

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 26417 of 2022

Harihara Jena

....

Petitioner

Mr. Smita Ranjan Patnaik, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite party Nos.1 to 3)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.12.2022

Order No.

5. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition prays for a direction to the Deputy Registrar, Cooperative Societies, Cuttack Division-II- Opposite Party No.2 to restrain Opposite Party No.6-Binod Bihari Nayak from functioning as the President of Markandapur Service Cooperative Society in the district of Jajpur (for short, 'the Society') till disposal of Election Dispute No.105 of 2022 pending before Odisha Cooperative Tribunal, Bhubaneswar (for short, 'the Tribunal').
3. Mr. Patnaik, learned counsel for the Petitioner submits that Opposite Party No.6, namely, Binod Bihari Nayak has three children born after Section 28 (3)(p) of the Odisha Cooperative Societies Act, 1960 (for short, 'the Act') came into force. Hence, he is disqualified to hold the post of President of the Society. Assailing his election, the Petitioner has filed Election Dispute No.105 of 2002, which is sub judice before learned Tribunal. Since a person acquiring disqualification is continuing

in the post of President, he should be immediately restrained from discharging his duties.

3.1 It is his submission that since the post of Judicial Member of the Cooperative Tribunal is lying vacant Petitioner is not in a position to move any application for appropriate relief. Hence, this writ petition has been filed. In support of his case, Mr. Patnaik, learned counsel for the Petitioner placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***K.Venkatachalam Vs. A. Swamichkan and another***, reported in AIR 1999 SC 1723, in which it is held that in the matter of disqualification, the High Court has jurisdiction to entertain an application under Article 226 of the Constitution. He also placed reliance upon a decision in the case of ***Ram Kumar Vs. State of Madhya Pradesh and others***, reported in AIR 2013 Madhya Pradesh 136, wherein entertaining an application under Article 226, Madhya Pradesh High Court quashed the election of Member and Vice President, as it was not in accordance with law. He, therefore, submits that this Court has ample power to entertain the writ petition during pendency of the election dispute to grant the relief sought for.

4. Mr. Mishra, learned ASC on the contrary submits that since the election dispute is sub judice before learned Tribunal, this Court should not entertain the writ petition. Further, an elected office bearer should not be prevented from discharging his duties unless and until his election is declared illegal or void by a competent court of law.

4.1. The issue with regard to disqualification of Opposite Party No.6 requires factual adjudication and is sub judice before learned Tribunal. Hence, the writ petition for the self-same relief is not maintainable.

5. The submissions of learned counsel for the parties clearly reveals that the dispute is with regard to disqualification of Opposite Party No.6, as he alleged has three children born after Section 28 (3)(p) of the Act came in force. The documents relied upon by the Petitioner as at Annexure-s 5 and 6 do not conclusively establish that the Opposite Party No.6 has three children. However, the correctness of those documents can be adjudicated in the election dispute by adducing evidence to that effect.

5.1 Admittedly, Opposite Party No.6 has been declared elected in a election process and his functioning as the President of the Society. A person who has received the public mandate to be the President of a Society should not be restrained from discharging his statutory duties unless any compelling circumstance is made out. In the instant case, there is no compelling circumstance to restrain the Opposite Party No.6 from discharging his duties as President of the Society. Further the allegation made by the Petitioner requires factual adjudication. In view of the above, the case laws cited supra by learned counsel for the Petitioner is of no assistance to him.

6. Accordingly, the writ petition being devoid of any merit stands dismissed.

(K.R. Mohapatra)
Judge

s.s.satapathy