

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.18887 OF 2022

Prasant Gupta @ Prasant Kumar Gupta ***Petitioner(s)***

Mr.S.K.Mishra,
Advocate

-versus-

Bhagirathi Murjia and another ***Opposite Party(s)***

Mr.S.Mishra,
ASC
Miss.D.Mohapatra,
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
25.08.2022

Order No.

03.

1. Heard learned counsel for the Parties.
2. The Writ Petition involves a challenge to the order dated 18.07.2022 passed by the learned Civil Judge (Sr. Division), Jeypore in Election Case No.01 of 2022 vide Annexure-6 thereby involving rejection of the application of the Petitioner at Annexure-3.
3. Considering the rival contentions of the Parties and on perusal of Annexure-3, this Court finds the application was filed involving the allegation of non-framing the issues by the trial Court as well as not providing opportunity of cross-examination after providing opportunity of perusal of document already brought on record by the witness already examined.
4. Considering this allegation and on perusal of the reasoning in rejecting such application further also taking into account the objection to the claim of the Petitioner by the counsel for respective Opposite Parties, this Court finds in the event the prayer of the Petitioner is

rejected, this will be amounting to violation of minimum natural justice in a matter involving the election dispute. Further there can be an effective consideration of such nature of dispute in absence of framing of issues.

5. For the opinion of this Court since the procedure of CPC can be followed even in election proceeding and since election dispute involved complicated question of fact and law, there must be framing of issues before proceeding for evidence. This Court finds, there is mechanical application of mind by the Judge involved in so far it relates to framing of issue and it is surprise to note that it involved the parties to bring the litigation to consider for framing issues before proceeding of evidence.

6. This Court therefore interfering the order at Annexure-6 sets aside the same and directs the trial court framing of issues based on draft issue being filed by both parties at least within a period of one week with permission to the Petitioner to have the opportunity of perusal of documents.

7. This Court observes unless there has been allowing at least perusal of documents through the evidence of P.W.1, there cannot be proper to opportunity in advancing cross-examination. This Court while records the submission of Miss. Mohapatra, learned counsel for the Opposite Parties that documents accompanied in the affidavit of evidence is already marked as exhibit. This Court interferes in the impugned order dated 18.07.2022 so far it relates to non-framing of issue and so far it relates to provide opportunity for cross-examination directing the trial Court while framing issue dependent on the draft issues being submitted by the respective parties within one week hence also permits the Petitioner at least to go through the documents already

marked as exhibits and the trial Court is to allow the Opposite Party No.1 to cross examine such witness.

8. Considering the matter involves the election dispute, this Court records the undertaking of both counsel appearing for both Parties to cooperate in timely disposal of the election dispute and the trial court is directed to complete such proceeding at least within a period of four months.

(Biswanath Rath)
Judge

Swarna

