

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5056 of 2022

Binod Das @ Binod Bihari Das

Petitioner(s)
Mr.D.P.Dash, Advocate

-versus-

Government of Odisha & Ors.

Opposite Party(s)
Mr.S.P.Panda, AGA
Mr.P.Mohanty, Sr.Adv.
Mr.B.Routray, Sr.Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
07.04.2022**

Order No.

5.

1. Heard learned counsel appearing for the parties.
2. This writ petition involves the following prayer:

“In view of the above noted facts and circumstances, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to;- admit this writ petition, Call for the Records and may kindly be pleased to issue appropriate writ/s, either in the form of mandamus or any other appropriate form/s, directing the O.Ps. and their authorities to publish the final ward-wise electoral roll for C.M.C. (Cuttack Municipal Corporation) in including/ inserting name of the petitioner therein and/or by making necessary corrections and adding/ including the name of the petitioner in the assembly electoral roll published on 05.01.2022 by the O.P. No.4 i.e. Electoral Registration Officer-cum-Sub-Collector, Cuttack for Choudhwar-Cuttack Assembly Constituency.

Further, may kindly be pleased to direct the O.P No.2 i.e. the State Election Commission, Odisha, to expunge/ withdraw the aforesaid impugned portions of restrictions imposed in its order dated 02.02.2022 vide Annexure-5 and allowing the O.P Nos. 5 and 6 i.e. the concerned Election Officer of C.M.C. to publish the final electoral roll for C.M.C in view of Rule-16 of Odisha Municipal Corporation (D.C.W.R.S & C.E.) Rules-2003 by inserting/ including the name of the petitioner therein, within the time stipulation as may deem just and proper by this Hon’ble Court for the ends of justice.

Also, may be pleased to issue any writ/s, order/s, direction/s, as may deem just and proper for the ends of justice and to protect the Constitutional rights of franchise of the petitioner.

And for such act of kindness the petitioners as in duty bound shall ever pray.

3. For the development taking place in the meantime and as the Municipal Election came to an end, learned counsel appearing for the petitioner does not want to press the first part of the prayer involved

herein. However, taking to the second part prayer involved herein with regard to insertion of the name of the petitioner in the Assembly electoral roll by way of correction applying provision contained in Section 23 of the Representation of the People Act, 1950 (for short “the Act, 1950”) Mr.Dash, learned counsel for the petitioner contended that for the application of the petitioner at page-47 of the brief, pending with the Electoral Registration Officer, Cuttack-Choudwar Assembly Constituency-cum-Sub-Collector, Cuttack, the said authority is duty bound to take up the issue and do the needful in exercise of power under Section 23 of the Act, 1950. Reading through the provision, Mr.Dash, learned counsel attempted to justify his claim so far it relates to admission of petitioner in the electoral roll is surviving in the present. There is no objection to such request as the request is based on the provision of section 23 of the Act, 1950 by the learned State Counsel.

4. Considering the rival contentions of the parties and going through the provision in Chapter-(3) of Section 23 of the Act, 1950, this Court finds there is provision for inclusion of names in the electoral roll for the Assembly Constituency provided name of such person not included as of now. Provision indicated hereinabove has also prescribed the manner of consideration of such application. This Court here since finds an application at the instance of the petitioner at running page 47 of the brief is already submitted to the Electoral Registration Officer, Cuttack-Choudwar Assembly Constituency-cum-Sub-Collector, Cuttack-opposite party no.4 and is pending consideration as of now, in the disposal of the writ petition, this Court directs the opposite party no.4 to consider the application of the petitioner at running page 47 onwards of the brief appears to have been received by the opposite party no.4 on 17.2.2022 as clearly borne in page 47 of the brief and take decision on the claim of the petitioner for inclusion of his name in the electoral roll in the particular Assembly Constituency by completing the entire exercise within a period of two months from the date of communication

of certified copy of this order and if necessary also involving the petitioner

(Biswanath Rath)
Judge

Sks

