

IN THE HIGH COURT OF JUDICATURE : ORISSA: CUTTACK

( Original Jurisdiction Case )

O.J.C. NO.7174/ 1998.

Code No. - 110700

In the matter of :

An application u/s 227 of Constitution of India.

And

In the matter of :

An application under Orissa Municipal Act.

And

In the matter of :

Sakuntala Chou Pattanaik, aged about 45 years, W/o Shyama Charan Pattanaik , At- Near Narayni Club, Mahatab Road, Old Town, P.O.Bhubaneswar-2, Dist - Khurda.

**PETITIONER**

- Vrs. -

1. Smt. Ratna Prava Mohapatra, aged about 36 yrs W/o Prafulla Kumar Mohapatra, resident of Punama Gate Sahi, Old Town, Po.-Bhubaneswar -2, P.S. Lingaraj, Dist : Khurda.
2. Premalata Patra, w/o Benudhar Patra, At- Daraji Sahi, Old Town, P.O - Bhubaneswar- 2, Dist-Khurda.
3. Susama Pattanaik, W/o Tarutanaya Pattanaik, At- Tarunivas, Nageswar Tangi, P.O -.Bhubaneswar -2, Dist- Khurda.
4. Bishnu Priya Mohapatra, w/o Nurusingha Mohapatra, At - Godipokhari Sahi, Old Town, P.O - Bhubaneswar -2, Dist - Khurda.
5. Nalini Mahanty, W/o Jayanta Pattanaik, At:Plot no. 1102, Sri Ram Kutira, Backside of Municipal Hospital, Old Town ,P.O. Bhubaneswsr-2, Dist- Khurda .

6. Sukanti Mishra W/o. Baidyanath Mishra,  
At-Mishra Sahi, Old Town, P.O- Bhubaneswar,  
Dist- Khurda.
7. Election Officer, Municipal Corporation Bhubaneswar-  
Cum - A.D.M, Bhubaneswar - 14, Dist-Khurda.
8. District Judge Khurda, Bhubaneswar, the Designated  
Tribunal under the Orissa Municipal Act.

**OPP.PARTIES**

After delivery of judgment, an oral prayer was made by learned counsel for Opposite Party No.1 in the writ application for grant of leave to appeal to the Apex Court. In our view, the case does not involve any substantial question of law of general importance, and is not a fit case for grant of leave. Prayer for leave to appeal is accordingly rejected.

Sd/- A. Pasayat - J

Sd/- S.C. Datta - J

## THE HIGH COURT OF ORISSA : CUTTACK.

O.J.C. No.7174 of 1998

In the matter of:

An application under Article 227 of the Constitution of  
India, 1950.

A N D

In the matter of:

Sukantala Chau Patnaik ... Petitioner

- Versus -

Smt. Ratna Prava Mohapatra &amp; Ors. ... Opp. Parties

For petitioner - M/s A.K. Das, S.K. Dey,  
B.K. Mohapatra & N. PatnaikFor Opp. Parties - Mr. R.K. Rath ( for opp. Party no.1)  
Mr. A.S. Naidu ( for State Election Commission )

PRESENT :

THE HONOURABLE MR. JUSTICE A. PASAYAT

AND

THE HONOURABLE MR. JUSTICE S.C. DATTA

Date of judgment - 31-08-1998

PASAYAT, J. Petitioner's election as a Councillor of Ward No.28 of Bhubaneswar Municipal Corporation (in short, the 'Corporation') having been declared null and void by the learned District Judge, Khurda (hereinafter referred to as the 'Tribunal') in terms of Section 21 of the Orissa Municipal Act, 1950 ( in short, the 'Act' ) on the basis of an application under Section 19 of the Act, this writ application has been filed.

2. Factual position as presented by the parties essentially is as follows:

Both petitioner and opposite party no. 1 were contestants for the post of Councillor of Ward No.28 in the election of the Corporation. Opposite party nos. 2 to 6 were also candidates. Petitioner was declared elected by the Election Officer (opposite party no. 2 ) as she secured highest number of valid ballots. Her election was challenged by opposite party no. 1 by filing an election petition solely on the ground that she was not eligible to contest by filing nomination as she was a permanent inhabitant of village Singipur under Nuagada Grama Panchayat of Tangi Block of Tangi Police Station of Khurda district, and as per the finally published

voters' list of the Legislative Assembly (Constituency No.59) her name was included in the voters' list of said Grama Panchayat. Her name appears at serial 163 in relation to Ward No. 11, House No.41. She had also contested as a candidate for election as Ward Member of village Singipur in the Grama Panchayat election held on 16.1.1997. She had lost the election.

3. The Election Commission had issued a Circular on 17.3.1997 addressed to all the District Magistrates of Orissa for preparation of electoral roll for the General Municipal Elections. It was clearly stipulated therein that where. The name of a particular elector is registered both in the electoral roll of Municipal Ward and of a particular village under Grama Panchayat, it should be enquired into if he had exercised his franchise in the last election as an elector of the village. If it is found to be in the affirmative, his name should be deleted from the electoral roll of the Municipal Ward. In paragraph 4 of the Circular it was indicated that the Election Officer was required to publish notice in a central place of the Ward and invite objections, and if any objection was raised same was to be summarily enquired into. Though the name of petitioner found place in the electoral roll of the Grama Panchayat, her name was not deleted from the electoral roll of the Corporation Ward. Notice was published in pursuance of the Circular issued by the Election Commission and objection was invited. Nomination of petitioner was illegally accepted, as her name was not deleted from the electoral roll of the Corporation Ward. Written objection was submitted before the District Election Officer, Khurda who did not take any action on the objection.

4. Petitioner filed objection mainly to the election petition on the ground that the application was barred by limitation and security deposit was not deposited within fifteen days from the date of publication of results. Certain other defects were pointed out. It was pleaded that she was no more a voter of village Singipur, and she had earlier written a letter to the District Election Officer, Khurda to delete her name from the voters' list of Singipur. The Election Officer had published requisite notices, but no objection was filed. She had been legally elected as Councillor in respect of Ward No. 28. The Election Officer took a stand that no objection was filed regarding nomination of petitioner,

5. Two issues were framed by the Tribunal. Delay was condoned and the election petition was taken up for adjudication of the question whether the election of petitioner was justified. Four witnesses were examined by present opp. party no. 1 and one witness was examined on behalf of the petitioner. With reference to the notification issued by the Election Commissioner, it was held by the Tribunal that since the petitioner's name was included in both the electoral rolls of the Grama Panchayat and the Corporation, her election was not legal. It is to be noted that the writ petitioner did not examine herself, but her son was examined. His statement was to the effect that though her mother's name was included in the electoral roll of village Singipur, she did not cast the vote. Tribunal held that the statement was not believable. It was concluded that objection in fact was filed by opp. party no. 1. In other words, the election has been set aside solely on the ground that the name of petitioner was included both in the electoral rolls of Grama Panchayat and the Corporation.

6. Mr S.K. Dey, learned counsel for petitioner submitted that the conclusions of the Tribunal are erroneous and the grounds on which disqualifications can be attracted or the election can be declared to be null and void have been specified in

the Statute, and none of the specified disqualifications is applicable to the facts of the case. The learned counsel for opp. party no. 1, however, submitted that the factual conclusion being that the name of petitioner was included in both the electoral rolls of Grama Panchayat and the corporation same was contrary to the directives issued by the Election Commission, and the Tribunal was justified in declaring the election of the petitioner to be void. Submissions Of the learned counsel appearing for the State Election Commission are to the same effect.

7. In order to appreciate the rival submissions, it is necessary to take note of few provisions of the Act. Chapter III deals with election and election petition, Section 13 deals with electoral roll. Section 14 deals with electors while Section 15 deals with removal of names from electoral roll. Disqualification of candidates for election is dealt with in Section 16 while Section 17 deals with disqualification of Councillor. The modalities to be followed for questioning the election are prescribed in Section 18, and the form and presentation of petition have been dealt with in Section 19. The procedure to be adopted is indicated in Section 22. Power of the Tribunal and finding of the Tribunal are prescribed in Sections 23 and 24 respectively. Sections 15, 16, 17 and 18 are the pivotal provisions which needs to be considered. They so far as relevant read as follows:

**"15. Removal of the name from electoral roll :-**

(1) ... ... ... ... ... ... ...

(2) If any person is convicted of an offence, under Chapter IX-A of the Indian Penal Code, XLV of 1860, punishable with imprisonment for a term exceeding six months, his name, if on the electoral roll, shall be removed there from and shall not be registered thereon for a period of three years from the date of conviction or, if not on the electoral roll, shall not be so registered for a like period.

Provided that the Governor may direct that the name of any person to whom this sub-section applies shall be registered on the electoral roll :

Provided further that convictions for offences of a political character shall not operate as a disqualification under this sub-section.

**16. Disqualification of candidates for election -**

(1) No person shall be qualified for election as a councillor of a municipality if such person -

- (i) is not included in the electoral roll of the municipal area, or
- (ii) is less than twenty one years of age,

(iii) is unable to read and write either English, Hindi or the language of State, or

(iv) has been adjudged by a competent court to be of unsound mind or is a deaf, mute, a leprosy or a tuberculosis patient; or

(v) is an undischarged insolvent or being a discharged insolvent has not obtained from the Court a certificate that insolvency was caused by misfortune without misconduct on his part; or

(vi) is in arrear or any dues payable to the municipality without sufficient cause shown to the satisfaction of the Election Officer, for a period of one year immediately preceding the year in which the election is held, or

(vii) is a person against whom an order of surcharge for willful negligence of misconduct has either been certified for payment or confirmed in case of an appeal in respect of any money or property of a municipality, under the provisions of the Orissa Local Fund Audit Act, Orissa Act 5 of 1948 or a person against whom a decree has been passed under Section 375; or

(viii) is interested in a subsisting contract, either directly or indirectly made with or any work being done for the municipality, except as a share holder in a registered joint stock company or co-operative society, constituted under the laws for the time being in force;

Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in -

(a) any lease, sale or purchase of immovable property or any agreement for the same; or

(b) any agreement for the loan of money or any security for the payment of money only; or

(c) any news paper in which any advertisement relating to the affairs of the municipality is or may be inserted; or

(d) the sale to the municipality of any articles in which he regularly trades or the purchase from the municipality of any article to a value in either case, not exceeding fifteen hundred rupees in the aggregate, in any year during the period of the contract or work; or

(ix) is employed as a paid legal practitioner on behalf of the municipality or as legal practitioner against the municipality; or

(x) is an Officer or servant holding office under the municipality or an Honorary Magistrate with jurisdiction over any part of the area of the Municipality; or

(xi) is a Government servant either whole time or part time has been dismissed from Government service for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal :

Provided that if any question arises, either before or after an election whether any person is or not disqualified under this clause, the question shall be referred to the State Government whose decision shall be final; or

(xii) has been sentenced by a Criminal Court to transportation or to imprisonment for a period of more than six months for any offence, other than an offence of a political character or an offence, other than an offence not involving moral delinquency (such sentence not having been reversed or the offence pardoned) so long as he is undergoing the sentence and for three years from the date of the expiration of the sentences

Provided that notwithstanding anything contained above the Governor may direct that such sentence shall not operate as a disqualification and upon such a direction being given or if and when the sentence is superseded on appeal or revision he shall be restored to office for such portion of the period for which he was elected, as may remain unexpired at the date if such restoration and any person elected to fill the vacancy in the interim shall, on such restoration, vacate office; or

(xiii) has been convicted or found to have been guilty of offence of corrupt or legal practice relating to elections, which has been declared, by the State Government, under prescribed rules, to be an offence or practice entailing disqualification of membership unless such period has elapsed as may be prescribed in that behalf; or

(xiv) Is disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State; or

(xv) is disqualified by or under any law made by the Legislature of the State; or

(xvi) has more than one spouse living; or

(xvii) has more than two children.

Provided that the disqualifications under clause (xvii) shall not apply to a person who has more than two children on the date of commencement of the Orissa Municipal (Amendment) Act, 1994, or as the case may be, within a period of one year of such commencement, unless he begets an additional child after the said ' period of one year, and

(2) Subject to the provisions of Section 38, where a person, who becomes disqualified by virtue of clause (xii) of sub-section (1) is at the date of disqualification a Councillor, his seat shall, notwithstanding anything contained in this section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or if within those three months, an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of but during any period during which his councillorship is preserved under this section, he shall not sit or vote in the council.

**17. Disqualification of Councillor** - (1) Subject to the provisions of Section 38, a Councillor shall cease to hold his office, if he -

(a) subject to the proviso to clause (xii) of sub-section (l) of Section 16, is sentenced by Criminal Court to such punishment and for such offence, as is prescribed in that clause; or

(b) becomes of unsound mind, a deaf-mute, a leprosy or a tuberculosis patient; or

(c) applies to be adjudicated or is adjudicated as an insolvent; or

(d) subject to the proviso to clause (viii) of sub-section (l) of Section 16 acquires any interest in any subsisting contract, either directly or indirectly made with or work being done for, the municipality except as share-holder in a registered Joint stock company or a co-operative society, constituted under the laws for the time being in force; or

(e) is employed as a paid legal practitioner on behalf of the municipality or accepts employments as a legal practitioner against the municipality; or

(e-1) has failed to pay any arrears of municipal dues within six months from the date of service of a notice demanding payment of the same; or

(f) is appointed as an Officer or servant under municipality or as Honorary Magistrate with jurisdiction over any part of the municipality; or

(g) is a salaried Government servant either whole-time or part-time:

Provided that if any question arises, whether any person is or not disqualified under this clause, the question shall be referred to the State Government, whose decision shall be final; or

(i) in the case of a Councillor absents himself from four consecutive meetings without obtaining previous permissions from the Chairman or without an excuse sufficient in the opinion of the municipality.

Provided that no meeting from which a Councillor absents himself shall be counted against him under this clause if due notice of that meeting was not given to him:

Explanation - Emergent or special meetings shall not be deemed to be meetings within the meaning of this clause; or

(j) has been convicted or found to have been guilty of any offence of corrupt or illegal practice relating to elections, which has been declared, by State Government under prescribed rules, to be an offence or practice entailing disqualification for Councillorship unless such period has elapsed as may be prescribed in that behalf.

(k) incurs any of the disqualifications specified, in clauses (xiv) to (xvii) of sub-section (l) of Section 16.

**18. Power to question election by petition -**

(1) The election of any person as a councillor may be questioned by a petition on the ground :

- that such person committed during or in respect of the election proceedings, a corrupt practice as defined in Section 28; or
- that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes; or
- that such person though enrolled as an elector was disqualified for election under the provisions of Sections 15, 16 and 29.

(2) The election of any person as councillor shall not be questioned -

- on the ground that the name of any person qualified to vote has been omitted from or the name of any person not qualified to vote has been inserted in the electoral roll;
- on the ground that any non-compliance with this Act or any Rule or of any mistake in the forms required thereby or of any error, irregularity or informality on the part of the Officer or Officers charged with carrying out the provisions of this Act or any Rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election."

A bare look at Section 16 shows that two electoral rolls one for the Grama Panchayat and one for the Corporation is not one of the disqualifications of a candidate for the election. It is stated by-learned counsel for opp. party no. 1 that inclusion of petitioner's name in both the electoral rolls constituted non-compliance with the Act and the Rules made there under. Reference in this context is made to Section 11-A of the Act which deals with superintendence, direction and control of elections on the Election Commission. It is stated that the notification published by the Election Officer was required to be observed as he had the over-all control of preparation of electoral rolls for conduct of the elections. as there was non-observance, there was non-compliance with the provisions of the Act.

8. Section 16 and Section 17 operate in different fields. Section 16 deals with disqualification of candidates for election. Section 17 deals with disqualification of councillor. The latter provision comes into operation after the election. This is evident from the fact that in case the disqualification has arisen a councillor ceases to hold office. Section 38 deals with power of the District Judge to decide question of disqualification of councilor. When it is alleged that any person who has been elected as councillor is disqualified under Section 16 or Section 17 and such person does not admit the allegation or whenever any Councillor himself is in doubt, whether or not he has become disqualified for office under Section 16 or Section 17, such councillor or any other councillor may, and the Chairman at the request of the municipal council shall apply to the District Judge of the district in which the municipality is situated. The District Judge after making such inquiry as

he deems necessary shall determine whether or not such person is disqualified under Section 16 or Section 17.

9. The directives issued by the State Election Commission on 17.3.1997 have been highlighted to show that once the petitioner participated in the Grama Panchayat election, her name was to be deleted from the Corporation electoral roll. The directives given by the Election Commission in this regard have been highlighted. The relevant portion reads as follows :

"(2) In Commission's Circular dated 17.3.97 vide para 3 thereof, it has been prescribed that the Election Officer should take up verification of Municipal Electoral Roll with G.P. Electoral Roll and where "the name(s) of particular elector(s) is registered both in the electoral roll of the Municipality and of the Grama Panchayat, it should be enquired into if such person had exercised his franchise in the last Panchayat election and in case he has so exercised his franchise. Franchise his name should be deleted from the Municipal electoral roll.

(3)      \*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*

4. On the other hand Section 17 of the R.P Act,1950 provides that no person shall be entitled to be registered in the E.R. for more than one constituency and Section 18 provides that no person shall be entitled to be registered in the Electoral Roll for any constituency more than once. This principle has also been embodied in Rule 5 of the Orissa Municipal (Delimitation of Wards, Reservation of Seats and Conduct of Election ) Rules, 1994. Further Section 13 of Orissa Municipal Act, 1950 also lays down that the electoral roll prepared under the R.P. Act will be the basis for preparing the Municipal Electoral roll and for effecting correction, deletion and inclusion etc., the procedure has been prescribed separately in the Commission's order of 31.7.96."

A reading of paragraph (6) shows that as per direction of election Commission whenever any elector's name finds place in the Panchayat electoral roll and also in the Municipal electoral roll, such name should be deleted from the Municipal Electoral Roll after observing the procedure prescribed in Commission's Circular No.3458 dated 17.3.97.

10. It is necessary to take note of the requirements as laid down by the State Election Commission by its order dated 17.3.1997. The direction of the Commission has been issued in exercise of powers vested in Article 243-ZA of the Constitution of India and such other enabling powers in this behalf. In paragraphs 3 and 4 thereof it was stated as follows :

"3. Regarding the complaints of the nature mentioned as (ii) of para 1 ante, the Election Officer should immediately take up verification with reference to G.P. electoral roll which can be had from the B.D.O. concerned and while correcting the electoral roll, the following general principle should be kept in view :-

(a) The electoral roll of a municipality shall contain names of the eligible electors living within the boundary of the municipal area;

(b) where the name of a particular elector is register both in the electoral roll of a municipal ward and of a particular village under a Grama Panchayat, it should be enquired into if he had exercised his franchise in the last Panchayat election as an elector of the village. If it is in the affirmative, his name should be deleted from the electoral roll of the municipal ward. In other cases, Commission's clarification communicated in message No. 1737 date, 19.9.1996 regarding entertaining claims to be included as a voter should be followed.

4. Before effecting the corrections in accordance with the instructions given in para 3(a) and (b) ante, the following procedure shall be observed :-

(i) A notice may be given to the elector or group of electors concerned inviting objections to the proposed deletions of their name/names from the electoral roll of the Municipality. The same notice shall be published in a central place of the Ward as well as in the notice Board of the E.O.

(ii) The objections may be filed within 3 days from the issue of such notice.

(iii) The objections may be enquired into summarily and then disposed of on merit. The Election Officer is at liberty to grant personal hearing if circumstances so warrant or if the elector affected so apply for. '

In paragraph 3 it has been clearly stipulated that where the name of a particular elector is registered both in the electoral roll of a municipal ward and of a particular village under a Grama Panchayat, it should be enquired into if he had exercised his franchise in the last Panchayat election as an elector of the village. If it is in the affirmative, his name should be deleted from the electoral roll of the municipal ward.

11. Learned counsel for petitioner stated that the circumstances which were under consideration of the Commission led to issuance of the order relating to names of certain voters appearing in the printed electoral roll of the municipality and that of a neighboring Grama Panchayat. It is stated by the learned counsel for petitioner that there is no material to show that the Grama Panchayat in question was a neighboring one, and/or that the petitioner exercised franchise.

The learned counsel for opposite party no. 1 highlighted that the petitioner has been taking evasive stands at different points of time. She has disowned to have been an elector of the Grama Panchayat. But the official records produced clearly show that the petitioner was an elector of the Grama Panchayat and she also contested the Grama Panchayat election. It is too much to accept that the petitioner exercised her franchise in the Panchayat election. To avoid truth from coming out, the petitioner did not depose as a witness.

12. Section 18(2) deals with two' situations. It provides that the election of any person shall not be questioned on the ground that the name of any person qualified to vote has been omitted from or the name of any person not qualified to vote has been inserted in the electoral roll. We are not concerned with this situation. The second part is of relevance. It provides that the election of any person as a Councillor shall not be questioned on the ground of non-compliance with the Act or any Rule or of any mistake in the forms required thereby or of any error,

irregularity or informality on the part of the Officer or Officers charged with carrying out the provisions of the Act or any Rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election. Section 11-A postulates that the superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to Municipalities vest in the Commission. This provision has been inserted vide Orissa Act No. 11 of 1994 with effect From 31.5.1994.

13. It has been urged by the learned counsel for petitioner that even if it is accepted for the sake of argument that there was non-compliance, that cannot affect result of the election on the basis of an electoral roll which was operative on the date of election.

14. At this juncture, it is necessary to take note of the decision rendered by the Apex Court in Nripendra Bahadur Singh v. Jai Ram Verma: 1977 - 1 SCC 260 under the Representation of the People Act, 1950 ( in short, 'R.P.Act' ). The challenge in that case was that by wrong inclusion in the electoral roll the election was materially affected. It was observed that mere remissness of the Officers in performing their duty in the preparation of electoral roll is not relevant for determining the validity of an election. No doubt, Section 27 of the R.P. Act of 1950 contemplates that, the electoral registration Officer shall maintain the roll upto date. But his failure to do so does not nullify the election. In fact Section 21(2), proviso of the R.P. Act of 1950 lays down that if the electoral roll is not revised, the validity or continued operation of the roll is not thereby affected. Although Section 27 makes no reference to Section 21, that does not mean that no finality is intended for the electoral roll referred to in Section 27. After the last hour of making nomination, no one can go behind the entries in the electoral roll, except for the purpose of considering disqualifications under Section 16 of the R.P.Act, of 1950.

15. It is to be further noted that when the name of a person is included in the electoral rolls his qualification to be included cannot be called in question before a Court either when he tries to cast his vote or to stand for election or even after the election is over, the only exception being Article 173 of the Constitution. (See Lakshmi Charan Sen and others v. A.K.M. Hassan Uzzaman and others: AIR 1985 SC 1233; - Kabul Singh v. Kundan Singh and others. AIR 1970 SC 340; R. Chandran v. M.V. Marappan : AIR 1973 SC 2362; and Ramji. Prasad Singh v. Ram Bilas Jha and others : AIR 1976 SC 2573).

It is to be noted here that there is difference between a challenge to the right of a voter to be registered in an electoral roll and the jurisdiction of an authority to enter a name in the electoral roll. That jurisdiction has to be exercised consistently with the provisions of the law governing the election and in case there is failure to do so, the action of the Officer would be open to challenge on the ground of want of jurisdiction.

It is also to be noted that the Apex Court in Lakshmi Charan Sen's case (supra) held that the fact that certain claims for inclusion of names in electoral rolls and objections relating to inclusion of certain names therein are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the legislature. The election has to be held on the basis of electoral roll which is in force on the last date of making nominations. In the

said judgment the Apex Court observed that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers, cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the Case of an individual.

16. That being the position in law, the learned District Judge was not justified in holding that the inclusion of petitioner's name in the electoral roll constituted infraction to warrant nullification of her election. The conclusion is clearly contrary to law and is indefensible, and same is accordingly set aside.

The writ application succeeds, but in the circumstance without any order as to costs.

Sd/- A. Pasayat J.  
Sd/- S.C. Datta - J.

I agree.

S.C. Datta, J  
Orissa High Court, Cuttack  
The 31<sup>st</sup> August, 1998