

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.8585 of 2017

An application under Articles 226 & 227 of the Constitution of India.

Puspanjali Chhatria

Petitioner

-Versus-

State of Orissa & others

Opp. Parties

For Petitioner:

Ms. G.Majhi,
Advocate

For Opp. Parties:

Mr. A.K.Nanda,
Addl. Government Advocate
(For O.P. Nos. 3 & 4)
Mr.S.K.Samal,
Addl. Government Advocate
(For O.P. No 5)

J U D G M E N T

P R E S E N T:

MR. JUSTICE BISWAJIT MOHANTY

Date of Hearing: 23.12.2021

Date of Judgment: 05.01.2022

B. Mohanty, J. This writ petition has been filed mainly with prayer to direct the opposite parties to publish the name of the petitioner as winning Sarpanch and names of other winning Ward Members of Kotagaon Grama Panchayat under Kalampur Panchayat Samiti in the district of Kalahandi as

per Section 15 of the Odisha Grama Panchayats Act, 1964, for short “the Act” and to further direct them to hand over the power to the petitioner as Sarpanch.

2. Ms. Majhi, learned counsel for the petitioner submitted that initially during July, 2016 by way of a notification issued by Government of Odisha in Panchayati Raj Department Mandal Grama Panchayat falling under Dharamgarh Sub-Division of Kalahandi district was trifurcated into Mandal Grama Panchayat, Balagaon Gram Panchayat and Nuagaon Gram Panchayat. Balagaon Grama Panchayat covered villages like Balagaon, Khandidangariguda and Kotagaon. Later on during December, 2016, the above noted trifurcation was cancelled and existing Mandal Grama Panchayat was bifurcated to Balagaon Grama Panchayat and Mandal Grama Panchayat. Balagaon Grama Panchayat covered villages Balagaon, Khandidangariguda, Kotagaon, Bhalubutura and Bindhaniguda with headquarter at Kotagaon. Further during same month i.e. December 2016, the above bifurcation was cancelled and Mandal Grama Panchayat was again trifurcated to Kotagaon Grama Panchayat, Nuagaon Grama Panchayat and Mandal Grama

Panchayat. In such background notification dated 23.12.2016 was issued under Annexure-1 constituting Kotagaon as a new Grama Panchayat. On 27.12.2016, a notification was published by the State Election Commission, Odisha under Annexure-2 appointing various dates with regard to holding of election of Ward Members and Sarpanchas of various Grama Panchayats of the State. Kotagaon Grama Panchayat consists of 11 wards. However none filed nominations in respect of 6 Wards covered by villages Balagaon and Khandidangiriguda and accordingly no election could be held in respect of these 6 Wards. But in other Wards, the election was conducted smoothly and accordingly Ward Members for such Wards were declared elected and the petitioner was declared elected as Sarpanch as per Annexure-5. However, the Block Development Officer-cum-Election Officer, Kalampur (opposite party No.4) did not publish the names of the petitioner and other elected Ward Members under Section 15 of “the Act” read with Rule 52 of the Orissa Grama Panchayats Election Rules, 1965, for short, “the Rules” as a result of which though the petitioner was elected as Sarpanch however she has not been able to perform her duties as Sarpanch. According to her

such non-publication is illegal as the same violates Section 15 of “the Act”. In such background, the present writ petition has been filed making the above noted prayers.

3. Mr.A.K.Nanda learned Addl. Government Advocate submitted that Kotagaon Grama Panchyat was carved out of Mandal Grama Panchayat after much administrative exercise. Initially Mandal Grama Panchayat was trifurcated to Balagaon, Nuagaon and Mandal Grama Panchayats with Balagaon Grama Panchayat covering villages like Balagaon, Khandidangariguda and Kotagaon. Later on matter was reconsidered in the light of observations made by this Court in W.P.(C) No. 16861 of 2016 and the above noted trifurcation was cancelled and Mandal Grama Panchayat was bifurcated to Balagaon Grama Panchayat and Mandal Grama Panchayat. On further consideration the above bifurcation was nullified and again Mandal Grama Panchayat was trifurcated to Kotagaon Grama Panchayat, Nuagaon Grama Panchayat and Mandal Grama Panchayat. On account of all these though Kotagaon Grama Panchayat has 11 Wards, but pursuant to Annexure-2 no nominations were filed in 6 Wards viz. Ward Nos. 6 to 11 covering villages Balagaon and

Khandidangariguda during 10.1.2017 to 17.1.2017. Accordingly State Election Commission issued Notification No. 1199 dated 21.1.2017 for filing of nominations for the second time from 27.1.2017 to 30.1.2017. Again no nominations were filed. In such background on 8.2.2017 Block Development Officer-cum-Election Officer, Kalampur (opposite party No.4) submitted a report to the Collector & District Election Officer, Kalahandi under Annexure-A/3. Pursuant to this, on 20.2.2017 the Collector, Kalahandi (opposite party No.3) wrote to Sub-Collector, Dharamgarh (opposite party No.5) under Annexure-B/3 to nominate persons to such Wards with least practicable delay in tune with Section 13 of “the Act” and Rules 30 and 54 of “the Rules”. On 21.2.2017 vide Annexure-A/4, the opposite party No.5 wrote to Block Development Officers under Dharamgarh Sub-Division to submit proposals to nominate persons to such Wards where no nominations have been filed resulting in failure of election held for the second time. According to him pursuant to the above noted letter, the Block Development Officer-cum-Election Officer, Kalampur (opposite party No.4) in the peculiar background of the case requested the villagers of

Balagaon and Khandi Dangariguda to select one person with his/her consent for each Ward viz, Ward Nos. 6 to 11 for being nominated as Ward Members by the Sub-Collector of Dharamgarh for constitution of Grama Panchayat body. But villagers of both the villages strongly refused the proposal and demanded for declaration of Balagaon Grama Panchayat, which was earlier notified twice but later on withdrawn. In this connection the villagers of both the above noted villages submitted their representations to opposite party No.4 on 5.7.2017 which have been enclosed to Annexure-B/4. According to Mr. Samal, learned Addl. Government Advocate on account of such deadlock the Sub-Collector, Dharmgarh (opposite party No.5) could not act as per the Rule 54 of "the Rules". It is in such background publication of result of election under Section 15 of "the Act" could not be made. Both the learned A.G.As. submitted that since only 5 Wards returned elected candidates along with Sarapanch, only 6 elected persons were available and with regard to rest 6 Wards neither anyone could be elected or nominated on account of intractable attitude of the villagers of Balagaon and Khandi Dangariguda. Thus in the absence of nominated

members and in absence of a majority, no wrong has been committed by the authorities in not issuing the notification under Section 15 of “the Act”. They also submitted that the present writ petition has been filed by the petitioner only and she cannot espouse the cause of other 5 elected Ward Members. They further submitted that as the election to Grama Panchayats of the State is now imminent, this Court may not otherwise interfere in the matter.

4. In reply, Ms.Majhi reiterated her earlier submission and stated that upon receipt of the letter from Collector under Annexure-B/3, the opposite party No.5 should have nominated persons and should not have asked the opposite party No.4 to propose the names for nomination under Annexure-A/4. Both the learned A.G.As. defended the letter under Annexure-A/4 submitting that in the background of peculiar facts and circumstances, when the feelings were running high on account of re-organisation of Grama Panchayats and when voters of the 6 Wards have refused to file nominations despite two opportunities being given to them, no wrong was committed by opposite party No.5 asking

opposite party No.4 to propose names, for nomination to be made by him.

5. Heard Ms. Majhi, learned counsel for the petitioner and Mr.A.K.Nanda as well as Mr.S.K.Samal, learned Addl. Government Advocate. No rejoinder has been filed by the petitioner to the counter of opposite parties.

6. The undisputed facts in this case are that Kotagaon Grama Panchayat was constituted after undertaking a series of exercise which included trifurcation, bifurcation and re-organisation of existing Mandal Grama Panchayat, which probably did not satisfy one and all. The said Grama Panchayat has got 11 Wards and in 6 Wards namely Ward Numbers 6 to 11 falling under village Balagaon and Khandi Dangariguda, nobody filed nominations for being elected as Ward Members though opportunity was given to them twice by the State Election Commission. In such background the Collector, Kalahandi (opposite party no.3) wrote to Sub-Collector, Dharamgarh on 20.2.2017 under Annexure-B/3 for nominating eligible persons to such vacant Offices of Ward Members. It may be noted here that as per Rule 54 of "the Rules" Sub-Collector has been assigned with

the requirement to nominate a person where there has been a failure of election for the second time for any seat so that ultimately notification under Section 15 of “the Act” can be issued. It appears in order to get such names, in the peculiar facts and circumstances, Sub-Collector, Dharamgarh on 21.2.2017 under Annexure-A/4 wrote to the Block Development Officers to propose names so that such persons can be nominated. This letter issued by the Sub-Collector to the Block Development Officer has not been challenged by the petitioner. In fact there exists no pleading from the side of the petitioner questioning its validity. Thereafter it appears the Block Development Officer, Kalampur (opposite party No.4) tried his best to persuade villagers of Balagaon and Khandi Dangariguda and requested them to select one person with his/her consent for each of the Wards covering Ward Nos. 6 to 11 to be nominated by Ward Members by the Sub-Collector, Dharmgarh. But villagers of both the villages refused to select any person to be nominated as Ward Members rather demanded restoration of Balagaon Grama Panchayat. It is in such background the Sub-Collector, Dharamgarh (opposite party No.5) has not been able to

nominate any person as required under Rule 54 of “the Rules” for issuance of ultimate notification under Section 15 of “the Act”. Before proceeding further, let us refer to certain relevant provision like Sections 13, 15 of “the Act” and Rules 52 and 54 of “the Rules”, which are quoted hereunder:-

“Section-13. Nomination on failure of election (reservation in certain cases)-

(1) If for any reason whatsoever the concerned electorate fails to return a Sarpanch, or a Naib-Sarpanch, or any other member a fresh election shall be held for the purpose; and if at such fresh election no person is elected the Sub-Divisional Officer shall nominate a person eligible for election to such office to be the Sarpanch, Naib-Sarpanch or such other member, as the case may be, who shall on being so nominated be deemed to have been duly elected.

(2) Where the office of the Sarpanch or the seat of any member is reserved under Section 10 for any particular category and the Sub-Collector fails to nominate under Sub-sec.(1) a person to such office or seat, as the case may be, for non-availability of an eligible person belonging to that category, such office or seat shall, on recommendation being made to that effect by the Sub-Collector be de-reserved by the Collector after such enquiry as he may deem fit and shall, thereafter, be filled up by fresh election.”

“Section-15.Publication of result of election-

Subject to the rules, if any, made in that behalf the names of all persons elected or nominated as Sarpanch, Naib-Sarpanch or any other member of the Grama Panchayat shall, as soon as may be after such election on nomination, be published by the prescribed authority in such manner as may be prescribed.

Provided that if the prescribed authority is satisfied that the majority of members including the Sarpanch of the Grama Panchayat have been duly

returned, he shall publish the names of such members, without awaiting for the result of election whether conducted or not of the remaining members.”

“**Rule-52.** If on the basis of the reports of the Presiding Officers of each ward in regard to election of ward members and his own report relating to election of the Sarpanch, the Election Officer finds that majority of members including the Sarpanch have been duly returned, he shall publish the names of the Sarpanch and also the ward members declared duly elected to each Grama Panchayat in the notice board of the block office as required under Section 15 of the Act. A copy of the notification shall be forwarded by the Election Officer to the Collector of the district where election officer is other than the Collector and also to the Grama Panchayat concerned and to the ward members and Sarpanch elected.”

“**Rule-54.** In case there is a failure of election for the second time for any seat, the Election Officer shall forthwith intimate the position to the Sub-Collector. On receipt of such intimation the Sub-Collector shall nominate a person to such seat with the least practicable delay and inform the Election Officer so that he may include the name of the nominated person in the notification under Section 15 of the Act. The Sub-Collector shall also forward a copy of the list of nominated persons to the Collector.”

7. Section 13 and Rule 54 deal with nomination in case of failure of election for the second time. As per both the provisions in case of failure of election for second time, Sub-Divisional Officer/Sub-Collector has been authorized to nominate persons. Once so nominated, these persons would be deemed to have been duly elected. Under the present

circumstances, where no candidate came forward for contesting election and nomination in 6 Wards as the villagers were demanding constitution of a separate Grama Panchayat, an authority can go forward with nomination only when a person is willing to shoulder the responsibility. Therefore the opposite party No.5 vide Annexure-A/4, which has not been challenged by the petitioner, keeping in mind the ground reality wrote to the opposite party No.4 to propose names for nomination as probably the opposite party No.4 by virtue of his office was in a better position to suggest appropriate names eligible for such nomination. Despite his efforts, it seems on account polarized atmosphere amongst the villagers, the opposite party No.4 could not succeed. In such background the opposite party No.5 could not make any nomination.

8. Section 15 of "the Act" makes it clear that subject to rules made in that behalf names of all persons elected or nominated as Sarpanch, Naib-Sarpanch and Ward Member shall be published soon after such election or nomination. Proviso to Section 15 permits publication when majority of members including the Sarpanch have been duly returned.

Rule 52 makes it clear that when Election Officer finds that majority of members including the Sarpanch have been duly returned, he shall publish the names of Sarpanch and Ward Members duly elected in the notice board under Section 15 of “the Act”. So a harmonious reading of Section 15 & Rule 52 makes it clear that unless a majority of Ward Members including Sarpanch has been elected/nominated, no publication of result of election under Section 15 will be permissible. Here only 6 were elected including Sarpanch and offices of rest 6 Ward Members remained vacant both on account of failure of election as well as nomination. Here as indicated earlier on account polarized atmosphere, none could be nominated for 6 Wards. Under these circumstances, clearly a majority of seven as required under law was not available. In such background and in peculiar facts and circumstances of the case, this Court is of the opinion that no illegality has been committed by the authorities in not issuing a publication, under Section 15 of “the Act”.

Accordingly, the writ petition is dismissed.

.....
Biswajit Mohanty, J.

Orissa High Court, Cuttack
The 5th January, 2022 / Kishore