

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14074 of 2022

Ashis Kumar Mishra

.....

Petitioner
(In person)

-versus-

The State of Odisha and others

....

Opp. Parties

Mr. Ajodhya Ranjan Dash,
Additional Government Advocate
(For Opposite Party Nos.1 to 3)

Mr. Harmohan Dhal, Advocate
(For Opposite Party No.4)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
30.08.2022

Order No.

6. 1. This matter is taken up through Hybrid mode.
2. Though this matter is listed for orders, on the consent of the Petitioner in person and learned counsel for Opposite Parties, the same is taken up for final disposal.
3. Petitioner in this writ petition seeks to assail the notification dated 17th May, 2022 (Annexure-1) issued by the Election Officer, Muribahal Cooperative Society, Muribahal in the district of Balangir (for short, 'the Society'). The Petitioner further prays for a direction to Opposite Parties to modify the instruction under Annexure-1 and to conduct the election for un-reserved electoral constituency.
4. Mr. Mishra, the Petitioner submits that he is a member of the Society and is a valid voter. Election notification has been issued without a single constituency being declared un-reserved,

which violates Article 14 of the Constitution of India. Rule 2(g) of the Odisha Cooperative Societies Election to the Committee Rules, 1992 (for short, 'the Rules') defines 'Reserved constituency' or 'Specific constituency'. It stipulates that a constituency reserved for the members belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, Women, as the case may be. But while issuing notification for election, the said Rule has been given a go-bye without reserving single constituency for the unreserved candidates. He, therefore, submits that the notification published is in flagrant miscarriage of justice and is liable to be set aside.

5. Mr. Dhal, learned counsel appearing for the State Cooperative Election Commission (for short, 'the Commission') draws attention of this Court to the amendment brought to the Odisha Cooperative Societies Act, 1962 in the year 2011, namely, The Orissa Cooperative Societies (Amendment) Act, 2011, which amended the provision of Section 28 of the Act. The amended provision of Section 28 (2)(c) reads as under:-

“ 28 (2)(c).— In the case of a Primary Society other than Large-sized Adivasi Multipurpose Co-operative Society, in the total number of elected members of the Committee, there shall be representation from among the members belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes including Socially and Educationally Backward Classes and the Women which shall be proportional to the ratio between the members belonging to each of (sic) category and the total number of members of the said society, so that among each of the said Scheduled Castes, Scheduled Tribes and Other Backward Classes including Socially and Educationally Backward Classes of members, there shall be representation of woman which shall be proportional to the ratio between the woman members belonging to each said category and the total number of members of that category.”

The said amendment came into force on 22nd September, 2011 and is in force till today. In terms of the said provision, proportional reservations have been made. The Petitioner has not made out any case as to how the said Rule has been violated in reserving the constituency. Further pursuant to the notification impugned herein, election has already been held and members have already been elected. Thus, the writ petition, without impleading the returned candidates of different constituencies of the said Society, is not maintainable. In view of the above, he prays for dismissal of the writ petition.

6. The Assistant Registrar, Cooperative Societies-Opposite Party No.2 has filed counter affidavit in the matter, relevant portion of which is reads as follows:-

“5. That in reply to paragraph-03 to 08 of the writ application, it is humbly submitted that the total membership of Muribahal Service Co-operative Society Ltd. have been organized into 15 nos. of constituencies as per provision of sub-rule 3 of rule 6 of the Odisha Co-operative Societies (Elections to the Committees) Rules 1992 and allocated to different categories of members following the Circular No.1408 Dt.21.11.2014 of the State Co-operative Election Commission, Odisha. Copy of the Circular No.1408 dt.21.11.2014 and copy calculation sheet of Organization of Constituencies of Muribahal SCS for election for the year 2022 are annexed herewith as ANNEXURE A/2 Series. Further, in pursuance of rule 3 (3-b) of the Odisha Co-operative societies (Elections to the Committees) Rules, 1992. As per Circular No.1408 dated 21.11.2014, the Chief Executive of the Society has submitted the particulars of the membership of the Muribahal Service Co-operative Society Ltd. organized into 15 constituencies to the Election Officer of the society duly supported with resolution no.2 dt.07.05.2022 (copy enclosed as ANNEXURE-B/2) of the society before the stipulated 40 (forty days) prior the date fixed for election.

It is crystal clear that 15 electoral constituency of Muribahal has been declared as unreserved basing on the calculation/formula made per Circular No.1408

Dt.21.11.2014 (under Annexure-A/1 series of this Counter Affidavit). It is humbly submitted that as per the calculation sheet, the calculation will be made by the formula and taking into consideration the total number of SC, ST, OBC/SEBC members of the Cooperative Societies. Therefore, in those Cooperative Societies where the number of members of the aforesaid categories are more, automatically applying the aforementioned formula, the number of unreserved seats will go down. The present case, out of total 925 members of Muribahal Service Cooperative Society, out of which 735 are Male members and 190 are Female Members and unreserved members are only 28. It is clear that where only 28 members belong to unreserved category out of 925 number of seats, the unreserved category will automatically get reduced to zero by applying the aforementioned equation. It is also humbly submitted that the same equation is adopted in reservation of seats of all over the State in the present Cooperative Societies election. Therefore, it cannot be said that the Opposite party No.1 and 2 have made any arbitrary decision, which is beyond the statute. Since the petitioner has not challenged either the overwhelming majority of the SC & ST members along with OBC and SEBC members nor challenged the calculation adopted, the present Writ Petition is liable to be dismissed."

In that view of the matter, Mr. Dash, learned AGA submits that the writ petition merits no consideration and is liable to be dismissed.

7. Taking into rival contentions of the parties and on perusal of record, it appears that the election to the post of committee members is already over. Accordingly, the Petitioner had sought for an adjournment to file an application for amendment, but no such petition has yet been filed. It is, however, submitted by Mr. Mishra, the Petitioner that the consolidated writ petition has already been filed. From perusal of consolidated writ petition, it appears that the returned candidates have not been impleaded as parties to the writ petition. Even no petition to that effect has yet been filed. Further, the Petitioner has not whispered a single word in the writ petition with regard to any violation of Rules in

reserving the constituencies of the Society. On the other hand, counter affidavit filed by Opposite Party No.2 clearly stipulates that Rules for reservation of constituencies have been meticulously followed. In that view of the matter, I find no infirmity in the notification dated 17th May, 2022 (Annexure-1) issued by the Election Officer, Muribahal Cooperative Society, Muribahal impugned herein.

8. Accordingly, the writ petition being devoid of any merit stands dismissed.

(K.R. Mohapatra)
Judge



s.s.satapathy