



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 8446 of 2024

Bhagyadhar Behera *Petitioner*

In person

-versus-

Election Commission of India (ECI), *Opposite Parties*
New Delhi and others

Mr. Ashok Kumar Parija, Advocate General assisted by
Mr. Debakanta Mohanty, Addl. Government Advocate
Mr. Gopal Agarwal, Advocate

CORAM:
THE CHIEF JUSTICE
MR. JUSTICE MURAHARI SRI RAMAN

Order No.

ORDER
24.04.2024

02. This matter is taken up through Hybrid mode.

2. Opposite party No. 3 is a Union Minister. The petitioner is Company secretary by profession. Opposite party No. 3 was earlier elected as a Member of Rajya Sabha from Odisha on 28.06.2019. The petitioner has filed the present writ petition seeking issuance of writ of mandamus to the Election Commission of India (ECI) to complete an inquiry in accordance with law within a stipulated time on a complaint submitted by the petitioner with respect to filing of a false affidavit by opposite party No.3 while submitting his nomination papers for the said election to Rajya Sabha, in 2019.



3. There are averments in the present writ petition that certain declarations made by opposite party No. 3 in the nomination paper were not correct. It is also pleaded that opposite party No. 3 had contested and was returned elected as Member of Rajya Sabha on 28.06.2019, based on false affidavit submitted by him.

4. The petitioner had neither contested the said election nor was an elector of the said election.

5. We take judicial notice of the fact that the General Elections, 2024 are notified on 18.03.2024 for the State of Odisha.

6. It is the petitioner's case as pleaded in the writ petition that he had made a complaint to the Election Commission of India on 15.02.2024 making an allegation that opposite party No. 3 had made false declaration in his nomination papers. Two weeks thereafter, he sent an email (Annexure-7) on 29.02.2024 at 1.03 PM to the Election Commission of India to the following effect:

“Sir,

I raised the complaint against Mr. Ashwini Vaisnav on 15.02.2024 and my complaint was registered vide Ref No-NGS18N160224368216. Why and how he was declared elected to Rajya Sabha later from Odisha and given the certificate by the Electoral Officer when my complaint was pending? At least issue of certificate could have been



kept pending till the complaint is resolved. Can Election Commission of India ask him to return the certificate so issued?

Regards,

Bhagyadhar Behera, FCS, Bhubaneswar.”

7. It further appears from Annexure-7 that on the same date at 2.23 PM, the Election Commission of India responded to the petitioner's *email* stating as under:

“Dear Bhagyadhar Behera,

Thank you for writing to Election Commission of India.

We apologize for the inconvenience; we would like to inform you that your complaint has already been registered in National Grievance Services portal and our concerned department is working on your complaint.

We will revert you shortly with appropriate response.”

8. The very next day after the General Elections were announced, the petitioner filed the present writ petition on 19.03.2024. Several averments have been made in the writ petition, which are not required to be referred to in the present order. It is precisely the petitioner's case that the conduct of opposite party No. 3 in making false statement amounts to an offence under the provisions of the Indian Penal Code, 1860 and the Representation of the People Act, 1951. The petitioner has also referred to certain Supreme Court's decisions in the writ petition. The present writ petition was filed through Mr. Sidharth Prasad Das, learned Advocate. While making



his submissions on the previous day i.e., 23.04.2024, he had vehemently argued that the Election Commission of India was sitting tight over the complaint made by the petitioner and therefore, the petitioner invoked extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India seeking direction to the Election Commission of India to complete the inquiry based on his complaint, forthwith. For passing appropriate orders, the matter was adjourned for today.

9. Today, Mr. Sidharth Prasad Das, learned counsel has submitted a 'No Objection Memo' withdrawing himself from this case on the instructions of the petitioner. He has submitted that it was on the insistence of the petitioner that he had filed present writ petition.

10. The petitioner is present in person today. He submits that in view of the seriousness of the allegations made against opposite party No. 3, the Election Commission of India ought to have completed the inquiry based on the complaint made by the petitioner.

11. After having carefully perused the pleadings in the writ petition, we are of the definite view that filing of the present writ petition is a blatant abuse of the process of the Court. Further, filing



of the present writ petition is manifestly politically motivated, soon after declaration of General Elections. It is curious to note that the petitioner in his communication addressed to the Election Commission of India through his e-mail dated 29.02.2024 put questions as to why opposite party No.3 was declared elected to Rajya Sabha from Odisha and given the certificate by the Electoral Officer subsequently also, when his complaint was pending. It is noteworthy that after completion of the term of election to Rajya Sabha in 2019, opposite party No. 3 has again been elected to Rajya Sabha in 2024. It is in that background the petitioner has questioned as to how opposite party No.3 was returned to Rajya Sabha when his complaint was pending. Further, despite the fact that the Election Commission of India had immediately responded to the petitioner's mail, the petitioner chose to approach this Court by making the present writ petition within less than a month of the said communication.

12. It is not that the Court exercising writ jurisdiction under Article 226 of the Constitution of India may not entertain genuine litigations having political overtones. However, we find from the pleadings made in the present writ petition, as has been noted above, that this writ petition is politically motivated filed for



ulterior reasons. The Courts exercising power of judicial review have duty to discourage filing of such frivolous and vexatious writ petitions as they clog the Courts with unnecessary litigations, which impede adjudication of genuine litigations, lying in queue.

13. In order to discourage filing of such frivolous and vexatious litigations, we are of the considered view that this petition deserves to be dismissed with exemplary costs.

14. This writ petition is accordingly dismissed with a cost of Rs. 5,00,000/-(Rupees Five Lakh) to be paid by the petitioner in the account of Orissa High Court Bar Association Advocates' Welfare Fund within three weeks from today.

15. Before we part with the present order, we record our appreciation for the assistance extended by Mr. Ashok Kumar Parija, learned Advocate General, at the Court's request.

(Chakradhari Sharan Singh)
Chief Justice

(M.S. Raman)
Judge