

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.23097 OF 2022

Manas Kumar Das

....

Petitioner

Mr.B.B.Mishra, Adv.

-versus-

Rajesh Kumar Mahakud & anr.

....

Opposite Party(s)

Mr.D.P.Mohanty, Adv.

Mr.S.P.Panda, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
23.9.2022**

Order No.

04.

1. Heard learned counsel for the Parties.
2. This matter involves allowing of an application under Order 6 Rule 17 of C.P.C. in an election dispute. The dispute involves a moot question required to be considered here to be once there is time stipulation for raising an election dispute under the Orissa Zilla Parishad Act, 1991. When the election dispute was raised on 14.3.2022, an application in the nature of amendment sought if could have been filed on 21.7.2022 ? It is in the above background, learned counsel for the election petitioner opposes the allowing of the application under Order 6 Rule 17 of C.P.C.

3. There is no dispute that the election dispute is brought within fifteen days of declaration of the election. This Court finds, Section 44-D of the Orissa Panchayat Samiti Act, 1959 deals with the contents of petition, particularly Section 44-D(a)(b) since also applied to the case at hand deals with the contents of the petition in case of corrupt practice. This Court is of the opinion, once there is clear restriction in bringing election dispute in certain time frame whatever allegation has to form part of the petition should already be there on the date of filing of the application. It is at this stage, looking to the contentions of the Parties, this Court looks at the nature of amendment brought by the defeated candidate. This Court takes into account the Schedule of amendment at Pag3-13 of the Brief, which is as follows :-

“1.In Paragraph No.1 the word “Zone No.15” may be corrected as “Zone No.05.”

2. In Para-5 the name of “Dilip Kumar Parida” and “Subhranshu Mohan singh” may be corrected as “Dilip Kumar Pandia” and “Pravanshu Mohan singh” respectively.

3. In 5th line of Paragraph No.5, the words “their” and “irrepalarily” may be corrected as “there” and “irregularity” respectively.

4. In first line of Paragraph No.9 of the petition, the following sentence may be added-

“the OP No.1 has also criminal background and he was involved in some criminal cases like C.T. No.705/17 and other cases, but he has suppressed the facts in his nomination application.”

4. Reading the above amendment, this Court finds, there is an attempt to change of Zone number and there is also an attempt to bring new name involving some controversies to Paragraph-5 of the election dispute. Through Paragraph-5, this Court finds, again there is bringing in some criminal background involving O.P.1 after the lapse period of filing of election dispute. From Paragraphs-3 & 4, this Court, however, finds, there has been seeking of formal amendment, which may not affect the prospect of the elected person.

5. In the circumstance, for the Petitioner's attempt to bring new materials in the election dispute involving the allegation of corrupt practice, for clear restriction in filing the election dispute, this Court finds, there is no scope to bring the nature of amendment involved herein in Clauses-1, 2 & 5 beyond the date of filing of the election dispute.

6. This Court, therefore, finds, there is illegality in passing the impugned order under Annexure-3 by the trial court so far as it relates to Clause Nos.1, 2 & 5. So far as Clause Nos.3 & 4 of the Schedule of amendment are concerned, this Court finds, there is an attempt to make some typographical error and such correction will not affect the elected candidate, for which there is no problem in allowing such amendment. Allowing the amendment, vide

Annexure-3 in respect of Clause Nos.3 & 4 of the Schedule of amendment, this Court sets aside the allowing of the amendment through Clause Nos.1, 2 & 5.

7. The Writ Petition partly succeeds.

(Biswanath Rath)
Judge

M.K.Rout

