

(2001) 04 OHC CK 0009
In the Orissa High Court
Case No : A.H.O. No. 167 of 2000

Surendra Dash

APPELLANT

Vs

Laxmidhar Sahoo and Another

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Births, Deaths and Marriages Registration Act, 1886 — Section 28, 9
Citizenship Act, 1955 — Section 9(2)
Citizenship Rules, 2009 — Rule 30
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 11, 226, 227
Orissa Municipal Act, 1950 — Section 16(1)
Orissa Registration of Births and Deaths Rules, 1970 — Rule 12, 13
Registration of Births and Deaths Act, 1969 — Section 15

Citation : (2001) 92 CLT 114

Hon'ble Judges : M. Papanna, J;B.P. Das, J

Bench : Division Bench

Advocate : Sanjit Mohanty, S.C. Samantray, N.C. Sahoo, S.P. Panda, S. Pattnaik, D. Mohanty, S. Nanda, R. Dasmohapatra and P.K. Muduli, for the Appellant; Jagannath Patnaik, A.A. Das, R. Rath, B. Mohanty, T.K. Patnaik, S. Das, P.K. Nayak, N.K. Lenka, S.K. Sethi and C. Kasturi, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—This Letters Patent Appeal is directed against the decision of a learned Single Judge of this Court rendered on an application under Articles 226 and 227 of the Constitution of India, being O. J. C. No. 11450 of 2000, confirming the judgment dated 31-10-2000 passed by the learned District Judge, Puri, acting as the Tribunal under the provisions of the Orissa Municipal Act, 1950 (in short "the Act"), passed in an election petition being Election Misc. Case No. 318 of 1997, holding the election of the appellant as the Councillor of Ward No. 28 to the Puri Municipal Council as invalid on the ground of violation of the provisions of section 16(1)(xvii) of the Act.

2. Respondent No. 1 filed an election petition u/s 18 of the Act before the learned

District Judge, Puri, alleging therein that although the appellant was declared elected as the Councillor of Ward No. 28 to the Puri Municipal Council in the election held on 11-7-1997 having secured the highest number of votes polled, his election was invalid because he had more than two children and as such was disqualified u/s 16(1) (xvii) of the Act to be elected as a Councillor. It was also alleged that the objection filed by respondent No. 1, i. e., the election petitioner, to the nomination paper of the appellant at the time of scrutiny before the Election Officer, i.e., the Addl. District Magistrate (General), Puri, was rejected and the nomination of the appellant was improperly accepted. The appellant filed a written statement denying the allegations made in the election petition. He categorically denied that his wife Anita Dash gave birth to a son on 2-6-1996 at the District Headquarters Hospital, Puri.

3. The learned District Judge, i. e., the Tribunal, on an analysis of the oral and documentary evidence on record and considering the rival contentions of the parties, held that the election petitioner was found to have successfully established beyond any reasonable doubt that a son was born to the appellant's wife Anita Dash on 2-6-1996 and, therefore, the appellant had incurred disqualification for election as a Councillor in view of the provisions of section 16(1)(xvii) of the Act, and accordingly his election was declared invalid. It was also held that a casual vacancy in the office of the Councilor of Ward No. 28 has been created and direction was given that the Magistrate of the District would take immediate proceedings for filling up the vacancy.

4. The aforesaid judgment of the Tribunal was challenged by the present appellant in this Court in an application filed under Articles 226 and 227 of the Constitution of India find the learned Single Judge, after hearing learned counsel for the parties, has rejected the application and confirmed the judgment of the Tribunal. The appellant has, therefore, come up with the present Letters Patent Appeal challenging the decision of the learned Single Judge.

5. The decision of the learned Single Judge has been challenged basically on ground Nos. (C), (D), (E), (F) and (G) of the grounds of appeal. They are quoted hereunder :--

""C. For that the finding of the learned Single Judge that the petitioner has placed reliance on section 28 of the Births, Deaths & Marriages Registration Act, 1886 is erroneous as appellant placed reliance on section 15 of Registration of Births & Deaths Act, 1969 and Rule 12 of the Orissa Registration of Births & Deaths Rules, 1970 framed thereunder.

D. For that the learned Single Judge has committed ex facie error by placing reliance on section 9 and SECTION. 28 of the Births, Deaths & Marriages Registration Act, 1866 while deciding the contentions that the District Judge/Tribunal does not have any jurisdiction to decide the correctness/genuineness of Ext. 12.

E. For that, the Hon"ble Single Judge illegally held that in the Certiorari

Proceeding, it is not directed against the decision itself, but against the decision making process by referring to Syed Yakoob Vs. K.S. Radhakrishnan and Others, and State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, The Hon"ble Single Judge failed to appreciate that, the, finding of learned Tribunal was wholly unwarranted and the same can be interfered with by exercising power under Article 227 of the Constitution. In the instant case, though arguments are advanced, that the findings by learned Tribunal were wholly un-warranted, the Hon"ble Single Judge failed to render a finding on the same.

F. For that the learned Single Judge has failed to take note of the decision rendered in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, which is as follows :

When the issue raised in judicial review is whether a decision, is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly, unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of, the decision-making process includes examination, as a matter of law, of the relevance of the factors.

G. For that, the Hon"ble Single Judge has erroneously drawn adverse inference for the alleged failure to examine the petitioner's wife on commission. On the face of the order dtd. 21-8-2000 of the Election Tribunal, the learned Single Judge illegally held that while exercising the powers under Article 227 of the Constitution, it can not be said that the Trial Court abused its discretion by not granting any further adjournment. The Hon"ble Single Judge failed to appreciate that the evidence regarding the birth of son could be derived through the wife of the petitioner, who has been left out by order dtd. 21-8-2000 passed in Election Misc. Case No.318/1997."

6. Let us first take up ground Nos. (E) and (F) together, i.e., whether the learned Single Judge erred in law in coming to a finding that in a certiorari proceeding it is not directed against the decision itself, but against the decision making process. The extent of power to be exercised by High Court under Article 227 of the Constitution can at least be traced back to 1954 when the Apex Court in the case of T.C. Basappa Vs. T. Nagappa and Another, observed that :--

".....The writ of "certiorari" is so named because in its original form it required that the King should be certified of the proceedings to be - investigated and the object was to secure by the authority of a superior court, that the jurisdiction of the interior Tribunal should be properly exercised....."

The Court further proceeded to hold :--

".....One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari

could be demanded."

The Apex Court in the case of *Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others*, observed as follows :--

".....Broadly speaking, it is true that an essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity..."

In the case of *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, as well as in the case of *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, which was relied upon by the learned Single Judge, the Apex Court held that a writ of certiorari will be issued for correcting errors of jurisdiction as and when an inferior court or tribunal acts without jurisdiction and in excess of it or fails to exercise it. Certiorari will also be issued when the court or tribunal acts illegally in exercise of its undoubted jurisdiction, as and when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice." The Court issuing a writ of certiorari acts in exercise of supervisory and not an appellate jurisdiction.

Shri Sanjit Mohanty, learned Senior Counsel appearing for the appellant, has strenuously contended that the learned Single Judge while relying upon the decision in the case of *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, has overlooked the relevant observation and has reached at an erroneous conclusion that in a certiorari proceeding this Court can only look into the decision making process and not the decision itself. By referring to a recent decision of the Apex Court in *Shama Prashant Raje Vs. Ganpatrao and Others*, the learned counsel has submitted that the horizon of certiorari proceeding has been broadened by the aforesaid judgment of the Apex Court and if tested on the touchstone of the latest decision of the Apex Court, there will be no other conclusion than that the judgment of the learned Single Judge is fallacious. We have perused the relevant portion of the judgment of the Apex Court rendered in *Maharaja D. P. Singh's case (supra)*, reproduction of which has been made in ground No. (F) of the appeal memo. On going through the aforesaid decision entirely, the irresistible conclusion is that when the infirmities described above are found in the decision making process, then only this Court can interfere in the decision itself. Same is also the view of the Apex Court in *Hari Vishnu Kamath's case (supra)*, as well as in *Sayed Yakoob's case (supra)*.

Now let us see how far the learned counsel for the appellant is correct in advancing an argument that in the latest judgment of the Apex Court in *Shama Prashant Raje's case (supra)*, the scope of certiorari has been broadened. The Apex Court in para 5 of the aforesaid judgment, inter alia, held as follows : --

".....(Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent tribunal. The jurisdiction of the High Court, therefore, is supervisory

and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same, on a mere perusal of the order of an inferior tribunal if the High Court comes to a conclusion that such tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to the conclusion that on the materials it is not possible, for a reasonable man to come to a conclusion arrived at by the inferior tribunal or the inferior tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior tribunal"

The aforesaid judgment, therefore, reaffirms the consistent view taken from 1954 till 2000, i. e.; if an inferior tribunal has ignored to take certain relevant materials into consideration or has taken into consideration certain materials which are not admissible; has not given an opportunity of hearing to parties; has committed manifest error in its decision making process by misconstruing certain documents ; and on the materials on record has come to a conclusion which a reasonable man could not have come, then the High Court can very well interfere with the findings of such tribunal. So, all that the High Court is to see is whether or not these defects are there in the decision making process.

7. Next in the case at hand we have to see whether there is any defect in the decision making process of the Tribunal or whether the Tribunal has committed any manifest error requiring interference of this Court.

Learned counsel for the appellant submits that the Tribunal does not have any jurisdiction to decide the genuineness of Ext. 12, which is an entry made in Form-11 read with Rule 13 of the Orissa Registration of Births and Deaths Rules, 1970 (in short "1970 Orissa Rules"), because Ext. 12 bears the name of one Amita wife of Sumendra Nath Das, whereas the appellant's wife's name is Anita Dash. According to the learned counsel for the appellant, the Registration of Births and Deaths Act, 1969 ("the 1969 Act" hereinafter) is a complete Code. Section 15 of the 1969 Act and Rule 12 of the 1970 Orissa Rules empower the Registrar to correct and cancel an entry made in the Register. The Registrar has the exclusive jurisdiction to deal with any question relating to, the entries made in the Register. While dealing with an election petition, the Tribunal has no jurisdiction to decide the correctness or otherwise of an entry. When ex facie EXE. 12 indicates that a male child was born to one Amita, there is no option left to the Tribunal than to accept the same. According to the learned counsel for the appellant, the Tribunal has taken a document into consideration which is not within its competency and, therefore, the High Court has the jurisdiction to interfere with the finding of the Tribunal. The learned Single Judge while dealing with the aforesaid contention of the appellant looked into the provision of the Births, Deaths and Marriages Registration Act, 1886 (in short "the 1886 Act")

more specifically sections 9 and 28 thereof and observed that section 9 prescribes that a copy of the entry made in the Birth or Death Register is admissible in evidence for the purpose of proving the birth, death or marriage, as the case may be; that even though such an entry is admissible, its evidentiary value is obviously within the domain of the Court deciding the matter where such entry has been admitted into evidence, and that by deciding that a particular entry is not reliable, the Court does not purports to exercise the power u/s 28 of the 1886 Act. Learned counsel for the appellant at this stage came up with an argument that though he had raised the contention and placed reliance on section 15 of the 1969 Act and Rule 12 of the 1970 Orissa Rules, the learned Single Judge did not deal with section 15 of the 1969 Act and erroneously placed reliance on section 28 of the 1886 Act while deciding the issue in question. According to the learned counsel, the Tribunal has got no other alternative than to accept the contents of Ext. 12, which is maintained under the 1969 Act read with Rule 13 of the 1970 Orissa Rules, It is profitable to extract hereunder section 15 of the 1969 Act :--

"15. Correction or cancellation of entry in the register of births and deaths--If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect of the condition on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation."

Shri Mohanty submits that the 1969 Act is a self-contained Code conferring powers on the Registrar to deal with any entry of a birth or death in any register kept by him if found to be erroneous in form or substance; and providing for self same mechanism for correction and cancellation oi any entry in the birth or death register by the Registrar. The sum and substance of his argument is that the jurisdiction of the Tribunal or any other court is impliedly barred by such a provision because it is only the Registrar who can correct such erroneous entry. In order to fortify his argument, Shri Mohanty refers to a decision of the Apex Court in Bhagwati Prasad Dixit "Ghorewala" Vs. Rajeev Gandhi, wherein the citizenship of a candidate was questioned in an election petition, and draws our attention to the observations made in para 5, which are as under :

"5. As regards ground No. (i) it has to be observed that the High Court was in error in construing that it could decide the question whether a person had ceased to be an Indian citizen. The High Court was of the view that since in an election petition the High Court is called upon to decide whether the returned candidate was disqualified to be chosen as a member of the Lok Sabha it was open to the High Court by virtue of that power to decide the question whether a candidate had ceased to be an Indian citizen notwithstanding the statutory bar contained in

section 9(2) of the Citizenship Act, 1955. The Citizenship Act, 1955 is enacted by Parliament in exercise of its powers under Entry 17 of List I of the .Seventh Schedule to the Constitution read with Article 11 thereof. Article 11 of the Constitution reads thus :

"11. Parliament to regulate the right of citizenship by law--Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship." "

Shri Jagannath Patnaik, learned Senior Counsel appearing for respondent No. 1, in this regard submits that the argument of the appellant is fallacious because there is no such provision under the statute debarring or ousting the jurisdiction of the court and that apart, the question before the Tribunal was to decide whether the appellant has incurred any disqualification because of birth of his fourth child, which has been rightly decided by the Tribunal. Shri Patnaik further contends that the learned Tribunal has not solely relied upon Ext. 12 but there are several other undisputed documents placing reliance on which the Tribunal came to the conclusion that the returned condidate has incurred disqualification by virtue of birth of his fourth child. Our attention is drawn by Shri Patnaik to the relevant portion of the judgment of the Tribunal wherein the following findings have been recorded :

"....It is not at all important for the purpose of adjudication of the controversy in the present case to find out who actually is responsible for the interpolations and manipulations in some of the documentary exhibits and substitution of some of the pages in the Births and Deaths Register. However, it is not at all disputed that entry Ext. 12 was made on the basis of the contents of Ext. 10 which is stated by p. w. 3 to be containing the particulars of the birth of son to o. p. No. 1's wife. Hence, the substituted entry in Ext. 12 does not at all improba-bilise the election petitioner's case that the original entry at serial No. 1450 contained the particulars of birth of son to o. p. No. 1's wife Anita Dash"

Be that as it may, the ratio of the decision on which the appellant has placed reliance, i.e., Bhagwati Prasad Dixit's case (supra) cannot be applied to the facts and circumstances of the present case. That was a case under the Citizenship Act, 1955, subsection (2) of section 9 of which provides as follows :--

"9. Termination of citizenship-

(1) xxx xxx xxx

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority/ in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

Hence, as per section 9(2) of the Citizenship Act, read with Rule 30 of the Citizenship Rules, 1956, it is the Central, Government which is vested with the

power to decide the question of voluntary acquisition of citizenship" of a foreign country and consequent determination of Indian citizenship, A conjoint reading of section 9(2), 18(2)(h) of the Citizenship Act and Rule 30 and Schedule III of the Citizenship Rules, 1956 makes it clear that no other court or authority has the power to decide the question as to whether, when or how a person has acquired the citizenship of another country. In the present case, no similar provision or procedure is available either in the 1969 Act or 1970 Orissa Rules or in the 1886 Act. There is also no such provision excluding the jurisdiction of other courts including the civil court. In this regard we are reminded of a decision of the Apex Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, which dealt with the question of applicability of section 9 of the CPC in relation to the rights of a workman as provided for under the Industrial Disputes Act. It is well settled that the workman who is governed by the Industrial Disputes Act can raise an industrial dispute and have such dispute adjudicated by the Industrial Tribunal or the Labour Court, as the case may be. Whether such a person can approach the Civil Court and obtain the same relief from the Civil Court was the moot question for consideration before the Supreme Court. The Apex Court while summing up the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute stated thus :--

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chap. VA then the remedy for its enforcement is either s. 33C or the raising of an industrial dispute, as the case may be."

Relying upon the aforesaid decision of the Apex Court, the Karnataka, High Court in the case *State of Karnataka and Another Vs. T. Srinivas*, where a similar question was raised, i. e., the 1969 Act, i. e., Registration of Births and Deaths Act, 1969, being a complete code by itself, whether a suit seeking correction of a date of birth was maintainable before the civil court, held as follows :--

"Whether the Registration of Births and Deaths Act, 1969 is a complete code by itself providing the remedy that the plaintiff had sought for in the civil Court should have been a matter for consideration before coming to the conclusion that the jurisdiction of the Civil Court is ousted by virtue of the provisions of this Act and the rules framed by the State Government under this Act. In the absence of any, consideration that Act and the Rules framed by the State Government

constitute a complete code for the determination of age of a person aggrieved by a wrong entry either in the registers maintained by the Director of Births and Deaths or any other official entry, it is not possible to come to the conclusion that authority under that Act and the Rules framed thereunder would oust the jurisdiction of the Civil Courts u/s 9 of the Code. On a proper examination of this Act, it is not even possible to come to the conclusion that the remedy of the plaintiff is optional and that he has the choice of either approaching the civil court or to approach the other statutory authorities. That Act is a regulatory Act providing for the registration of births and deaths and no rights are created under that Act by the mere fact of registration of birth or death of a person

8. This being the position of law, the irresistible conclusion is that the Tribunal has acted within its jurisdiction while dealing with Ext. 12, i. e., the entry in birth and death Register.

9. Challenge is made to the act of the Tribunal alleging that the Tribunal has not granted fair opportunity of hearing by not allowing the wife of the appellant to be examined as a witness and thereby the principles of natural justice have been violated and this has been done in the process of decision making" which can render the decision so made by the Tribunal illegal.

This aspect has been exhaustively dealt with by the learned Single Judge in para 8 of the judgment. Though we have nothing to disagree with the conclusion arrived at by the learned Single Judge in that respect, we would like to add a few lines to the same.

It is submitted by the learned counsel for respondent No. 1, and our attention is also drawn to the order-sheet of the Tribunal from which we find, that an application was filed by the appellant to examine her wife as a witness to disprove the allegation of the election petitioner, i. e., present respondent No, 1, before the Tribunal. As she was not keeping fit and was continuously ill and was, therefore, unable to stand the strain of coming to court to depose, a prayer was made to depute a pleader commissioner. The aforesaid application was dealt with by the Tribunal, in its order dated 21-8-2000 and o. p. No. 1 was directed to produce the witness on 31-8-2000. Again on 31-8-2000 the matter was adjourned to 7-9-2000 on which day at the behest of the present appellant the matter was adjourned to 21-9-2000. It is worthwhile to mention here that the application so filed by o. p. No. 1, i. e., the present appellant, on 7-9-2000. asking for time along with a copy of the discharge card of Nilachal Clinical Establishment stating therein that Anita Dash, wife of o. p. No. 1, another material witness in this case had not yet recovered from her illness and she was not in a position to come to court for her examination and prayer was made for grant of a reasonable time. The matter was therefore adjourned to 21-9-2000 on which day the advocate for o. p. No. 1 filed a memo, to the effect that he did not want to adduce further evidence but on that day the matter was adjourned to 26-9-2000 and then to 29-9-2000 and then to 19-10-2000. Ultimately judgment was passed on 31-10-2000. From the above, it is clear that the matter was

adjourned from 21-8-2000 to 19-10-2000 on several occasions but during that period, no effort had been made to produce the witness so desired to be examined on behalf of the appellant. That apart, the appellant himself had filed a memo, stating therein that he did not want to adduce further evidence. This fact belies the stand of the learned counsel for the appellant that the Tribunal has acted illegally by not giving an opportunity to the appellant to examine a vital witness on his behalf and orders were passed violating the principles of natural justice.

10. In course of hearing, the parties were allowed to be heard on the merits and our attention was drawn to different documents exhibited before the Tribunal. As upon hearing in detail we find there is no illegality or error committed by the learned Single Judge in passing the judgment so impugned, there is no necessity to enter into the validity of the findings of the Tribunal which, have been duly confirmed by the learned Single Judge.

11. In our opinion, there is no infirmity in the judgment of the learned Single Judge warranting interference of this Court. The appeal is accordingly dismissed being devoid of any merit. All interim orders stand vacated. The L. C. R. be sent back forthwith.

There shall be no order as to costs.

M. Papanna, J.

I agree.

12. Appeal dismissed.