

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.27741 of 2022

Paresh Murmu *Petitioner*
Mr. Subash Chandra Puspalka, Adv.
-versus-
Union of India and Ors. *Opposite Parties*
Mr. P.K. Parhi, DSGI
Mr. Jateswar Nayak, CGC
(for O.Ps.1, 3, 4 & 5)
Mr. S. Kasyap, Adv.
(for O.P.2)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order

No.

02.

ORDER

23.12.2022

1. This matter is taken up through hybrid mode.
2. The Petitioner through the aforementioned Writ Petition has challenged the order dated 18.10.2022 passed by the Returning officer-cum-Deputy Chief Labour Commissioner, Bhubaneswar by virtue of which order the candidature of the trade union of the petitioner namely Paradip Port Mazdoor Sangha has been rejected to participate in the election which has been scheduled to be held on 28.10.2022 for the membership of Paradip port authority.

I. FACTUAL MATRIX OF THE CASE:

3. Shorn of unnecessary details, the factual matrix of the case, in short, is that the petitioner submitted his nomination with the symbol in triplicate to the returning officer on 17.10.2022 which was duly accepted by the returning officer and scrutiny was done on the same day. At the time of scrutiny, the authority demanded the original copy of the certification of registration of the trade union although it was not indicated in the notification dated 07.10.2022. Thereafter, the petitioner submitted an application on 17.10.2022 to the returning officer stating therein to produce the original copy of certificate of registration on 18.10.2022 and the application was received by the returning officer and time was allowed to the petitioner to produce the original copy of the certificate of registration on 18.10.2022. On 18.10.2022 he submitted the original copy of registration certificate which was accepted by the returning officer.
4. Originally, the name of the trade union of the petitioner was Paradip Port Construction Mazdoor Congress which has been amended by virtue of an amendment application and after the amendment the trade union is called as Paradip Port Mazdoor Sangha. However, the returning officer vide order dated 18.10.2022 has rejected the

nomination paper filed by the petitioner on three grounds; firstly the representative of Paradip Port Mazdoor Sangha did not produce the original certificate of registration issued by the registering authority; secondly, the photo copy of duplicate registration certificate submitted by the union during nomination does not contain the date of issue of the certificate and the signature of the competent authority and thirdly, the certificate does not contain the name, seal and designation of the competent authority who has made the amendment.

II. PETITIONERS' SUBMISSIONS:

5. Learned counsel for the Petitioner(s) earnestly made the following submissions in support of their contentions:
6. The nomination paper of the trade union has been rejected on three grounds that the trade union did not produce the original registration certificate along with the nomination paper. However, in the letter dated 07.10.2022 it has been stated nowhere to submit the original document along with the nomination paper nor has at any point of time the authorities or the returning officer directed the petitioner to produce the original copy of the registration certificate. However, on 17.10.2022 at the time of scrutiny the returning officer wanted to verify the original registration.

III. COURT'S REASONING AND ANALYSIS:

7. It should not be a matter of great surprise that the returning officer wanted to verify the original registration certificate. Primary evidence is of utmost importance and the state shall be allowed to scrutinize or verify a document when it concerns to a related matter or smacks doubt in his mind. In this regard, the Supreme Court in *M. Chandra vs M.Thangamuthu and another*¹ has held that,

"It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party."

8. Similarly, in *J.Yashoda vs K.Shobha Rani*², the Hon'ble Supreme Court has held that:

"The rule which is the most universal is that the best evidence in the nature of the case shall be

¹ (2010) 9 SCC 712

² (2007) 5 SCC 730

produced and so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be provided by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section."

9. Furthermore, the Opposite Party allowed the petitioner extra time to arrange the original document. However, the petitioner has not been able to utilize the extra time to procure the original document. Moreover, it is pertinent to note that one of the grounds under which the application of the petitioner was rejected was the fact that the certificate does not contain the name, seal and designation of the competent authority who has made the amendment. Therefore, in the present case the contention of the petitioner cannot be entertained.

10. In light of the aforesaid discussion and having regard to the present position of law, this Court is of the view that the writ petitioner cannot be granted any relief by way of a writ and the present Writ Petition is liable to be dismissed.
11. Accordingly, this Writ Petition is dismissed. No order as to costs.

B.Jhankar



(Dr. S.K. Panigrahi)
Judge