

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16824 OF 2022

Durga Charan Jagdev

Petitioner

Mr. Sukanta Kumar Dalai, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate
(For Opp. Party Nos.1, 5 and 7)

Mr. Harmohan Dhal, Advocate
(For State Cooperative Election Commission)

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

**ORDER
19.07.2022**

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for the following relief:

“Under the aforesaid facts and circumstances of the case, the Petitioner humbly prays that this Hon’ble Court may graciously be pleased to issue Rule NISI calling upon the Opp. Parties to show cause as to why:

I. The order dated 30.06.2022 shall not be quashed being illegal, arbitrary, unreasonable, discriminatory and unsustainable in the eyes of law;

II. The action of the Opp. Parties in declaring the election with a defective electoral roll shall not be declared illegal, arbitrary, unreasonable and not germane in the eye of law;

III. A direction shall not be issued to the Opposite Parties more particularly the Opp. Party No.2 Commission for correcting the electoral rolls before starting the scheduled

election process in the interest of justice and fair play;

And or pass such other order(s), direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

And for this act of kindness, the Petitioner shall as in duty bound ever pray."

3. The grievance of the Petitioner in this writ petition is with regard to preparation of electoral roll of Gadasanaput Primary Agricultural Co-operative Society, Puri (hereinafter referred to as 'Gadasanaput PACS') for the ensuing Co-operative Election, 2022.

4. It is submitted by Mr. Dalai, learned counsel for the Petitioner that there are several irregularities and illegalities in preparing the electoral roll for the aforesaid Gadasanaput PACS. Drawing attention of this Court to the preparation of electoral roll for Zone No.8 of the said Gadasanaput PACS, he submits that originally there were four numbers of voters in the electoral roll, but subsequently the authorities by manipulating the same increased it by adding one voter and thereby making it five. In that regard, the villagers of Gadasanaput had submitted a grievance petition dated 9th June, 2022 (Annexure-3) before the Election Officer much prior to the final publication of the voter list. At that juncture, election scheduled to be held on 26th June, 2022, but for some reasons, it was disrupted. In spite of that, no action was taken on the grievance petition under Annexure-3. Subsequently the election to the said Gadasanaput PACS was re-scheduled to be held vide order dated 30th June, 2022 pursuant to the notification under Annexure-1 passed by the State

Cooperative Election Commission-Opposite Party No.2 as per the programme given in the said order.

5. Mr. Dalai, learned counsel for the Petitioner by filing an affidavit in Court today brings on record the final voter list for the aforesaid PACS published on 5th July, 2022, which is taken on record. He submitted that after filing of this writ petition the authorities in order to overcome the illegalities in preparation of the electoral roll included few other voters in the electoral roll, which not only perpetuated the illegalities committed earlier, but clearly shows the manner in which the cooperative election is being conducted. There is nothing on record to show that the objection filed by the Petitioner under Annexure-3 series was taken into consideration, while preparing the electoral roll on 5th July, 2022. He refers to Rule 5 of the Odisha Co-Operative Societies Election to the Committee Rules, 1992 (for short 'the Rules') and submits that the said Rules provide issuance of notice at various stages of the election. It clearly provides that after publication of the provisional electoral roll, objection concerning anything published, not published or wrongly published in the provisional electoral roll should be invited. Although objection was invited to the provisional list published on 4th June, 2022, but the objection raised by the Petitioner under annexure-3 is yet to be considered. In publishing the so called final voter list on 5th July, 2022, the Election Commission has not only vitiated the law but also failed to exercise the power conferred on him. He refers to the provisions under Articles 243 (O) and 243 (ZG) of the Indian Constitution and submits that in respect of Gram

Panchayat and local body elections, no Court should interfere in the matter of election process. But, no such prohibition is provided under Article 243 (ZH) of the Indian Constitution, which deals with election to the Co-Operative Societies. He also relies upon the case law in ***State of Goa –v- Fouziya Imtiaz Shaikh***, reported in (2021) 8 SCC 401, wherein the Hon’ble Supreme Court at Paragraph-68.4 held as under:

“xxx

xxx

xxx

68.4. Under Article 243-ZA(1), the SEC is in overall charge of the superintendence, direction and control of the preparation of electoral rolls, and the conduct of all municipal elections. If there is a constitutional or statutory infraction by any authority including the State Government either before or during the election process, the SEC by virtue of its power under Article 243-ZA(1) can set right such infraction. For this purpose, it can direct the State Government or other authority to follow the Constitution or legislative enactment or direct such authority to correct an order which infracts the constitutional or statutory mandate. For this purpose, it can also approach a writ court to issue necessary directions in this behalf. It is entirely up to the SEC to set the election process in motion or, in cases where a constitutional or statutory provision is not followed or infringed, to postpone the election process until such illegal action is remedied. This the SEC will do taking into account the constitutional mandate of holding elections before the term of a municipality or Municipal Council is over. In extraordinary cases, the SEC may conduct elections after such term is over, only for good reason.”

6. He, therefore, submits that if there is a constitutional or statutory infraction by any authority including State Government either before or during the election process, the SEC by virtue of its power under Article 243-ZA(1) can set right such infraction.

Such a power is also conferred on the State Co-Operative Election Commission. But, he miserably failed to exercise the power vested on him by setting aside the illegalities committed by the Sub-Ordinates. Preparation of the so called final voter list (electoral roll) is only an eye wash to overcome the deficiencies in the voter list. As such, the writ petition deserves to be allowed by setting aside the order issued by the Commission on 30th June, 2022 under Annexure-1 in respect of Gadasanaput PACS.

7. Taking into consideration the submission made by learned counsel for the Petitioner, this Court vide order dated 13th July, 2022 directed Mr. Dhal, learned counsel for the State Cooperative Election Commission to take instruction in the matter, more particularly with regard to grievance made in the writ petition. Today, Mr. Dhal, learned counsel for the State Cooperative Election Commission, on instruction, submits that in Gadasanaput PACS, total number of valid members is 1254. The PACS is divided into fifteen zones. Taking into consideration the total number of valid members, each zone comprises of eighty three (83) members except the last zone which would be residual. The valid members, who are having savings deposit of Rs.100/- for SC & ST and Rs.500/- for others, preceding four months prior to the date of notification of the election, are the valid voters. Initially, final voter list was published on 4th June, 2022. But inadvertently it was described as the provisional voter list. Keeping in view the objections received, the Election Commission directed vide order 25th June, 2022 to correct the voter list, which was one day prior to the date of election, i.e. 26th

June, 2022. In the meantime, election was disrupted from the date of filing of nomination because of the invalid voter list. Accordingly, taking into consideration the objection received, the final voter list was published on 5th July, 2022 with valid voters and on the basis of final voter list, the election is scheduled to be held on 24th July, 2022. He further submits that out of fifteen zones, there are no voters in Zone No.14. On the date of nomination, i.e. on 11th July, 2022, nominations were received for the remaining fourteen zones on the basis of the final voter list published on 5th July, 2022. Except Zone No.3, single nominations were received for thirteen numbers of zones. Only for Zone No.3, two nominations have been received for which election will be held on 24th July, 2022. He also submits that the writ petition is not maintainable in view of bar under Section 28-B of the Odisha Co-operative Societies Act, 1963 (for short 'the Act'). In support of his contention, he relies upon the case law in ***Kailash Chandra Dandapat and others –v- Secretary, Birabhadraswar Weavers' Co-Operative Society Ltd. and others***, reported in AIR 1994 Ori 1, Paragraph-5 of which reads as follows:

“5. Next is the question regarding illegality in preparation of the electoral rolls and clubbing of constituencies in violation of the relevant provisions. These also are undoubtedly process of election and hence come under the provisions of Section 28-B as being excluded from interference by the authorities under the Act. Though Section 67-B providing for constitution of the tribunal has not been brought into force, so also Section 38 of the amending Act, substituting Section 68 has not been brought into force for which reason election disputes are maintainable under the unamended Section. Section

68 in its Explanation-IV as stood prior to the amendment provided that any dispute arising in connection with election of any officer of a society shall be a dispute within the meaning of Section 68. A dispute in connection with 'election of any officer of the society' is wide in its ambit and should take within its scope all sorts of disputes arising out of the election process which has ultimately resulted in the election of the officers of the society whose election is sought to be challenged. If voters' list has been illegally prepared, or constituencies have been constituted in a manner not permissible in law and thereby the resultant situation is that the election of the officer has become vitiated or that the persons who were otherwise eligible to be candidates but have not been able to contest, all such disputes are within the cognisance of the Registrar as an election disputes under Explanation-IV. Even when a tribunal is constituted under Section 67-B, the provision is the same as under Section 67-B(1) and the tribunal is to try any dispute arising in the matter of election of an office bearer of the society. There is thus a complete remedy available to the petitioners to challenge the election when it is over."

8. He also relies upon the decision in the case of **Rabindra Kumar Das and another –v- State of Orissa and others**, reported in 1999(I) OLR-497, wherein it has been held at Paragraph-18 as under:

"18. Our attention has been drawn to section 28-B of the Orissa Co-operative Societies Act, 1962 itself that not with-standing anything contained in this Act and the Rules, election process of a Society, once started, shall not be held up and no matter relating to election of the President or members of the Committee shall be called in question before any authority under this Act until the declaration of the result of such election. If we read section 28-B together with Rule 6(3)(4) and (5), we do not find that those are contradictory and repugnant to section 28-B. The election process as in the Representation of the People Act is not the same as we understand reading the definition of Rule 2 of the Orissa

Co-operative Societies Rules, 1992 and thereafter sub-rules (3), (4) and (5) of Rule 6. If the Executive Officer has filed the electoral roll in terms of sub-rule (3) of Rule 6, there is scope for raising objection before the Election Officer. The petitioners have never raised any objection before the Election Officer and if anything is done thereafter, the election process starts and then there should be no other remedy under the Act except after election as would be answered by section 67-B.”

9. It is his submission that the land mark judgment of this Court in the case of ***Maheswar Tripathy and others –v- State of Orissa and others***, reported in 1992 (II) OLR-90, has been taken into consideration in both the aforesaid case laws. He therefore, submits that the writ petition is not maintainable. Further, entertaining such writ petition will be only for the academic purpose as there will be no election for Zone No.8, instance of which was given by the Petitioner, because only a single nomination has been filed for that zone.

10. I have heard learned counsel for the parties and perused the materials available on record.

11. At the outset, it is beneficial to reiterate that except Zone No.3, there will be no election for committee members of Gadasanaput PACS on the scheduled date, i.e. on 24th July, 2022. On perusal of the objection dated 9th June, 2022 (Annexure-3), it appears that there is no allegation with regard to preparation of the voter list for Zone No.3. Hence, consideration of the contention raised by learned counsel for the Petitioner in this writ petition will be an academic one.

12. Mr. Dalai, learned counsel for the Petitioner drew attention of this Court to the preparation of voter list in respect of

Zone No.8. He also raised objection with regard to the voter list (Electoral roll) published on 5th July, 2022 stating that the authorities have committed further illegalities by preparing the voter list on 5th July, 2022 without following due procedure of law. Such contention requires no consideration in this writ petition, as there will be no election for Zone No.8 on the scheduled date i.e. on 24th July, 2022.

13. It appears that the Petitioner is a valid voter for Zone No.8 and in all the electoral rolls including one prepared on 5th July, 2022, his name appears. He has neither submitted any objection to the voter list nor is a candidate in respect of the election of committee members to Gadasanaput PACS Ltd.

14. Mr. Dalai, learned counsel, however, submits that the Petitioner could not participate in the election process as he has filed this writ petition. Such a contention is not acceptable as there was no prohibition on the part of the Petitioner to participate in the election process.

15. In view of the above, this Court without delving into the questions of law raised by learned counsel for the parties, disposes of this writ petition with an observation that relief sought for in this writ petition has become academic one.

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

(K.R. Mohapatra)
Judge