

Surendra Dash Vs. Laxmidhar Sahoo and anr.

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Court : Orissa

Decided On : Dec-13-2000

Reported in : 2001(I)OLR65

Judge : P.K. Misra, J.

Acts : [Constitution of India](#) - Articles 226 and 227; [Orissa Municipal Act, 1950](#) - Sections 16(1); Births, Deaths and Marriages Registration Act, 1886 - Sections 9 and 28

Appeal No. : Original Jurisdiction Case No. 11450 of 2000

Appellant : Surendra Dash

Respondent : Laxmidhar Sahoo and anr.

Advocate for Def. : C. Kasturi, N.K. Lenka, S.K. Sethi and J. Patnaik (Opp. party No. 1)

Advocate for Pet/Ap. : Sanjit Mohanty, S.C. Samantaray, N.C. Sahoo, S.P. Panda, S. Pattnaik, D. Mohanty, R. Dasmohapatra and S. Nanda

Disposition : Application dismissed

Judgement :

P.K. Misra, J.

1. The petitioner has challenged the legality of the judgment dated 31.10.2000 passed by the District Judge, Puri, in Election Misc. Case No. 318/97 whereunder the election of the petitioner as a Councillor of Puri Municipal Council has been quashed on the ground of violation of the provisions contained in Section 16 (I)(xvii) of the Orissa Municipal Act.

2. Election to Puri Municipal Council was held on 11.7.1997. The petitioner was declared as a Councillor from Ward No. 28. Opposite party No. 1 filed an election petition before the District Judge on the allegation that present petitioner has more than two children and as such as disqualified Under Section 16 (1) (xvii) of the Orissa Municipal Act. The petitioner had filed objection denying the allegation made in the election petition. The District Judge (Tribunal) has found that the present petitioner had more than two children on the appointed date and as such was disqualified. The said decision is being challenged in the present writ application.

3. The learned counsel for the petitioner has taken me through the pleadings and submitted that there had not been any specific allegation that the Death and Birth Register maintained in accordance with law had been tampered with and yet, the District Judge has based his finding mainly on the conclusion that the register had been tampered with. It is further submitted that since there was no such specific pleading, such a conclusion was not available to the District Judge. In this connection, it is further contended that under the Act only the competent authority under the Act can decide about the correctness of the entries in the Death and Birth Register and the District Judge has committed an illegality in coming to a conclusion that some entries in the Death and Birth Register had been tampered with.

4. In my opinion, none of these aforesaid contentions can be countenanced. The main question raised in the election petition was as to whether the present petitioner had more than two children by the appointed date. The entries in the birth register are only materials to be utilized either in support of such allegation or to disprove such allegation. Law is well stated that a party has to plead the material facts on the basis of which he seeks relief. The party has to plead only the

material facts and not the evidence in support of or in disproof of such facts. The question as to whether any of the entries in the birth register were genuine or not is a matter which was required to be gone into by the District Judge for the purpose of ascertaining the veracity of such entries. It was not a material fact required to be pleaded in the petitioner.

5. Similarly, the contention that the District Judge does not have any jurisdiction to decide about the correctness of the entries or genuineness of the entries is also equally without substance. The learned counsel for the petitioner has placed reliance upon Section 28 of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886) in support of his contention that it is only the prescribed authority, namely the Registrar of Births and Deaths who can correct any error contained in such register and no other authority can correct such error. Section 28 of the Act is extracted hereunder :

' 28. Correction of entry in register of births or deaths. -

(1) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, he may, subject to such rules as may be made by the State Government with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

(2) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.'

The aforesaid provision contained in Chapter-III of the Act relating to registration of births and deaths is intended to empower the Registrar to correct any entry already made in such register. The question as to whether any entry made in such register is to be relied upon or not in a Court of law is not a matter coming within Section 28.

Section 9 of the Act is as follows :

' 9. Copies of entries to be admissible in evidence.

A copy of an entry given under the last foregoing section shall be certified by the Registrar-General of Births, Deaths and Marriages, or by an officer authorised in this behalf by the State Government, and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.'

This provision makes it clear that a copy of the entry made in the Birth or Death register is admissible in evidence for the purpose of proving the birth, death or marriage, as the case may be. Even though such entry is admissible, its evidentiary value is obviously within the domain of the Court deciding the matter where such entry has been admitted into evidence. By deciding that a particular entry is not reliable, the Court does not purport to exercise the power Under Section 28 of the Act. While considering the effect of any such entries in the death and birth register, the Court always opine about the genuineness or otherwise of such entries. It cannot be said that by doing so, the Court was arrogating in itself the jurisdiction vested in the Registrar whose duty it is to maintain the Death and Birth Register.

6. The learned counsel appearing for the petitioner has argued at length impugning the various reasonings given by the trial Court. Law is well settled that High Court while deciding a writ of certioraris under Arts. 226 and 227 of the [Constitution of India](#) does not sit in appeal over the decision of the lower Court. It is well settled that the writ of certiorari is not directed against the decision itself, but against the decision-making process. Even though the findings arrived at by the lower Court or Tribunal may not be- acceptable to an appellate Court, that would not be a ground to over-turn the decision of the lower tribunal in exercise of jurisdiction under Arts. 226 and 227 of the Constitution. It is only when the decision of the lower Tribunal is not supportable by the evidence on record, or no reasonable man could have come to a conclusion arrived at by the lower Tribunal, the High Court in exercise of power under Arts. 226 and 227 may be justified in over-turning such decision. This position is clear in view of several decisions of the Supreme Court including the decisions reported in AIR 1964 Supreme Court 477

(Syed Yakoob v. K.S. Radhakrishnan and others), and AIR 1989 Supreme Court, 997 (State of U.P. and Ors. v. Maharaja Dharmander Prasad Singh etc.).

7. Though at the time of hearing, I had permitted the counsels appearing for both parties to address in detail regarding the various reasons given by the trial Court with reference to the various exhibits and oral evidence on record, I do not think' in exercise of jurisdiction under Arts. 226 and 227 of the Constitution, it is permissible to test the validity of the decision of the inferior Tribunal by trying to test the reasoning given as if this Court is sitting as an appellate Court. After going through the judgment passed by the Court below and after perusing the oral as well as documentary evidence on record, it cannot be said that the conclusion reached by the trial Court is one which no reasonable person could have arrived at. In other words, it cannot be characterized that the decision of the trial Court is based on no evidence or is a perverse one. A possible view has been taken by the trial Court. It may be that an appellate Court might have come to a different conclusion on the very same set of evidence. The error, if any, is relating to appreciation of evidence and not in the decision-making process itself.

8. The learned counsel for the petitioner also contended that the trial Court has committed a gross illegality in drawing adverse inference against the petitioner for non-examination of the wife of the petitioner. It appears that one stage the petitioner had filed an application for examining his wife on commission on the ground of illness. However, the said petition was rejected by the trial Court. Even though the petition was rejected, hearing of the election petition had been subsequently postponed on some pretext or other. At a subsequent stage, the petitioner could have examined his wife. However, it appears that the petitioner filed another Memo stating that he was not in a position to examine his wife in Court due to illness and it was indicated that the evidence may be closed. No medical certificate in support of such Memo had been filed. The question as to whether a case would be adjourned for the purpose of examining a witness is essentially a matter of discretion of the trial Court. While exercising power under Art. 227 of the Constitution, it cannot be said in the facts and circumstances of the present case that the trial Court had abused its discretion by not granting any further adjournment.

9. The trial Court had referred to the various oral evidence on record including that of the doctor. The trial Court has opined that the documentary evidence on record had corroborated the statements made by the witnesses particularly, the doctor. This conclusion is essentially a finding of fact which is not available to be challenged in a writ application except on the limited grounds indicated earlier. As already noticed, the present case is not one where it can be said that the decision of the trial Court is based on no evidence or is perverse or that no reasonable man could have come to such a conclusion. The trial Court has noticed certain general features and as already indicated, the conclusion appears to be a possible conclusion.

10. For the aforesaid reasons, I do not find any merit in this writ application, which is accordingly dismissed. Since the petitioner has lost the post by virtue of the election dispute, I do not want to add to his misery by awarding cost.