

**ORISSA HIGH COURT: CUTTACK**

**W. P.(C) NO.10382 OF 2008**

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

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Smt. Anupama Samal ..... Petitioner

-Versus-

Kunja Bihari Parida and others ..... Opp. Parties

For Petitioners : M/s. Prahallad Kar and  
B.S.Samal.

For Opp. Parties : M/s. B.H.Mohanty,  
R.K.Nayak,  
D.P. Mohanty, T.K.  
Mohanty &  
P.K. Swain  
(for O.P.No.1.)

Addl. Government Advocate

(For O.Ps 3 to 5)

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Decided on 27.04. 2010.  
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**P R E S E N T :**

**THE HONOURABLE SHRI JUSTICE M. M. DAS**  
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***M.M. Das, J.***

Election to the office of Sarpanch, Mahakalapada Gram Panchayat under Bari Block in the District of Jajpur was held on 17.02.2007. The writ petitioner, opposite party no.1 and one Amit Kumar Parida filed their nomination papers. The candidates were allotted symbols. The result of the election was

declared on 22.02.2007. The petitioner was declared elected as Sarpanch of Mahakalapada Gram Panchayat. The opposite party no.1 filed Election Misc. Case No.18 of 2007 contending therein that 28 number of valid votes, which were cast in his favour in booth no.10 had been illegally rejected. The said 28 ballot papers cast in favour of the opposite party no.1 were unevenly torned on the upper side of the margin and the Election Officer improperly rejected the said valid votes, which affected the result of the election. The opposite party no.1, therefore, prayed to declare the election of the petitioner to the Office of the Sarpanch as invalid.

2. The petitioner filed her written statement contending, inter alia, that on recounting of the ballot papers, it was found that she (petitioner) got more votes than the opposite party no.1 and was declared elected, inasmuch as, there is no illegality committed in declaring her as the elected Sarpanch of the Gram Panchayat.

3. Learned Election Tribunal framed as many as four issues. Parties led evidence in support of their respective cases. The disputed 28 ballot papers were also exhibited. Presiding Officer of Booth No.10 was examined as P.W.3. The learned Tribunal by its judgment dated 18.03.2008 dismissed the Election Misc. Case, upon which, being aggrieved, the opposite party no.1 preferred Election Appeal No.10 of 2008

before the learned District Judge, Cuttack challenging the judgment passed by the Election Tribunal. Learned appellate court, while hearing the appeal, verified the disputed 28 ballot papers of Booth No.10 and considering the materials available on record allowed the appeal declaring the election of the petitioner as invalid and further declaring the present opposite party no.1 as newly elected Sarpanch of the Gram Panchayat.

The petitioner being aggrieved has preferred the present writ application impugning the judgment passed by the learned appellate court by which her election to the Office of Sarpanch was declared invalid.

4. Mr. P.Kar, learned counsel for the petitioner vehemently urged that the allegation of the petitioner in the election petition that the disputed 28 ballot papers should not have been rejected as invalid votes is not tenable in view of the fact that the Election Officer as P.W.3 categorically stated that in his presence and under his supervision the seals over the ballot papers were opened prior to recounting. The seal of ballot papers packet was, in tact, in respect of all the 11 booths and at the time of recounting, he noticed that some ballot papers without the seal and signature of the Presiding Officer were found in respect of the booth no.10. He checked the ballot papers and found that 28 ballot papers, which were without seal and

signature of the Presiding Officer and without distinguishing marks, were allowed by the Presiding Officer for which he rejected those 28 ballot papers. Mr. Kar further submitted that the learned Election Tribunal categorically arrived at a finding of fact that the above 28 number of ballot papers did not contain the signature of the Presiding Officer at all and the seal of the Presiding Officer was not available in any of the said ballot papers. In some of the ballot papers, the portion of the seal of the Presiding Officer was available. The Tribunal, therefore, concluded that the said 28 ballot papers which did not contain the signature of the Presiding Officer cannot be treated as valid ballot papers.

5. Mr. B.H. Mohanty, learned counsel appearing for the opposite party no.1, on the contrary, contended that the opposite party no.1, as election petitioner, in Paragraphs-11 and 16 of the election petition specifically alleged that the said 28 number of ballot papers had been purposefully torned in the upper side by some of the officials in whose custody the ballot papers were preserved till recounting. As the said ballot papers were not found to be torned during the first counting, the presumption would be that the said 28 ballot papers were mutilated at the instance of the present petitioner in connivance with the officers who were custodian of the said

ballot papers. According to the opposite party no.1, those ballot papers were supplied with the seal and signature of the Presiding Officer and when they were counted at the first instance, there was no objection from the side of the present petitioner.

6. The learned appellate court in the impugned judgment held that the Presiding Officer for booth no.10 specifically stated in his cross-examination that at the time of counting, the used ballot papers were containing the signature of the Presiding Officer initially at the time of counting of votes in respect of booth no.10 and there was no objection from any quarter with regard to the authenticity and validity of the ballot papers, which were subsequently rejected during the recounting. Tearing of 28 ballot papers being beneficial to the writ petitioner (respondent in the appeal) the irresistible conclusion/inference would be that she has committed the mischief.

7. Mr. Mohanty, learned counsel for the opp. party no. 1 contended that under Rule 47 (h) of the Orissa Grama Panchayat Election Rules, 1965 (hereinafter referred to as 'the Rules'), the authority, after rejecting the ballot papers, is required to record the reasons for each paper so rejected, in a separate sheet and admittedly, there was no endorsement by the authority to that effect. Therefore, the result, declaring the

present writ petitioner as Sarpanch was not in accordance with law.

8. Mr. P. Kar, learned counsel for the petitioner , however, on the contrary vehemently argued that the Election Tribunal has found, as a matter of fact, that even though allegation was made that 28 ballot papers were torned/damaged by a public servant, but the opp. party no. 1 failed to prove the same. According to Mr. Kar, if the 28 ballot papers are verified, it will be seen that there is no signature of the Presiding Officer on 17 ballot papers and the seal of the Presiding Officer appears to have been torned on the upper side margin. But in the other 11 ballot papers there is no seal and signature of the Presiding Officer.

9. Rule 47 of the Rules provides that the ballot papers shall be liable to rejection on one or more of the following grounds, namely, -

“47.	xx	xx	xx
(a) to (e)	xx	xx	xx
(f) If it is so damaged or mutilated that its genuineness cannot be established.			
(g)	xx	xx	xx
(h) If it does not bear the seal and signature of the Presiding Officer.”			
	xx	xx	xx”

The appellate court has observed that all the 28 ballot papers are mutilated from one side bearing the seal and signature of the Presiding Officer. But it has not considered the effect that 11 ballot papers, out of 28 ballot papers, do not contain the seal and signature of the Presiding Officer. Hence, Mr. Kar submitted that the 28 ballot papers having been mutilated, genuineness of those cannot be established as per Rule 47 (f) of the Rules. He also argued that the appellate court has acted on the basis of surmises and conjectures without proper verification of all the 28 ballot papers and without meeting the reasonings of the trial court for which the conclusion of the appellate court is unacceptable inasmuch as none of the witnesses, who deposed in the case, have stated that the ballot papers were torned between the date of election on 17.2.2007 and the date of recounting on 22.2.2007.

10. It is a sell settled principle of law that in a writ of certiorari, unless palpable illegality, error apparent on the face of the record, violation of principles of natural justice or non-consideration of the materials available on record is disclosed, this Court in a petition under Article 226 of the constitution seeking issuance of writ of certiorari should not interfere with the impugned order containing finding of facts like an appellate

court. But, however, the power of this Court, even in such matter, can examine the materials on record to be prima facie satisfied about the contentions raised, cannot be ruled out.

11. Keeping the above principle in mind, this Court called for the 28 ballot papers, which were produced during the course of hearing of the writ petition. On examining the same, it appears to the naked eye that the top portions of all the ballot papers have been torned in an angular manner. The Election Officer has been examined as witness no. 3 on behalf of the election petitioner, who has deposed that after the election, the votes were counted in the booth in presence of the agents of the candidates and the election was held peacefully without any objection. He has further stated during the cross-examination that at the time of counting of the votes, he found that all the used ballot papers were containing the signatures of the Presiding Officer. As recorded by the appellate court, the witness no. 3 examined on behalf of the writ petitioner has categorically stated that on 22.2.2007 when the result of the election was declared, the votes were recounted at the Block Office as per his instruction on the application of two candidates. Such recounting was made in his presence. At the time of recounting, he noticed some ballot papers without seal and signature of the Presiding Officer with respect to booth no. 10 for which he

rejected the said ballot papers. Prior to two days, he, as the Election Officer, conducted tabulation after the polling. Tabulation reports submitted by the Presiding Officer of booth no. 10 were tallied with used, unused and surplus ballot papers. There was no adverse report about the conduct of the election. From the above statements, it is clear that when the ballot papers were initially counted in respect of booth no. 10, there was no complaint from any quarter. Though the presumption raised by the appellate court that since tearing of 28 ballot papers being beneficial to the respondent in the appeal (writ petitioner ) inference would be that the writ petitioner has committed the mischief, cannot be accepted as no such inference can be drawn. But, since initially there was no objection raised by the writ petitioner with regard to the said 28 ballot papers of booth no. 10, tearing of such ballot papers, which were found at the time of recounting might be accidental. However, it cannot be said that the said ballot papers in which vote was cast in favour of the opp. party no. 1 should be construed to be invalid for not containing the seal and signature of the Presiding Officer. Portions of the ballot papers show that there are traces of the seal of the Presiding Officer. The combined effect, therefore, would be that those ballot papers cannot be held to be invalid in view of the subsequent mutilation.

12. This Court, therefore, finds no reason to interfere with the order passed by the appellate court, which is impugned in the present writ petition.

13. The writ petition is, therefore, dismissed being devoid of merit. There shall be no order as to cost.

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***M.M. Das, J.***

*Orissa High Court, Cuttack.  
April 27th , 2010/Himansu.*





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