

IN THE HIGH COURT OF ORISSA ; CUTTACK
W.P.(C) No. 9277 / 2006

Code No.110900

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 Rules made thereunder;

AND

In the matter of :

1. Srikanta Kumar Panda, aged about 43 years son of Sukadev Panda of Mankerpur Po/Ps/Dist - Kendrapara.
2. Muktar Khan aged about 39 yrs, son of late Matlub Khan Vill- Madhugarpur (Dillanpur) P.S./ Dist - Kendrapara.

Petitioners

- Versus -

1. State of Orissa, represented through the Secretary, H& U.D. Deptt. Secretariate Building, Bhubaneswar, Dist - Khurda.
2. Director, Municipal Administration-cum- Ex-Officio Addl. Secretary, Housing & Urban Development Department.
3. District Magistrate -cum -Election officer, Kendrapara , Po/Dist- Kendrapara.
4. The State Election Commission, Orissa, Samabaya Bhawan, Janpath, Unit - IX, Bhubaneawar.

Opp.Parties

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24.08.2006 Heard Mr. A. Das learned counsel for the petitioners and Mr. P. Acharya learned counsel for opposite party no.4, State Election Commission, Orissa.

2. This writ petition has been filed by the petitioners basically with two grievances. The first grievance is that after disposal of the writ petition (W.P.(C) No.3509 of 2002) in which an interim order was passed stalling the election of Kendrapara Municipality for about three years, notice was issued by the Election Officer on 28.06.2006 to file objection and so on and in the said notice it was stated that any person who is not less than 18 years of age on 1.1.2002 and is not otherwise disqualified to become a voter shall be entitled to have his name entered in the electoral roll.

3. In view of the aforesaid stipulation in the notice, the petitioners' objection was that names of persons who have become 18 years after 1.1.2002 have been eliminated. It appears from the affidavit filed by the State Counsel that to rectify the aforesaid defect the State Election Commission has issued an order dated 28.6.2002 giving all those persons who have attained 18 years as on 1.1.2002 the right to be enrolled as voters.

4. Now the only surviving objection of the present petitioners' is that the present election which is going to be held on 1991 census should not be permitted as in the meantime 2002 census report has come, and accordingly, the election should take place as per 2002 census.

5. This Court can not accept the aforesaid plea in view of the fact that election is an ongoing process. Previously the election process was initiated but due to the intervention of the Court by an interim order dated 24.3.2003, the Municipal election was stalled and the same could only be vacated by the subsequent order of this court on 5.5.2006. In the previous writ petition, the notification at Annexure 4 was challenged. But this Court by its order dated 5.5.2006 passed in the previous Writ Petition being W.P.(C) No.3509 of 2002 did not accept the said challenge. On the other hand, this Court upheld the notification dated 19.06.2002 under Annexure-4 of W.P.(C) No.3509 of 2002. This Court also held that the said notification was published after due consideration of the objection. Therefore, the said notification namely the notification dated 19.6.2002 was not quashed by this Court despite the challenge being made to the same. The

petitioners are not trying to get the said notification quashed. In this writ petition, petitioner no.2 was a party to the previous writ petition. Since the election process has already been initiated, this Court directs the election authority to complete the election process on the basis of ongoing process. One of the grievances of the petitioners is that in 1991 census the number of O.B.C. was not available, as such, 2002 census should be accepted. But from Annexure - 4 of the previous writ petition, which is the notification dated 19.6.2002, we find that several seats have been kept reserved for O.B.C. candidates. Therefore, the interest of O.B.C. has also been protected under the previous notification. We, therefore, dismiss the writ petition by holding that the present election shall be held on the basis of the previous notification which was published but such election shall be held on the basis of the notice dated 28.6.2006 given by the Election Officer which says that any person who is not less than 18 years of age as on 1.1.2002 is entitled to become a voter.

This Court directs that the election be held as per the schedule.

The writ petition is accordingly disposed of No. order as to costs.

Sd/- A.K. Ganguli, Justice
Sd/- I. Mohanty, Justice