

Smt. Rashmi Rekha Pattnayak

APPELLANT

Vs

Smt. Ranjan Patra

RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Grama Panchayat Act, 1964 — Section 25, 25(1), 9(2)
Orissa Grama Panchayat Election Rules, 1965 — Rule 28, 4

Citation : (2009) 1 ILR (Ori) 201

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—Heard learned Counsel for the Petitioner and the learned Counsel for the opposite party.

2. In the election to the Office of Sarapanch of Nagari Gram Panchayat under Baranga Panchayat Samittee in the District of Cuttack, the Petitioner was declared elected. The opposite party challenging the election of the Petitioner filed Election Dispute Case No. 3 of 2007 before the learned Civil Judge (Jr. Division), 1st Court, Cuttack. The ground of challenge of the election of the Petitioner as made out in the election petition was that the Petitioner was not eligible to contest the election to the Office of Sarpanch as she was not a voter with regard to any of the villages under the Nagari Gram Panchayat, after her marriage. The Petitioner was married to one Pranab Kumar Pattnaik who is a resident of Khandagad under the Nagari Gram Panchayat residing in holding No. 59 but the name of the Petitioner has not been included in the voters list. It was further pleaded by the election Petitioner that the writ Petitioner (the opposite party in the election dispute) has been mentioned as a voter of village Sisua at Sl. No. 28, under holding No. 10 which is not situated under the Nagari Gram Panchayat. The Petitioner in his show cause / written statement denied the

allegations in toto, inter alia, pleading that her nomination paper was accepted after proper scrutiny and she has been duly elected to the Office of Sarpanch.

3. The learned Election Tribunal framed as many as five issues. After discussing the materials brought before it by way of oral and documentary evidence, he has found that on the date of filing of nomination, the Petitioner was not a valid voter in respect of Nagari Gram Panchayat and as such was not entitled to contest the said election.

4. Coming to such finding, the Tribunal allowed the election petition in part by declaring the election of the Petitioner as void and consequently holding that a casual vacancy has occurred for which the concerned authorities under the Act are at liberty to hold fresh election.

5. The Petitioner being aggrieved, preferred Election Appeal No. 6 of 2008 before the learned District Judge, Cuttack who by his judgment on dated 19.05.2008 under Annexure-1 after hearing the parties, concurred the findings arrived at by the Election Tribunal and dismissed the appeal. Being aggrieved, the Petitioner has preferred the present writ application challenging the orders passed by the Election Tribunal and the appellate authority under Annexures - 2 and 1 respectively.

6. learned Counsel for the Petitioner contended that since the name of the Petitioner appears in the electoral roll of the Assembly Constituency showing that she is a voter of Grama-Khandagad, which comes under Nagari Gram Panchayat, the findings arrived at by the courts below are erroneous on the face of it. He further submitted that the courts below have wrongly interpreted Rules - 4 and 28 of the Orissa Gram Panchayat Election Rules, 1965 (hereinafter referred to as " the Rules"). It was further contended by him that the nomination of the Petitioner was never objected by anybody, when filed and was duly accepted, allowing her to contest election. As such, at this belated stage, it is not open for the opposite party to contend that the Petitioner was not eligible to contest the election. He relied upon various case laws in support of his contention that since the electoral roll of a Gram Panchayat is an extra of the electoral roll prepared for the Assembly Election/Parliamentary Election and as the Petitioner "s name finds place in the electoral roll for the Assembly as a voter of Grama-Khandagada under Nagari Gram Panchayat, the learned courts below should have held that the Petitioner was a voter of the village situated within the jurisdiction of Nagari Gram Panchayat. All the cases which were cited by the learned Counsel for the Petitioner are under the Representation of People"s Act relating to filing of a copy of the electoral roll with the nomination paper. The facts of the said cases are distinguishable from the facts of the present case which relates to an election under the Orissa Gram Panchayat Act. I am, therefore, of the view that the Petitioner cannot draw any support from the said decisions cited by the learned Counsel, in favour of the argument advanced by him.

7. Mr. Rath, learned Counsel for the Opposite Party vehemently argued that Rule

28 of the Rules specifically provided that unless the name of the person finds place in the electoral roll of the Grama, he cannot contest as a candidate in the election to the Office of Sarpanch. He further submitted that the learned courts below finding that the Petitioner's name does not find place in the electoral roll of the Grama have rightly concluded that the Petitioner was not eligible to contest the election and the findings of the court below being findings of facts, this Court should not interfere by exercising its extra ordinary jurisdiction under Article 226 of the Constitution of India.

8. Rule 4 of the Rules which has been relied upon by the Petitioner is as follows:

4.(1) Where the Commissioner otherwise directs under Sub-section (2) of Section 9, to have a separate electoral roll for every ward, he may by order, direct for the preparation of such electoral roll and in such case he may prescribe, in other order, the procedure thereof including the procedure of its revision, addition or alteration to be followed.

(2) So much for the electoral roll of the Assembly Constituency, for the time being in force, as it relates to the ward shall be the electoral roll in respect of the ward and for the purpose of its preparation, final publication including revision, addition or alteration, the procedure hereinafter prescribed shall apply.

(3) Every order passed under Sub-rule (1) shall be published in the Official Gazette.

9. Rule 28 prescribes as follows:

No person shall be eligible to stand as a candidate for the office of Sarpanch unless his name finds place in the electoral roll of the Grama. No person shall similarly be eligible to be either the proposer or seconder of a candidate for the office of Sarpanch unless his name finds place in the electoral roll of the Grama.

10. Admittedly, the name of the Petitioner has not been included in the electoral roll prepared for the Nagari Gram Panchayat, for the Office of Sarpanch of which Gram Panchayat the Petitioner contested the election.

11. Section 25 prescribes the condition under which a person shall be disqualified from being elected or nominated as a Sarpanch of the Gram Panchayat constituted under the Act. Section 25(1)(b) prescribes that a person who is not on the electoral roll in respect of the Grama will be disqualified for being elected or nominated as a Sarpanch. From the above provisions, it is, therefore, clear that the intent of the Legislature is unambiguously stated that a person whose name is not found in the electoral roll of the Grama will not be eligible to contest the election for the Office of Sarpanch.

12. Admittedly, the name of the Petitioner did not find place in the electoral roll of the Grama which has been exhibited before the Tribunal as Ext. 1. It is, therefore, clear that the courts below have rightly hold that the Petitioner was not eligible to contest the election to the Office of Sarpanch of the Gram

Panchayat. In view of the above, I am not inclined to interfere with the impugned orders.

13. The writ petition being devoid of merit is accordingly dismissed.

14. Urgent certified copy of this order be granted on proper application.