

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.32436 OF 2022

Dalimba Gamanga

....

Petitioner

Mr.S.K.Dash, Adv.

-versus-

Ramesh Chandra Majhi & anr.

....

Opposite Party(s)

Mr.A.P.Bose, Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
13.12.2022**

Order No.

- 03.
1. This matter is taken up for final hearing on consent of the Parties.
 2. Heard learned counsel for the Parties.
 3. The Writ Petition involves a challenge to allowing of the Amendment Petition by the Election Tribunal, vide Annexure-3. Undisputedly, the Election Petition having been filed on 19.5.2022, there has been filing of Amendment Petition to the Election Petition by the Election Petitioner on 23.11.2022.
 4. On service of copy of the Amendment Petition, learned counsel for the Petitioner established, though the Petitioner has received the copy on 23.11.2022 but there has been clear endorsement on receiving of copy with objection. The Order 6 Rule

17 of C.P.C. Application got disposed of on 23.11.2022. There is no dispute at the Bar with regard to the return candidate making endorsement to have his objection to the Application involved. There is no dispute also at the Bar that the Application for amendment was filed on 23.11.2022 and also got disposed of on 23.11.2022 without affording opportunity of objection to the Petitioner herein. This Court finds surprise in the undertaking of exercise involving the Amendment Application and disposing of such Application on the day it is filed.

5. It is only on this ground, the impugned order dated 23.11.2022 is interfered with and set aside. The matter is relegated back to the Election Tribunal directing for re-hearing of the Order 6 Rule 17 of C.P.C. Application involved herein with involvement of both the return candidate and the defeated candidate. This Court directs both the Parties to appear before the Election Tribunal on 19th December, 2022. This Court further directs the return candidate to file objection to the Application under Order 6 Rule 17 of C.P.C. on the date of appearance itself. It is open to the Election Tribunal to get into fresh disposal of the Application involved at least within a period of ten days from the date of communication of this order but

without being influenced by his own observation in the impugned order.

6. The Writ Petition stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout

