

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.28055 of 2022

Ramadebi Rautaray

....

Petitioner(s)

Mr. D. Nayak,
Sr. Advocate

-versus-

Basanti Sahoo & Anr.

....

Opposite Party(s)

Mr. S. Mishra,
ASC for O.P.2

CORAM:

JUSTICE BISWANATH RATH

ORDER

28.10.2022

Order No.

01.

1. Mr. Nayak, learned Sr. Advocate appearing on behalf of the Petitioner makes a serious allegation against the trial Court for unnecessarily issuing repeated notice to the Opposite Party Nos.1 & 2. Taking this Court to the recording of the trial Court on the sufficiency of notice on both above Opposite Parties Mr. Nayak, learned Sr. Advocate contended that once service of notice on the Opposite Party Nos.1 & 2 remains sufficient and there is clear recording by the trial Court in this regard, there is no scope for further issuance of notice.

It is, in the circumstance, Mr. Nayak, learned Sr. Advocate appearing on behalf of the Petitioner requests this Court for targeting the disposal of the Election Dispute involved herein.

2. Considering the allegation made by Mr. Nayak, learned Sr. Advocate appearing on behalf of the Petitioner, this Court from the order sheet dated 30.03.2022 finds, the case was admitted on this date with a direction for issuing notice to the Opposite Parties in both ways and also by fixing the date of appearance to 13.04.2022. The order

dated 13.04.2022 discloses that S.R. against the Opposite Party No.1 is back with an endorsement that the Addressee left without instruction. Consequently there is direction for issuance of notice. The order dated 15.04.2022 discloses that the trial Court directed for issuance of notice to both the Opposite Parties by fixing the case to 11.05.2022 for their appearance. The order dated 11.05.2022 discloses as follows:-

“Advocate for the Petitioner is present and files a Petition U/o.5, R-20 of C.P.C. supported by Affidavit S.R. through Nizarat against O.P. 2 returned back with sufficient of service. No steps are filed on behalf of O.P. 02 on repeated calls. S.R. against O.P.-1 through Post returned with absence of service. Put up on 16.05.2022 for consideration of Petition U/o.-5,R-20 C.P.C. and awaiting S.R. through Nizarat against O.P. No.1.”

3. This Court finds, there is clear recording by the trial Court indicating that the service of notice against the Opposite Party No.2 returned back with sufficiency of service and there is no step on behalf of the Opposite Party No.2 on repeated call. Looking to the position of the Opposite Party no.2 this Court observes, since the Opposite Party No.2 is the Election Officer it may not be a contesting party. Therefore there should not be issuance of further notice and if necessary, there may be service of copy on the Government Pleader on behalf of the Opposite Party No.2. From the order dated 16.05.2022 this Court finds, the trial Court has clearly made a recording that service of notice on Opposite Party No.2 is already made sufficient on 11.05.2022. There is, however, no information coming through the entire order sheet as to if there is sufficiency of notice on the Opposite Party No.1 who is to contest the proceeding being the return candidate. From the order dated 23.06.2022 it appears, there is clear recording that S.R. through Nizarat against O.P.1 is returned back with affixure of service. As a consequence of the above observation learned counsel for the defeated

candidate prayed for issuing notice to the Opposite Party No.1 through Special Messenger. The later order dated 23.06.2022 discloses that there is already deposit of required cost for issuing notice to the Opposite Party No.1 by Special Messenger. The order dated 8.07.2022 discloses that the AGP has already appeared for the Opposite Party No.2 and S.R. through Special Messenger on Opposite Party no.1 not back. The matter was next posted to 18.07.2022. It is not known as to what happened on 18.07.2022. There is reposting of the matter on 5.08.2022. In this proceeding there is clear recording of the trial Court regarding presence of the Advocate for the Petitioner and the Advocate for the Opposite Party No.1 and their filing of Hazira. Even after such recording there is again direction to the Petitioner to file a draft notice for publication of the same in a local Daily. In view of the clear recording in the order dated 8.07.2022 it appears, the AGP has already appeared for Opposite Party No.2 and requested for filing show cause and the order dated 5.08.2022 clearly shows appearance of the Opposite Party No.1. Thus it is strange to observe here that in spite of the AGP already appeared for the Opposite Party No.2, trial Court again directed the Petitioner to take out notice on Opposite Party No.2 through paper publication. From reading of the entire order sheet, it appears, there is already appearance of the Opposite Party Nos.1 & 2 and thus there is force in the submission of Mr. Nayak, learned Sr. Advocate that there is unnecessary lingering of the Election Dispute.

4. Considering the request of Mr. Nayak, learned Sr. Advocate appearing on behalf of the Petitioner for expediting the trial of the proceeding and since there is already appearance of both the Opposite Parties, the trial Court in case there is no filing of written statement, to ensure filing of written statement by the Opposite Party Nos.1 & 2 within two weeks from the date of service of copy of this order. This

Court further directs the trial Court to go by its own order dated 8.07.2022 and 5.08.2022 and proceed for finality of the proceeding at least within a period of four months from the date of communication of a certified copy of this order by the Petitioner.

5. Since this Court has disposed of the matter in presence of the Petitioner and without providing opportunity to the contesting Opposite Party, liberty is also granted to the Opposite Party No.1 to move application for clarification of the order, in the event there is any hard necessity.

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

7. Issue urgent certified copy as per rules.

(Biswanath Rath)
Judge

Ayaskanta Jena

