

THE HIGH COURT OF ORISSA : CUTTACK.
W.P.(C) No. 2266 of 2007

In the matter of:

An application under Articles 226 of the Constitution of India, 1950.

A N D

In the matter of:

An application relating to the election to the Office of member, Zilla Parishad, Zone No. 2 (Agalpur Block) in the District of Bolangir.

A N D

In the matter of:

An application for correction of numbers of votes polled by the Candidates in respect of Ward no. 6 (Badatika Gram Panchayat) for election to Zilla Parishad, Zone No. 2, Agalpur Block in the District of Bolangir, which is apparent on the face of record and consequently to quash the result declared by the Election Officer, Agalpur Block and for direction to Publish the corrected results for the said Ward of the respective Zones for Member, Zilla Parishad.

A N D

In the matter of:

Manomohan Patel Resident of Dudka, P.O. Dudka P.S. Loisinga, Dist Bolangir

PETITIONER

- Versus -

1. The State Election Commissioner, Samabaya Bhawan, Janapath, P.O/P.S. Bhubaneswar District Khurda.
2. Collector ~cum-Election Officer, District of Bolangir, At/P.O./P.S./District: Bolangir
3. Sub-Collector, Bolangir, At/P.O./P.S./District: Bolangir

4. Block Development Officer-cum-Election Officer (Authorised by the Collector-cum-Election Officer, Agalpur Block Dudka, At/P.O.- Dudka, P.S. Loisingha District- Bolangir.
5. Baishakhu Patel, Aged about 50 years Son of Dasarath Patel At/P.O.- Dudka, P.S. Loisingha District- Bolangir.

OPP.PARTIES

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR. A.K. GANGULY
AND THE HONOURABLE FOR JUSTICE N. PRUSTY**

Date of Order 07-03-2007

Heard learned counsel for the parties.

2. Mr. Acharya, learned counsel is appearing on behalf of opposite party no. 1 and 2 Mr. Mohanty, learned Government Advocate is appearing on behalf of opposite party Nos. 3 and 4 Mr. M. Mohapatra is appearing on behalf of opposite party no. 5.
3. After hearing the learned counsel for parties, this writ petition is disposed of by the following order.

The petitioner was a contesting candidate for the post of member, Zilla Parishad Zone No. 2 Agalpur Block in the district of Balangir. His prayer is that in the declaration of result of the said election, some errors have been committed at the instance of the authorities as a result of which opposite party no. 5, who did not secure the majority votes, has been declared elected.

4. After hearing the learned counsel for the petitioner, we directed issuance of notice to the learned counsel for the State Election Commission. We also directed him to produce the entire record. Learned counsel for the State Election Commission has filed an affidavit about the maintainability of the writ petition and has also very fairly produced the records. In the instant case, on the prayer of the petitioner for recounting of votes the same has been rejected by a speaking order. But a different grievance has been raised in the present writ petition.

5. However, Mr. Acharya, learned counsel for the State Election Commission submits that after the prayer for recounting was rejected, the result of election was declared and thereafter same has been published in the Official Gazette. According to Mr. Acharya, after the result is declared the election process comes to an end and thereafter it can only be challenged by filing an election petition and this writ Court cannot be asked to intervene by setting aside the result of the elected candidate.

6. We are of the view that the aforesaid contention is a sound one and we normally should not take a different view.

But, a submission has been made by the learned counsel for the petitioner that even after declaration of the result, the State Election Commissioner has the power under sub-rule (4) of Rule 40 of the Zilla Parishad Election Rules (hereinafter referred to as the 'said Rules') to reopen the result. According to him, such power is given both to the competent Court and also to the State Election Commissioner. This submission is made on the basis of sub-rule (4) of Rule 40 of the said Rules. Said sub-rule (4) of Rule 40 is set out below;

"(4) The documents or records referred to in sub-rule (3) in the custody of the Collector shall not be opened or inspected or produced save with the prior permission of the Commissioner or of a Competent Court".

7. From the scheme of the Act, it appears that under Section 6-A of the Zilla Parishad Act, superintendence, direction and Control of election vests on the Election Commissioner. Section 6-A of the Act is virtually on the Article 324 of the Constitution. Since the power of superintendence, direction and control has been vested in the Election Commissioner under the Act, in the Rules some provisions have been made for exercise of power by the Election Commissioner for opening or inspecting the documents or records, which are specified in sub-rule (4) of Rule 40.

8. Learned counsel for the petitioner submits that sub-rule (4) of Rule 40 amounts to grant of inherent power in favour of the Commissioner to direct reopening of the result even after the result has been published.

9. We are not in agreement with the said submission. We find that under Part - V of the Zilla Parishad Election Rules, there are detailed provisions relating to polling and Rule 39 thereof provides for declaration of result of votes and Rule 40 provides for publication of result of the votes. Once the result of votes is published in the Official Gazette, it is not possible for the Commissioner to reopen the result. Such power is conferred specifically under the Act in favour of a Judicial Tribunal. The provisions of Section 32 of the Zilla Parishad Act is clear to that effect. In our view no provision of any rule can override Section 32. Therefore the provision of Rule 40 of the Zilla Parishad Election Rules must be read in a manner which becomes consistent with Section 32 of the Zilla Parishad Act. Therefore, no different construction is possible. We do not find that there is any merit in the contention of the learned counsel for the petitioner that after the result is declared and published in the Official Gazette, the Commissioner can reopen the same. This submission goes against, the consistent view of the Apex Court in this matter and which is that once the result has been declared and published, it is only a Judicial

Tribunal which on the basis of an election dispute filed under the Statute and on being satisfied about some error or Commission of corrupt practices and on such statutory ground as provided under the Statute can set aside the election. This view has been repeatedly expressed by the Apex Court in the interest of maintaining purity in the democratic process of election. This Court cannot give a different interpretation in this case, though assuming but not admitting that the petitioner has been made a victim of some errors some where at the official level.

10. However, considering the facts of the case, this Court observes that the petitioner may file an election dispute as early as possible. Once the election dispute is filed before the appropriate Judicial Tribunal, we direct that the said Judicial Tribunal shall give this case a precedence and shall try to dispose of the matter as early as possible, preferably within a period of three months from the date of settlement of issues by the Court. We also direct that as soon as the copy of the election petition is served on the elected candidate, who is appearing before us as opposite party no. 5, he shall file the written statement within a period of four weeks from the date of service of the copy of election petition on him. All other parties shall file their respective written statements within the said time. We hope and trust that the Judicial Tribunal will decide the election dispute and carry out the directions contained in this order in letter and spirit.

Misc. Case No. 2212/07 is also disposed of.

11. We, however, put on record the fair assistance rendered to this Court by Mr. Acharya, learned counsel for the State Election Commission and the fair attitude shown by him in producing the entire record.

Urgent certified copy of the order be granted on proper application.

Sd/- A.K. Gmiguly, C.J.
Sd/- N. Prusty J