

IN THE HIGH COURT OF ORISSA, CUTTACK  
(ORIGINAL JURISDICTION CASE )

W.P.(C) No.3509 of 2002

CODE NO.110700

IN THE MATTER OF :

- An application under Articles 226 and 227 of the Constitution of India;

AND

IN THE MATTER OF :

An application relating to the provisions contained in the Orissa Municipal Act, 1950 and the rules framed thereunder ;

AND

IN THE MATTER OF :

- 1 Dhruba Charan Jena, aged about 55 years, son of Late Musei Jena, President, District Bar Association, Kendrapara, At - Medical Road, P.O./P.S./ District - Kendrapara.
- 2 Muktar Khan, aged about 35 years, son of Late Matlula Khan, Village - Madhugarpur ( Dillarpuri, P.S./ District - Kendrapara.

**PETITIONERS**

VERSUS

1. State of Orissa, represented through the Secretary, Housing and Urban Development Department, At - Secretariat Building, Bhubaneswar, Dist - Khurda.
2. Director, Municipal Administration-cum-Ex-Officio Additional Secretary, Housing and Urban Development Department, Bhubaneswar, Dist - Khurda.
3. Collector, Kendrapara, At/P.O. / District - Kendrapara.
4. Administrator, Kendrapara Municipality, At/Po/ Dist. Kendrapara.

**OPP. PARTIES**

Heard Mr. Pattnaik, learned counsel for the petitioners, Mr. Nanda, learned counsel for the State and Mr. Mishra, learned counsel appearing for opposite party No.4.

2. The subject matter of challenge in this case is a notification issued by the District Magistrate, Kendrapara under Sub-section (3) & (3A) of Section 12 of the Orissa Municipal Act, 1950 read with Sub-Rule (1) of Rule 2-A of the Orissa Municipal (Delimitation of Wards, Reservation of Seats and Conduct of Election ) Rules, 1994. The petitioner being aggrieved by the said notification filed an appeal before the Director, Municipal Administration-cum-Ex-Officio Additional Secretary to Government, H.U.D. Deptt., Orissa, Bhubaneswar. The appellate authority has also affirmed the order of the District Magistrate, Kendrapara. Since the petitioner did not get any relief under the statutory authorities, he has filed this writ petition before this Court. A Division Bench of this Court entertained the writ petition and by order dated 24.03.2003 granted stay of operation of both the orders mentioned above. The said stay order is still continuing. As a result thereof, the Municipal Election of Kendrapara Municipality has remain stalled since 2003. Today when the matter is taken up for hearing, the Court wanted to know from the learned counsel for the petitioner how this writ petition could be move in view of the bar under Article 243ZG of the Constitution of India. The bar which is contemplated under Article 243ZG of the Constitution of India is very wide spread in nature.

3. For better appreciation, the Article 243ZG of the Constitution of India is quoted below:

243ZG. Bar to interference by courts in electoral matters - Notwithstanding anything in this Constitution,-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZF shall not be called in question in any court;
- (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

4. Commenting upon the said provision of the Constitution and some other similar provision, the Hon'ble Supreme Court in the case of **Anugrah Narain Singh v. State of U.P.** reported in **(1996) 6 Supreme Court Cases 303** has held that the bar contemplated under the said Constitution of India is two fold. The learned Judge of the Supreme Court, however, held that if the election is imminent or well under way, the court should not intervene to stop the election process. In the case of Anugrah Narain Singh (supra), the Apex Court again reiterated that if court intervenes to stop election no new election would take place because some one or the other will always find some excuse to move the court and stall the election process. In paragraph-30 of the judgment, the Hon'ble Supreme Court made it clear that any challenge to the validity of the delimitation of constituencies or the allotment of seats to such constituencies and the election to any panchayat should not be entertained by Court except on the ground that before the delimitation, no objection was invited and no hearing was given. In the instant case no such objection could be taken and from the notification of the District Magistrate, Kendrapara, it is clear that same was

published after considering all the objections. So in our view the interference of the Court in the instant case was perhaps not proper.

5. Considering the constitutional provisions as also the facts of the case it appears that initially, there was a draft notification as at Annexure - 3, and after consideration of objection a further notification was published on 19.06.2002 vide Annexure-4. We, therefore, dismiss the Writ Petition as misconceived and vacate the interim order. We further directed that the election which was stalled for all these years, in view of interference of this Court, may now be held in accordance with law.

Sd/- A.K. Ganguly, J.  
Sd/- I. Mohanty, J.