

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C). No.18277 OF 2022

Sarada Prasanna Swain and others ***Petitioner(s)***
Mr.S.R.Mohanty,Adv.

-versus-

***State Election Commissioner,
Bhubaneswar and others*** ***Opposite Party(s)***
Mr.U.K.Sahoo,ASC
Mr.B.Routray,Sr.Adv

WITH
W.P(C) No.17808 of 2022

Biswanath Rout and others ***Petitioner(s)***
Mr. S.K.Dalai,Adv.

-versus-

State of Odisha and others ***Opposite Party(s)***
Mr.U.K.Sahoo,ASC
Mr.B.Routray,Sr.Adv.
Mr.M.Kanungo,Sr.Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
13.09.2022

Order No.

06. 1. Heard learned counsel for the Parties.
2. Considering the rival contentions of the Parties this Court finds, both the matters involved herein challenge to the notification of the State Election Commission in first proceeding, election of the chairman of the constituency becoming illegal in holding such election in absence of holding election of casual vacancy in respect of Gatirautpatana Panchayat Samiti for the death of the chairman who

was incidentally also a member involving such Panchayat. This matter has been heard several occasions. In the meantime this Court has also come to notice that there has been two failure attempts involving Bye-election for the post of chairman Cuttack, Sadar Panchayat Samiti ahead of holding Bye-election to the member vacancy. There is serious resistance in holding the Bye-election of Chairman ahead of conducting the bye-election of the member involved.

3. Through the affidavit of State Election Commission, this Court finds there is clear statement by Election Commissioner in making both the attempts for having bye-election of the office of Chairman of Cuttack Sadar Panchayat Samiti failed for non-cooperation of the members/voters involved therein. Considering there is failure in both attempts in paragraphs-6 & 7, the Election Commissioner has a clear undertaking to follow the provision under Section 45(C) to fill up the vacancy. There is also undertaking by the Election Commissioner to go ahead with the by-election for vacancy post of Panchayat Samiti member of Gatroutpatna Panchayat Samiti constituency along with other casual vacancy, the Panchayat member in different districts. In the above background and as Commissioner failed twice holding the Bye-election of Chairman, this Court finds there is no purpose in holding the Bye-election of the Chairman of the Panchayat Samiti ahead of holding by election of Gatroutpatna Panchayat Samiti and there should not unnecessary experimentation in holding by-election of chairman in absence of Bye-election of member as there is already unnecessary spending of public fund involving two consecutive futile exercises.

4. In the circumstance for the undertaking of the Election Commissioner through Mr. Routray, learned Senior Counsel,

disposing of both the Writ Petitions, this Court directing that there should be in first place holding Bye-election for the post of Panchayat Samiti member before undertaking such exercise for Bye-election for the post of chairman, Cuttack Sadar Panchayat Samiti. This Court hopes and expect that there shall be Bye-election for the post of Panchayat members Gatirautpatna Panchayat Samiti constituency without further loss of time at least undertaking such decision within a period of three weeks at least by issuing notification involving detailed programme required for election of the member involved and such election should also be completed within two months time in the maximum.

5. Keeping in view the request of the Election Commissioner and as there is lawful disposal of both proceedings with the cooperation of the Election Commissioner, this Court recalls the imposition of cost on the Election Commissioner by order dated 26.08.2022.

6. Both the Writ Petitions stands disposed of with direction hereinabove.

(Biswanath Rath)
Judge

Swarna