

ORISSA HIGH COURT: CUTTACK.

W.P.(C) No. 10330 of 2014

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

Sri Malaya Kumar Durga Petitioner

-Versus-

State of Odisha & others Opp. Parties

For Petitioner : M/s. Amit Prasad Bose
N. Hota, S.S. Routray,
V. Kar, D.J. Sahoo,
S.K. Dwibedi.

For Opp. Parties 1 to 3 : Additional Government Advocate

For Opp. Party No.4 : Md. G. Madani.

PRESENT :

THE HONOURABLE SHRI JUSTICE C.R. DASH

Date of Judgment : 28.11.2014

C.R. Dash, J. Order dated 25.04.2014, passed by the Collector, Kalahandi, (Opp. Party No.2) in exercise of power under Section 26 (2) of the Orissa Grama Panchayat Act, 1964 (for short 'the Act') vide Annexure- 1 to the writ application, is brought under challenge in this writ application.

2. The petitioner is the returned candidate so far as the post of Sarpanch of Rengalpali Grama Panchayat in the district of Kalahandi is concerned. The opposite party No.4 lost to him in the said election. The opposite party No.4 filed compliant under Section 26 (2) of the Act before opposite party No.2 on 19.03.2012 alleging that the petitioner has begotten three children after the cut off date and

has thus incurred disqualification under Section 25 (1) (v) of the Act. After filing of the aforesaid complaint, opposite party No.4 raised an election dispute in the court of the learned Civil Judge (Junior Division), Jaipatna. There was some delay in preferring the election dispute. Learned Civil Judge (Junior Division), Jaipatna, without hearing the present petitioner in the election dispute, condoned the delay and admitted the election petition. The petitioner had impugned such order in W.P.(C) No.10212 of 2013. This Court, vide order dated 13.05.2013, passed in the aforesaid W.P.(C), set aside the impugned order passed by the learned Election Tribunal in the election dispute and directed the learned Election Tribunal to hear the question of limitation afresh in accordance with law giving opportunity of being heard to both the parties concerned. Thereafter, the limitation petition was heard afresh and the election petition was dismissed as not maintainable as barred by the law of limitation. The said order of the learned Election Tribunal is the subject matter of W.P.(C) No.22796 of 2013, which is pending adjudication.

3. In the meantime, the Collector, Kalahandi (opposite party No.2) proceeded on the basis of the complaint filed by opposite party No.4 under Section 26 (2) of the Act and issued notice to the present petitioner to file show cause. The present petitioner appeared through his counsel. The proceeding before the Collector, Kalahandi (opposite party No.2) suffered several adjournments, on the basis of the adjournment petitions filed by learned counsel for the petitioner and ultimately, the Collector, Kalahandi (opposite party No.2), vide order dated 25.04.2014, disposed of the proceeding holding that the petitioner is disqualified under Section 25 (1) (v) of the Act, as he has begotten three children after the cut off date.

4. The said order of the learned Collector, Kalahandi (opposite party No.2) is impugned in this writ application on two grounds :-

- (i) Whether the opposite party No.4 being the defeated candidate could have filed an

application under Section 26 of the Act, when he has also moved the election petition under Section 30 of the Act ?

- (ii) Whether the proceeding could have been disposed of on the basis of the report of the Block Development Officer, Jaipatna regarding the birth of three children of the petitioner after the cut off date without such report being confronted to the petitioner and the petitioner having not been given opportunity to rebut such report ?

5. Mr. Amit Prasad Bose, learned counsel for the petitioner, in order to substantiate his contention, relies on the case of **Chandrakanti Bhoi vs. The Collector, Balangir and another, 2007 (Suppl.-I) OLR – 400, Smt. Mithila Seth vs. The Collector, Balangir, 2011 (Supp.-II) OLR – 594** and the Full Bench decision of this Court in the case of **Debaki Jani vs. The Collector and another, 2014 (I) OLR (FB) – 867**.

6. In the case of **Chandrakanti Bhoi vs. The Collector, Balangir and another** (supra), it was held that a person, who contested the election, cannot file an application under Section 26 of the Act and he is only to file an election petition.

7. This Court, in the case of **Smt. Mithila Seth vs. The Collector, Balangir**, had taken somewhat contrary view. The Full Bench of this Court, in the case of **Debaki Jani vs. The Collector and another**, in paragraph-9 of the judgment, has held that the power of the Collector to enquire into the matter suo motu cannot be cabined, cribbed or confined. The power is wide enough. The power of the Collector to act suo motu on the question of disqualification of a Sarpanch or Naib-Sarpanch is enshrined in Section- 26 (2) of the Act. Again in the aforesaid paragraph-9 of the judgment, the Full Bench has observed thus :-

“..... The Collector has to prima facie satisfy himself and apply his mind before issuing any notice to the person whose disqualification is in question. The only rider is to observe principles of natural justice. The legislature in its wisdom thought it proper to grant ample power to the Collector to see that purity and sanctity in the election process is maintained and no unqualified person holds the post. The same also does not exclude any other person to bring the notice of the Collector about the disqualification incurred by any Sarpanch or Naib-Sarpanch or any other member of the Grama Panchayat. The Collector exercising the suo motu power is not debarred from obtaining information and materials from various sources.....”

Proceeding further the Full Bench, in paragraph-10, held thus :-

“In view of the analysis made in the preceding paragraphs, we hold that the ratio laid down in Chandrakanti Bhoi and Smt. Mithila Seth, which run contrary to the observations made supra, is not correct enunciation of law.”

8. Needless to mention here that the Hon’ble Full Bench, before arriving at a conclusion, has analysed the meaning of the Latin word *suo motu*. From the observation of the Hon’ble Full Bench, it is, therefore, clear that the Collector, while exercising power under Section 26 (2) of the Act, has authority to obtain information and materials from various sources and any person can bring to the notice of the Collector any fact about the disqualification incurred by any Sarpanch or Naib-Sarpanch or any other member of the Grama Panchayat. On receipt of information, requirement is that the Collector is to conduct an enquiry to prima facie satisfy himself about the veracity of the complaint so that he can act suo motu. The aforesaid observation of the Hon’ble Full Bench, therefore, makes it clear that “any person” even includes a defeated candidate and he can also bring

to the notice of the Collector any fact touching on disqualification incurred by any Sarpanch, Naib-Sarpanch or any other member of the Grama Panchayat.

In view of such fact, I do not find any merit in the first contention raised by Mr. Amit Prasad Bose, learned counsel for the petitioner.

9. Coming to the second contention, it is an admitted fact that notice was issued by the Collector, Kalahandi (opposite party No.2) to the petitioner; petitioner received the notice and entered appearance through counsel. From the counter affidavit filed by opposite parties 1 to 3, it is found that the counsel for the petitioner filed adjournment petitions before the Collector on 27.09.2012, 01.11.2012, 29.11.2012, 20.12.2012 and 16.12.2013. All the adjournment petitions were allowed and time as a last chance was granted on 16.02.2013 adjourning the case to 16.03.2013. Thereafter, the case has been adjourned, though last chance was granted on the basis of the petition filed by learned counsel for the petitioner on 16.03.2013, 27.04.2013, 25.05.2013, 29.06.2013 and 27.07.2013. Ultimately on 25.04.2014, the proceeding was disposed of by the Collector, Kalahandi under Section 26 (2) of the Act holding that the petitioner has begotten three children after the cut off date. The basis of such finding was the report of the Block Development Officer, Jaipatna and the field enquiry report of the Grama Panchayat Extension Officer, Jaipatna. From the course of proceeding and the manner, in which it suffered adjournments at the behest of the petitioner, it is clear that sufficient opportunity was given to the petitioner, but he unnecessarily filed adjournment petitions to gain time, as he was sitting pretty in the elected office. At the same time, it is, however, a matter of judicial concern that the petitioner, though acted at his own peril, had lost the chance to rebut the report of the B.D.O., Jaipatna and the field enquiry report of the Grama Panchayat Extension Officer, which he was entitled to do, had he participated in the proceeding diligently.

10. The petitioner is, however, an elected representative of the inhabitants of a Gram Sasan and he is holding the office by the will of the people. The order of the Collector passed vide Annexure-1 has the consequence of unseating the petitioner. The consequence being so harsh in spite of callousness by the petitioner, I deem it proper and in the interest of justice to afford him an opportunity of being heard in the matter.

11. In view of such fact, both the petitioner and opposite party No.4 are directed to appear before the Collector, Kalahandi on 06.01.2015. No further notice need be issued to them. On the date of appearance on 06.01.2015, the petitioner shall file his show cause, if any. No further opportunity shall be given to him to file show cause in the matter. Learned Collector, Kalahandi is directed to dispose of the proceeding within three months from the date of appearance of the parties on 06.01.2015. Any rebuttal evidence to be given by the petitioner, shall be given within the time prescribed. This order shall be effective subject to payment of Rs.5,000/- as cost to the opposite party No.4 on or before 06.01.2015. Consequently, the impugned order vide Annexure-1 is set aside and the writ application is accordingly disposed of.

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C.R. Dash, J.

Orissa High Court, Cuttack.
28th November, 2014/Subha.

