

(2005) 08 OHC CK 0042
In the Orissa High Court
Case No : Writ Petition (C) No. 5220 of 2003

Suryakanti Mishra

APPELLANT

Vs

State of Orissa and seven Ors.

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Orissa Grama Panchayat Act, 1964 — Section 10, 11
Orissa Grama Panchayat Election Rules, 1965 — Rule 29

Citation : (2005) 08 OHC CK 0042

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

Bench : Division Bench

Advocate : B. Prasad Das, P.K. Pattnayak, K.B. Sahoo and Md. Zamir, for the Appellant; D.P. Dhal, K. Dash and B.B. Mishra and Ch. P.K. Mishra, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. On the consent of the parties, the matter is taken up for final disposal at the stage of admission.
2. Heard.
3. Petitioner was elected to the office of Sarpanch, Hatibandha Grama Panchayat under Sinapalli Police Station in the district of Nuapada in the election held in the year 2002. Opp.party No. 2, who was one of the defeated candidates in the said election challenged election of the Petitioner by filing Election Petition bearing MJC No. 8 of 2002 in the Court of learned Civil Judge (Junior Division), Nuapada inter alia on the ground that Petitioner cannot read and write Oriya and was disqualified from contesting the election as provided u/s 11(b) of the Orissa Grama Panchayat Act, 1964 (hereinafter called "the Act"). Petitioner while denying to the allegation pleaded that she has read up to Class-III and is able to read and write Oriya.
4. During the enquiry, opp.party No. 2 examined herself as the sole witness and

did not produce any document. Petitioner examined two witnesses including herself and produced the School Leaving Certificate, the entry of School Admission Register, entries of the Result Register of 1975 and 1974 which were marked as Exts. "A" to "D" respectively. Learned Civil Judge (Junior division), Nuapada after considering the evidence of the parties, by his order dated 20th March, 2003, Annexure-2, declared the election of the Petitioner as void. Petitioner challenged that order in Misc. Judicial Appeal No. 4 of 2003 in the Court of Addl. District Judge, Nuapada. The appellate Court dismissed the appeal and confirmed the order of the lower Court by the impugned judgment dated 17.5.2003, Annexure-3 and as against that Petitioner has filed the present Writ Petition with the prayer to quash the orders Annexures-2 and 3.

5. Grievance of the Petitioner is that when she has produced Exts. A to D in support of her educational qualification, there was no scope for the Courts below to disbelieve her ability to read and write Oriya script and to ask the Petitioner to read and write Oriya script in the witness box or to utilize the result of such test as conclusive proof of inability of the Petitioner to read and write Oriya.

6. Learned Counsel for opp.party No. 2 on the other hand submits that Section 11(b) of the Act does not speak of educational qualification, but the ability of a candidate to read and write Oriya. According to him, when the Petitioner was unable to read and write Oriya script in the Court, the documents regarding her educational qualification were of no consequence and so, the Courts below were justified in declaring the election of the Petitioner invalid.

7. In the above context it is appropriate to quote the relevant provision of Section-11.

11. Qualification for membership in the Grama Panchayat-Notwithstanding anything in Section 10 no member of a Grama Sasan shall be eligible to stand for election-

(a) xx xx xx (b) as a Sarpanch or Naib-Sarpanch, if he has not attained the age of twenty-one years or is unable to read and write Oriya;

8. A plain reading of Section 11(b) would thus show that a candidate would stand disqualified if he/she is unable to read and write Oriya. This provision does not speak and about educational qualification of a candidate. The provision thus signifies that a person having no academic educational qualification is eligible to stand for election of the Grama Panchayat, if he is able to read and write Oriya. In other words, even if a person has educational qualification, but is unable to read and write Oriya, he would not be eligible to stand for election.

9. Documents-Exts. A to D no doubt show that Petitioner pursued her study in Bargaon Primary School up to Class-III, but when she was tested in the Court during her cross-examination she was unable to read and write Oriya. In paragraph-7 of her evidence, Petitioner admitted that she could not read the Oriya script which was shown to her in Court and also could not write the name

Truptimayee Meher when she was asked to write that name. When the Petitioner was unable to read and write Oriya and also admitted that she cannot read and write the Oriya scripts shown and dictated to her, the documents Exts. A to D are of no help. Since she is unable to read and write Oriya, the disqualification provided in Section 11(b) of the Act squarely applies to her and the Courts below did not commit any factual or legal error in declaring her election as void.

10. At this stage learned Counsel for the Petitioner seeks for a classification if the above disqualification permanently disqualifies her on the principle of constructive resjudicata even if in the meantime i.e. by the next election she acquires the capability to read and write Oriya.

11. To answer that query and dispel the apprehension, we make it clear that failure of the Petitioner to read and write Oriya in the instant case, disqualified her from contesting the election and her election has accordingly been declared void. If she gets rid of that disqualification by acquiring proficiencies in reading and writing Oriya then that disqualification is removed for a fresh or further election. In that context, we feel it appropriate to observe that at the stage of scrutiny of nomination papers if the Election Officer would have done his job strictly in accordance with Rule 29(a) of the Orissa Grama Panchayats Election Rules, 1965 (in short the Rules) then perhaps a disqualified candidate like the Petitioner could not have been permitted to contest Reading and writing Oriya, as provided in Section 11(b) of the Act is not in accordance with any standard of academic educational qualification but capability to read and write. Obviously that means that the persons filing nominations must have the capacity to read and write Oriya alphabets as well as "Yuktakhyaras" i.e. the alphabets made on combination of vowels and consonants.

12. For the reasons indicated above, we do not interfere with the judgments and order of the Courts below and accordingly dismiss the writ petition. No cost.