

A.F.R.

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.8022 of 2022

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

Sasmita Nayak

: Petitioner

-Versus-

State of Odisha & Others

: Opposite Parties

For Petitioner

:

M/s. S. Mohanty,
S. Pattnaik, A. Dash

For O.Ps.1 to 4, 6 & 7

:

Mr. R.P. Mohapatra, AGA

For O.P.5

:

Mr. B. Routray,
Sr. Advocate being assisted by
Ms. M. Panda,
Advocate

For O.P.8

:

M/s.B.S. Das,
Mr. P.K. Mohapatra

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of hearing & Date of Judgment :: 12.05.2022

1. This writ petition is taken up for final hearing on consent of all the parties involved herein.

2. This writ petition involves the following prayer:-

“It is, therefore prayed that this Hon’ble Court may graciously be pleased to admit this Writ Petition, issue notice to Opp. Parties and after hearing from the counsels of parties, issue a Writ in the nature of mandamus/certiorari and quash the letter no.965 dtd. 25.03.2022 corresponding to notification no. 5536 dtd. 21.03.2022 of SEC, Odisha under Annexure-3 for the interest of justice.

And further direct to publish the result of Naib-Sarpanch of Chasakahnd Gram Panchayat as per resolution dtd. 11.03.2022 under annexure – 1 as the petitioner has already elected as Naib-Sarpanch.

And issue any other order/orders, direction/directions and writ / writs as this Hon’ble Court deem fit and proper giving complete Justice to the petitioner.”

3. Short background involved in this case is that after completion of Election for the post of Sarpanch and Word members in the respective Gram Panchayats held under the Odisha Gram Panchayat Act, 1964 hereinafter in short be called as “the Act, 1964”, the Government in its appropriate Department issued a general notification to conduct the Gram Panchayat Election so far it relates to Naib-Sarpanch in the respective Panchayats in the entire State. This case involves election for the post of Naib-Sarpanch for the Gram Panchayat Office of the Chasakhanda and the Petitioner and the Opposite Party No.8 were the only two contestants participated in the voting taking place as per the schedule under Form No.17.A (Rule 75) issued by the Election Officer on 03.03.2022. There is no dispute between the parties that until there is exercise of power by the Presiding Office under provisions of the Rule 80 of the Odisha Gram Panchayat Election Rules, 1965 hereinafter in short called as “the Election Rules 1965”, the only

conflict between the Petitioner and the State Authorities as well as the Election Authority more particularly in the action of Presiding Officer and the Election Officer and for the intervention of the State Election Commission appears to after declaration of votes counted / polled by the Petitioner and the Opposite Party No.8, there has been misconducting by both the Presiding Officer and the Election Officer in illegally taking a ride for 2nd Election for the post of Naib-Sarpanch. The Petitioner alleges that there is clear violation of Rule 80 & Rule 81 read with Section 15 of the Election Rules 1965 and the Act 1964.

4. In the above background of the matter Mr. Mohanty, learned counsel for the Petitioner contended that there is inaction by the Opposite Party Nos.5, 6 & 7 in not declaring the result on the basis of the report of the Presiding Officer and in an illegal attempt they went on bringing in further notification to hold the 2nd time meeting of the Chasakhand Gram Panchayat and proceeded with reworking for election of the Naib Sarapanch of Chasakhand Gram Panchayat in the manner prescribed there in Annexure-3. In strengthening his submission, taking this Court to the pleadings in the writ petition Mr. Mohanty, learned counsel for the Petitioner contended that for the disclosures through Annexure-2 it appears, the Presiding Officer undertaking the Election Exercise as per the Election notification has already come to hold that the private Opposite Party No.8 has come to secure 7 (seven) numbers of votes whereas the present Petitioner has secured 8 (eight) numbers of votes and after observing so, even after taking into account the validity in the ballot papers vide proceeding dated 11.03.2022 has further come to observe that the candidate No.1 Bidumati Gochhayat-the Opposite Party No.8 herein

has secured seven number of votes whereas the second candidates Sasmita Nayak-the present Petitioner has secured eight number of votes. It is claimed that the Presiding Officer has almost completed the proceeding up to Rule 80 and almost landed to take the proceeding to Rule 81 of the Election Rules 1965 and submitted that it was on the part of the Presiding Officer to only communicate the above result to the Election Officer to complete the formalities under Rule 80 and then the Election Officer under the provision at Rule 81 was required to publish the result of the election of the Naib-Sarpanch in the notice board of the Block Office as required U/s.15 of the Act, 1965 and then the Election Officer was also required to forward copy of such notification to the Collector as well as the Gram Panchayat concerned in a way to complete his exercise under Rule 81 of the Election Rules, 1965.

It is, in the above view of the legal position Mr. Mohanty, learned counsel for the Petitioner contended that there has been misconducting by the Presiding Officer as well as by the Election Officer and while claiming that the action of the Opposite Party Nos.6 & 7 vide Annexure-3 remains contrary to the provision at Rule 80 & Rule 81 of the Election Rules, 1965, Mr. Mohanty, learned counsel for the Petitioner claimed that issuing notice under Annexure-3 becomes bad and thus requested this Court for quashing the notification at Annexure-3 and further for issuing a mandamus declaring the result in the election held in the first attempt for the post of Naib-Sarpanch of the Chasakhand Gram Panchayat.

5. Mr. Mohapatra, learned Additional Government Advocate on the other hand taking this Court to the plea taken in the counter affidavit and on production of the relevant documents, while not

denying the drawing of the proceeding by the Presiding Officer vide Annexure-1 and while also not disputing the legal position involving such matter through the provision at Rule 80 & Rule 81 of the Election Rules, 1965 clearly disclosing the manner of holding of election and declaration of result, however taking this Court to the documents filed through the counter affidavit in an attempt to support the further notice vide Annexure-3 contended that it is after drawing of the election proceeding by the Presiding Officer vide Annexure-1, it appears, there was serious commotion in the matter of consideration of certain ballot papers by the Presiding Officer and in the process more than 200 persons rushed inside the counting place forcing the Presiding Officer to count the particular two numbers of invalid votes of the particular candidates as reveals from the document filed in counter affidavit at Annexure-A/6. Taking this Court to the document at Annexure-A/6 and the sequence indicated therein and further taking this Court to the development through the order at Annexure-B/6 a communication by the Block Development Officer, Remuna to the Secretary, State Election Commission Mr. Mohapatra, learned Additional Government Advocate claimed that the Block Development Officer had intimated the State Election Commission regarding the incident taken place and thereby requesting the Election Commission to consider for fresh Election for the post of Naib-Sarpanch in the Chasakhand Gram Panchayat. To support the action through Annexure-3 Mr. Mohapatra, learned Additional Government Advocate also attempted to strengthen its view through the documents at Annexure-C/6 & D/6.

In the above circumstance while attempting to oppose the claim of the Petitioner Mr. Mohapatra, learned Additional

Government Advocate further attempted to support the decision taken through the order vide Annexure-3. Mr. Mohapatra, learned Additional Government Advocate, however, did not bring to the notice of this Court any development either involving the notification vide Annexure-3. This Court here also finds surprise when the State is resisting its case for the troubles created in the course of election process, it is not making its stand clear as to the reason not initiating any criminal proceeding involving such disturbance. Documents, however, disclose for the Police presence, they could be able to control the situation.

6. Mr. Das, learned counsel for the Opposite Party No.8 even though did not dispute to the Presiding Officer's communication dated 11.03.2022 indicating that the Petitioner is in receipt of eight votes whereas the Opposite Party No.8 was in receipt of seven votes, but attempted to toe the submission of Mr. Mohapatra, learned Additional Government Advocate and accordingly submitted for dismissal of the writ petition. Mr. Das, learned counsel, however, did not support the steps for 2nd Election.

7. Mr. Routrary, learned Senior Advocate appearing on behalf of the State Election Commission while supporting the stand taken by the State Authorities through their counter affidavit and the submission made by Mr. Mohapatra, learned Additional Government Advocate, though did not dispute to the legal position involving the Rule 80 & Rule 81 of the Election Rules, 1965, however, for the communication of the Block Development Officer seeking decision of the State Election Commission, contended that it is only on the basis of the information of the Officers concerned, the State Election Commission was compelled to give a direction for

holding the second election for the post of Naib-Sarpanch of the Chasakhand Gram Panchayat. Mr. Routray, learned Senior Advocate, however, did not dispute the recordings in the proceeding vide Annexure-1 and while not disputing the communication of the Presiding Officer clearly indicating number of votes by the two candidates, requested this Court for passing lawful order.

8. For better understanding of the case of the parties and for the greater reliance of the provision at Rule 80 & Rule 81 of the Election Rules, 1965, this Court here takes into account the provisions at Rule 80 & Rule 81 of the Election Rules, 1965 as follows:-

“80. Immediately after voting is over, the Presiding Officer shall count the votes in the presence of the members, as may be present and declare the candidate securing the order number of valid votes to have been elected. In the event of there being an equality of votes, the Presiding Officer shall draw lots. The candidates whose name is first drawn shall be declared to have been elected. The Presiding Officer shall thereupon communicate the result forthwith along with the connected election papers to the Election Officer. The election papers shall be forwarded in sealed packets and the provisions of Rule 56 regarding preservation of these papers shall apply.

81. The Election Officer shall thereupon publish the name of the Naib-Sarpanch duly elected or nominated in the notice board of the Block office as required under Section 15. He shall forward a copy of the notification to the Collector as also to the Gram Panchayat concerned.”

9. Reading the development through the recording of the Presiding Officer at Annexure-1 and the mandates under the Election Rules, 1965 vide Rule 80 & Rule 81 of the Election Rules,

1965, this Court finds, for the Presiding Officer had already counted the votes in presence of the members, the only option available with the Presiding Officer was to declare the result and since one of the candidate had already secured more votes than the other candidates, the only option available with the Presiding Officer was to communicate the result forthwith and forwarding the same along with the election paper to the Election Officer to publish the result following other requirements under the provisions of the Rule 80 and then the Election Officer was required to work under the provision at Rule 81 of the Election Rules, 1965.

10. Considering the rival contentions of the parties, this Court finds, for the clear disclosure in Annexure-1, the votes & counting process continuing through page 12 to 15, it appears, the Election for the post of Naib-Sarpanch of Chasakhand Gram Panchayat had already crossed the stage of Rule 80 of the Election Rules, 1965 even with determination of votes casted in favour of all the two contestants involved. Once the Election process has already crossed the stage under Rule 80, the only step left behind is to follow rest mandate through the Rule 80 & Rule 81. It is here taking into account the further disturbance taken place after the stage of Rule 80 is over, this Court observes, even assuming there has been some disturbance, since it cannot be construed to be an Election disturbance in affecting the process under Rule 81 and the disturbance, if any, and the person in disturbance, if any, should be taken care of in separate and in appropriate proceeding and there is nothing to do invalidating the Election, which is already crossed the stage of Rule 80 of the Election Rules, 1965. For the stand of all the parties involved this Court here also does not find any request for

recounting by either of the parties contesting even after the Presiding Officer records finally the number of votes secured by both the contestants.

In the circumstance, there was even no other scope with the Presiding Officer than to follow the Rule 80 & Rule 81 of the Election Rules, 1965 and the Election Officer was to publish the name of the Naib-Sarpanch duly elected in the notice board of the Block Office as required U/s.15 of the Odisha Gram Panchayat Act, 1964 and further after notice to forward a copy of such notification to the Collector and also to the Gram Panchayat, if any. In the circumstance, this Court finds, there was no requirement for obtaining opinion or consultation of Higher Officer the Election Commission. There was even no scope for bringing in the further election through the notice dated 25.03.2022.

11. In the circumstance, this Court finds, there is no necessity of going for second Election under Annexure-3. This Court thus holds, issuing notice at Annexure-3 is invalid and for clear disclosures through Annexure-1, any further action even for the interim application herein are all innocuous. Thus while declaring further proceeding involving the second Election process as bad and for the clear disclosure in Annexure-1, the Presiding Officer was to clear his exercise under Rule 80 of the Election Rules, 1965, the matter is remitted back to the stage of declaration by the Presiding Officer under Rule 80 of the Election Rules, 1965 and the final outcome in the Election involving the Naib-Sarpanch in the Chasakhand Gram Panchayat under the notification dated 11.03.2022 shall be strictly in terms of the Rule 81 of the Rules, 1965. Further exercise involving

the direction herein shall be concluded within a period of seven days from the date of receipt of a copy of this judgment.

12. The original records submitted by Mr. R.P. Mohapatra, learned Additional Government Advocate be returned back to Mr. R.P. Mohapatra, learned Additional Government Advocate for obtaining necessary endorsement in case brief.

13. The writ petition succeeds. In the circumstance, there is, however, no order as to costs.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 12th May, 2022//A. Jena, Sr. Stenographer

