

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.2503 of 2022

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

Swapna Sorongi Oraon

....

Petitioner

Versus

**State Election Commission of
Odisha & Ors.**

.... **Opposite Parties**

For Petitioner ... Mr.S.J.Mohanty, Advocate

For Opposite Parties ... Mr. B.Routray, Sr. Advocate.
Mr.S.P.Panda, Addl.Govt.
Advocate

JUDGMENT

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 27.01.2022

Biswanath Rath, J. This writ petition involves the following prayer:

“It is, therefore, most humbly prayed that this Hon’ble Court be graciously pleased to issue a Rule Nisi calling upon the Opp. Parties to show cause as to:

- i) Why the Opp. Parties shall not be directed to accept the Nomination paper of the petitioner, which was rejected by the Opp. Party Nos.4 & 5 on the ground non submission of Caste Certificate from State of Odisha (U/Annexure-8) by declaring the same is illegal, arbitrary and nonest in the eye of law.

- ii) Why the office order of Election Commission of Odisha dated 21.10.2021 (under Annexure-7) in the facts and circumstances in the case of the Petitioner, shall not be declared as Illegal, arbitrary and not binding effect.
- iii) Why the office order of the Election Commission dated 21.10.2021 shall not be quashed looking into the facts and circumstances of the case of the petitioner.

And if the opp. Parties fail to show any cause or show any insufficient cause, then the aforesaid Rule be made absolute and necessary directions be given to the Opp. Parties by issuing appropriate writ/writs;

And pass any other order/orders, direction/directions as would be deemed fit and proper in the facts and circumstances of the present case;

And for which act of kindness the petitioners shall as in duty bound, ever pray.”

2. Petitioner while herein challenged the action of the opposite parties in the rejection of her nomination in the ensuing election also challenges a circular dated 21.10.2021 issued by the Election Commissioner vide Annexure-7. During course of submission, Mr. Mohanty, learned counsel appearing for the petitioner while bringing to the notice of the Court the ground of rejection vide Annexure-8 being non-production of caste certificate issued by the Authorities in the State of Odisha, taking this Court to the Annexure-7 attempted that Annexure-7 contained undisputedly there is compliance of requirement as prescribed vide sub-para-(4) (a) to sub-para (4) (c) , running page-35 of the brief. It is at this stage, advancing his submission, Mr.Mohanty, learned counsel for the petitioner further taking this Court to the Caste Certificate being issued by the competent authority at Annexure-10, page- 41 of the brief, however submitted that the authority issued caste certificate at page 41 is also competent. Mr.Mohanty, learned counsel for the petitioner however did not dispute that this caste certificate has been issued by the authority sitting at Ranchi in the State of Jharkhand

and is not a certificate in terms of circular dated 21.10.2021. It is at this stage of the matter, taking a reversal plea, Mr.Mohnaty, learned counsel for the petitioner giving reference to the provision at Rule 29 (a) of the Orissa Grama Panchayat Election Rules, 1965 read with Section 25 of the Orissa Grama Panchayat Act, 1965 attempted to contest his case involving the alleged illegal rejection of his nomination. It is in the above background of the matter, Mr.Mohanty, learned counsel for the petitioner contended that nomination at the instance of the petitioner was fully protected under the provision of rule 29 (a) of the Orissa Grama Panchayat Election Rules, 1965 read with section 11 and 25 of the Orissa Grama Panchayat Act, 1965. Mr.Mohanty, learned counsel also contended that petitioner should not be suffering for wrong circular dated 21.10.2021.

3. Mr.B.Routray, learned Senior Advocate and Mr.S.P.Panda, learned Additional Government Advocate at this stage of the matter while opposing the contentions raised by Mr.Mohanty, learned counsel for the petitioner, contended that once the petitioner has surrendered to the requirement of the contingency at Annexure-7, there is no scope for such candidates to challenge the rejection, if any, in compliance of the provision at Annexure-7. Further a submission is also advanced by both the counsels that once the petitioner applied under the particular provision in the circular, petitioner is also estopped from challenging any of the conditions therein. Both the counsel however also submitted taking this Court to the statutory provision recorded here even otherwise does not come to the rescue of the petitioner.

4. Considering the rival contentions of the parties and taking up the matter for final hearing at the stage of admission, this Court looking to the impugned order at Annexure-8 finds the order reads as follows:

**“OFFICE OF THE PANCHAYAT SAMITI, NUAGADA
(GP Section)**

(Email-ori-nuagada@nic.in)

Letter No. 201

Dt.24.01.2022

To

Smt. Swapna Sarangi oran
Nuagada

Sub: Submission of grounds of rejection.

Ref: Application Submitted on 24.01.2022.

It is reported by the Designated Election Officer Nuagada G.P. that your nomination has been rejected on the ground of non submission of Caste Certificate of the State of Odisha as per letter No. 2931-SEC Dated 21.10.2021 of the State Election Commission of Odisha.

Block Development Officer,
Nuagada.”

5. At this stage, looking to the requirement under order dated 21.10.2021 under which provision the petitioner had applied her candidature for the ensuing election. Clause –(4) (a) and (4) (c), running page 35 of the brief reads as follows:

“(4) (a) All those contesting to the seats reserved for SC/ST/BCC shall have to submit the caste certificate of that category issued by the competent authority along with nomination form.

(c) Caste certificate issued from the competent authority anywhere in the state of Odisha is acceptable but caste certificate issued from outside the State is not acceptable.”

Reading the aforesaid provision, this Court has no hesitation to observe there is no clear requirement for submission of a caste certificate granted by competent authority of the State besides for petitioner undertaking an exercise under the provision in circular dated 21.10.2021, once candidature is applied under the order at Annexure-7,

one is bound to file caste certificate of particular category issued by the competent authority under the State of Odisha along with the nomination form. Provision hereinabove also made it clear that caste certificate issued from outside the State is not acceptable. This Court here observes knowing fully the restriction and requirement quoted hereinabove, petitioner filed her nomination for the ensuing election. It is at this stage of the matter, this Court takes into consideration the caste certificate filed by the petitioner which is reproduced herein as follows:

“ Office of the Circle Officer Nagri, RANCHI (Jharkhand)
 CASTE CERTIFICATE TO BE ISSUED TO PERSONS
 BELONGING TO A SCHEDULED TRIBES APPLYING FOR
 APPOINTMENT TO POSTS/ADMISSION UNDER THE
 GOVERNMENT OF JHARKHAND.

Application Reference No.JHCST/2021/338648 Issue Date 25/11/2021

This is to certify that Swapna Sorangi Oraon daughter of Pratap Sorongi Oraon of village/Town: Pandu Toli Nagri P.S.: Nagri District/ Division : RANCHI of the State./Union Territory Jharakhand, belongs to ORAON Caste/Sub-Caste under Scheduled Tribes which is approved as Scheduled Tribe for the State of Jharkhand and professes Others (religion).

2. Swapna Sorongi Oranon “and/or” family ordinarily reside (s) in Pandu Toli Nagri Village/Town : Pandu Toli Nagri P.S. : Nagri District/Division : of the State/Union Territory of India.

3. This certificate is valid till further orders or till any change made in SC/ST caste list for Jharkhand State.

Note (a) The term ‘ordinary reside’ (s) used here will have the same meaning as in Section 20 of the Representation of the People Act, 1950 and the place is mentioned on the basis of self-declaration by the applicant,

(b) The authorities competent to issue the caste certificate are indicated below.

(i) District Magistrate/ Additional Magistrate/ Collector/ Additional Deputy Commissioner/ Deputy Collector/1st Class Stipendiary Magistrate/Sub-Divisional Magistrate/ Executive Magistrate/ Assistant Collector and Assistant Magistrate.

(ii) Circle Officer.

(c) Cast/Sub Casts enumerated in Jharkhand Reservation of Vacancies and Posts (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act- 2001, as amended by the fifth and sixth schedule under section 23 and 24 respectively of Reconstitution of Bihar Act, 2000 the Constitution of (Scheduled Castes) Amendment

Order, 1950 and Amendment (Scheduled Tribes) Amendment Order, 1950 and Scheduled Castes and Scheduled Tribes Order (Amendment) Act 2002.

Digitally signed by SANTOSH KUMAR SHUKLA
Digitally Signed by Circle Officer Nagri.

Place : Nagri
Date : 25/11/2021”

6. Glance of the caste certificate, there remains no doubt that the caste certificate was issued in favour of the petitioner on 25.11.2021 at Ranchi in the State of Jharkhand. Such certificate is completely unentertainable by Clause (4) (a) and (4) (c) indicated hereinabove. Thus, there was no proper filing of nomination paper.

7. In the circumstance, this Court finds there is reasonable rejection vide Annexure-8 involving the candidature of the petitioner. For the dispute involving the case of the petitioner well protected under the provision of Rule 29 (a) of the Orissa Grama Panchayat Election Rules, 1965 read with Section 11 and 25 of the Orissa Grama Panchayat Act, 1965, this Court here finds in the event petitioner wanted to take help of such provisions, nothing prevented her to challenge the order of the State Election Commissioner dated 21.10.2021. For the petitioner surrendering to a statute/ guideline or order, once her attempt fails, there is no scope with such party to challenge to the provision therein. It is in the above background, this Court finds no infirmity in the impugned order requiring to be interfered with.

8. In the result, the writ petition stands dismissed at the stage of admission. No cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 27th January, 2022/SKS*