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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.365 of 2025

In the matter an Appeal under Section 10 of the Letter Patent of the Patna High Court, read with Article-4 of the Orissa High Court Order, 1948 and from common judgment dated 08.01.2025 passed in W.P.(C) Nos.29872 & 18920 of 2024.

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Sri Biswaranjan Mohanty ... ***Appellant***

-Versus-

1. ***State of Odisha, represented through its Commissioner-cum-Secretary to Government, Department of Cooperation***

2. ***Registrar of Cooperative Societies, Odisha***

3. ***Deputy Registrar of Cooperative Societies, Odisha***

4. ***Additional Secretary to Government, Department of Cooperation***

5. ***Special Secretary to Government, Department of Cooperation***

6. ***State Cooperative Election Commission, Odisha***

7. ***Sub-Assistant Registrar of Cooperative Societies, Office of the Assistant Registrar Cooperative Societies, Bhubaneswar*** ... ***Respondents***

Advocates who Appeared in this case:

For Appellant - Mr. P.K. Rath, Sr. Advocate
Mr.B.Routray, Sr. Advocate
Mr. M. Kanungo, Sr. Advocate

For Respondents - Mr.S.B. Panda, AGA
Mr.G.Mishra,
Sr. Advocate for Intervener
Mr.D.Mohapatra,
Sr. Advocate for Caveator.

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HON'BLE MR. JUSTICE KRISHNA S. DIXIT
HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing : 24.06.2026 : Date of Judgment : 30.06.2026

***PER* KRISHNA S. DIXIT, J.**

This Intra Court Appeal seeks to lay a challenge to a learned Single Judge's order dated 08.01.2025 whereby Appellant's W.P.(C) No.29872 of 2024 has been negatived. In the said Petition, he had challenged DRCS's Notice dated 19.11.2024 whereby he was disqualified from the membership of Primary Society, i.e. Capital Cooperative Housing Limited. It purports to have been issued under section 28(3)(p) of the Orissa Cooperative Societies Act, 1962 on the ground that he has begotten three children, two being the ceiling limit.

2. Learned Senior Advocate Mr.P.K.Rath appearing for the counsel on record for the Appellant assails the impugned order essentially on two grounds:

i. Appellant is not the father of third child at all and this aspect of the matter has already been determined in the Election Petition of his spouse. The finding recorded in the said Petition would put the things beyond the pale of any doubt. This aspect has been ignored by the learned Single Judge.

ii. Abundant evidentiary material vouching the above contention has not been adverted to by the jurisdictional authorities and eventually, a wrong decision has been entered having enormous consequence to the prejudice of the Appellant.

iii. The impugned orders of the authorities are vitiated for denying the opportunity of hearing to the Appellant and therefore, the same are liable to be quashed on the ground of violation of the principles of natural justice.

3. Learned AGA appearing for the official Respondents and the learned Senior Advocates appearing for the private Respondents resisted the Appeal making submission in justification of the impugned order of the learned Single Judge and of other authorities. They drew attention of the Court about unworthiness of the evidentiary material that has been generated post litigation. They also told us that in an *intra* Court Appeal like the one at hand, has conventional restrictions and therefore, this Court cannot undertake a deeper examination of the findings of facts recorded by the authorities on the basis of evidentiary material available on record, more particularly when no error of jurisdiction is demonstrated in them and in the impugned order of learned Single Judge.

4. Having heard learned Senior Advocates for the parties and having perused the Appeal papers, we decline indulgence in the matter on the following grounds, broadly agreeing with the submission advanced on behalf of the Respondents:

4.1. Section 28(3)(p) of the 1962 Act disqualifies a Member or President or Vice-President of the Committee of a Society, if he has more than two children as on 1st January, 1995. This disqualification is by operation of law. However, the Registrar of the Societies has to hold a due enquiry as to foundational facts, with the participation of the stake holders by recording a finding that the person concerned has more than two children. The vehement submission of Mr.Rath that his client was not given an opportunity of hearing is unsustainability, inasmuch as admittedly he was given notice of the proceedings and he has filed his Written Submission wherein not even a

whisper is made denying the allegation that he has more than two children. Simply saying the subject provision of the Act is not attracted, would not come to his protection. The opportunity of hearing does not mean oral submissions are to be permitted despite filing the reply in writing to the notice in question. After all, the principles of natural justice cannot be chanted as a mantra, without *prima facie* demonstrating the prejudice occasioned on account of their violation. Much is not necessary to deliberate on this aspect of the matter.

4.2. The second submission of Mr.Rath that there is abundant evidentiary material to show that the third child does not belong to the Appellant is unworthy of consideration when he has not made even a single statement denying the allegation that he has three children. It is not that the Appellant is an illiterate person having no exposure to the outside world. He has fought election to the Primary Membership of the Society and from there he has gone to the pinnacle of confederation. In the absence of denial of the allegation, no purpose would be served by looking into the evidentiary material which may arguably show that the third child is not his. It hardly needs to be stated that in the absence of plea, no evidentiary material need be examined. Learned Senior Advocates appearing for the other side are more than justified in contending that the so-called evidentiary material is generated post *lis*. Admittedly, in the original Birth Register, an extract of which is a part of the record herein, Appellant's name is reflected in father's column of third child. However, post *lis* rectification has been secured by showing the name of other person in his stead. That person is none other than his own brother. No explanation is offered as to how Appellant's name was entered in the Register, much less wrongly. The Discharge Summary of the Hospital also does not generate confidence. It lacks the material particular as to who had furnished the information to the Hospital officials to make entries.

4.3. AS TO DECISION IN APPELLANT'S WIFE'S ELECTION PETITION AND ITS EFFECT ON THE QUESTION HEREIN:

4.3.1. The third contention advanced on behalf of the Appellant that in the Election Petition filed against his wife on the ground of having three children, a finding to the contrary is entered would not come to his aid. It hardly needs to be stated that the decision in Election Petition is not a judgment in *rem* but only in *personum***.** Appellant was not a party to the same. **Sir John Woodroffe & Syed Amir Ali** in their Law of Evidence, 15th Edition, write: *"...Bower defines a judgment in rem as one which 'declares, defines or otherwise determines the status of a person, or of a thing; that us to say, the jural relation of the person or thing to the world generally'... 'Judgment in rem' means an adjudication pronounced upon the status of a person or thing by a competent Court to the world generally..."*.

4.3.2. Halsbury's Laws of England 2009, 5th Edition, Para 1161 reads: *"...The following are examples of judgments in rem: the judgment of a prize court condemning a vessel as prize; the judgment of an Admiralty court establishing a lien, or condemning a vessel in a claim (for example for the supply of goods) ... the judgment of a probate court establishing a will or creating the status of administrators; the judgment of a divorce court of competent jurisdiction dissolving or establishing a marriage, or declaring the nullity of a marriage or affirming its existence; the judgment on a parliamentary election petition; a conviction for non-repair of a highway; a determination of justices that a street was a highway repairable by the inhabitants at large, establishing the status of the highway and the liability to repair; a determination that a path was subject to a public right of way; an order for revocation of a patent; a sentence or order of expulsion or rustication from a college or*

deprivation of a living. Condemnations in the old Court of Exchequer for breach of revenue laws and the order of justices for the removal of a poor person, establishing both his status and the place of his settlement, were also examples of judgments in rem…".

4.4. Wisdom can be drawn from the observations of the Apex Court in ***Satrucharla Vijaya Rama Raju vs Nimmaka Jaya Raju,*** AIR 2006 SC 543, wherein paragraph-12 runs as under:

> *"With respect to learned senior counsel, these decisions do not show that the judgment in an election petition could be treated as a judgment in rem. Obviously, the whole of the constituency concerned is interested in the outcome of an election petition, since it either affects the choice they have already made, or their right to have the freedom of a fresh choice. But since a challenge to an election petition is only a statutory challenge under the Representation of the People Act and since the acceptance of the challenge or the rejection of it in a given case would be based on facts and law available therein, and since an adjudication therein is not one which comes directly within the purview of Section 41 of the Act, the same could not be treated as a judgment in rem. In fact, if it were a judgment in rem, the ratio of the decision of this Court in C.M. Arumugam Vs. S. Rajgopal and Ors. [(1976) 1 SCC 863] earlier referred to, would not have been rendered, since the adjudication in the earlier election petition would have barred the consideration of the question even if it be based on additional facts. We, therefore, overrule the argument that the judgment in E.P. 13 of 1983, should be held to be a judgment in rem binding on the whole world including the election petitioner herein, even though he was not a party to the earlier proceeding."*

We are also mindful of the fact matrix of the said Ruling. It was an election dispute arising under the provisions of the Representation of People Act, 1951 unlike the Appeal at hand that relates to election dispute under the provisions of 1962 Act. But, the Ruling throws light as to what is a judgment in *rem.* It is only in that context we had adverted to the observations in the said Ruling.

4.5. There is force in the submission of learned AGA appearing for the official Respondents and learned Advocates appearing for the opposite parties that an *intra* Court Appeal of the kind has conventional constraints and therefore, the Court cannot undertake a deeper examination of the findings of

facts recorded by the Statutory Authorities in a normative way and after giving opportunity of hearing to the stake holders, more particularly when the same have secured imprimatur at the hands of learned Single Judge exercising a limited extraordinary jurisdiction constitutionally vested under Articles 226 & 227. It hardly needs to be stated that an eminent case has to be made out for securing the interference of this Court in appellate jurisdiction and, that has not been demonstrated.

4.6. AS TO THE CONTENTION OF LACK OF COMPETANCE:

4.6.1. The last submission of Learned Senior Advocate appearing for the counsel on record for the Appellant that, the Author of impugned order disqualifying the Appellant, is incompetent cannot be agreed to, and reasons for this are not far to seek:

i. It was Bertrand Russell (1872-1970) a British Philosopher & Nobel Awardee (1950), who said that *"Population explosion is more dangerous than hydrogen bomb"*. In Fact and Fiction[1], he writes:

> *"The world is faced at the present day with two antithetical dangers. There is the risk, which has begun to sink into popular consciousness, that the human race may put an end to itself by a too lavish use of H-bombs. There is an opposite risk, not nearly so widely appreciated, that the human population of our planet may increase to the point where only a starved and miserable existence is possible except for a small minority of powerful people. These risks, though diametrically opposed to each other, are nevertheless connected. Nothing is more likely to lead to an H-bomb war than the threat of universal destitution through over-population… In India, the population grew and grows unchecked, producing a downward plunge towards misery and starvation."*

Overpopulation being a complex & multifaceted global issue presents a mammoth challenge to the delicate balance of our only planet and its limited resources. The unchecked population growth places immense strain on environmental, societal & economic systems. There is almost a global

[1]. Burtrand Russell, Fact and Fiction, Routledge Classics London and New York Publication, Part IV Chapter 5 – Population Pressure and War, Page 238.

unanimity of opinion that overpopulation causes environmental degradation, resource scarcity and intensified societal challenges.

ii. The Constitution (Forty-Second Amendment) Act, 1976 introduced Entry-20A 'Population Control & Family Planning' to the Concurrent List in the Seventh Schedule with effect from 03.01.1977. This introduction is not without significance. It was made in the wake of rapidly growing population in the country so that Center & States can devise policies to control the growth rate, in concurrent competence. Such provisions are found in several legislations, one of such other being Section 25(1)(v) of Odisha Grama Panchayats Act, 1964. Section 28(3)(p) of the 1962 Act is a positive measure to check the population growth, that has crossed Malthusian Danger Mark in the country.

iii. Mr. Rath's contention that the provisions of 1962 Act do not designate any authority in so many words for giving effect to Section 28(3)(p) is difficult to countenance. Where a specific authority for giving effect to the statutory policy of the kind is not specified, then the authority who would function as the conscience keeper of the said policy as of necessity has to be conceded power to effectuate the same. It cannot be gainfully disputed the Registrar of Co-operative Societies is one such functionary. It hardly needs to be stated, under Section 2(i) the word Registrar is inclusively defined to encompass any person appointed to assist the Registrar. Section 3 empowers the Government to make such appointment. The author of the disqualification order dated 19.11.2024 that was challenged before the Ld. Single Judge is non-other than the Deputy Registrar. Sub-section 2 of Section 3 empowers the Government to clothed such an official with the powers of Registrar, under the 1962 Act. Therefore, the contention as to the lack of competence cannot be countenance.

In the above circumstances, the Appeal being devoid of merits is liable to be dismissed and accordingly it is, costs having been made easy.

This Court places on record its deep appreciation for the able assistance rendered by its official Law Clerk-cum-Research Assistant Mohammed Nihad Sharief.

(Krishna S. Dixit)
Judge

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack
The 30th day of June, 2026/Basu