

Niranjan Sahu Vs. Narasu Satpathy and ors.

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Court : Orissa

Decided On : Jul-17-1969

Reported in : AIR1970Ori46; 35(1969)CLT977

Judge : G.K. Misra, C.J. and ;R.N. Misra, J.

Acts : [Constitution of India](#) - Article 226; Orissa Gram Panchayat Act, 1964 - Sections 35, 35(1), 35(2) to 35(9), 37, 38, 38(1) and 38(2); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 18, Rule 17

Appeal No. : O.J.C. No. 1561 of 1968

Appellant : Niranjan Sahu

Respondent : Narasu Satpathy and ors.

Advocate for Def. : Adv. General, ;B.K. Pal and ;B. Pal, Adv.

Advocate for Pet/Ap. : N.V. Ramdas and ;N.B.K. Murty, Adv.

Disposition : Application allowed

Judgement :

G.K. Misra, C.J.

1. The petitioner and opposite party No. 1 were candidates for election of Sarpanch in the Golantha Gram Panchayat. The election was held on 3-6-67 and

the results were published on 9-6-67. Opposite party No. 1 was declared elected. The petitioner filed an election petition under Section 31 of the Orissa Gram Panchayat Act, 1964 (hereinafter to be called as the Act) for setting aside the election of opposite party No. 1 on the ground, amongst others, that he was disqualified under Section 25 (1), Clause (1) of the Act as he was a debtor to the Aska Multipurpose Co-operative Society. The election petition was registered as Misc. Case No. 109 of 1967. It was taken up for trial. After the close of the entire evidence the petitioner filed an application for further cross-examination of opposite party No. 1 himself with reference to a document which was called for earlier but produced subsequent to his examination on oath. The application was filed under Order 18, Rule 17 C. P. C. The learned Munsif was of opinion that Order 18, Rule 17 was not applicable to trial of election cases, and as such he had no power to grant the prayer. The petitioner filed an appeal before the District Judge under Section 38 (4) of the Act. Petitioner's assertion is that no appeal lies, but that the appeal had been filed by way of abundant caution. The writ application has been filed under Articles 226 and 227 of the Constitution for quashing the order of the learned Munsif dated 22-7-68.

2. Mr, Pal raises a preliminary objection that an appeal lies against an interlocutory order in an election case before the Munsif. To appreciate this contention. Section 38 of the Act needs close examination. The section runs thus :

'38 (1) If the Munsif after making such enquiry, as he deems necessary, finds in respect of any person, whose election is called in question by a petition that his election was valid, he shall dismiss the petition as against such person and may award costs at his discretion.

(2) If the Munsif finds that the election of any person was invalid, he shall either--

(a) declare a casual vacancy to have been created; or

(b) declare another candidate to have been duly elected;

whichever course appears, in the circumstances of the case to be more appropriate and in either case, may award costs at his discretion,

(3) All orders of the Munsif shall, subject to the provisions of Sub-section (4), be final and conclusive;

Provided that the Munsif may, on application presented within one month from the date of any of the orders made under this section by any person aggrieved, review such order on any ground and may, pending the decision in review direct stay of operation of such order; Provided further that no application for review under the preceding proviso shall lie, if an appeal is preferred in accordance with the provisions of Sub-section (4).

(4) Any person aggrieved by an order of the Munsif may within thirty days from the date of the order, prefer an appeal in such manner as may be prescribed before the District Judge having jurisdiction who shall after giving the parties an opportunity of being heard, confirm, reverse, alter or modify the order of the Munsif and pending disposal of such appeal may direct stay of operation of the said order.'

On a perusal of the various sub-sections, it is clear that an appeal lies only against final orders passed under Sub-sections (1) and (2), and no appeal lies against an interlocutory order. Those very sub-sections make provision for awarding of costs at the discretion of the Munsif. The first proviso to Sub-section (3) makes the position further clear that the appeal is to lie against any order made under Section 38. This section makes no provision for passing of interlocutory orders. It merely conceives of final orders either of dismissal or of allowing the election petition. We are therefore satisfied that there is no substance in the preliminary objection. No appeal lies to the District Judge, and the only remedy is by an application under Article 226 of the Constitution,

3. The next question for consideration is whether the view of the learned Munsif that Order 18, Rule 17. C. P. C. has no application to trial of election cases is correct. Section 35 (1) of the Act enacts that subject to the provisions of the Act and the rules made thereunder every election petition shall be tried by the Munsif as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. Sub-sections (2) to (9) of Section 35 do not exclude the applicability of Order 18, Rule 17 C. P. C., Section 37 of the Act

enumerates the powers that the Munsif shall have when trying election cases. He would have powers in respect of the following matters :

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments; (f) reception of evidence taken on affidavit.

4. Order 18 C. P. C. is styled as 'Hearing of the Suit and Examination of Witnesses'. Order 18 Rule 17 C. P. C. is clearly a procedure applicable to the trial of suits. The powers conferred upon the Munsif in Section 37 to try election cases come under Orders 11, 16, 13, 18, 17 and 19. Examining witnesses on oath clearly comes under Order 18. Order 18, Rule 17 in terms says that the Court may at any stage of a suit recall any witness who has been examined and may, subject to the law of evidence for the time being in force, put such questions to him as the Court thinks fit. This also comes within the purview of Section 37, Clause (d), namely, examining the witnesses on oath. We are therefore, clearly, of opinion that the learned Munsif wrongly refused to exercise his jurisdiction which was vested in him. He had powers to follow Order 18, Rule 17 C, P. C., and under a misconception of law he was of the view that he could not exercise such powers. We will accordingly quash his order.

5. Order 18, Rule 17 C. P. C. itself says that the power is discretionary with the Court. The case must accordingly go back to the Munsif to examine, in the facts and circumstances of this case, whether he would exercise his discretion to allow the prayer of the petitioner to resummon opposite party No. 1 for further cross-examination.

6. In the result, the application is allowed with costs against opposite party No. 1. Hearing fee of Rs. 100/- (one hundred). There will be no order as to costs against

the State.

R.N. Misra, J.

7. I agree.

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