
(2010) 11 OHC CK 0041
In the Orissa High Court
Case No : Writ Petition (C) No. 2599 of 2009

Tipnna Kesab Reddy

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Grama Panchayat Act, 1964 — Section 10, 11
Representation of the People Act, 1950 — Section 19

Citation : (2011) 1 OLR 122 Supp : (2011) 1 RCR(Rent) 885

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Gram Panchayat elections in the State of Orissa were held in the month of February, 2007. The date of filing of nomination papers was fixed as 9th January, 2007. The Petitioner as well as the opposite party No. 3 filed their nomination papers for contesting in the election to the post of Sarpanch of Ekasingi Gram Panchayat in the District of Ganjam. The nomination papers were scrutinized and accepted. The result of the election was published on 22.02.2007 declaring the Petitioner as the elected Sarpanch of the said Gram Panchayat.

2. On the date of filing of the nomination paper, the opposite party No. 3 filed an objection before the Election Officer stating therein that the nomination paper filed by the Petitioner should be rejected on the ground that he has not attained the age of 21 years as mandatorily required u/s 11(b) of the Orissa Gram Panchayat Act, 1964. However, the Election Officer accepted the nomination paper of the Petitioner. Voting was held on 13.02.2007. The Petitioner secured 609 votes and the opposite party No. 3 secured 561 votes out of the valid votes cast. The opposite party No. 3 thereafter filed an election dispute before the Civil Judge (Jr. Division), Berhampur registered as Election Petition No. 2 of 2007 seeking declaration of the election of the Petitioner as void and further to declare

the opposite party No. 3 as Sarpanch of the said Gram Panchayat. The Petitioner filed his show cause/written statement on receiving the show cause notice in the election Misc. Case. The opposite party No. 3 in support of his case relied upon the certificate granted to the Petitioner by the Board of Secondary Education, Orissa in the High School Certificate Examination for proving his date of birth to be 25.05.1986 and, as such, the Petitioner was 20 years 7 months 15 days old on the date of filing of the nomination paper.

3. The Petitioner, on the other hand, claimed that he was born on 08.07.1984 and was admitted in a Project Upper Primary School on 08.11.1989. While continuing his studies in Class-II, he left the school on 30.04.1992 and was admitted in a school at Bhubaneswar. As the Petitioner did not fair well at Bhubaneswar, he was again brought back to village Parapentho and was admitted in Biswanathpur Chakka Upper Primary School in Class-III on 10.07.1993 by mentioning his date of birth as 03.05.1985 where he continued for sometime and was admitted in some other school and completed Class-VII. Ultimately he was admitted in Costal Development Technical Bidyamandir, Biswanathpur wherefrom he completed his High School Examination. The Petitioner further stated in the written statement that his date of birth cannot be possible after 21.12.1984 as his mother has undergone a family planning operation in the Public Health Centre at Keluha Palli vide entry No. 300 dated 21.12.1984 and, therefore, the date of birth as entered in the First Admission Register at the Project Primary School is his correct date of birth.

4. The Opposite Party Nos. 1 and 2 in this writ petition, who are the State and the Block Development Officer-cum-Election Officer also filed a written statement denying the allegations made in the election petition and, inter alia, stating that the nomination paper was thoroughly scrutinized and the objection petition was rejected with the observation that the authorities have no power to adjudicate the matter within a short span of time and also denied the allegation with regard to unfair practice, i.e, influencing the opposite party No. 2 in terms of money to accept the nomination paper. The voter list on the basis of which the Election Officer held the Petitioner to be eligible to contest the election was stated to have been prepared in accordance with law and no objection was raised during preparation of the same.

5. The vital issue framed by the Election Tribunal was as to whether the opposite party No. 1 attained the age of 21 years on the date of filing of the nomination. Parties examined witnesses in support of their respective cases and exhibited various documents. The learned Election Tribunal allowed the election petition by his judgment dated 07.09.2007 holding that the Petitioner was not 21 years of age on the date of filing of the nomination. Petitioner being aggrieved preferred Election Appeal No. 6 of 2007 before the learned District Judge, Ganjam-Gajapati. The learned District Judge by his judgment dated 10.02.2009 confirmed the order of the Election Tribunal. Being aggrieved, the Petitioner has preferred the present writ application.

6. A preliminary objection was raised by the learned Counsel for the opposite party No. 3 (election Petitioner) that the writ petition involves disputed questions of facts and concurrent findings of fact, should not be interfered with by exercising jurisdiction under Articles 226 or 227 of the Constitution, by this Court.

7. Mr. Mahadev Mishra, learned Counsel for the Petitioner, on the contrary, submitted that non-consideration of material evidence by the Courts below is a substantial ground for this Court to exercise its power of superintendence under Article 227 of the Constitution to set the wrong right. Mr. Mishra, further submitted that both the Courts below have been swayed away by only relying upon the Matriculation Certificate granted by the Board of Secondary Education, Orissa to come to the conclusion that the Petitioner was born on 25.05.1986. It was further submitted by him that the Courts have discarded the Ext-E, which is the entry in the Sterilization Payment Register at Sl. No. 300 of the P.H.C., Keluha Palli, which shows that the mother of the Petitioner was sterilized on 21.12.1984 by giving a finding that ladies may conceive after such operation, without any materials in support of such finding. According to Mr. Mishra, Ext-B discloses that the Petitioner was a major on 01.01.2002. Therefore, by the date of filing of the nomination paper, he was above 21 years of age and these materials have not been taken into consideration by both the Courts below.

8. Learned Counsel for the opposite party No. 3, however, submitted that if the documents produced by the Petitioner before the Court below are taken into consideration, it would show different dates of birth of the Petitioner and, as such, no reliance could have been placed on such documents more so in view of the Matriculation Certificate which according to law is a conclusive proof of date of birth.

9. On perusal of the judgment passed by the learned District Judge in appeal, it is found that though he has taken into consideration all the documents produced before the Tribunal but he has disbelieved Ext-D showing that the mother of the Petitioner underwent Tubectomy operation on 21.12.1984 and hence, there was no chance of her giving birth to the Petitioner on 25.05.1986 on the ground that failure of many sterilization operations are there and many women also have gives birth to child after undergoing such operation. For the above conclusion, he has relied upon the decision in the case of State of Punjab Vs. Shiv Ram and Others, . With regard to placing reliance on the Matriculation Certificate, the learned appellate Court relied upon different decisions of this Court as well as the Allahabad High Court.

10. However, even accepting all the materials, it is found that the date of birth mentioned in the Voter Identity Card Ext-B as on 01.01.2002 shows to be 18 years. It can, therefore, safely be concluded that the Petitioner had a right to exercise his franchise as on 01.01.2002 having been considered to be eligible to be registered in the electoral roll being not less than eighteen years of age u/s 19(a) of the Representation of the People Act, 1950. It is a common knowledge and judicial notice can also be taken of the fact that parents have a tendency to

reduce the age of the child by mentioning a subsequent date of birth in the school register, which would ultimately culminate in the certificate granted to the children in the High School Certificate Examination. No doubt, the date of birth as reflected in the Matriculation Certificate relates to the date of birth mentioned in the application form filled up by the candidate, which is required to be submitted before the Examining Authority for appearing in the said examination. But, while considering as to whether a person has attained the age of 21 years on the date of filing of the nomination paper as contemplated u/s 11 of the Act, the age mentioned in the Voter Identity Card assumes relevancy more so because such person is allowed to cast his vote in the General Election having attained the age of majority and registered in the electoral roll.

11. In this view of the matter and keeping in view the law as laid down in *Surya Dev Rai Vs. Ram Chander Rai and Others*, , where the Hon"ble Apex Court held that a patent error is an error, which is self evident, i.e., which can be perceived or demonstrated without delving into any lengthy or complicated argument or a long drawn process of reasoning which can be corrected by the High Court in exercise of its power under Article 227 if such error is manifest and apparent on the face of the proceeding, such as, when it is based on clear ignorance or utter disregard of the provisions of law and grave injustice or gross failure of justice will be occasioned thereby.

12. The other vital question which is to be addressed in this case is with regard to interpretation of Section 11(c)(iii) of the Act. Section 11 of the Act reads as follows:

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) as a Sarpanch if he-

(i) is a candidate for election as a member of the Grama Panchayat in respect of any ward; or

(ii) xxx xxx xxx

(iii) is a candidate for election or holds office as a Sarpanch of any other Grama Panchayat;

(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;

(c) as a member-

(i) for more than one ward in the Grama or for more than one Grama Panchayat; or

(ii) if he is unable to read and write Oriya; and

(iii) if he has not attained the age of twenty-one years.

From the above, it would be clear that a person shall not be eligible to stand for election as a Sarpanch if he has not attained the age of 21 years. Admittedly, according to the date of birth as mentioned in the matriculation certificate relied upon by the pp. parties, the age of the Petitioner on the date of filing of nomination paper was 20 years 7 months and 15 days. According to Black's Law Dictionary, the word "attain" means to reach or come to by progression or motion; to arrive at; as, to attain a ripe old age. Thus, to attain the age of 21 years would unambiguously mean that a person on completing 20 years of age attains the age of 21 years. As such, even accepting the date of birth as mentioned in the matriculation certificate of the Petitioner, he already attained the age of 21 years as mandate in Section 11(c)(iii) of the Act and the learned Courts below have erred in law in interpreting the said clause to the effect that a person should complete 21 years of age.

(Emphasis supplied)

13. This Court is, therefore, of the view that the learned Courts below could not have ignored Ext. B, the Voter Identity Card produced by the Petitioner while considering the question as to whether the Petitioner was entitled to contest the election to the office of Sarpanch or not in view of mandate of Section 11 of the Act and should have held that his nomination paper was rightly accepted as he already attained 21 years of age on the date of filing his nomination paper.

14. This Court, therefore, quashes the impugned judgments passed by the Election Tribunal as well as the appellate authority as at Annexures - 1 and 2 and directs that the Petitioner shall continue as the elected Sarpanch of Ekasingi Gram Panchayat.

15. The writ petition is accordingly allowed, but in the circumstances without cost.