

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 32616 of 2022

Mahendra Kumar Behera ***Petitioner***
Mr. Bigyan Kumar Sharma, Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. Baibaswata Panigrahi,
Additional Standing Counsel
(For Opposite Party Nos.1 and 2)

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
01.12.2022

1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 25th November, 2022 (Annexure-3) passed by the Election Officer, Chilika Fisheries Central Cooperative Societies, Balugaon (for short, 'the Society'), whereby he upheld the nomination of Opposite Party No.3 for the post of President of the Society ignoring that he has acquired disqualification under Section 28 (3)(p) of the Cooperative Societies Act, 1962 (for short, 'the Act').
3. It is submitted by Mr. Sharma, learned counsel for the Petitioner that both the Petitioner as well as Opposite Party No.3 has submitted their nominations for the post of President of the Society. As per the schedule of the election, the Petitioner has submitted an objection with regard to disqualification of Opposite Party No.3, as he has three children as on the cut-off date. Without issuing any notice to the Petitioner to have his say

and without verifying the records, the Election Officer of the Society rejected the objection of the Petitioner vide order under Annexure-3 and declared the nomination of Opposite Party No.3 to be valid.

3.1 It is submitted by learned counsel for the Petitioner that along with the affidavit the Petitioner had submitted the evidence with regard to birth of three children of Opposite Party No.3, but his objection with regard to disqualification of Opposite Party No.3 was overruled on the ground that the Petitioner could not file the birth certificates of those three children. He, therefore, prays for setting aside of the impugned order under Annexure-3 passed by the Election Officer of the Society and to scrutinize the objection of the Petitioner afresh giving opportunity of hearing to the parties concerned.

4. Mr. Panigrahi, learned ASC submits that the Election Officer has duly considered the objection and passed the impugned order under Annexure-3. Further, the grievance of the Petitioner squarely falls under the purview of Rule 57 of the Odisha Cooperative Societies (Elections to the Committees) Rules, 1992 (for short, 'the Rules'). Thus, the Petitioner has remedy under Rule 28-B of the Act to prefer an election dispute before the State Cooperative Tribunal, Odisha, Bhubaneswar. Hence, he prays for dismissal of the writ petition for being not maintainable.

5. Considering the rival contentions of the parties and on perusal of record, it appears that the Petitioner has filed an affidavit dated 24th November, 2022 styling it to be his objection. On perusal of the said affidavit under Annexure-2, it does not

reveal that the Petitioner has raised any objection in terms of Section 28(3)(p) of the Act. It further appears that no particulars of the allegations as submitted by Mr. Sharma, learned counsel for the Petitioner, is reflected in the said affidavit. In addition to the above, the date of election is 1st December, 2022, (i.e. today) as per the election notice published under Annexure-1. In that view of the matter, this Court declines to interfere with the impugned order.

5.1 However, declining to interfere with the impugned order does not preclude the Petitioner from availing the statutory remedy under the Act and Rules framed thereunder.

6. The writ petition is accordingly disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy