

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C). No.22761 of 2022

Janardan Patra

.... ***Petitioner(s).***
Mr.P.K.Rath, Advocate

-versus-

Anil Kumar Mahapatra & Ors.

.... ***Opposite Party(s)***
Mr.A.Das, Advocate
(For O.P.No.1)
Mr.S.Mishra, ASC
(For O.P.Nos.2 & 3)

CORAM:
JUSTICE BISWANATH RATH

ORDER
20.09.2022

Order No.

02.

1. Heard learned counsel appearing for the parties.
2. This matter involves rejection of an application under Order 7, rule 11 of the Code of Civil Procedure involving election of Samiti Member dealing an election dispute under the provision of Panchayat Samiti Act, 1959. Facts reveal Election Petition No.2 of 2022 was filed by the unsuccessful candidate making specific allegation in paragraph-3 on non-disclosure of material facts/criminal antecedents alleging the required affidavit to be not in terms of Section 45 (1) (w) of Panchayat Samiti Act, 1959. On receipt of notice, it appears the elected candidate, the petitioner herein came to file an application under Order 7, rule 11 of the Code of Civil Procedure to take out the plaint involved herein for having no cause of action on the premises that even there is material available on record, more particularly, affidavit filed by the petitioner has a clear disclosure of the requirement of law clearly negating allegations of the unsuccessful

candidate in the election dispute through paragraph-3. After getting into objection to the application under Order-7, rule 11 of the Code of Civil Procedure, trial court appears considered the application under Order-7, rule 11 of the Code of Civil Procedure and vide impugned order at Annexure-1 came to reject the same under the observation at page 12 of the brief. Challenging such order in the writ petition at hand, Mr.Rath, learned counsel for the petitioner taking this Court to the plea taken in paragraph-3 and reading therein the petition under Order-7, rule 11 of the Code of Civil Procedure at Annexure-4, paragraph-6 attempted to submit that the elected candidate had the specific plea that the document attached to the election dispute petition proves the allegation in paragraph-3 therein otherwise and taking away the election dispute in its entirety thereby satisfying the approach under Order 7, rule 11 of the Code of Civil Procedure at the instance of the petitioner. It is for the mechanical disposal by the trial court, Mr.Rath, learned counsel for the petitioner contended that the impugned order should go and as consequence of allowing the writ petition, the Election Petition also deserve to go..

3. Mr.Das, learned counsel appearing for the opposite party no.1, election petitioner while not disputing the specific allegations in paragraph-3 at the instance of the election petitioner also not disputing the plea of the elected candidate through paragraph-6 of the application under Order 7, rule 11 of the Code of Civil Procedure. However, taking this Court to the reasoning in the impugned order, Mr.Das, learned counsel submitted that the trial court has examined all the aspects involved and passed the impugned order rightly. Mr.Das,

learned counsel also contended for the reasoning therein, there is no requirement to interfere in the impugned order.

4. Considering the rival contentions of the parties, this Court takes here the settled position of law involving consideration of scope of considering of application under Order 7, rule 11 of the Code of Civil Procedure. Position as settled makes it clear, it is only plain reading of the plaint averments, which will be reading of the election petition herein and documents appended therein ought to be the basis in deciding an application under Order 7, rule 11 of the Code of Civil Procedure and there is no scope for bringing in written statement to form part in such consideration. It is keeping the above settled position of law in mind, this Court proceeds to examine as to if the correct approach by the trial court in considering the application under Order 7, rule 11 of the Code of Civil Procedure involved herein had the correct approach. Keeping in view the argument and the opposition by the respective parties involved herein, this Court proceeds to consider the pleading in the election petition through paragraph-3 and finds paragraph-3 therein reads as follows:

“3. That as per provision of Section 45 (1) (w) of Panchayat Samiti Act, 1959, a person shall not be eligible to stand for election for the office of Samiti, if he has not furnished an affidavit containing particulars relating to his criminal antecedents, assets and liabilities and educational qualification at the time of filing of nomination. It would not be out of place to mention here that the Opposite Party No.3 was the Convict in UC No.402/2007 on the file of Hon'ble Sub-Divisional Judicial Magistrate, Chatrapur. Upon his pleading guilty before the Hon'ble Court, he was sentenced to pay a fine of Rs.100/- (Rupees one hundred only) i.d. to undergo S.I. for a period of 4 days. But the Opposite Party No.3 deliberately has not furnished his criminal antecedents in his affidavit while filing his nomination. As such, by suppressing the fact of his criminal antecedents and by not furnishing the same in his affidavit filed along with his nomination, he made himself liable to be disqualified for contesting for the post of Member of Pitala Samiti Constituency. So it is crystal clear that on the date of nomination as well as election, the Opposite Party No.3 was not qualified as required under the provisions of Orissa Panchayat Samiti Act, 1959. The improper acceptance of nomination of the Opposite Party No.3 by the Election Officer materially affected the result of

the election of the Petitioner. As such, the Petitioner is constrained to file this election petition to declare the election of the Opposite Party No.3 as null and void and further to declare the Petitioner as the elected Samiti Member of Pitala Samiti Constituency under Sheragada Panchayat Samiti as there were no other contestant except the Petitioner and Opposite Party No.3.

At this stage, reading the aforesaid averments, this Court finds once election petitioner had the pleading on the suppression of material fact through the affidavit of the elected candidate, it is presumed that such affidavit is also on record, for the mandatory requirement of the Code of Civil Procedure for bringing plaint, which is here election dispute along with documents taken support therein. Next proceeding to the complain of the elected candidate through his application under Order 7, rule 11 of the Code of Civil Procedure, this Court finds the election petitioner has the following plea:

“6) That the election petitioner has pleaded in the election petition various matters which are not at all necessary to declare the election as void. But on the other hand, those are vague, scandalous and lack in material particulars and that they did not disclose any cause of action. The description in para 3 of the election petition which are said to be allegations regarding disqualification of the respondent no.3 do not make any substantial evidence within the meaning of Section 45(1) (w) of Panchayat Samiti Act. As per Sec.45 (1) (w), a candidate should furnish an affidavit regarding particulars. In this case, the respondent no.3 has furnished the details in the affidavit which was filed along with the nomination paper before the election officer. Everything was mentioned in the affidavit which are necessary to contest for an election for the post of Samiti Member by respondent no.3. But if a candidate intentionally gives false information or conceals any information in the nomination paper or in the affidavit, then he will be punished by way of initiation of criminal cases against him. But the nomination paper shall not be rejected. In the present juncture, adhering to the principles of election law, the respondent no.3 has furnished everything but to defame the reputation of respondent no.3, the election petitioner has mentioned vague and scandalous materials in the election petition. So para 3 from the election petition should be struck out.”

5. Keeping in view the plea and counter plea and the legal background involved herein, proceeding to examine the impugned order at Annexure-1, in the entire reading of the impugned order, this Court nowhere finds the trial court given any attachment to find from the pleading in paragraph-3, the objection of the elected petitioner

through paragraph-6 of the of the application under Order 7, rule 11 of the Code of Civil Procedure vis-à-vis the document if any appended to establish the allegation in paragraph-3 of the election dispute, the approach of the Civil Judge appears to be in a broader aspect in considering the application under Order 7, rule 11 of the Code of Civil Procedure and in ignorance of basic ingredient for consideration of application under Order 7, rule 11 of the Code of Civil Procedure.

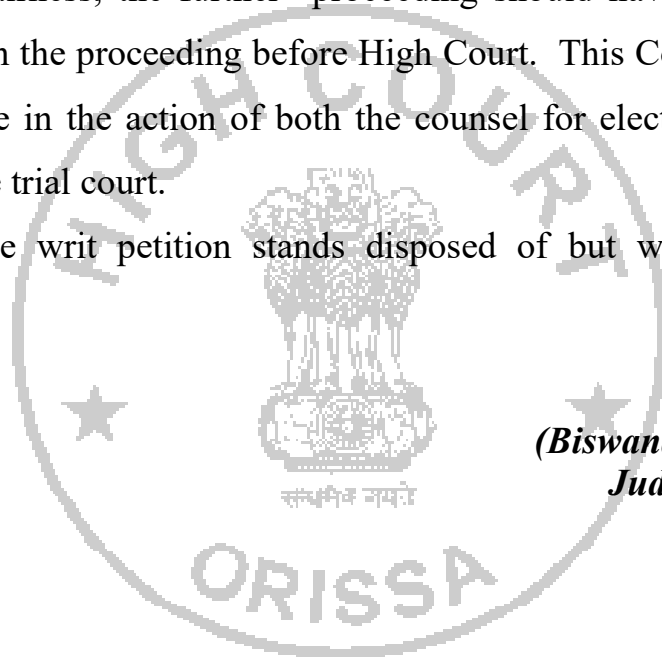
6. In the circumstance, this Court finds there is mechanical disposal of application under Order 7, rule 11 of the Code of Civil Procedure in dismissing the same and as such this Court finds the order at Annexure-1 is not sustainable in the eye of law. As the application under Order 7, rule 11 of the Code of Civil Procedure requires re-adjudication keeping in view the observation made hereinabove and the parameter required in consideration of such application, this Court remits the matter back to the Civil Judge (Senior Division), Aska to have the re-exercise in consideration of application under Order 7, rule 11 of the Code of Civil Procedure afresh in the involvement of the parties and by disposing such application within a period of one month from the date of production of certified copy of this order. Both the parties are directed to appear before the trial court on 26.09.2022 or on the date fixed in the meantime along with certified copy of this order. This Court observes, the observation, if any herein is only in the consideration of the merit involving the impugned order and has nothing to do in the fresh consideration of the application involved herein.

7. Keeping in view the serious allegation of the counsel for the petitioner that in spite of this Court entertaining the writ petition

permitting both the parties to seek short adjournment in view of the pendency of the matter in this Court even in presence of counsel for both side and application being filed, this Court not only finds strange in the attitude of the counsel for election petitioner in objecting such petition and further keeping in view the nature of direction, this Court also finds surprise in the attitude of the Court involved and there is very miser adjournments by adjourning the matter for two days. Once this Court examines an order of lower court and both sides contest with all fairness, the further proceeding should have awaited till an outcome in the proceeding before High Court. This Court expresses its displeasure in the action of both the counsel for election petitioner as well as the trial court.

8. The writ petition stands disposed of but with the order of remand.

sks



(Biswanath Rath)
Judge