

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 1592 OF 2010

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

Smt. Draupadi Soren Petitioner

-Versus-

State of Orissa and others. Opp. Parties

For Petitioner : M/s. D.P. Dhal, S.K. Dash,
A.K.Mishra, K.Dash &
B.S. Daspanda.

For Opp. Parties: Addl. Government Advocate.
(For O.Ps 1 and 2)

M/s. Dr. Sujata Das,
A.Bhuyan & A.K.Dash.
(For O.P. 3)

Date of judgment- 25.04.2011

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M.M. DAS

M. M. DAS, J. The petitioner is the elected Sarpanch of Moroda Grama Panchayat in the district of Mayurbhanj belonging to Scheduled Tribe community. After the election, while she was discharging the duties as Sarpanch of the said Grama Panchayat, a complaint was lodged before the Collector of the District against her, inter alia, alleging that she has five children and was disqualified to contest the election as per the provisions of section 25 (1) (v) of the Orissa Grama Panchayat Act, 1964 (for short, 'the Act'). The opp. party no. 3, who was

also one of the complainants before the Collector, filed W.P. (C) No. 5154 of 2007 before this Court for issuance of a direction to the Collector to dispose of the said complaint/representation. This Court by order dated 18.5.2007 disposed of the said writ petition directing the Collector, Mayurbhanj to enquire into the matter personally or through his subordinate officer and, thereafter, take appropriate action in accordance with law. Consequent upon the said direction issued by this Court, the petitioner alleges that the opp. party no. 3 and others filed a fresh petition before the Collector, Mayurbhanj requesting to make an enquiry against her (petitioner). The Collector took cognizance of the allegation in the subsequent petition dated 20.8.2007 and directed the Block Development Officer, Moroda to enquire into the matter and submit a factual report along with the evidence collected on the allegation. Since no report was received from the Block Development Officer, a reminder was issued on 10.9.2007 and again on 8.10.2007 with a further direction to conduct a local enquiry in presence of the local Ward Members and people of the locality as well as in presence of at least two impartial witnesses and submit the enquiry report with the required documents, like, attested copies of the records from the school, Anganwadi Centre and C.H.C./PHC etc. in relation to the date of birth of the children of the

petitioner. Besides, the petitioner and the opp. party no. 3 were also noticed to appear on 22.10.2007 for personal hearing. The petitioner asserts that on 22.10.2007, she appeared through her advocate, but she was not allowed to be represented by a lawyer. On 1.12.2007, the case was taken up when the opp. party no. 3, the petitioner and one Punta Soren, the second wife of the late Laxmikanta Soren (husband of the petitioner) were examined and their statements were recorded by the Collector. On 7.1.2008, the Collector, Mayurbhanj in G.P. Misc. Case No. 12 of 2007, which is a proceeding under section 26 of the Act passed a final order holding that the petitioner is disqualified from continuing as Sarpanch, Moroda Grama Panchayat. The petitioner alleges that her statement before the Collector clearly reveals that her husband Laxmikanta Soren was dead by that date and he had married twice. The petitioner was his first wife and gave birth to a son in 1998 and then a daughter one and half year thereafter. Her husband got married to one Punta @ Manguli Soren through whom two girls were born in 1991 and a son in 1996. As such, the petitioner is the mother of two children only. She further alleges that on 1.12.2007, the Collector received the enquiry report from the Block Development Officer, copy of which was not made available to her to know its contents. The Collector again directed the Block

Development Officer to cause a fresh enquiry and submit a report. The subsequent report was received on 24/26.12.2007 to which the petitioner had no access. The petitioner also applied for obtaining the certified copy of the order sheet as well as the enquiry report along with the documents supposed to have been collected from the Anganwadi Centre and other places which were never provided to the petitioner on the plea that no certified copy can be granted from the xerox copy of the documents submitted by the Block Development Officer and the Sub-Collector. However, certified copy of the report of the Sub-Collector/ Block Development Officer was made available to the petitioner as at Annexures- 7 and 8. The Collector passed an order in the said proceeding on 7.1.2008 declaring the petitioner to be disqualified from holding the post of Sarpanch. Being aggrieved by the order dated 7.1.2008 passed by the Collector, the petitioner preferred W.P. (C) No. 990 of 2008. This Court, while quashing the order dated 7.1.2008 passed by the Collector, disposed of the said writ petition with the following order:

"I am, therefore, of the view that the petitioner having not been afforded with sufficient opportunity of hearing by supplying the copies of the reports and the documents on which such reports were prepared, for enabling her to lead rebuttal evidence, there has been violation of the principles of natural justice. I, therefore, set aside the impugned order dated 07.01.2008 passed in G.P. Misc. Case No. 12 of 2007 annexed as Annexure-6 to the writ petition and remit the matter back to the

Collector, Mayurbhanj to rehear the matter afresh by providing sufficient opportunity to both the parties to lead oral and/or documentary evidence in their support and by providing copies of the reports along with documents enclosed thereto, of the Block Development Officer as well as the Sub-Collector. It is needless to mention that the parties are at liberty to engage counsel on their behalf if they so choose. The Collector shall expeditiously dispose of the Misc. Case preferably by the end of October, 2008.”

2. After remand, the petitioner was provided with the report of the Sub-Collector, Block Development Officer, Medical Officer, C.D.P.O. and other related documents. The Collector after hearing the matter afresh passed an order on 18.1.2010 declaring the petitioner to be disqualified to hold the office of Sarpanch on the ground that she has incurred/earned disqualification as provided in section 25 (1)(v) of the Act. Being aggrieved by the said order, the petitioner has preferred the present writ petition for appropriate relief.

3. Mr. Dhal, learned counsel for the petitioner submitted that the documents relied on by the opp. parties are fabricated and, more over, the birth certificate was asked by a stranger without giving any information regarding the purpose for which it was sought for. He further submitted that the Anganwadi Worker, who has given the date of birth of the child of the petitioner, was never called for to be cross-examined by the petitioner and the petitioner was not given adequate opportunity to examine her witnesses.

4. A counter affidavit has been filed on behalf of the opp. party no. 3 denying the allegations made in the writ petition and further averring that the Collector gave ample opportunity to the petitioner to examine all her 23 witnesses. But on the next date, learned counsel for the petitioner submitted that he will produce only three witnesses on the next date. However, on 9.11.2009 the petitioner presented six witnesses, who were examined. It is further stated by the opp. party no.3 that the documents produced were maintained in due course of official business and, therefore, cannot be alleged to be forged ones. Copy of the order-sheet maintained by the collector in the said proceeding has been annexed to the counter affidavit containing the orders from 21.7.2008 till 11.1.2010 on which date, the matter was posted for delivery of orders by the Collector.

5. At this juncture, it should be clarified that the order of the Collector as at Annexure-9, which is impugned in the present writ petition, contains findings as disputed questions of fact and this Court, while exercising jurisdiction under Article 226 of the Constitution and examining the legality of the said order in a writ of certiorari, cannot act as an appellate authority. A writ of certiorari can only be issued if glaring errors are shown on the face of the order impugned

and/or errors of law or errors on record are found in it, leading to wrong conclusions. The Writ Court should restrain itself from entering into disputed questions of fact. Keeping this in view, it would be seen that the only question, which can be adjudicated in the present writ petition is, as to whether after the matter was remanded back to the Collector to be decided afresh by order passed in the previous writ petition filed by the petitioner, whether sufficient opportunity was given to the petitioner to defend her case as directed by this Court and, thereby, the principles of natural justice have been adhered to.

6. A bare reading of the order sheet, after the matter was remanded back to the Collector and the impugned order as at Annexure-9, clearly discloses that the petitioner was afforded with sufficient opportunity to defend her case against the allegation made. The Collector meticulously examining the materials available before him has arrived at a finding of fact on the basis of which he has concluded that the petitioner was disqualified to hold the office of Sarpanch as per the provisions of section 25 (1)(v) of the Act. This Court, therefore, finds no reason to interfere with the said impugned order.

7. In the result, the writ petition, being devoid of merit, is dismissed, but in the circumstances without any cost.

All pending Misc. Cases also stand disposed of. The interim order passed earlier stands vacated.

.....

M. M. Das, J.

***Orissa High Court, Cuttack
April 25th ,2011/Biswal***
