

**ORISSA HIGH COURT
CUTTACK**

W.P.(C) NO.5736 OF 2009

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Sarat Chandra Mukhi

.....

Petitioner

-versus-

Sri Mohan Naik & others

.....

Opp. Parties

For petitioner - M/s S.P. Mishra, B.S.Panigrahi,
S.K. Sahoo and
Miss. S. Mishra

For opp. parties - M/s A.K. Nanda & G. Sahu
(for O.P.N.1)

Mr. Ashok Mohanty,
Advocate General
(for O.P.3)

P R E S E N T :

THE HONOURABLE MR. JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 17.08.2009

PRADIP MOHANTY, J. In this writ application, the petitioner challenges the legality and propriety of the order dated 07.01.2009 passed by the learned District Judge-cum-Election Tribunal, Dhenkanal and Angul in Election Misc. Case No.193 of 2008 rejecting his petition filed under Section 24 of the C.P.C. read with Section 5(2) of Orissa Civil Courts Act, 1994 to transfer the said election case to the court of Addl. District Judge, Angul.

2. The fact of the case in brief is that the petitioner was duly elected as Councilor of Ward No.6 under the Angul Municipality in the year 2008. Opposite party no.1 challenged the said election of the petitioner by filing a petition under Section 19 of the Orissa Municipal Act, 1950 registered as Election Petition No.193 of 2008. The petitioner entered appearance and filed a petition under Section 24 of the C.P.C. for transfer of the said election case to the court of Addl. District Judge, Angul on the grounds stated therein. The learned District Judge after hearing the parties by the impugned order rejected the said petition with the observation that there is no specific notification empowering the Addl. District Judge to deal with the application filed under Section 19 of the Orissa Municipal Act.

3. Mr. Mishra, learned counsel for the petitioner submits that as per the provisions of the Orissa Municipal Act, every election petition has to be presented before the District Judge having jurisdiction over the area and since Angul Municipality comes under the jurisdiction of the court of Addl. District Judge, Angul, the present election petition can effectively be tried by the said court of the Addl. District Judge, Angul. Furthermore, as both the petitioner and opposite parties are residing/holding their office within the jurisdiction of the Addl. District Judge, Angul, interest of justice would be best served if the election case is transferred to the said court for disposal. He further submits that though no detailed procedure has been envisaged under the Orissa Municipal Act for transfer of the election case, the learned District Judge has power under Section 24 of the C.P.C. read with Section

5(2) of the Orissa Civil Courts Act to transfer the case to the Addl. District Judge, Angul. The legislative intention behind the establishment of the courts of Addl. District Judge is to accelerate the disposal of cases pending before the District Judge. This fact is clear from the language of Section 5(1) of the Civil Courts Act. He further submits that Section 21 of the Orissa Municipal Act is clear that not only the election petition is to be filed before the District Judge but it is also necessary that the concerned Municipal area in respect of which the election dispute is raised must be situated within the territorial jurisdiction of the said District Judge. Since the District Judge, Dhenkanal has no territorial jurisdiction over the concerned Municipal area, the Addl. District Judge, Angul under whose territorial jurisdiction the concerned Municipality is situated can only have jurisdiction to entertain and try the election dispute. He further submits that Section 19 of the Orissa Municipal Act confers power upon the District Judge to adjudicate the election disputes and Orissa Civil Courts Act, 1984 deals with the establishment and power of different civil courts including the court of the District Judge within Orissa. As such, Section 19 of the Orissa Municipal Act, 1950 can be said to be in parimateria with Orissa Civil Courts Act, 1984. According to the learned counsel, the expression "District Judge" in Orissa Municipal Act, 1950 must be understood by taking into account the provisions of the Orissa Civil Courts Act, 1984 under which the expression "District Judge" is deemed to include "Addl. District Judge". He further submits that the expression "persona designata" connotes a person pointed out by name or other personal description in contradiction to one whose identity is to be ascertained by the office which he holds. The Civil Courts Act came into force in the year 1984.

But the Orissa Municipal Act was enacted in 1950, when the Orissa Civil Courts Act was not in existence in the year 1950. Therefore, the latter Act, i.e., the Orissa Civil Courts Act, shall override the former Act. After bifurcation of the districts, Angul Municipality is coming under the district of Angul, not within the district of Dhenkanal. Therefore, District Judge, Dhenkanal has no jurisdiction to decide the election dispute. In support of his submission Mr. Mishras relies upon the decisions in **S. Srinivas Rao v. High Court of A.P. and others**, AIR 1989 AP 258, **AIR 1962 AP 59** and **Ashok Kumar Sahu v. Raghab Chandra Bhoi**, 2009(I) CLR 550.

4. Mr. Nanda, learned counsel appearing for opposite party no.1 vehemently contends that the present writ application is not maintainable and the learned District Judge, Dhenkanal has rightly rejected the petition under Section 24 of the CPC. There is no illegality and infirmity in the said order. Section 21(2) of the Orissa Municipal Act envisages that such District Judge shall be deemed to exercise jurisdiction as “persona designata” and not in the capacity of a Judge of a Civil Court. The plea of the writ petitioner that the expression “District Judge” also includes “Addl. District Judge” is not sustainable in the eye of law. Section 21(2) of the Orissa Municipal Act completely excludes an Addl. District Judge of a Civil Court to entertain election disputes. In support of his contention he relies upon the decisions in **Central Talkies Ltd. V. Dwarka Prasad**, AIR 1961 SC 606, **Ram Chandra v. State of U.P.**, AIR 1966 SC 1888, and **Thakur Das (dead) by LRs v. State of Madhya Pradesh and another**, AIR 1978 SC 1.

5. Mr. Mohanty, learned Advocate General also supports the order passed by the learned District Judge, Dhenkanal. He submits that an election petition shall be heard by the District Judge within whose jurisdiction the municipality situates, and such District Judge (Tribunal) shall be deemed to exercise jurisdiction as “persona designata” and not in the capacity of a Judge of a Civil Court. A combined reading of Sub-sections (1) and (2) of Section 21 prima facie shows that the statute requires that the election petition shall be heard by the District Judge. Sub-section (2) qualifies the District Judge as Tribunal and the sentence begins with “such District Judge shall be deemed to exercise jurisdiction as persona designata” and specifically states, while acting as such, he will not be acting as a Judge of a Civil Court. He also submits that the decision in **Asok Kumar Sahoo v. Raghab Ch. Bhoi**, 2009 (I) CLR 550 is not applicable to the facts of the present case.

6. Perused the records and the decisions cited by the parties. In the instant case, the only point which falls for consideration is, whether the Addl. District Judge, Angul has the jurisdiction under the Orissa Municipal Act to decide the election dispute under Section 19 of the Act and whether the District Judge, Dhenkanal has power under Section 24 of the CPC read with Section 5(2) of the Orissa Civil Courts Act to transfer the election case to the court of the Addl. District Judge, Angul. For ready reference, Sections 19 and 21 of the Orissa Municipal Act are quoted below :

“19. Form and presentation of petition- (1)The petition shall be presented before the District Judge, together with a deposit of two hundred rupees as security for cost within fifteen days, after the day on which the result of the election was announced and shall specify the ground or

grounds on which the election of the opposite party is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such grounds.

(2) The petition may be presented by any candidate in whose favour votes have been recorded and who claims to be declared elected in place of the person whose election is questioned, or by twenty-five or more elected members of the Ward.

(3) A person whose election is questioned and when the petition states that any other candidate shall be declared elected in place of such person, every successful candidate, who has polled more votes than such candidate, shall make opposite party to the petition.”

“21. Tribunal – (1) An election petition shall be heard by the District Judge within whose jurisdiction the Municipality area is situated.

(2) Such District Judge (hereinafter referred to as “Tribunal”) shall be deemed to exercise jurisdiction as *persona designata* and not acting in capacity of a Judge of a Civil Court.”

7. A combined reading of Sub-sections (1) and (2) of Section 21 of the Orissa Municipal Act *prima facie* indicates that the statute requires that an election petition shall be heard by the District Judge. Sub-section (2) qualifies the District Judge as Tribunal. Sub-section (2) further specifies that the District Judge, who will hear the matter, will be deemed to exercise jurisdiction as “*persona designata*” and not acting in the capacity of a Judge of a Civil Court. The definition of “District Judge” in Section 2 of the Orissa Civil Courts Act to mean the court of the District Judge shall also include the Addl. District Judge has no application so far as an election petition is concerned under the Orissa Municipal Act. In the Law Lexicon “*persona designata*” has been described as “The expression ‘*persona designata*’ connotes a person pointed out by name or other personal description in

contra distinction to one whose identity is to be ascertained by the office which he holds. In the case of **Ram Chandra v. State of U.P.**, AIR 1966 SC 1888, it has been held that “*persona designata*” means a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.

Similar view has been expressed in **Thakur Das (dead) by L.Rs. v. State of Madhya Pradesh**, AIR 1978 SC 1 by following the ratio decided in **Central Talkies Ltd. V. Dwarka Prasad**, AIR 1961 SC 606 and **Ram Chandra v. State of U.P.**, AIR 1966 SC 1888. The contention raised by the petitioner is that since the Orissa Municipal Act came into force in 1950 and the Civil Courts Act came into force in the year 1984, the Civil Courts Act will override the provisions of the Orissa Municipal Act and, therefore, the Addl. District Judge has the power to try the case under the Act. For better appreciation Section 2(1)(a) and Section 5(1) of the Orissa Civil Courts Act are quoted below :

“2. Class of Civil Courts- (1) There shall be the following classes of Civil Courts under this Act, namely,

(a) The Court of the District Judge which shall include the Court of the Additional District Judge;”

“5. Additional Judge- (1) Whenever the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Governor may, after consultation with the High Court, appoint such number of Additional Judges as may be necessary.”

From a bare reading of the aforesaid provisions, it is crystal clear that while acting in the capacity of a Judge of Civil Courts, the District Judge shall

include Addl. District Judge. A bare reading of Section 21 of the Orissa Municipal Act requires the District Judge to exercise jurisdiction as a “*persona designata*” by a deeming provision. That means, except the District Judge no one will be designated as the ‘Tribunal’ under Section 21 of the Orissa Municipal Act. Under the Orissa Civil Courts Act a District Judge also includes an Addl. District Judge. But in the Orissa Municipal Act under Section 21 it is very clear and specific that such District Judge (referred to as ‘Tribunal’) shall be deemed to exercise jurisdiction as “*persona designate*” and not acting in the capacity of a Judge of a Civil Court. Therefore, the Orissa Civil Courts Act will not apply to this case. The ratio decided in **Ashok Kumar Sahoo v. Raghab Ch. Bhoi**, 2009 (I) CLR 550 is not applicable to the present case in view of the fact that in the reported case this Court has only interpreted Section 31 of the Orissa G.P. Act. The provision of Section 31 of the Orissa G.P. Act in its meaning and construction is completely different from that of Section 21 of the Orissa Municipal Act. Under Section 21 of the Orissa Municipal Act, while exercising jurisdiction as “*persona designata*” the District Judge does not act in the capacity of a Judge of a Civil Court, but such prohibition is absent under Section 31 of the Orissa G.P. Act.

For the foregoing reasons, this Court finds no illegality committed by the District Judge in rejecting the application under Section 24 of the C.P.C. read with Section 5(2) of the Orissa Civil Courts Act, 1984. The writ petition is devoid of any merit and is dismissed as such.

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Pradip Mohanty, J.

Orissa High Court, Cuttack.
 August 17, 2009/**G.D.Samal.**

