

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 15777 OF 2022**

***Manjulata Barik***

***.... Petitioner***

Mr. Sukanta Kumar Dalai, Advocate

*-versus-*

***State of Odisha and others***

***.... Opp. Parties***

Mr. Suvashish Pattnaik,

Additional Government Advocate

(For Opp. Party No.1)

Mr. S.K. Nayak, Advocate

(For State Cooperative Election Commission)

Mr. Mr. Manoj Kumar Panda, Advocate

(For Opp. Party No.7)

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**13.09.2022**

**Order No.**

4.
  1. This matter is taken up through hybrid mode.
  2. The Petitioner in this writ petition prays for a direction to set aside the order dated 20<sup>th</sup> June, 2022 (Annexure-4) issued by the State Co-Operative Election Commission, Bhubaneswar- Opposite Party No.2. She also assails the action of the Opposite Parties in proceeding to draw Lots without complying with the provisions of Rule 45 of OCS (Elections to the Committees) Rules, 1992 (for short 'the Rules') and prays to declare her elected as a committee member in respect of Zone No.15 of Maluda SCS.
  3. Mr. Dalai, learned counsel for the Petitioner submits that election to the committee members of Maluda SCS was held on 19<sup>th</sup> June, 2022. However, there was a tie of votes between the

Petitioner and Opposite Party No.7. Thus, the Election Officer decided to draw Lot in terms of the provisions under Rule 45 (1) of the Rules. At that juncture, the Petitioner made an application to recount the votes in terms of Rule 45 (1) of the Rules. Without taking any decision on the same, the Election Officer wrote to the Commission for his clarification in the matter. In response to the same, the Election Commission vide his letter dated 20<sup>th</sup> June, 2022 directed the Election Officer of Maluda SCS to decide the result in respect of Constituency No.15 by drawing lots with due intimation to the contesting candidates as per the schedule provided therein. Being aggrieved, the Petitioner has filed this writ petition.

4. An affidavit has been filed by the Opposite Party No.1 stating that the result of Zone No.15 in respect of election to the committee members of Maluda SCS could not be declared, because the election agent and candidate did not cooperate with the Presiding Officer and Election Officer, as there was confusion with regard to validity of one number of vote and there was a tie of votes between the Petitioner and Opposite Party No.7. As such, the Election Officer decided to draw Lots in terms of Rule 45 (1) of the Rules. But, the same was opposed.

5. Mr. Pattnaik, learned Additional Government Advocate submits that he has no instruction as to whether any decision with regard to recounting of votes pursuant to the application of the Petitioner under Annexure-3 is taken or not. He further submits that Lots have already been drawn up and kept in sealed cover pursuant to the order dated 28<sup>th</sup> June, 2022 of this Court.

6. Mr. Panda, learned counsel for the Opposite Party No.7 submits that the writ petition is not maintainable in view of Rule 57 of the Rules read with Section 67 (B) of the Odisha Co-operative Societies Act, 1962 and the Petitioner has remedy to file election dispute, if she is aggrieved by the decision of Election Officer. He, therefore, prays for dismissal of the writ petition.

7. Taking into consideration the rival contentions raised by learned counsel for the Parties, this Court is of the considered opinion that since the final result in terms of Rule 45(6) of the Rules is yet to be declared, an election dispute in terms of Rule 57 of the Rules read with Section 67(B) of the Act is not maintainable. When there is a tie of votes between the two candidates, namely, the Petitioner and the Opposite Party No.7, the Petitioner filed an application for recounting of votes under Rule 45 of the Rules. Thus, the Election Officer is required to take a decision on the same in terms of Rule 45 (3).

8. In the instant case, there is no material on record to show that the Election Officer has taken a decision in terms of Rule 45 (3) of the Rules. There is also no material on record to show that the Election Commission has passed the impugned order under Annexure-4 considering the aforesaid materials on record.

9. In that view of the matter, the impugned order under Annexure-4 passed by Election Commission is set aside and the Secretary, Panchayat Executive Officer-cum-Election Officer-Opposite Party No.3 is directed to take a decision on the petition filed by the Petitioner under Annexure-3 for recounting of votes.

The Lots drawn shall be subject to the result of the decision of the election officer pursuant to the application for recounting of votes.

10. Since the matter relates to election of committee members of Maluda SCS, the Opposite Party No.3 is expected to take a decision expeditiously following due procedure of law and communicate the result thereof to the parties concerned.

11. This writ petition is allowed to the aforesaid extent.

12. As requested by Mr. Pattnaik, learned Additional Government Advocate, a copy of this order be handed over to him for communication and compliance.

Urgent certified copy of this order be granted on proper application.

**(K.R. Mohapatra)**  
**Judge**

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