
(2016) 02 OHC CK 0047

ORISSA HIGH COURT

Case No: W.P.(C) No. 21117 of 2015

Sanjay Kumar Bhoi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision: Feb. 11, 2016

Acts Referred:

- Orissa Grama Panchayat Act, 1964 - Section 25(1)(v)

Hon'ble Judges: Biswajit Mohanty, J.

Bench: Single Bench

Advocate: Deepali Mohapatra and S. Parida, for the Appellant; Prem Patnaik, Additional Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Biswajit Mohanty, J.

1. The petitioner, who is an elected Sarpanch, herein challenges the order dated 28.10.2015 passed by the Collector, Sambalpur - opposite party No. 2 in G.P. Misc. Case No. 1 of 2012 under Annexure-2 by which, the petitioner has been disqualified for being elected as Sarpanch on the ground of violation of the provisions of Section 25(1)(v) of the Orissa Grama Panchayats Act, 1964, for short, "the Act".

2. The facts of the case are as follows;

"The petitioner was elected as Sarpanch of Baduapali Grama Panchayat on 11.2.2012. One Dayanidhi Bhoi made a representation before the Collector, Sambalpur - opposite party No. 2 alleging that the petitioner was disqualified to hold the post of Sarpanch as he has been blessed with three children after 18.4.1995. Since his representation was not considered by opposite party No. 2, he filed W.P.(C) No. 4405 of 2012 before this Court. This Court vide its order dated 6.4.2012 without expressing any opinion on the merits on the claim of said

Dayanidhi Bhoi, disposed of the said writ application by directing opposite party No. 2 to consider the matter, which had been brought to his notice by said Dayanidhi Bhoi and to take a decision as to whether he would initiate a suo motu proceeding or not. It was further directed that if opposite party No. 2 decided to initiate a suo motu proceeding, adequate opportunity of hearing should be given to said Dayanidhi Bhoi as well as to the present petitioner and the matter should be disposed of within a period of three months from the date of receipt of the order. After disposal of the said writ application, the matter was taken up by opposite party No. 2 in G.P. Misc. Case No. 1 to 2012. On 17.10.2012, said Dayanidhi Bhoi filed a memo before opposite party No. 2 that he did not want to proceed with the case. In such background, opposite party No. 2 on 17.4.2013, dropped the case initiated by Dayanidhi Bhoi and converted it into a suo motu proceeding. Ultimately, the suo motu proceeding has resulted in passing of the impugned order under Annexure-2."

3. Ms. Deepali Mohapatra, learned counsel for the petitioner mainly submitted that though this Court vide its order dated 6.4.2012 directed that in case opposite party No. 2 decided to initiate a suo motu proceeding, adequate opportunity of hearing be given to the present petitioner, however, opposite party No. 2 has not given the petitioner adequate opportunity of hearing and as a result of which, there has been flagrant violation of principles of natural justice. She further submitted that though, while passing the impugned order dated 28.10.2015, opposite party No. 2 has relied on the report dated 17.6.2013 of the Child Development Project Officer, Maneswar, report dated 29.6.2013 of the Block Development Officer, Maneswar and report dated 1.7.2013 of the District Project Coordinator, SSA, Sambalpur, however, copies of such reports along with annexures were never supplied to the petitioner enabling him to defend himself properly. Further, the authors of such reports were never called for by opposite party No. 2 to tender their evidence regarding genuineness of the documents supplied by them to opposite party No. 2 and thus, the petitioner was deprived of an opportunity of cross-examining them. In such background, the petitioner could not adduce rebuttal evidence. Thus, the sum and substance of the contention of Ms. Mohapatra was the proceeding as conducted by opposite party No. 2 has been vitiated on account of violation of principles of natural justice.

4. In order to cross-check the veracity of the submissions made by Ms. Mohapatra, learned counsel for the petitioner, on 30.11.2005, this Court directed the learned Additional Standing Counsel to produce the entire record of G.P. Misc. Case No. 1 of 2012 from the office of opposite party No. 2. Accordingly, the same was produced.

5. While Ms. Mohapatra, learned counsel for the petitioner reiterated her submissions, Mr. Prem Patnaik, learned Additional Government Advocate defended the impugned order dated 28.10.2015. Ms. Mohapatra relied on two decisions of this Court in the cases of Sri Kasteswar Khatua v. State of Orissa and 4 others reported in , 2004 (I) OLR 275 and Smt. Pramila Pradhan v. State of Orissa and another reported in , 2005 (I) OLR 411.

6. Perused the entire record of G.P. Misc. Case No. 1 of 2012 produced from the office of opposite party No. 2. It appears that in order dated 3.7.2013, opposite party No. 2 has noted that report dated 17.6.2013 of the Child Development Project Officer, Maneswar, report dated 29.6.2013 of the Block Development Officer, Maneswar and report dated 1.7.2013 of the District Project Coordinator, SSA, Sambalpur were received in his office. But there is nothing to show that these reports along with annexures attached to the reports were ever supplied to the petitioner or to his counsel in order to enable the petitioner to defend himself properly or to prepare his defence properly. However, basing on such reports, the impugned order dated 28.10.2015 has been passed against the petitioner. In such background, this Court is clearly of the view that there has been violation of principles of natural justice. In Kasteswar Khatua's case (supra), the Collector relied on the report of the Sub-Collector as well as the statement of the Doctor of PHC, Baunsuni against the petitioner therein without letting him know about such evidence against him and without affording the petitioner therein an opportunity to cross-examine the Sub-Collector as well as the Doctor of P.H.C., Baunsuni. In such background, this Court held that since the Collector passed the impugned order disqualifying the petitioner therein from the office of Sarpanch basing on the report of the Sub-Collector and statement of the Doctor of PHC, Baunsuni, therefore, in the interest of justice, the Collector should have afforded an opportunity to the petitioner therein to cross-examine the witnesses, whose reports have been accepted as evidence and further, the petitioner therein should have been provided with an opportunity of tendering rebuttal evidence. Since no such opportunity was granted to Kasteswar Khatua, therefore, this Court set aside the impugned order and remanded the matter to the Collector for fresh disposal. Similarly, in Smt. Pramila Pradhan's case (supra), Smt. Pradhan was disqualified from the office of Sarpanch on the basis of the reports submitted by the Block Development Officer, Raikia and the Medical Officer of PHC, Raikia. Copies of such reports, which were furnished to the Collector, were never furnished to Smt. Pramila Pradhan. Though these reports were made the foundation of the adverse conclusion against the petitioner, however, she was not given an opportunity whatsoever to rebut the contents of such reports. In such background, this Court came to hold that there has been violation of principles of natural justice and accordingly, set aside the impugned order granting liberty to the Collector to furnish the petitioner therein with the copies of the reports and to grant her fresh opportunity by giving further show cause to deal with the contents of such reports and also directed that the Collector should give opportunity to the petitioner to adduce any rebuttal evidence and an opportunity of hearing before deciding the matter. The ratio decided in the above noted decisions apply with full force to the present case. Here also as indicated earlier, report dated 17.6.2013 of the Child Development Project Officer, Maneswar, report dated 29.6.2013 of the Block Development Officer, Maneswar and report dated 1.7.2013 of the District Project Coordinator, SSA, Sambalpur were never supplied to the petitioner though these reports have been made basis of the

impugned order. In such background, this Court quashes the impugned order dated 28.10.2015 passed by the Collector, Sambalpur - opposite party No. 2 under Annexure-2 and remands the matter to the Collector, Sambalpur for disposal afresh of G.P. Misc. Case No. 1 of 2012 after providing opportunity of hearing to the petitioner in the manner as indicated above. To make it clear, opposite party No. 2 should issue a fresh show cause to the petitioner along with copies of the above noted three reports and enclosed documents, so that the petitioner can take his stand on such reports and documents properly. Further, opposite party No. 2 should provide opportunity to the petitioner to cross-examine the person/authorities, who have filed the reports and the documents and thereafter, he be provided adequate opportunity to adduce rebuttal evidence, if he so wishes. The petitioner is directed not to apply for unnecessary adjournments and he should extend full cooperation with opposite party No. 2, who should complete the entire exercise within a period of two months from the date of production of certified copy of this order. This Court further directs the petitioner to appear before opposite party No. 2 on 19.2.2016 along with the certified copy of this order for disposal of G.P. Misc. case No. 1 of 2012 within the time indicated above.

The writ application is accordingly allowed.

Issue urgent certified copy of this order as per rules.

A free copy of this order be supplied to Mr. Prem Patnaik, learned Additional Government Advocate for compliance.