

**(2017) 04 OHC CK 0003**  
**In the Orissa High Court**  
**Case No : 4300 of 2017**

Tiburam Tangulu

APPELLANT

Vs

State of Orissa,

RESPONDENT

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**Date of Decision :** 10-04-2017

**Acts Referred:**

<a href=3998>Constitution of India</a>, <a href=3998-243M>Article 243M</a>, <a href=3998-243O>Article 243O</a> - Part not to apply to certain areas - Bar to interference by Courts in electoral matters  
<a href=13635>Orissa Zilla Parishad Act, 19

**Citation :** (2017) 04 OHC CK 0003

**Hon'ble Judges :** Biswanath Rath

**Bench :** SINGLE BENCH

**Advocate :** B. Baug, M.R.Baug, T.Kumar, K.K. Mishra, P.Acharya, S.Rath, D.Panigrahi, G.Patra, A.Satpathy, N.Jena, S.P.Behera

**Final Decision :** Allowed

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## **Judgement**

1. This writ petition has been filed assailing the notification under Annexure-6 issued by the Election Officer notifying convening of the first meeting of the Zilla Parishad at 9 A.M. of 12.3.2017 for oath taking of the Members of the Parishad elected and also for the election of the President of the Zilla Parishad.
2. Undisputed fact involved in the writ petition is that the petitioner is a resident of Chitrakonda in the district of Malkanagiri. He had already held the post of Sarpanch, Member of Panchayat Samiti and once became the Chairman of Kudumulgumma Panchayat Samiti. Presently, the petitioner's constituency comes under Chitrakonda Block by way of Panchayat Raj Department notification under the provisions of the Orissa Zilla Parishad Act and the Rules framed thereunder

issued on 15.11.2016. State Government under the Panchayat Raj Department published list of constituencies for Zilla Parishad Election in the Malkanagiri district.

Petitioner is concerned with the constituency, namely, Chitrakonda-2 being reserved for Scheduled Tribe members. Election as schedule for the post of Members though concluded but no election for the constituency i.e. Chitrakonda-1 and Chitrakonda-2 could be held for the violence taking place in the area and some Maoist activities taking place in the locality even in spite of filing of the nomination by different candidates. It appears, after the election of the Members over except the aforesaid two Constituencies, 13 candidates have been elected from the 13 Zilla Parishad Constituencies, impugned notification under Annexure-6

was issued for convening first meeting of the Zilla Parishad to give oath to the elected member and also for the election of the President of the Zilla Parishad which was scheduled to 11.3.2017. Petitioner by filing the writ petition sought for quashing of the notification vide Annexure-6 so far it relates to election of the President of the Parishad and also sought for issuing a mandamus against the opposite parties to conduct the Zilla Parishad election in respect of Chitrakonda-1 and Chitrakonda-2 constituencies within a stipulated period of time.

3. Sri Baug, learned counsel appearing for the petitioner, referring to provisions contained under Section 6(A) (1) and (2), Section 8 (a) of the Zilla Parishad Act and Rules 40, 41 and 48 of the Zilla Parishad Rules contended that the election of President of Zilla Parishad in absence of completion of the election of all Zilla Parishad Members cannot be held. Sri Baug further submitted that for

non-compliance of the requirements under the aforesaid provisions and particularly

for no publication of the resolutions in the official gazette as well as publication required under Section 6 (2) of the Zilla Parishad Act contended that convening a meeting for the election for the post of President at this juncture is not permissible.

Referring to provisions contained under Articles 243-M and 243-O of the

Constitution of India, Sri Baug, learned counsel appearing for the petitioner contended that the restriction contained under Article 243-O shall not apply to the particular Zilla Parishad for its being covered under Article 243-M of the Constitution of India. On the above premises, Sri Baug, learned counsel contended

that the petitioner has sufficient reason to ask for intervention of the Court in the matter of convening the first meeting as well as proceeding for the election of the President of the Zilla Parishad and thus requested the Court to interfere in the matter and grant the relief as prayed for in the writ petition.

4. Sri P.Acharya, learned Senior Counsel appearing for the State Election Commissioner-opposite party no.2 on the other hand referring to the provisions contained in Section 7 of the Zilla Parishad Act and taking this Court through the provisions contained under Articles 243-E as well as 243-O of the Constitution of India contended that not only the duration of the Zilla Parishad cannot be extended under any circumstance but for the restriction contained in Article 243-O

of the Constitution of India, entertaining the writ will be amounting to interfering in

the election process and the decision, if any, will, be opposed to the mandate of the Constitution of India. Taking this Court to the pleadings in paragraphs- 4, 5, 6 and 7 of the counter affidavit at the instance of the opposite party no.2, Sri Acharya, learned Senior Counsel attempted to justify the grounds raised by him and prayed this Court for rejecting the writ petition thereby making way for election

of the President of the particular Zilla Parishad. Shri Acharya, learned Senior Counsel producing copy of Gazette Notification dated 2nd March 2017, which refuted the allegation of Sri Baug that there is no publication, as required under Section 40 (1) of the Orissa Zilla Parishad Act, also contended that there is no prohibition for proceeding with the election of the President of the Zilla Parishad for

no election for some of the constituencies. Sri Acharya also contended that the election process was convened for, election of the Zilla Parishad Members, the

process gets concluded only after the election for the post of President and Vice President of the Zilla Parishad is over. For the interim direction of this Court, the State Election Commissioner is not in a position to proceed ahead with the election

of the President of the Zilla Parishad and the position presently if allowed will defeat the mandate of the Voters.

5. Considering the rival contentions of the parties, this Court finds, the moot question needs to be considered hear is whether the election of the President of the Zilla Parishad can be held in absence of completion of the election of all the Member constituencies? Reading of the provision contained in Sections 6, 7 and 8 of the Zilla Parishad Act and the provisions in the Rules therein, despite whole prescription prescribed in the matter of conducting the election of the Members of the Zilla Parishad and the President, this Court nowhere finds any statutory restriction to withhold the election of the President in absence of some vacancies involving the Members Constituencies. Reading the provision contained in Article 243-M of the Constitution of India and considering the submission of Sri Baug, learned counsel for the petitioner that for the restriction contained in Article 243-M

of the constitution of India for the reasons of Malkanagiri being a schedule area, as

claimed by Sri Baug, this Court finds the restriction imposed under Article 243-M of

the Constitution of India shall apply only to the areas covered under Article 244 of the Constitution of India and Odisha included in Article 244 of the Constitution, the

restriction contained under Article 243 of the Constitution of India has no application to the present case. Now coming to the restriction imposed in Article 243-O of the Constitution of India, this Court finds there is a clear bar in the Constitution for interference of Courts in electoral matters. This Court finds for the

commencement of the election process already there, there is no scope with the High Court for interfering in the particular election process. Accordingly, this Court

finds force in the submission of Sri Acharya, learned Senior Counsel appearing for the State Election Commissioner. Now looking to the decision on the subject, the Hon"ble Apex Court in the case of Boddula Krishnaiah & Anr v. State Election Commissioner, 1996 AIR 1595 interfering in the interference of the High Courts in the Election process involving Grama Panchayat Election in clear term held that once an election process is set in motion, though the High Court may entertain or may have already entertained a writ petition, it will not be justified in interfering with

the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh in particular when election has already been held in which the voters were allegedly prevented to exercise their franchise.

Similarly, a Division Bench of this Court in the case of Sesadev Pradhan v. State of Orissa and others, W.P.(C).No.5908 of 2003, considering a case of similar nature involving Panchayat Samiti answering a question whether election of the Chairman of the Panchayat Samiti can be stalled for the casual vacancies involving some constituencies and taking into consideration that the petitioner therein was yet to be elected observed as follows:

"The petitioner is yet to get elected as Member of the Samiti and thus, has no right presently either to elect a Chairman of a Samiti or to contest in an election for Chairman of the Samiti and the mere expectation of the petitioner that in the election that may be held for the vacancy in the office of the Member of the Samiti he may be elected cannot confer any locus standi on the petitioner to move this Court to stall the election to the office of the Chairman of the Samiti. On this ground alone, We are not inclined to interfere in this writ petition with the election to the office of Chairman, K.Nuagaon Panchayat Samiti"

Considering the above statutory position as well as the legal position, this Court finds the first prayer involving the writ petition is not maintainable.

6. Now coming to take a decision on the second prayer of the petitioner, particularly, for issuing a direction to the State Election Commissioner to conduct the Zilla Parishad Election in Chitrakonda-1 and Chitrakonda-2 constituencies within a stipulated period of time, this Court finds it necessary to go through the provision of Section 7 of the Orissa Zilla Parishad Act, 1991, which reads as follows:

"7. Duration of Parishads- (1) Every Parishad, unless sooner dissolved under this

Act, shall continue for five years from the date appointed for its first meeting referred to Section 8, and no longer. (2) An election to constitute a Parishad shall be completed- (a) before the expiry of its duration specified in Clause (1); or (b) Where a Parishad is dissolved before the expiry of its duration, before the expiration of a period of six months from the date of its dissolution. (Provided that where the remainder of the period for which the dissolved Parishad would have continued is less than six months, it shall not be necessary to hold an election under this sub-section for constituting the Parishad for such period.)"

It is also relevant here to take into consideration the provisions contained at Rule 3(1) and Rule 4 of the Orissa Zilla Parishad Election Rules, 1994, which reads as follows:

"3. Notification of Election-(1) A general election shall be held for the purpose of election of members to the Parishad before the expiry of the term or in its dissolution." "4. Appointment of dates for election - (1) As soon as the notification under Rule 3 is issued, the Commissioner shall draw up (and notify) the programme of election of members and fix up the date of first meeting of the Parishad and communicate the same to the Election Officers. (2) In the programme so drawn up under Sub-rule (1), the Commissioner shall fix up the date of first meeting of the Parishad for the purpose of Sub-section (1) of Section 8.

(3) The date of election of the member of the Parishad so fixed by the Commissioner shall not be altered or deferred, save with the prior sanction of the Commissioner.

(4) At least (four weeks) before the date fixed for conducting the Poll, The Election Officer shall issue notice in Form No.1 calling for the names of the candidates for the office of the member of Parishad from every constituency and specify therein the date, time and place of filing nomination scrutiny, withdrawal of candidature and the date and time of Poll."

From the reading of the aforesaid provisions, this Court finds there is a statutory mandate under the above provisions to hold election compulsorily before the expiry of the period of the Parishad. Once the election process of the Zilla Parishad commenced, it must end with election of all constituencies to defeat attraction of provision contained in Rule 13 of the Rules, 1994 until and unless the State Election Commission reach the stage of Rule 13. Accordingly, this Court finds force in the submission of Sri Baug, learned counsel for the petitioner so far it relates to issuing a mandamus to the State Election Commissioner for holding the

election for the rest of the constituencies in the Zilla Parishad.

7. For the discussions made hereinabove, the findings arrived at and taking into consideration the law of the land on this particular subject discussed hereinabove, this Court finds, there is no illegality on the part of the State Election

Commissioner in issuing the Notification under Annexure-6 for convening first meeting of the Parishad for purpose of oath and also holding the election of the President of the Zilla Parishad, Malkanagiri. Therefore, this Court declines to entertain the writ petition so far it involves declaring the Notification under Annexure-6 as bad in law. But, however so far the prayer involving a direction to the State Election Commissioner to conduct the Zilla Parishad election in Chitrakonda-1 and Chitrakonda-2 constituencies within a stipulated period of time taking into consideration the mandate of the Constitution as well as the provisions contained in the Act, 1991 and the Rule 1994 which requires conducting fresh election of Zilla Parishadas before the expiry of its duration, this Court directs the State Election Commissioner to hold the election for the Chitrakonda-1 and Chitrakonda-2 constituencies of the Malkanagiri Zilla Parishad immediately but however in compliance of the available statutory requirements.

8. In the result, the writ petition stands partly allowed. However, there is no order as to cost under the circumstances.