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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.25130 of 2022

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

Sabita Biswal

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Petitioner

Versus

Subhashree Biswal & Anr.

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Opposite Parties

For Petitioner

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Mr.B.Bhuyan, Advocate

For Opposite Party
No.1

...

Mr.S.K.Dalai, Advocate

For Opposite Party
No.2

Mr.S.Ghose, Additional
Government Advocate

JUDGMENT

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 11.11.2022

Biswanath Rath, J. Background involving the case is that the Election dispute vide Election Petition No.6 of 2022 was initiated on the ground indicated therein making the return candidate as well as the BDO-cum-Election Officer, Puri as Opposite Party Nos.1 & 2 respectively. On entertainment of such Election dispute, notice being

issued to both the parties therein, Opposite Party No.1 being the returned candidate herein on her appearance as a first attempt filed an application under Order 7 Rule 11(d) of C.P.C. challenging the maintainability of the Election dispute on the ground that there has been non-compliance of provision at Section 80 of C.P.C. so far it relates to Opposite Party No.2 therein. This application has been disposed of in rejection of such application giving raise filing the Writ Petition in hand.

2. Mr.Bhuyan, learned counsel appearing for the Petitioner, the returned candidate bringing in reference to the position of Opposite Party No.2 in the Election dispute, reading through the ground made under Order 7 Rule 11(d) of C.P.C., further also taking this Court to the provision at Order 27 Rule 5-A of C.P.C. reading together with Section 32 of the Orissa Grama Panchayat Act contends once there is involvement of a party to a civil dispute, the provision at Section 80 of C.P.C. must be complied. It is reading through the aforesaid provision attempting to satisfy the Court the requirement of Section 80 of C.P.C. involving the dispute at hand, Mr.Bhuyan, learned counsel for the Petitioner attempted that there was failure of appreciating the above provision of law by the trial court requiring this Court interfering in such order and passing appropriate order in allowing of the application under Order 7 Rule 11(d) of C.P.C.

3. Mr.Dalai, learned counsel appearing for the Election Petitioner here as Opposite Party No.1 however seriously objecting the contention raised by Mr.Bhuyan, learned counsel, reading through the provision at Section 31, 32(2) read together with Section 27(4) of the Orissa Grama Panchayat Act and Rule 56 of the Orissa Grama

Panchayat Election Rules while not disputing that there is no dispute on maintainability of application under the provision of Order 7 Rule 11 of C.P.C. in the required circumstance, in reference to the application under Order 7 Rule 11 involved herein, again taking this Court to the cause title to the Election Petition and the pleading involving Opposite Party No.2 therein contended that the Election never involved any dispute against Opposite Party No.2 therein and further for the clarity under the provision at Section 32(2) of the Grama Panchayat Act, position of Opposite Party No.2 in the Election dispute becomes formal and inconsequential particularly so far as the dispute required to be resolved between the contesting parties in the Election dispute. Further in reference to the safeguards under Section 27(4) read together with Rule 56 of the Election Rules, there is however no dispute that there has been complete safeguards on the aspect of calling for records and/or production of records from the Election Officers through the above provisions even in absence of such party. In the above contest Mr.Dalai learned counsel for the Opposite Party while attempting to support the impugned order seriously objected the contention raised by Mr.Bhuyan, learned counsel for the Petitioner and prayed for dismissal of the Writ Petition.

4. Considering the rival contentions of the Parties and taking into account the settled position of law on the aspect of bringing any parties to Election dispute for both parties referring to provision at Section 32(2) of the Act, this Court takes into account the provision at Section 32(2) of the Act which reads as follows:-

“32(2) A person whose election is questioned and where the petition is to the effect that any other

candidate is to be declared elected in place of such person, every unsuccessful candidate who has polled more votes than such candidate shall be made opposite party to the petition”.

Reading the aforesaid provision, this Court finds, there should not be any doubt that Election Officer is not a necessary party. Party relevant to such proceeding firstly a person whose Election is questioned, secondly the party/parties where the petition is to the effect that any other candidate is to be declared, elected in the place of such person and thirdly also include every unsuccessful candidate who has polled more votes than such candidates. Looking to the position of Opposite Parties, this Court here taking into consideration the claim and objection of the respective parties observes in the contingency involving the Election dispute, there was no necessity at all making the Election Officer a party to the Election Petition. Further if such party is made his role is formal in nature. Thus, even though the Election Officer has been made a party to the Election dispute is simply the formal party.

5. It is coming back to the doubt raised by the learned counsel for the Petitioner that there may be impossibility in ensuring production of records from the Election Officers in Election dispute of this nature in absence of such party, this Court here takes into account the provisions at Section 27(4) of the Act and Rule 56 of the Grama Panchayat Election Rules, which reads as hereunder:-

Section 27(4) of the Orissa Grama Panchayat Act:-

Section 27(4) The Election Officers, Presiding Officers and other officers appointed or designated for the time being for the conduct of elections under this Act shall be deemed to be on deputation to the Election Commission for the period commencing on the date of the notification

calling for such election and ending with the date of declaration of the results of such election and, accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission."

Rule 56(1) of Orissa Grama Panchayat Election Rules:-

Rule 56(1) *The documents relating to election proceedings received from the Presiding Officers and those prepared by the Election Officer shall be retained in safe custody in the office of the Election Officer for a period of three months and shall then, unless otherwise directed by a competent Court, be destroyed.*

(2) The documents or records referred to in Sub-rule (1) in custody of the Election Officer shall not be opened or inspected or produced save with the prior permission of the Commissioner or of a competent Court."

Reading both the aforesaid provisions, this Court here finds there has been complete safeguard in ensuring production of material documents from the Election Officer involved through both the aforesaid provisions. For the aforesaid provision of law ensuring production of material documents is possible even in absence of Election Officer being a party. In the circumstance this Court finds, there is no room for making Election Officer as a party even to an Election dispute. Coming back to the decision process involving the Election dispute vis-à-vis the role of Election Officer, the Election dispute is simply to be decided taking into account the dispute involved therein between the contesting parties certainly not the Election Officer, who has no role to contest the Election proceeding, further the Election dispute also does not involve any relief against Opposite Party No.2, the Election Officer.

6. Reverting back to the moot question involved if application under Order 7 Rule 11 of the C.P.C. in the present contingency was

entertainable? For this Court already exercised its opinion through paragraphs 3 & 5 on the role of such Opposite Party, Election dispute should not involve any dispute between the contesting party vis-à-vis the Election Officer. As a consequence, this Court finds, there was no room for bringing in an Election under Order 7 Rule 11 of C.P.C. involving the Election Officer as the issue raised through such application is not germane to the dispute involving the Election dispute.

7. In the circumstance this Court finds, there is no merit involving the case. The Writ Petition thus stands dismissed but however there is no order as to cost.

8. In the event the trial is obstructed in spite of a clear order of this Court, the trial court is directed to proceed by showing outcome in the Election dispute at least within a period of three months from the date of communication of this judgment. Looking to the nature of dispute being Election dispute, if necessary, trial may be conducted on day to day basis.

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BISWANATH RATH, J.