IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.35628 of 2022

Tulabati Santa .... Petitioner

Mr. S. Dash, Advocate

-Versus-

The Secretary, Panchayat Raj Department, Khorda and others .... Opposite parties

Mr. R. Pradhan, ASC
Mr. N. Panda, Advocate

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
12.12.2024

Order No.

08. 1. Heard Mr. Dash, learned counsel for the petitioner and Mr. Panda, learned counsel for opposite party No.4 to 6 besides Mr. Pradhan, learned ASC for the state.

2. None appears for the other opposite parties at the time of hearing.

3. Instant writ petition is filed by the petitioner challenging the impugned order under Annexure-3 passed in connection with R.M.C. (G.P.) Case No.01 of 2022 by opposite party No.2 on the grounds stated.

4. Mr. Dash, learned counsel for the petitioner submits that the reports relied upon by opposite party No.2 have not been confronted to the petitioner, while claiming that a 3rd child was born to her after the cutoff date, hence, there is violation of principles of natural justice. The further submission is that the so called first child

born on 7th August, 2014 is not the daughter of the petitioner and the same is revealed from Annexure-5. With the above submission, Mr. Dash, learned counsel for the petitioner claims for remand of the matter for a fresh decision by opposite party No.2 with an opportunity of hearing to respond after being confronted to the reports received in connection with R.M.C. (G.P.) Case No.01 of 2022.

5. On the other hand, Mr. Panda, learned counsel for opposite party Nos.4 to 6 submits that an enquiry has been held and in course of such enquiry, after having received the reports from the concerned Tahasildar as well as RI and from the Anganwadi Centre, such a decision has been arrived at with a conclusion that 3rd child was born after the cutoff date, hence, rightly, the petitioner has been declared disqualified in view of Section 25(1)(v) of the Grama Panchayats Act (herein after referred to 'the Act').

6. Mr. Pradhan, learned ASC for the State supported the contention of Mr. Panda, learned counsel for opposite party Nos.4 to 6 and submits that the impugned order under Annexure-1 should not be interfered with as the decision was reached after due enquiry held.

7. In course of hearing, Mr. Dash, learned counsel for the petitioner cited the following decisions, such as, **Sri Kasteswar Khatua Vrs. State of Orissa and others 2004 (I) OLR 275 and Smt. Pramila Pradhan Vrs. State of Orissa and another 2005 (I) OLR 411** to contend that all such reports referred to and relied upon to hold the disqualification should have been confronted to the petitioner,

which has not taken place, hence, there is violation of principles of natural justice.

8. From Annexure-3, the Court does not find that the reports received by opposite party No.2 have ever been confronted to the petitioner. It is made to understand from the said order that the 1st child, namely, Jyoshna Santa was born on 7th August, 2014, whereas, the 3rd, namely, Bhumika Santa was on 19th November, 2020 and was in fact given in adoption. The contention of Mr. Dash, learned counsel for the petitioner is that the child by name Jyoshna Santa is not the daughter of the petitioner. In fact, such claim is based on a copy of the study certificate dated 24th November, 2022 as at Annexure-5. Considering the above facts and submissions of learned counsel for the respective parties, since the parenthood in respect of the child, namely, Jyoshna Santa is disputed and the finding vis-à-vis adoption is in respect of the so called 3rd child, namely, Bhumika Santa born on 19th November, 2020 and the impugned order under Annexure-3 does not reveal, if the reports received from the learned Tahasildar and RI concerned and information from the concerned Anganwadi Centre to have been confronted to the petitioner, in best interest of the parties and keeping view of the decisions referred to herein before that there is a need for a proper hearing following the principles of natural justice, the Court is of the conclusion that the matter should be remitted back for a fresh decision by opposite party No.2.

9. Accordingly, it is ordered.

10. In the result, the writ petition stands disposed of with the direction to opposite party No.2 to rehear both the sides in

connection with R.M.C. (G.P.) Case No.01 of 2022 and after providing reasonable opportunity of hearing to them, confronting the reports received, to the petitioner, to pass necessary order as per and in accordance with law at the earliest preferably within a period of eight weeks from the date of receipt of a copy of this order. As a necessary corollary, the impugned order under Annexure-3 is hereby set aside with the direction as aforesaid.

11. Urgent copy of the order be issued as per the rules.

(R.K. Pattanaik)
Judge

Rojina

Signature Not Verified
Digitally Signed
Signed by: ROJINA SAHOO
Designation: Junior Stenographer
Reason: Authentication
Location: OHC, CTC
Date: 13-Dec-2024 10:59:19