

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.28636 OF 2022

Gouribala Das

....

Petitioner(s)

Mr.B.B.Mishra2,Adv.

-versus-

Rama Chandra Das and another

....

Opposite Party(s)

Mr.A.Mishra, Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER

15.11.2022

Order No.

03.

1. Heard learned counsel for the parties at admission stage.
2. The Writ Petition involves a challenge to the order of rejection of the application under Order 7 Rule 11 of C.P.C. at the instance of the return candidate challenging initiation of proceeding on the premises of being barred by limitation. Mr.Mishra, learned counsel objects the entertainability of Election dispute in absence of application for condonation of delay. Thus justified filing of application under Order 7 Rule 11 of C.P.C. and submits there is illegal rejection of application under Order 7 Rule 11 of C.P.C.
3. Undisputedly there is four days delay in filing the Election dispute. This Court here from the provision at Section 31 of the Orissa Grama Panchayat Act finds the following:-

31. Presentation of petitions- (1) The petition shall be presented on one or more of the grounds specified in Section 39 before the Civil Judge (Junior Division) having jurisdiction over the place at which the office of the Grama Sasan is situated together with a deposit of such amount, if any, as may be prescribed in that behalf as security for costs

within fifteen days after the date on which the name of the person elected is published under Section 15:

Provided that if the office of the Civil Judge (Junior Division) is closed on the last day of the period of limitation as aforesaid the petition may be presented on the next day on which such office is open:

Provided further that if the petitioner satisfies the Civil Judge (Junior Division) that sufficient cause existed for the failure to present the petition within the period aforesaid the Civil Judge (Junior Division) may in his discretion condone such failure.”

From the provision at Section 31 of the Orissa Grama Panchayat Act, this Court finds, the competent court has authority to in consider to the delay aspect and undisputed there is scope for bring dispute even after expiry of period of limitation.

4. For the opinion of this Court, there is no strict application of law of limitation under the Limitation Act to such cases. For there is enabling provision authorizing the competent court to also enter into the question of limitation, the question, if any, raised on the request of the Petitioner, may be involved in the trial and the trial may also involve issues involving such questions. Coming to the entertainability of application under Order 7 Rule 11 of C.P.C., this Court is of opinion not entertaining such application when it involves only limitation aspects. In the process this Court finds, there is no scope for entertaining the application under Order 7 Rule 11 of C.P.C. For there is rejection of such application and keeping in view the observations made hereinabove, this Court does not want to interfere in such order. However while dismissing the Writ Petition, this Court observes, in the event the written statement brings such dispute and the return candidate asks for framing an issue on the question of limitation, such issue may be framed and the same shall be taken up in the trial process along with other issues involved herein. In the event there is requirement for considering such issue, the issue will be

entertained and decided independently and without being influenced by the observations already made in rejection of the application under Order 7 Rule 11.

(Biswanath Rath)
Judge

Swarna

