

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1186 OF 2022

S. Ranjit Kumar Patro ***Petitioner***
Dr. Binoda Kumar Mishra, Advocate
-versus-
J.S. Shinde and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
25.11.2022

Order No.

1. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 19th November, 2022 (Annexure-1) passed by learned Senior Civil Judge, Bhubaneswar in I.A. No.01 of 2022 (arising out of C.S. No.2529 of 2022), whereby an application filed by the Plaintiff-Petitioner under Order XXXIX Rule 3 C.P.C. has been rejected.
3. Dr. Mishra, learned counsel for the Petitioner submits that C.S. No.2529 of 2022 has been filed alleging inaction of Utkal Chemists and Druggists Association in not recognizing the Petitioner as the Secretary of Ganjam and Phulbani Chemists and Druggists Association and for consequential and ancillary relief.
4. Since the election of Utkal Chemists and Druggists Association is scheduled to be held on 29th November, 2022 without following due procedure, an application under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No.1 of 2022 has been filed to restrain the authorities from proceeding with the election. As there is urgency in the matter, an application under Order XXXIX Rule 3 C.P.C. was filed to dispense with service of notice on the Opposite Parties and to take up I.A. No.1 of 2022 for grant of an *ex*

parte ad-interim order of injunction. Learned trial Court by a cryptic order rejected such application. Hence, this CMP has been filed.

5. Dr. Mishra, learned counsel for the Petitioner submits that the voter list is defective inasmuch as three districts, namely, Sundargarh, Jajpur and Rayagada have gone unrepresented. Further, the districts, namely, Ganjam, Balasore and Bhadrak are not properly represented. Moreover, the schedule date of nomination was fixed without providing a clear seven days gap in between publication of the voter list and filing of nomination. No notice whatsoever of such election was given to the Petitioner. Thus, the entire process of election is defective and should be struck down. If the election as per the schedule date is held, the Petitioner will suffer irreparable loss. These material aspects were not taken into consideration by learned trial Court while rejecting the application under Order XXXIX Rule 3 C.P.C. Hence, the impugned order under Annexure-1 is not sustainable.

6. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the alleged voter list is annexed to the CMP as Annexure-4, but this Court is not in a position to form an opinion as to whether the same is complete one or not. Further, if, at all, any district has gone unrepresented or not properly represented, the same is a matter of adjudication, which can only be ascertained after giving opportunity of hearing to the Opposite Party. It further appears that the Petitioner is not recognized as the Secretary of Ganjam and Phulbani Chemists and Druggists Association and the same is a subject matter of adjudication in the suit itself. In that view of the

matter, the interim application for injunction can only be considered after providing opportunity of hearing to the Opposite Parties. Hence, this Court feels that learned trial Court has committed no error in rejecting the petition under Order XXXIX Rule 3 C.P.C.

7. Accordingly, the CMP being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge



bks