

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.36216 Of 2021
(Through hybrid mode)**

Ramesh Mehta

....

Petitioner

Mr. K.Khuntia, Advocate

-versus-

Addl. DM, Sundergarh and Others

....

Opposite Parties

Mr. A.K.Sharma, AGA

Mr. Palit, Advocate (for O.P.2)

CORAM: JUSTICE ARINDAM SINHA

**ORDER
22.02.2022**

**Order No.
03.**

1. The writ petition was moved in this Bench on 17th February, 2022.
2. Mr. Khuntia, learned advocate, appeared on behalf of petitioner and submitted, his client is a member of Rourkela Chamber of Commerce and Industry. Election has not been held in the Chamber. His client moved Court for appropriate directions for the election being held. Executive members of the Chamber had their elected term ended on 30th June, 2021. They purportedly unanimously approved extension of their term by six months. That too ended. He submitted,

there is no term in the articles to allow for elected members to themselves extend their terms.

3. Mr. Palit, learned advocate appeared on behalf of the Chamber. Today he submits, petitioner is guilty of suppression of material fact. He was ex-President and as such, a member of the Presidential Board. Decisions taken by the Executive Committee are informed to the Presidential Board. He refers to his client's counter, wherein stands disclosed letter dated 3rd December, 2021 informing minutes of 31st Meeting of the Executive Committee held of 18th November, 2021. Following from the resolutions adopted is reproduced below:-

“ 8.0..... The House proposed that the current team should continue justifying the meticulous efforts put up by our present president and VP Sri Prabhat Tibrewal who have gone into every detailed aspect of the land paper regularization, will go in vain if same persuasion and follow-up is not done by the new team which has happened earlier also.

It is of utmost importance at this juncture that land paper work are completed in the larger interest of our chamber.

Hence the term of current EC should be extended till March' 22 and more efforts should be continued given to complete the paper works.”

4. He submits, being ex-President, petitioner was aware of this resolution as circulated to the Presidential Board. His grievance being against the decision to extend term of the Executive Members, he

should have approached under article 66 of the Memorandum and Articles of Association, which provides procedure for grievance redressal. Petitioner however moved Court. As such, the discretionary jurisdiction should not be exercised in his favour. He submits, suppression by petitioner of having been a President and therefore privy to decisions taken by the Executive Committee is suppression of a material fact, inasmuch as on knowing the decision, petitioner was obliged to approach for grievance redressal under clause 66. He relies on judgment of the Supreme Court in **K.D.Sharma v. Steel Authority of India Limited**, reported in (2008) 12 Supreme Court Cases 481, paragraph 34 reproduced below.

“The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim. ”

5. He then relies on another judgment of said Court in **Titaghur Paper Mills Co. Ltd vs. State Of Orissa** reported in

AIR 1983 SC 603, paragraph 6. He submits, existence of alternative remedy was reason for the Supreme Court to dismiss the writ petition. Here too there is existence of alternative remedy by the grievance redressal procedure. Lastly, he relies on judgment of said Court in **Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi**, reported in **(2010) 1 SCC 234**. The Court declared the law about grant of relief in writ jurisdiction to be confined to the prayers(s). He submits, petitioner has prayed for requiring his client to take appropriate decision within stipulated period of time as to be fixed by the Court. By said resolution taken in the meeting held on 18th November, 2021, the terms stood extended till March, 2022. Election will thereafter be held.

6. Mr. Khuntia in reply submits, it is of no matter that his client is ex-President. Resolutions of the Executive Committee, as on date filing of the writ petition, were, inter alia, extension of their term. This is not provided for in the articles. It transpires there has been further extension till March, 2022. As such, his client's grievance of election not being held in the Chamber has not been dealt with.

7. Petitioner having been ex-President of the Chamber and therefore entitled to information regarding resolutions taken by the

Executive Committee, is not a relevant fact for purpose of his grievance being addressed, the grievance being election not held in the Chamber. On behalf of the Chamber, nothing could be shown from the articles empowering the Executive Committee to themselves extend their term and that to, successively. It appears from the resolutions taken on 18th November, 2021 by the Executive Committee, as relied upon, the reason for the extension up to March, 2022 is land paper regularization, persuasion and follow up, in larger interest of the Chamber. The reason seems to suggest that apart from the continuing, beyond their terms, Executive Members, succeeding elected Executive Members will not be able to do the persuasion or follow up in the interest of the Chamber. The reason, in addition to being without any substance, appears to be presumptuous. Court is convinced that the Executive Members having served out their terms are unwilling to face election.

8. A further submission was made by Mr. Palit regarding there being no constitutional obligation upon the Executive Committee requiring conduct of elections unlike the requirement in the three tier democratic set up of the country. It is a private body and there should not be interference by Court. In this context must be seen prayer of

petitioner, which is in respect of annexure-2 in the petition. It is for direction by opposite party no.1 (Additional District Magistrate-cum-Registrar of Societies, Sundargarh) on subject request dated 19th August, 2021 for immediate orders for conduct of election in the Rourkela Chamber of Commerce and Industry. The subsequent extension of term of the Executive Members by resolution dated 18th November, 2021, relied upon by the Chamber, was made much after 19th August, 2021.

9. It follows, the Chamber being a registered society, petitioner had approached the Registrar of Societies with his grievance. Petitioner acted in accordance with applicable statutory provisions regarding registered societies. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and submits, he does not have instruction of action taken on petitioner's request. The demand for justice has not been acted upon. A clear case of exercise of writ jurisdiction in favour of petitioner arises.

10. There will be direction upon opposite party no.1 to forthwith deal with complaint dated 19th August, 2021 (annexure-2) of petitioner and make appropriate directions in accordance with provisions in Societies Registration Act, 1860. This must be done within three

weeks of communication of the order.

11. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant

