IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR **W.P.(C) No.31617 of 2024**

Maheshwar Jena .... Petitioner
Mr. A.S. Nandy, Advocate

-Versus-

Madhusudan Dalai & others .... Opposite Parties
Mr. P.K. Rath, Senior Advocate
Assisted by Mr. A. Khandelwal, Mr. Millan Kumar &
Pankaj Khandelwal (O.P. No.1)
Mr. S.K. Swain, AGA (O.P. Nos.2 to 4)

And
W.P.(C) No. 32188 of 2024

Maheshwar Jena .... Petitioner
Mr. A.S. Nandy, Advocate

-Versus-

Madhusudan Dalai & others .... Opposite Parties
Mr. P.K. Rath, Sr. Advocate
Assisted by Mr. A. Khandelwal, Mr. Millan Kumar &
Pankaj Khandelwal (O.P. No.1)
Mr. S.K. Swain, AGA (O.P. Nos.2 to 4)

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF HEARING: 02.09.2025
DATE OF JUDGMENT: 05.12.2025

1. Both the writ petitions are disposed of by the following judgment since a common cause of action is involved.

2. W.P.(C) No.31617 of 2024: This writ petition is filed by the petitioner challenging the impugned judgment dated 20th

April, 2024 as at Annexure-1 passed in connection with Election Misc. Case No.03 of 2022 by the learned Civil Judge, Balasore confirmed in Election Appeal No.03 of 2024, whereby, he has been declared to be disqualified under Section 11 of the Odisha Grama Panchayats Act, 1964 (hereinafter referred to as 'the Act') in connection with the election to the seat of Sarpanch, Bishnupur Gram Panchayat on the grounds inter alia that such decision is erroneous and not tenable in law and therefore, liable to be interfered with and set at naught.

3. W.P.(C) No.32188 of 2024: Instant writ petition is filed by the petitioner for quashment of Annexure-2 in relation to the decision of the learned District Judge, Balasore for having confirmed invalidity of the election and his declaration as Sarpanch of the concerned G.P. to be null and void on account of disqualification by virtue of Section 25(1)(v) of the Act and Section 11 thereof and not to give effect to the same for the reasons stated with appropriate directions issued in that regard.

4. The election of the petitioner as the Sarpanch of the concerned G.P. was challenged by opposite party No.1 with an election petition filed to declare the same as void on the ground that he invites disqualification under Section 25(1)(v) of the Act and Section 11 thereof for having a child born after the cut-off date and not able to read and write Odia respectively. The said election petition was disposed of by the learned Civil Judge, Balasore vide Annexure-1 and

concluded that the petitioner stands disqualified as the Sarpanch of Bishnupur G.P. only under Section 11 of the Act. However, the request of opposite party No.1 to declare him as the Sarpanch for having polled second highest number of votes was not considered leading to a declaration about casual vacancy to have been created with a direction to the concerned authority to hold a fresh election to the post of the Sarpanch of the G.P. Against the above decision, the petitioner filed Election Appeal No.3 of 2024, whereas, opposite party No.1 questioned the legality of the order for him not being declared as the Sarpanch and preferred Election Appeal No.4 of 2024. Both the appeals were heard together by the learned District Judge, Balasore and disposed of by a common judgment dated 18th November, 2024. The appeal filed by the petitioner was dismissed upholding the decision of the Court of first instance on disqualification but on both counts. The other appeal of opposite party No.1 was also dismissed denying any such declaration as having been duly elected as the Sarpanch of the G.P., thereby, concurring the view that a casual vacancy has arisen as a result to be filled up by fresh election held. Since the appeals were dismissed, it has led to the filing of the writ petitions only by the petitioner.

5. The learned Civil Judge, Balasore considering the pleadings of the parties, framed the following issues, such as, (i) whether the cause of action to file the election petition? (ii) whether the petition is barred by law of

limitation? (iii) whether the returned candidate is unable to read and write Odia? (iv) whether the returned candidate's 4th child was born on 4th November, 2022 after the cut-off date and hence, his election as Sarpanch of the G.P. is void in view of Section 25(1)(v) of the Act? (v) whether the election petitioner having secured second highest votes in election, he should be elected as duly elected Sarpanch of the G.P.? and (vi) any other reliefs, if the petitioner is otherwise entitled to under law and equity? and answered accordingly against the petitioner.

6. Heard Mr. Nandy, learned counsel for the petitioner and Mr. Rath, learned Senior Advocate appearing for opposite party No.1 besides Mr. Swain, learned AGA for the State.

7. Before the learned Civil Judge, Balasore, the election petitioner, namely, opposite party No.1 examined himself as a witness besides another and exhibited as many as fourteen documents, whereas, on the other hand, the petitioner adduced oral and documentary evidence in rebuttal. Referring to the materials on record, the learned Civil Judge, Balasore discussed the issues framed and ultimately reached at a conclusion that the petitioner invited disqualification only for not being able to read and write Odia and accordingly, declared his election as the Sarpanch of Bishnupur G.P. as void under Section 11 of the Act but denied any such declaration in favour of opposite party No.1, rather, held a casual vacancy to have been created. The question is, whether, the decision of the learned Civil

Judge is in accordance with law? Such decision on disqualification under Section 11 of the Act was confirmed in appeal but with a finding that the returned candidate's election is also void under Section 25(1)(v) of the Act for having the 4th child born after the cut-off date. Whether, any error or illegality in the appreciation of evidence has been committed by the learned District Judge, Balasore being a Court of fact and law for having dismissed the appeal of the petitioner?

8. According to Mr. Nandy, learned counsel for the petitioner, the evidence on record has not been properly examined by the learned Courts below. It is contended that the petitioner led evidence and duly proved the fact that the 4th child born to him was not after the cut-off date i.e. on 6th November, 1994, however, the learned court below failed to appreciate the same and accepted the plea of opposite party No.1 overturning the finding of the learned Civil Judge. It is also contended by Mr. Nandy, learned counsel that the view expressed by both the learned Courts below on disqualification under Section 11 of the Act is grossly erroneous and illegal. Mr. Nandy, learned counsel submits that the petitioner is having the ability to read and write Odia bare minimum necessary to discharge the functions as the Sarpanch of the G.P. but the learned Courts below adopted a procedure and test not in consonance with the spirit of the law and concluded that the disqualification is also invited under Section 11 of the Act. The contention is

that the learned Courts below lost sight of the provisions of the Act and a decision of this Court in **Usha Sahoo Vrs. Ambika Sahoo and another 2011 (I) OLR 499** followed in **Kuntala Mallik Vrs. Smt. Bharati Behera** decided on 14th August, 2024 in W.P.(C) No.7580 of 2024. It is contended that the standard test set by the learned Courts below and the procedure to ascertain the capacity of the petitioner to read and write Odia could not have been adopted, hence, there has been a grave error in reaching at the conclusion that the petitioner invites disqualification under Section 11 of the Act.

9. On the contrary, Mr. Rath, learned Senior Advocate appearing for opposite party No.1 would submit that no any serious wrong or illegality has been committed by the learned Courts below in applying the test to know and ascertain the bare minimum standard required to read and write Odia. It is further contended that by applying a basic standard and direction to the petitioner to read and write in Court exposed him fully and the same revealed his complete inability and incapacity manifestly displayed on record, which is sufficient to reach at a definite conclusion that he invited disqualification under Section 11 of the Act. The further contention is that there has been no error either by the learned Court below in concluding that the petitioner stands disqualified under Section 25(1)(v) of the Act when it has been proved and clearly established that his 4th child was born after the cut-off date and it was in the year 1996.

In fact, on the disqualification of the petitioner under Section 11 of the Act, Mr. Rath, learned Senior Advocate cited a decision of a Division Bench of this Court in **Mrs. Suryakanti Mishra Vrs. State of Orissa and others 2005 (Supp.) OLR 906** and one more in the case of **Saraswati Sahoo Vrs. Lipika Dash & another 2020 AIR (Ori) 84**, wherein, a similar test was applied to determine the ability of an elected representative to read and write Odia. With such submission, it is contended that the learned Court below rightly declared disqualification of the petitioner under Section 25(1)(v) of the Act and also under Section 11 thereof confirming the decision of the learned Civil Judge in that regard, hence, the impugned judgment as at Annexure-2 should not be tampered with and disturbed.

10. First of all, the Court is to determine, whether, the decision of the learned Court below with regard to disqualification under Section 25(1)(v) of the Act is in accordance with law. From Ext.1, it shows that the petitioner contested the election for the post of Sarpanch of Bishnupur G.P. in the year 2002. In fact, one of the candidates in the election, namely, Susant Mandal challenged the election of the petitioner on similar ground for him having 4th child born on 6th November, 1996 and filed Election Misc. Case No.15 of 2002 before the learned Civil Judge, Balasore, which was contested and disposed of with a conclusion that the latter has invited disqualification. The said decision was challenged in Election Misc. Appeal

No.132 of 2004, but it was upheld. While under examination, the petitioner as OPW 1 admitted that there is a declaration as to disqualification against him by the learned Civil Judge in Election Misc. Case No.15 of 2002. As stated before, the judgment therein was challenged in Election Misc. Appeal No.132 of 2004 and was dismissed by a judgment dated 2nd December, 2004. The learned Court below has discussed the decisions in **Hemanta Kumar Meher Vrs. Shiba Prasad Khamari and another 2005(II) OLR 734** and **Satrucharla Vijaya Rama Raju Vrs. Nimmaka Jaya Raju and others AIR 2006 SC 543** relied on from the side of the petitioner challenging the admissibility of Exts. 1 and 2 with the plea that any such earlier decision on disqualification is not binding to him not being a judgment in rem but, at last, with a finding thereon further proceeded to examine other evidence on the plea of 4th child born after the cut-off date and finally concluded with the impugned judgment i.e. Annexure-2.

11. In so far as the evidence on record is concerned, Ext.7 is the information obtained by opposite party No.1 under the RTI Act from the PIO, CHC, Baliapal and the same indicates that the date of birth of the 4th child to be 4th November, 1996 and it was registered in Birth and Death Register at Serial No.2842 dated 8th November, 1996. The certified copy of the said Register stands marked as Ext.11. At serial No.2842 of the Register, it has been mentioned that a male child of the petitioner was born and it has been

entered therein on 8th November, 1996. Furthermore, opposite party No.1 has referred to Ext.10/a, a certified copy of an Immunization Register to show that the date of birth of the said child has been entered as 6th November, 1996. As it is made to reveal from the record, the petitioner alleged Exts.7, 10/a and 11 as manufactured documents with the plea that the name of the child has not been mentioned in Ext.7 while Ext.10/a bears the name of the child as Raj Kishore Jena and there is infirmity. In fact, attention was drawn by the petitioner to Ext. D, such as, birth certificate of the child, namely, Rajib Jena issued by Baliapal CHC. That apart, the matriculation certificate of the child marked as Ext. E has been referred to corroborate the claim of the 4th child was born on 6th November, 1994. In so far as Ext. D is concerned, registration of the birth of the child was made in the year 2002, whereas, he was claimed to be born on 6th November, 1994. In fact, no explanation has been offered by the petitioner as to why after 8 years of birth of the child, it was registered. In so far as Ext.11 is concerned, the same is a contemporaneous document with the time of birth of the child. No material has been placed on record to substantiate the plea that Ext.11 is a created document. In fact, the relevant entry in Ext.11 reveals the date of birth. Such entry is made in regular course of business and therefore, according to the Court, the same is a valuable piece of evidence and cannot to be ignored. Mere allegation that Ext.11 as a manufactured document by itself is not sufficient to discredit the same. Rather, it is made to suggest

that Ext.D was managed a month before the election purportedly to avoid disqualification. From Ext.11, it is revealed that the 4th child of the petitioner was born on 6th November, 1996 with an entry in that regard at serial No.2482. It is equally relevant to notice that the date of birth of a daughter of the petitioner is mentioned in Ext.11 and therefore, no doubt remains to disbelieve the birth of the 4th child with a similar entry therein. It is to reiterate that Ext.D reveals birth of the child registered on 5th January, 2002 after 8 years from the date of birth and as such, no satisfactory explanation was offered for the entry in the Register with inordinate delay. In fact, the learned court below has taken judicial notice of the fact that delay in registration can be allowed by an order of the competent authority having jurisdiction over the area where the birth or death has taken place and only after necessary verification but nothing has been produced by the petitioner to show that such entry was duly made and according to law by following the established procedure. Referring to Ext.2, the judgment dated 2nd December, 2004 in Election Misc. Appeal No.132 of 2004 of the learned District Judge, Balasore, it has been concluded by the learned court below that there is an observation therein that Ext.D has been created designedly to avoid disqualification. The said observation has not been set aside and hence, it has been further concluded that Ext. D cannot be said to have any credibility. That apart, the learned court below entertained doubt to accept Ext. G issued by the Headmaster of a

primary school, wherein, the date of birth of the child is mentioned as 6th November 1994. That apart, Ext. F was found to lack reliability. The conclusion of the learned Court below is that Exts. B, F and G are found to be not credible enough to override the prior finding of the Courts vide Ext.1, 2 as well Exts.7, 10/a and 11. In fact, learned Court below examined the material evidence in great detail and reached at a conclusion that the 4th child of the petitioner having been born on 6th November, 1996, the petitioner invited disqualification under Section 25(1)(v) of the Act as well, hence, differed with view of the learned Civil Judge but confirmed the decision on disqualification under Section 11 of the Act. This Court in exercise of writ jurisdiction is only to examine the correctness of the decision and only to interfere with it, if there is perversity. By considering the evidence received from both the sides, the Court reaches at a conclusion that there has been no any perversity in the decision of the learned court below in appeal and rightly held the disqualification vis-à-vis the petitioner for having a 4th child born after the cut-off date. In other words, this Court is not inclined to interfere with the finding and conclusion arrived at by the learned court below in overturning the decision of the learned Civil Judge on disqualification under Section 25(1)(v) of the Act.

12. With regard to the other disqualification of the petitioner under Section 11 of the Act, this Court is to examine, whether, the learned courts below erred in reaching at such

conclusion. On perusal of the record, this Court finds that before the learned Civil Judge, a portion of Ext.14 was dictated for writing of the petitioner. It is made to appear that the petitioner, during and in course of the above exercise, became senseless and was shifted to the hospital. A part of the writing left incomplete is marked as Ext.14/a. It is also revealed from the record that on 18th January, 2024, the dictation was given once again and the petitioner was made to write down the same. The said piece of writing by the petitioner on 18th January, 2009 has been marked as Ext. 14/b. According to the learned Civil Judge, such writing of the petitioner carried no meaning and it was full of mistakes and reached at the conclusion that the petitioner is unable to write in Odia, hence, cannot continue as Sarpanch having invited disqualification under Section 11 of the Act and such decision has been affirmed in appeal.

13. Mr. Nandy, learned counsel for the petitioner would submit that no such test could have been adopted and applied by the learned Civil Judge with a dictation in open court directing the petitioner to write down. The further argument is that the petitioner has read up to Class-V and is an old man and when he was able to read a paragraph given to him correctly referring to the writing marked as Ext.14/b, it could not have been held that he is unable to write in Odia. On the entire exercise, as submitted by Mr. Nandy, learned counsel, it would not be correct to claim that the petitioner did not know writing in Odia at all.

14. In **Usha Sahoo** (supra), it has been concluded that this Court in **Labangalata Mallick Vrs. Mandakini Mallick and others 2010 (Supp.-I) OLR 73** while dealing with similar question in the case of **Kalabati Jena Vrs. Dhaneswar Jena 2009 (Supp.-II) OLR 344** distinguished the judgment in **Mrs. Suryakanti Mishra** (supra) and concluded that no hard and fast rule can be prescribed for finding out as to whether a person, who was a contestant in the Grama Panchayat election, knows how to read and write Odia. Such conclusion should be drawn from the analysis of facts of each case. It has also been held therein referring to the above decision that a Court while exercise jurisdiction under Article 226 of the Constitution of India for issuing a writ of certiorari is not to reappreciate the evidence on record but, if it is found that the conclusion drawn by the authorities/courts below is based on surmises and conjectures, it can quash such orders.

15. In **Kalabati Jena** (supra), this Court dealing with the expression 'read and write in Odia' held that the same has not been defined in the Act nor in the Election Rules framed thereunder. Keeping the legislative intent in view for introducing of such a disqualification clause, it has been further held therein that a person, who can to some extent, read and write Odia, cannot be said to be unable to read and write; the standard of reading and writing Odia having not been specifically provided in the Act and the Rules, the Court is precluded from introducing a minimum standard of

a candidate in that regard. In the said case, it was further concluded that nowhere within the four corners of the Act or the election Rules framed thereunder, it has been prescribed that in order to ascertain as to whether a person is able to write Odia, such person, who has been elected by the majority of the voters, should take down dictation in Court and such writing should be taken as a test. But, in the said decision, it is made to appear that this Court considering one of the exhibits wherein the dictation was taken down found the sentence in Odia to be correct and in good handwriting duly conscious of the fact that Odia language contains various complicated conjoint letters in various words which even a qualified person may commit mistake in writing such type of words which are commonly known as 'Yuktakhyaras' and dictating such words to a witness in Court would definitely make the person panicky and unstable in the atmosphere to receive dictation and write down such words correctly. Under such circumstances, with the above view, this Court finally concluded therein that the approach of the Court of appeal was absolutely technical without keeping in view the above facts especially when the person is an elected representative and hence, not to be thrown out of his office on that ground and in such cases, the Courts are to be cautious and restraint. Referring to the above decision (supra), a similar conclusion was reached at in the case of **Kuntala Mallik** concluding that the petitioner therein was having ability to read and write Odia and the words and sentences written in 'Panchayat Sahayika

Pustika' marked as Ext.5 from the side of the election petitioner could not have been the basis for testing the reading ability of the candidate. It has been concluded further that the petitioner is an elected candidate and cannot be removed by such a process adopted fixing the standard with the test held to assess the ability to read and write Odia.

16. However, in **Mrs. Suryakanti Mishra** (supra), this Court considering the fact that the elected candidate could not read and write Odia script shown in course of hearing approved of such an exercise undertaken to test the ability to read and write. Referring to the document relied upon from the side of the returned candidate, it has been concluded therein that the same is of no help or assistance since the candidate was unable to read and write Odia and admitted the same when script was shown and dictated to her and at last held that the learned courts below did not commit any error in reaching at a conclusion on disqualification under Section 11 of the Act.

17. In **Saraswati Sahoo** (supra), when the elected Sarpanch with much difficulty wrote down a passage which was full of mistakes and conveyed no meaning, this Court considering the same concurred the view of the Court of appeal with the conclusion that no wrong has been committed in declaring the disqualification. In the above decision, the case law in **Damburu Majhi Vrs. Tarini Charana Majhi 2006 (II) CLR 705**, a judgment of the Division Bench of this Court was referred to, wherein, in

similar situation, when the elected candidate committed several mistakes and the writing had no meaning, concluded that the learned Trial Court and also the Appellate Court rightly held that he was unable to write in Odia. In fact, differing with the view taken in **Kalabati Jena** (supra) and **Usha Sahoo** (supra), it has also been held that in the aforesaid decisions, the Court did not refer to the nature of duties of a Sarpanch required to be performed under Section 19 of the Act. So, the approach in testing the ability of the elected candidate, whether, he is capable of reading a passage and writing it as well with an open dictation in the Court has been approved in **Saraswati Sahoo** (supra). In other words, the decision in **Mrs. Suryakanti Mishra** (supra) received concurrence in **Saraswati Sahoo** (supra). In fact, the said decision in **Mrs. Suryakanti Mishra** (supra) is a judgment of a Division Bench, referring to which, this Court in **Saraswati Sahoo** case was not inclined to approve the view expressed in **Kalabati Jena** (supra) and **Usha Sahoo** (supra), one of which, is placed reliance in **Kuntala Mallik** (supra).

18. Having regard to the above facts and since the petitioner was found having much difficulty in writing the passage with lot of mistakes therein, in view of case laws referred to hereinabove, it has to be held that the learned court below did not err in reaching at a conclusion that he invites disqualification under Section 11 of the Act. In fact, from Ext. 14/b, it has been found that except the letters in Odia,

almost each and every word is incorrect. It has been concluded by the learned Court below that a person, who is not conversant with the facts of the case, cannot make out a meaning from Ext. 14/b, which is the writing of the petitioner, hence, held that he cannot be said to have the ability to write in Odia though may be able to read.

19. In so far as Section 11(b) of the Act is concerned, a person shall not be eligible to contest the election for the post of Sarpanch, if he or she unable to read Odia. It means if the candidate is unable to read and write Odia, then he invites disqualification. Mere ability in reading Odia is not sufficient. A person in order to be eligible to contest the election must also know how to write in Odia. In **Usha Sahoo** (supra), the elected candidate was able to write down a correct sentence in Odia and the same was found to be in good handwriting. Under such circumstances, it was concluded that the dictation with difficult words, such as, 'Yuktakhyaras' should not be the right approach for a Court to assess the ability. But, as earlier discussed, it has been differed by this Court in **Mrs. Suryakanti Mishra** (supra). The law is well settled that there is no hard and fast rule to make an assessment, whether, a person, who was a contestant in election, knows to read and write Odia. It is also equally correct to conclude that there is no standard of reading and writing in Odia to have been specifically provided in the Act and the Rules. But, to hold that the Court is precluded from undertaking any such exercise of a

candidate has not been found favour with in **Mrs. Suryakanti Mishra** (supra) concurring the view that open dictation of the Court may be one of the ways and means to assess the ability of a candidate to read and write Odia. The petitioner herein made many mistakes in taking down the dictation and according to the learned court below, it conveyed no meaning. The further conclusion is that almost every word was incorrect and on a reading of the same, it would be difficult for anyone to understand, who is not really conversant with the facts of the case. Since such a procedure has been followed and has not been disapproved of rather concurred in **Mrs. Suryakanti Mishra** (supra), this Court is of the humble view that there is no reason or any justification to have a different view than the one expressed above. Having said that, the irresistible conclusion of the Court is that there has been no infirmity in the impugned judgment in Election Appeal No.03 of 2024. As far the decision in Election Appeal No.04 of 2024 is concerned for not declaring the election petitioner as duly elected, it has not been questioned, hence, to be held that fresh election to the post of concerned G.P. shall have to be held by the authority concerned.

20. Before winding up, the Court is of the considered view that the kind of responsibilities a Sarpanch to grapple with cannot be underestimated, which is referable to and evident from Section 19 of the Act. It is no doubt that, sufficient literature knowledge is not insisted upon but the ability to

read and write Odia is absolutely necessary to discharge the functions of a Sarpanch. How one can expect proper discharge of such functions, if a Sarpanch struggles with the reading and/or writing in Odia. It is reiterated that just reading is enough but a member of the institution must have to know the writing, otherwise, it could lead to many difficulties and hamper its proper governance. In the case of the petitioner, the writing was leading to no meaning as the particulars have been reproduced by the learned court below, while reaching at such conclusion to which the Court is not inclined to tinker with. But, it is also to be mentioned that such disqualification is not permanent as one may acquire the ability to read and write in future. Once such ability is acquired, the earlier disqualification would not stand an obstacle in the next election. A similar view has been expressed by this Court in **Mrs. Suryakanti Mishra** (supra). That apart, writ jurisdiction is exercisable provided there is perversity, which is not noticed herein. So, it has to be finally concluded that the learned court below did not err or commit any illegality in upholding disqualification of the petitioner on both the counts, hence, the decision in that regard does not suffer from any legal infirmity.

21. Accordingly, it is ordered.

22. In the result, the writ petitions stand dismissed.

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Reason: Authentication
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(R.K. Pattanaik)
Judge