

Natabar Hati Vs. Block Development Officer and ors.

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Court : Orissa

Decided On : Jul-01-1975

Reported in : AIR1976Ori68

Judge : G.K. Misra, C.J. and ;P.K. Mohanti, J.

Acts : [Evidence Act, 1872](#) - Sections 114; Orissa Gram Panchayat Act, 1964 - Sections 25(1) and 32(1)

Appeal No. : O.J.C. No. 1334 of 1975

Appellant : Natabar Hati

Respondent : Block Development Officer and ors.

Advocate for Def. : R. Mohanty, Adv. and ;Standing Counsel

Advocate for Pet/Ap. : C.V. Murty, Adv.

Disposition : Petition allowed

Judgement :

G.K. Misra, C.J.

1. Petitioner and Opposite Parties 2 to 5 filed their nomination to the office of the Sarpanch of Anantpur Grama Panchayat in the District of Cuttack on 17-3-1975 before the Block Development Officer (Opp. Party No. 1). The nomination papers

were taken up for scrutiny. Petitioner raised an objection that Opp. Party No. 2 was an Extra Departmental Branch Post Master and was disqualified for standing as a candidate for Sarpanchship under Section 25 (1) (h) of the Orissa Gram Panchayat Act, 1964 (hereinafter to be referred to as the 'Act'). Opposite Party No. 2 also took an objection that the petitioner was disqualified under Section 25 (1) (h) of the Act. Both the objections were overruled and they were allowed to contest. Opposite Party No. 2 secured the highest vote and petitioner came up next to him.

2. Opposite Party No. 2 admits that he was an Extra Departmental Branch Post Master. In (1971) 37 Cut LT 222 = (AIR 1972 Orissa 8). (Nabaghan v. Election Officer. Mukundapur Gram Panchayat) a Bench of this Court held that such a post is an office of profit. Opposite Party No. 2 would, therefore, be disqualified to stand as a candidate for the Sarpanchship if his story that his resignation was verbally accepted is not entertained by us. This story of verbal acceptance is a fantastic theory which can hardly receive any recognition. In official dealings resignations are never verbally accepted. We, therefore, do not accept the contention of Mr. Mohanty that resignation of Opposite party No. 2 was verbally accepted. If this theory is discarded then Opposite Party No. 2 continued as an Extra Departmental Branch Post Master by the date he filed the nomination. His nomination paper should have been rejected by Opposite Party No. 1.

3. Mr. Mohanty in his turn contends that the petitioner is also disqualified under Section 25 (1) (i) of the Act by the date of the nomination as he was a teacher in a recognised school under the provisions of the Orissa Education Code. To get over this difficulty Mr. Mohanty contends that though the appeal of the petitioner had been allowed reinstating him in service the Secretary of the School (Opposite Party No. 2) did not allow him to join and as such the petitioner was not a teacher by the date of the filing of the nomination. Mr. Murty's contention is not acceptable. Once the petitioner's appeal was allowed and the D. P. I. gave a direction that the petitioner was reinstated in service, he shall be deemed to be continuing in service as a teacher. It is immaterial whether he factually joined his post after the order of reinstatement was passed. By the date of the scrutiny the petitioner was disqualified to stand as a Sarpanch under Section 25 (1) (i) of the Act.

4. Mr. Mohanty also raised an objection that the petition does not lie at the instance of the petitioner who is a disqualified candidate. Section 32 (1) however lays down that the petition may be presented by any person who has filed his nomination. Even though the petitioner was a disqualified candidate he is entitled to challenge the election of Opposite Party No. 2 as he had filed his nomination. This objection does not stand.

5. The result of the aforesaid discussion is that both the petitioner and Opposite Party No. 2 were disqualified in standing as candidates for the Sarpanchship. The Opposite Party No. 2's election is set aside. As there were three other candidates there would be a fresh election.

6. In the result, the writ application is allowed, but in the circumstances there would be no order as to costs. A writ be issued accordingly.

Mohanti, J.

I agree.

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