

(2010) 06 OHC CK 0026

In the Orissa High Court

Case No : Writ Petition (C) No. 10342 of 2010

Sri Ramesh Chandra Jena ' Ramesh Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Arms Act, 1959 — Section 25, 27
Constitution of India, 1950 — Article 80(4)
Penal Code, 1860 (IPC) — Section 120B, 201, 216A, 302, 34
Representation of the People Act, 1951 — Section 152, 59, 62(5)

Citation : (2010) 110 CLT 336 : (2010) 2 OLR 361

Hon'ble Judges : C.R. Das, J;B.P. Das, J

Bench : Division Bench

Judgement

1. On the oral prayer of the Learned Counsel for the Petitioner, the Returning Officer, Biennial Elections to the Council of States, Orissa is made as an Opp. Party to the Writ Petition. Learned Counsel is permitted to make necessary corrections in the cause title of the Writ Petition, in Court today.

2. Heard Mr. Pitambar Acharya, Learned Counsel for the Petitioner & Learned State Counsel. This application has been made by an elected Member of the Orissa Legislative Assembly from 130 - Sanakhemundi Constituency, who has been arrested for the offence punishable under Sections 120-B/216-A/201/302/34, I.P.C. read with Sections 25 & 27 of Arms Act, & he is in jail custody since 13.05.2010, & his bail application, i.e., BLAPL No:9753 of 2010 was withdrawn on 28,05,2010 with liberty to renew the payer for bail, as the investigation is still in progress.

3. Learned Counsel for the Petitioner prays to direct the Opp. Parties to allow the Petitioner to participate in the process of voting to the Biennial Elections to the Council of States, 2010 (Rajya Sabha Elections) scheduled to be held on 17.6.2010 between 9.00 a.m. & 4.00 p.m. in Room No. 54 of the Assembly Buildings, BBSR. Learned Counsel for the State vehemently objects to the prayer

of the Petitioner & draws our attention to Sub-section (5) of Section 62 of the Representation of People Act, 1951. He further draws our attention to the decision of the Apex Court in the case of Kuldip Nayar Vs. Union of India (UOI) and Others, , wherein it was held that the right to vote & elect representatives of the State in the Council of States is not a constitutional right & that there is nothing in the constitution provisions declaring the right to vote in such election as an absolute right under the Constitution. Learned Counsel for the State further refers to the decision of the Apex Court in the case of Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and others, , wherein it was held that the right to vote is subject to the limitations imposed by the Statute, which can be exercised only in the manner provided by the Statute.

4. On the other hand, Mr. Acharya for the Petitioner draws our attention to Article 80(4) of the Constitution & the Proviso to Section 59 of the R.P. Act, 1951 inserted in 2003 by way of amendment & contends that the process of voting being by way of open ballot by the members of the electoral college u/s 152 of the R.P. Act, 1951 through proportional representation by means of single transferable vote system, the same is different from that of the process of election to the House of the People & the Legislative Assemblies for which the contention of the Learned Counsel for the State does not stand in good stead.

6. After hearing Learned Counsel for the parties, we are of the opinion that since the Petitioner is a Member of the Orissa Legislative Assembly, it would be proper to allow him to exercise his franchise by way of participating in the voting process for election to the Council of States which is going to be held on 17.6.2010 as indicated above.

7. Accordingly we direct Opp. Party No. 1, Secretary to Government of Orissa, Home Department, Bhubaneswar to issue necessary instruction/direction to Opp, Party Nos. 4, 6, 7 & 10 & the Commissioner of Police, Bhubaneswar-Cuttack, to facilitate transportation of the Petitioner to Bhubaneswar with adequate security & ensure his presence on 17.6.2010 at the time & place of voting to cast his vote. We further direct that after the Petitioner casts his vote, he shall be taken back to the jail, where he was lodged.

8. As there is nothing further to decide in the present Writ Petition, the same is disposed of with the aforesaid direction. A free copy of this order be handed over to Learned Counsel appearing for the State to take necessary steps for compliance of this order.

9. Urgent certified copy of this order be granted on proper application, in course of the day.