

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23086 of 2022

Ahait Karna

....

Petitioner(s)

Mr. T. Nanda,
Advocate

-versus-

***B.D.O.-cum-The Election Officer,
Puintala & Anr.***

....

Opposite Party(s)

Mr. S.P. Panda,
Addl. Govt. Adv.
Mr. P.K. Mohapatra,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
24.11.2022**

Order No.

09.

1. Heard the submissions of respective parties.
2. Undisputedly this Writ Petition involves an Election proceeding vide Election Petition No.4 of 2022. Further undisputed fact remains; even though result in the election involved herein was declared on 27.02.2022 and time for filing of the election dispute was going to be ended on 14.03.2022, however the election dispute was filed on 23.04.2022. Further from the submission of learned counsel for Petitioner, it appears, even though the election dispute was filed on 23.04.2022, it did not accompany any application U/s.5 of the Limitation Act which appears to have been filed on 20.05.2022. It is, at this stage of the matter, this Court records that there is no dispute at the Bar that looking to the nature of the proceeding involved herein, there is no room for entertaining a petition U/s.5 of the Limitation Act involving an election dispute U/s.31 of the O.G.P. Act. This Court in

catena of decisions has already observed, the election dispute proceedings under the O.G.P. Act are in shape of suits. Even though there is provision providing power to the Election Tribunal to condone the delay, in the given case even assuming that there was delay in filing the election dispute, there was no room for insisting and/or entertaining a petition U/s.5 of the Limitation Act. In the event the written statement brings a case of non-entertainability of the dispute on the ground of delay and there is pleading in the election petition that it is filed beyond the time stipulation, appropriate issue on the said aspect would be framed and decided alongwith all other issues in the final trial of the Election Dispute. Keeping this in view and the settled legal provision on the non-application of Section 5 of the Limitation Act, this Court finds, the proceeding U/s.5 of the Limitation Act itself is bad in law. Any order involving such application also remains bad in law and thus the impugned order herein is declared as bad and unenforceable.

3. However, keeping in view the observation of this Court in paragraph no.2, question on limitation is kept open and to be decided in the ultimate trial of the Election Dispute. It is open to the parties to raise their contentions on the limitation aspect by raising appropriate issues.

4. The Writ Petition stands disposed of with the above order.

(Biswanath Rath)
Judge