
(2004) 01 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 12011 of 2003

Sri Kasteswar Khatua

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 26(2)

Citation : (2004) 97 CLT 698 : (2004) 1 OLR 275

Hon'ble Judges : P.K. Tripathy, J;A.S. Naidu, J

Bench : Division Bench

Advocate : Bharati Dash and J.K. Mohanty, for the Appellant; Arun Kumar Acharya, M.R. Kar and D.N. Guru (Caveator), Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Heard.

2. Petitioner ventilates his grievance against Annexure-1. i.e. the order of removal of the petitioner from the post of Sarapanch, Tikarapada Grama Panchayat u/s 26 (2) of the Orissa Grama Panchayat Act, 1964 (in short, "the Act"). The detailed order is Annexure-B/1, which has been filed by the Collector.

3. Sole dispute between the parties is as to whether petitioner's fourth child was born in January, 1995 or in May, 1997. According to the petitioner, that child was born in January, 1995, whereas according to the findings recorded by the opposite party No. 1, the Collector, that child was born on 16.5.1997 and accordingly he disqualified the petitioner to function as the Sarapanch of Tikarpada Grama Panchayat. In that respect, learned Collector has referred to and relied on the report of the Sub-Collector as well as the statement of the doctor of the P.H.C. Baunsuni. There is nothing on record to indicate that before accepting such evidence to derive the conclusion against the petitioner, learned Collector provided an opportunity to the petitioner to know about the evidence

available against him or offered him an opportunity to cross-examine the Sub-Collector as well as the doctor of the P.H.C., Baunsuni besides verifying the relevant reports and documents. Learned counsel for the petitioner states that no such opportunity was granted to the petitioner. Learned Government Advocate, who possesses the concerned file, verifies the same and concedes to that position but states that notice was issued to the petitioner providing an opportunity of hearing.

4. Since the Collector wanted to base his finding and the conclusion on the basis of such evidence, i.e., the report of the Sub-Collector and the statement of the Doctor etc., therefore, in the interest of justice, he should have afforded an opportunity to the petitioner to cross-examine the witnesses whose report or statement have been accepted as evidence besides providing opportunity to tender rebuttal evidence. No such opportunity having been granted to the petitioner, the impugned order suffers from illegality. Accordingly, we set aside the order u/s 26(2) of the Act passed by the Collector on 15.11.2003.

5. The matter relating to disqualification of the petitioner is a factum which is required to be considered in public interest. Therefore, we remand the case to the Collector, Boudh for fresh adjudication after providing opportunity of hearing to the petitioner in the manner indicated above. In other words, whatever evidence the Collector accepts against the petitioner, that be done only after providing opportunity to cross-examine the persons/authorities filing reports and/or documents and thereafter petitioner be provided with opportunity to adduce rebuttal evidence, if any. Petitioner undertakes not to apply for any adjournment and to avail the opportunity of cross-examination of the witnesses, if made available and to file his rebuttal evidence within a period of one month. Therefore, we direct the petitioner to appear before the Collector, Boudh on 6.2.2004 along with a certified copy of this order. If petitioner shall co-operate for early disposal of the case, then it be disposed of by 5th of March, 2004. In the event of non-disposal of the case due to circumstances beyond the control of the petitioner, the Collector shall permit the petitioner to function as the Sarapanch with effect from 6th March, 2004 till the date of decision made by the Collector on the proceeding relating to disqualification of the petitioner.

The writ petition is accordingly allowed.

A free copy of this order be granted to learned Government Advocate.