

ORISSA HIGH COURT : CUTTACK

W. P.(C) NOs. 19715 & 19750 OF 2008

A N D

W.P.(C) NO. 1377 OF 2009

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

In WPC 19715/2008

Champa Pujari

.....

Petitioner

-Versus -

Manju Majhi

.....

Opp. party

For Petitioner : M/s. J.R. Dash,
Mrs. K.L. Dash, Miss M. Rout &
D.N. Patnaik.

For Opp. Party : None

In WPC 19750/2008

Kunti Majhi

.....

Petitioner

- Versus -

Manju Majhi and others

.....

Opp. parties

For Petitioner : M/s. J.R. Dash,
Mrs. K.L. Dash & M. Rout.

For Opp. Parties : None

In WPC 1377/2009

Smt. Manju Majhi

.....

Petitioner

- Versus -

The Collector, Nabarangpur
and others

.....

Opp. parties

For Petitioner : M/s. G.K. Mishra,
G.N. Mishra,
S.C. Sahoo & P.K. Sahoo.

For Opp. Parties : Addl. Govt. Advocate
(For O.Ps. 1 & 2)

M/s. J.R. Dash, Mrs. K.L. Dash,
Miss M. Rout, M. Rout,

S. Mukherjee & D.N. Patnaik.
(For O.Ps. 3 & 4)

Decided on 29.11. 2011.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. DAS, J.

As all the above three writ applications arise out of common election petitions and involve common questions of fact, they were heard together and are being disposed of by this common judgment.

2. In the three tier Panchayati Raj Election of the year 2007, Champa Pujari, petitioner in W.P.(C) No.19715 of 2008, was elected as Member of Jharigam Panchayat Samiti from Banuaguda Panchayat Samiti constituency and the opposite party no.1 Manju Majhi in the said writ application was elected as Member to the said Panchayat Samiti from Kanakote Panchayat Samiti constituency. The above two candidates contested the election for the office of the Chairperson of the said Jharigam Panchayat Samiti and Manju Majhi was elected as the Chairperson.

3. The petitioner Kunti Majhi in W.P.(C) No.19750 of 2008, who contested the election to be elected as Member, Panchayat Samiti from Kanakota Panchayat Samiti constituency with Manju Majhi, filed an election petition under Section 44 (B) of the Orissa Panchayat Samiti Act, 1959 (hereinafter referred to as 'the Act') before

the learned Civil Judge (Senior Division), Nabarangpur registered as Election Petition No.7 of 2007 with a prayer to declare the election of Manju Majhi as Member of the Panchayat Samiti to be invalid, on the ground that Manju has more than two children and one of such child was born after the cut off date and thus, she was disqualified to contest the said election. Champa Pujari, who contested the election to the office of the Chairperson with Manju and was defeated, challenging the said election of Manju to the office of the Chairperson on the same ground that she was disqualified to hold the office of the Chairperson having a third child born after the cut off date, filed Election Petition No.16 of 2007 before the learned Civil Judge (Senior Division), Nabarangpur for declaring the election of Manju as Chairperson to be invalid and to declare herself as elected to the office of the Chairperson of the Panchayat Samiti, she being the only other contesting candidate.

4. Both the election petitions were heard together by the learned Civil Judge (Senior Division), Nabarangpur and by a common judgment dated 06.08.2008, the Election Tribunal came to the following conclusion :-

“In view of my findings made in Issue No.2, it can safely be said at this stage that the declaration of O.P.-Manju as returned candidate both for the post of Panchayat Samiti member as well as Chair-person is void. There being only two persons in El.P. No.16/07 there is no embargo to declare petitioner thereof as elected chair person. In other Election Petition though more than two

persons were there in election fray still all opp. parties incurring dis-qualification, petitioner though not secured highest number of votes still remaining as only valid contesting candidate, she is declared as elected for the post of Panchayat Samiti member of Kanakote Panchayat Samiti constituency. (2005(I)OLR-(SC)26, 1968-Vol.34-C.L.T. – 53 relied).....”

5. Upon coming to the above conclusion, the Election Tribunal passed the following order:-

“Both the election petitions are allowed but without cost. Election Petition No.7/2007 is allowed on contest against O.P. No.1, on admission against O.P. No.2 and ex parte against O.P. No.3.

Declaration of O.P. No.1 as returned candidate as Panchayat Samiti Member of Kanakote Panchayat Samiti constituency to Jharigam Panchayat Samiti is declared as void. The petitioner is declared as duly elected as Panchayat Samiti member of said Panchayat Samiti U/sec.44-N – Orissa Panchayat Samiti Act, 1959.

Election Petition No.16/2007 is allowed on contest against the opp. party.

Declaration of opp. party as returned candidate as Chair-person of Jharigam Panchayat Samiti is declared as void. The petitioner of said case is declared as duly elected as Chair-person of said Panchayat Samiti.”

6. Manju Majhi, being aggrieved, filed two separate election appeals against the aforesaid common judgment passed in both the election petitions before the learned District Judge, Koraput at Jeypore, which was registered as Election Appeal Nos. 15 and 16 of 2008, Election Appeal No. 15 of 2008, being against the judgment passed in Election Petition No.16 of 2007 and Election Appeal No.16 of 2008 being against the judgment in Election Petition No.7 of 2007.

7. The learned District Judge, also, by a common judgment dated 16.12.2008, disposed of both the election appeals by setting aside the common judgment passed by the Election Tribunal and remitting the election petitions back to him for fresh adjudication.

8. In the interregnum, basing on the original judgment passed by the learned Election Tribunal, the Collector, Nabarangpur issued a Notification on 24.01.2009 declaring Kunti Majhi and Champa Pujari to be elected Member and the Chairperson respectively of Jharigam Panchayat Samiti and directed the Block Development Officer, Jharigam to undertake the process of giving and taking of charge of the respective offices. Manju Majhi, whose election was declared void by the Election Tribunal and the said judgment was set aside by the appellate court and the matter was remitted back to the Election Tribunal for fresh disposal, has filed W.P.(C) No.1377 of 2009 challenging the said action of the Collector and the Block Development Officer. The common judgment passed in both the election appeals by the learned District Judge, remanding the matter back to the Election Tribunal, has been challenged in both the W.P.(C) Nos. 19715 and 19750 of 2008 .

9. On perusal of the common judgment passed by the learned District Judge in Election Appeal Nos. 15 and 16 of 2008, which is impugned in W.P.(C) Nos.19715 and 19750 of 2008, it appears that during the pendency of the appeal, the appellant Manju

Majhi in both the appeals, filed an application under Order – 41, Rule – 27 C.P.C. for admitting a document as additional evidence in support of the pleal that Kunti Majhi, who has been declared to be elected, as Member, Panchayat Samiti from Kanakote Panchayat Samiti constituency was ineligible to contest the election having a third child born after the cut off date. An application under Order – 6, Rule – 17 C.P.C. was also filed by the said appellant Manju Majhi seeking amendment of her pleading to the above effect.

10. The learned appellate court came to the conclusion that if the petitions under Order – 41, Rule – 27 and Order – 6, Rule – 17 C.P.C. merit consideration the matter has to be remitted back to the learned Election Tribunal. If not, the common judgment of the learned Election Tribunal has to be scrutinized to find out whether the said judgment can be sustained or not. Thus, framing the above two questions, the learned lower appellate court, while addressing itself to the question of admission of additional evidence, came to the conclusion that if Kunti, who has been declared as elected Member, is found to be ineligible to hold the office of the Member, Panchayat Samiti, the order declaring her to be elected as Member, cannot be sustained and, therefore, the said document is required to be examined by the learned Election Tribunal. Thus holding, as already stated above, the learned lower appellate court set aside the common judgment passed in both the election petitions and remitted the

matter back to the learned Election Tribunal with the following directions :-

“In the result both the appeals are allowed on contest but without cost. The impugned order is set aside. The Election Petitions are remanded to the court below for fresh adjudication. If the appellant files petition under Order 6 Rule 17 of the C.P.C. and files documents opportunity should be given to the other side to arrive at a just and proper conclusion. Parties are directed to remain present in the court below on 24-12-2008 to receive further instruction. The court below is directed to dispose of the elections petitions within three months.”

11. However, the learned lower appellate court has not addressed itself to the question as to whether Champa Pujari, who was declared to be elected to the office of the Chairperson of the Panchayat Samiti, could have been declared as such by the learned Election Tribunal, which was the subject matter of the Election Appeal No.15 of 2008.

12. As the learned Election Tribunal held that Manju Majhi was not eligible to be elected as Member of the Panchayat Samiti and on that ground, she was not eligible to contest the election for the office of Chairperson of the Panchayat Samiti, in her place declared Kunti Majhi to be the elected Member. The learned Election Tribunal could not have declared Champa Pujari to be the elected Chairperson in the absence of the Member from Kanakote Panchayat Samiti constituency. The Chairperson of the Panchayat Samiti is elected by the elected members of the Panchayat Samiti. Therefore, if

there is a dispute with regard to the membership of one of the members involved in an election petition, unless the same is finalized and in the event, the election of the elected Member is declared to be null and void and a fresh election is held, another Member, who contested for the post of Chairperson, cannot be declared elected as Chairperson, where the election of the elected Chairperson whose election as Member of the Panchayat Samiti has been held to be null and void.

13. No error apparent on the face of the judgment of the learned lower appellate court is found by this Court except that the learned lower appellate court could not have held that there was scope for filing of a counter claim by Manju Majhi. Nevertheless, when the learned Election Tribunal is competent to declare either the election petitioner or any other contestant, who secured maximum number of votes as elected in the event the election of the elected candidate is declared null and void, the learned Election Tribunal is required to find out as to whether such person, who is to be declared as elected, was eligible to hold the office in question.

14. This Court, therefore, also finds no perversity or illegality in the impugned order passed by the learned lower appellate court. Hence, W.P.(C) Nos.19715 and 19750 of 2008 being devoid of merit stand dismissed.

15. With regard to W.P.(C) No.1377 of 2009 filed by Manju Majhi, it is found that in view of the judgment of the learned lower appellate court setting aside the common judgment passed by the learned Election Tribunal and remitting the matter back to him, the Collector, Nabarangpur could not have issued the notification dated 24.01.2009 declaring Kunti Majhi as the elected Member from Kanakote Panchayat Samiti constituency and Champa Pujari as the Chairperson of Jharigam Panchayat Samiti. Thus, the Collector, Nabarangpur could not have directed the Block Development Officer, Jharigam to undertake the process of giving and taking of charge of the respective offices. The said notification dated 24.01.2009 issued by the Collector, Nabarangpur pursuant to the common judgment passed by the learned Election Tribunal, which has been ultimately set aside by the learned lower appellate court, therefore, cannot be sustained and, is, accordingly quashed. The Collector, Nabarangpur is directed to restore the status quo ante till disposal of both the election petitions by the learned Election Tribunal, which have been remitted back to him by the learned lower appellate court.

16. In the result, therefore, W.P.(C) No.1377 of 2009 stands allowed. All the pending Misc. Cases stand disposed of.

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M. M. Das, J.

November 29th, 2011/Subha
