

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16391 OF 2022

Sanjib Kumar Mishra

Petitioner

Mr. S.P. Das, Advocate

-versus-

***State Co-operative Election
Commission, Odisha, Bhubaneswar
and others***

.... Opp. Parties

Mr. H.M. Dhal, Advocate
(For State Election Commission)

Mr. Ananta Narayan Pattnaik, Advocate
(For Caveator-Opp. Party No.5)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
08.07.2022**

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. Mr. H. M. Dhal, learned counsel and his associates have entered appearance on behalf of the Opposite Party No.1-State Co-operative Election Commission by filing Vakalatnama in Court today, which is taken on record.
 3. The Petitioner in this writ petition seeks to assail the order dated 28th June, 2022 (Annexure-6) passed by the Election Officer, Lachhipur rejecting the objection raised by the Petitioner with regard to nomination of Opposite Party No.5 to contest the election for the post of President of Lachhipur PACS Ltd.
 4. Mr. Das, learned counsel for the Petitioner submits that it is a fit case, in which this Court should issue a writ of quo warranto. The Opposite Party No.5 is disqualified to contest the election as he is convicted in a criminal case. Hence, in

spite of availability of an alternative remedy under Rule 57 of the Odisha Co-operative Societies (Election to the Committee) Rules, 1992 (for short 'the Rules'), the writ petition is maintainable. He also relying upon the decision in case of ***K. Venkatachalam –v- A Swamickan and others*** in C.A. No.1719 of 1986 submits that the Court is not powerless to issue a writ of quo warranto on the face of an alternative remedy being available to the Petitioner.

5. Mr. Dhal, learned counsel for the Opposite Party No.1- State Election Commission objecting to the same submits that the election to the post of President of Lachhipur PACS Ltd. is already over since 6th July, 2022 and the result has been declared. Since the Petitioner has an alternative remedy under Rule 67(B) of the Rules read with Rule 57 of the Rules, the writ petition is not maintainable. He, therefore, prays for dismissal of the writ petition.

6. Mr. Pattnaik, learned counsel for the Caveator-Opposite Party No.5 submits that the writ petition is not maintainable in view of availability of alternative remedy to the Petitioner. Further, the Petitioner has suppressed the material fact in the writ petition. The allegation made in the writ petition also requires factual adjudication. In that view of the matter, he prays for dismissal of the writ petition.

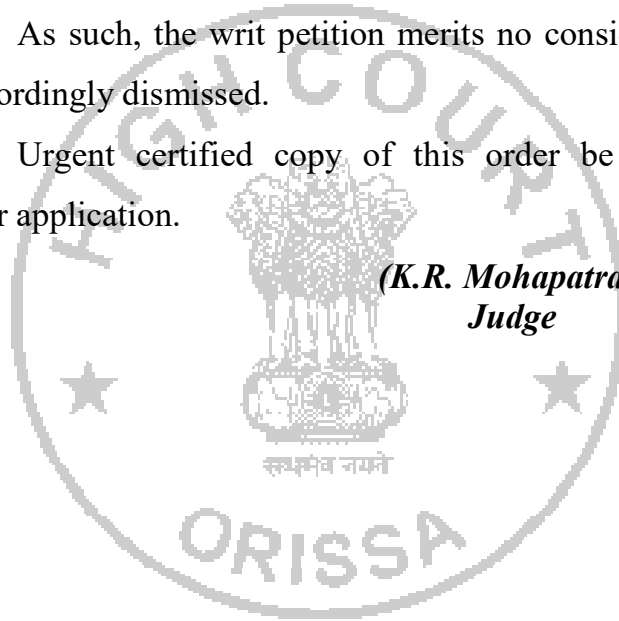
7. Taking into consideration the rival contentions of the parties and on perusal of the relevant provisions of law including the case law cited by learned counsel for the Petitioner, this Court is of the considered opinion that since the Petitioner has efficacious statutory remedy to assail the

acceptance of nomination of the Opposite Party No.5 and the result of the election, as well, by filing a properly constituted election dispute, this Court is not inclined to entertain this writ petition. Although it is prayed for by learned counsel for the Petitioner to issue a writ of quo warranto, but there is no pleading in the writ petition that the Opposite Party No.5 is holding the post of President, Lachhipur PACS Ltd. Thus, in absence of such a pleading, the prayer to issue a writ of quo warranto is misconceived.

8. As such, the writ petition merits no consideration and is accordingly dismissed.

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

(K.R. Mohapatra)
Judge



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