

**ORISSA HIGH COURT: CUTTACK.**

**W.P.(C) NO. 7713 OF 2010**

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

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Usha Sahoo ..... Petitioner

-Versus-

Ambika Sahoo and another ..... Opp. parties

For Petitioner : M/s. S.P. Mishra, Sr. Advocate,  
S.B. Panda and  
A.K. Rout

For opp. parties : M/s. M.K. Mohanty,  
M.R. Pradhan and  
T. Pradhan  
(For O.P. 1)

Addl. Government Advocate  
(For O.P. 2)

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Date of Judgment: 25.11.2010  
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**PRESENT :**

**THE HONOURABLE SHRI JUSTICE M.M. DAS**

**M. M. Das, J.** Election to the post of Sarpanch of Jamunakote Grama Panchayat in the district of Dhenkanal was held on 21.2.2007. The petitioner along with opp. party no. 1 and others contested the said election. After counting all the ballot papers, the petitioner having secured 757 valid votes was declared elected as Sarpanch of the said Grama Panchayat by the Election Officer-opp. party no. 2. The opp. party no. 1 secured the second highest number of valid votes. He challenged the election of the petitioner as the Sarpanch in Election Misc. Case No. 16 of 2007 by filing the said election dispute before the

Civil Judge (Junior Division), Kamakhyanagar on the ground of eligibility of the petitioner to contest the said election, alleging that the petitioner is unable to read and write Oriya and also questioning the correctness of counting of the ballot papers. On receiving notice, the petitioner filed her show cause denying all the allegations made in the election petition. The opp. party no. 2-Election Officer also filed a show cause, inter alia, stating that after declaration of the result, on the application of the opp. party no. 1 (election petitioner), recounting was made in respect of the used ballot papers including the rejected votes of all the 11 booths and after recounting, the election petitioner was found to have secured 752 votes whereas the writ petitioner polled 757 valid votes and was declared elected. It was also stated by him that since there was no objection before him at the time of scrutiny of the nomination papers on the question of eligibility or disqualification of the writ petitioner, there was no occasion for him to delve into the said matter.

2. The learned Election Tribunal after framing the issues and considering the evidence adduced on behalf of the parties causing recounting of the used ballot papers including the rejected ballot papers in presence of the parties and their respective Advocates, arrived at a finding that the election petitioner obtained 752 votes and the writ petitioner, who was the opp. party no. 1 in the election petition, polled 757 votes. Therefore, he found no discrepancy in counting of the votes. With regard to the allegation that booths were captured and votes were caste in the names of the dead persons and absentees, the learned Election Tribunal on analyzing the materials available on record arrived at a finding that there is no concrete proof available in the case record to substantiate the said allegation.

3. So far as the second leg of allegation made by the election petitioner that the writ petitioner has filed a false affidavit before the Election Officer about her passing of Class-III examination and does not know how to read and write Oriya, was denied by the writ petitioner stating that she knows how to read and write Oriya. On analyzing the evidence adduced, the Election Tribunal found that though there are some minor mistakes, she could correctly write the portion dictated to her from “Chhabila Madhu Barna Bodha” in Ext. 3, the mistakes she has committed are in relation to stiff words which include “Yuktakhyara”. The Daily Sambad dated 9.1.2008 which was given to her to read in court consists of very small letters on it and the writ petitioner, who is an old and rustic village lady, aged about 60 years, though could not be able to read it, but this aspect was not sufficient to hold that she was completely ignorant of reading and writing Oriya. The learned Election Tribunal thus concluded that inability to read and write particular sentences is not sufficient to hold that she does not know how to read and write Oriya to satisfy the ingredients of Section 11 (b) of the Orissa Grama Panchayat Act, 1964. Holding thus, the learned Election Tribunal dismissed the election petition. The opposite party no. 1, who was the election petitioner, being aggrieved filed FAO No. 8 of 2009 against the judgment of the Election Tribunal before the learned District Judge, Dhenkanal, who by his judgment dated 12.4.2010 reversing the findings arrived at by the Election Tribunal allowed the appeal on contest and declared the election of the writ petitioner to the office of the Sarpanch of Jamunakote as null and void. As there were more than two candidates in the election fray, he declared that a casual vacancy in respect of the post of Sarpanch of the said Grama Panchayat has

occurred and the concerned authorities were directed to take necessary steps in accordance with law for conducting fresh election for the same. Being aggrieved, the petitioner has preferred the present writ petition.

4. It was contended by the learned counsel for the petitioner that the findings arrived at by the lower appellate court are not only erroneous but also unreasonable. While defending the judgment of the Election Tribunal, he urged that examining the entire scheme of legislation keeping in view the Article-40 of the Constitution and Part-IX thereof, it can safely be construed that the legislature in their wisdom have never intended by including Section 11 (b) of the Act to make a person eligible to contest the election for the post of Sarpanch only by becoming an expert in Oriya language so as to read Oriya flawlessly without any error and writing in Oriya language without any mistake. He further submitted that the lower appellate court lost sight of the disastrous consequence of his finding that his interpretation of law, if accepted, would only make a handful of experts available in the Oriya language eligible to contest the election for the post of Sarpanch and such a situation will not only create pandemonium in implementing the local governance inasmuch as will frustrate the legislative scheme of the Act. It was also urged by him that in common parlance, a person is considered to be passed in an examination by securing 33% of marks, but the learned court below expected 100% performance from the petitioner, who is a scheduled caste rustic old lady of 60 years of age, by putting her to a hard test inside the court room during course of the trial before an intellectual audience. Relying upon Ext. 3, he submitted that from the said Ext. 3, it unequivocally transpires that the petitioner has given her best performance against a very tough and complicated test

even under a critical psychological atmosphere. Learned counsel appearing for opposite party no. 1, per contra, submitted that the lower appellate court on scrutinizing the materials on record though has confirmed the finding of the learned Election Tribunal that there was no booth capturing of Booth No. 3, but with regard to the question as to whether the writ petitioner was able to read and write Oriya or not, on the date of filing of the nomination paper, has categorically and rightly concluded that she was unable to read the Oriya Newspaper dated 19.1.2008 marked as Ext. 1 and she was unable to write a portion of “Chhabila Madhu Barna Bodha” marked as Ext. 2 in writing at Ext. 3.

5. It appears from the judgment of the lower appellate court that the said court was swayed away by the test conducted by the trial court during examination of the writ petitioner in court. Referring to various decisions of this Court, the lower appellate court came to a finding that it is crystal clear that the writ petitioner (respondent no. 1 in the appeal) was not able to read and write Oriya at the time of filing of the nomination paper and hence, finding of the learned Election Tribunal cannot be upheld.

6. This Court in the case of **Labangalata Mallick –v- Mandakini Mallick and others**, 2010 (Supp.-I) OLR 73 dealing with a similar question relied upon the decision in the case of **Kalabati Jena –v- Dhaneswar Jena**, 2009 (Supp.-II) OLR 334 distinguishing the judgment passed by the Division Bench in the case of **M/s. Mrs. Suryakanti Mishra –v- State of Orissa and seven others**, 2005 (Supp.) OLR 906 and laid down that no hard and fast rule can be prescribed for finding out as to whether a person who was a contestant in the Grama Panchayat election knows how to read and write Oriya or

not. Such conclusion should be drawn from the analysis of facts of each case. No doubt, this Court while exercising jurisdiction under Article 226 of the Constitution for issuing a writ of certiorari is not to re-appreciate the evidence on records, but, however, if it is found that the conclusion drawn by the authorities/courts below is based on surmises and conjectures, it can quash such order or orders.

7. In the case of Kalabati Jena (supra), this Court dealing with the phrase “Read and Write Oriya” held that the said phrase has neither been defined in the Orissa Grama Panchayat Act nor in the Election Rules framed thereunder. Keeping the legislative intent in view for introducing such a disqualification clause in case of Sarpanch and Naib-Sarpanch inasmuch as to find out the object to be achieved by such introduction of the disqualification clause, this Court concluded that a person, who can to some extent, read and write Oriya, cannot be said to be unable to read and write Oriya. The standard of reading and writing Oriya having not been specifically provided in the Act and the Rules, the Court is precluded from introducing a minimum standard of a candidate with regard to reading and writing Oriya. In the circumstances of the present case, it can further be added that nowhere within the four corners of the Act or the Election Rules framed thereunder, it has been prescribed that in order to ascertain as to whether a person is able to write Oriya, such person, who has been elected by the majority of the voters, should be given dictation in court for writing it down and such writing to the dictation given should be taken as a test as to whether the said person knows how to write Oriya.

8. In the instant case, this Court on perusing Ext. 3 finds that the petitioner has written down a corrected sentence in Oriya and that

too in a good handwriting. As judicial notice can be taken that Oriya language contains various complicated conjoint letters in various words which even a qualified person may commit mistake in writing such type of words which are commonly known as “Yuktakhyaras”, dictating such words to a witness in court would definitely make the person skippy and unstable in the atmosphere of the court, to write it down such words correctly. This Court, therefore, finds that the approach of the learned lower appellate court was absolutely technical without keeping in view the above facts and without also keeping in mind that by his conclusion, a person elected by majority will be thrown out of his office, to which fact a court trying an election dispute, should not only be cautious but also have the acumen of showing its restraint.

9. In view of the above discussion and conclusion, this Court is of the view that the impugned judgment dated 12.4.2010 passed in FAO No. 8 of 2009 by the learned District Judge, Dhenkanal cannot be sustained and the same is accordingly quashed. The petitioner shall continue as the elected Sarpanch of Jamunakote Grama Panchayat in the district of Dhenkanal till the end of the term in accordance with law. The writ petition is accordingly allowed, but in the circumstances, without cost.

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