

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 39461 of 2023

Bibhutibhusan Mohapatra

.....

*Petitioner
In Person*

Vs.

Union of India

.....

*Opposite Party
Mr. B. Moharana, CGC*

CORAM:

**ACTING CHIEF JUSTICE DR. B.R. SARANGI
MR. JUSTICE MURAHARI SRI RAMAN**

**ORDER
18.12.2023**

**Order No.
01.**

This matter is taken up by hybrid mode.

2. Heard Mr. Bibhutibhusan Mohapatra, the petitioner in person and Mr. B. Moharana, learned Central Government Counsel appearing for the opposite party-Union of India.

3. The petitioner has filed this writ petition in the nature of public interest litigation seeking to declare Section 69 (ii) of Representation of People's Act, 1951 as unconstitutional to have a fair election.

4. Mr. Bibhutibhusan Mohapatra, the petitioner appearing in person contended that Section 69 (ii) of Representation of People's Act, 1951 is to be declared as ultra vires, as because democracy is the basic structure of the Constitution and free and fair election is the basic feature of democracy, which has been observed by the apex Court in the case of *People's Union for Civil Liberties and another v. Union of India and another* (Writ Petition (Civil) No. 161 of 2004 disposed of on 23.02.2009).

5. Mr. B. Moharana, learned Central Government Counsel appearing for the opposite party-Union of India raised preliminary objection with regard to credential of the petitioner for filing of the writ petition and contended that the petitioner has

to satisfy the Court with regard to his source of income and how and in what way he has filed this writ petition. As such, when elections are being done in free and fair manner, for which flaw the petitioner has challenged the constitutional validity of Section 69 (ii) of Representation of People's Act, 1951, the petitioner has to satisfy the same.

6. Having heard learned counsel for the parties and after going through the records, when this Court to show bona fide called upon Mr. Bibhutibhusan Mohapatra, the petitioner appearing in person, to explain his credentials, it is contended that he himself has a fabrication unit and invested Rs.4.0 lakhs and, as such, his source of investment has not been disclosed. When this Court called upon the petitioner as to wherefrom he got the amount, it is contended that he himself earned the amount. But nothing has been placed on record to that extent and, therefore, the credential of the petitioner is doubtful. In course of hearing, when this Court asked the petitioner to explain the grounds based on which vires the provisions contained in Section 69 (ii) of the Representation of People's Act, 1951 are to be declared as unconstitutional, nothing has been placed on record save and except stating that democracy is the basic structure of Constitution and free and fair election is the basic feature of democracy, which has been observed by the apex Court in the case of People's Union for Civil Liberties and another (supra).

7. In the above view of the matter, this Court doubts the credential of the petitioner for filing of the present writ petition. As such, without justifying how Section 69 (ii) of Representation of People's Act, 1951 is unconstitutional, this frivolous writ petition has been filed by the petitioner. Therefore, this Court is not inclined to entertain this writ petition. Consequentially, the

writ petition stands dismissed with a cost of Rs.1,00,000/- (Rupees one lakh), which shall be deposited in the Advocate Welfare's Fund of the High Court Bar Association within seven days, failing which the amount shall be recovered by initiating proceedings under the Odisha Public Demands Recovery Act, 1962 against the petitioner, so that the petitioner will refrain from filing such type of frivolous writ petition before this Court. Needless to say, if the amount is not deposited within the time stipulated, the State authority is free to initiate criminal proceeding against the petitioner, in addition to recovery of the amount under the Odisha Public Demands Recovery Act, 1962.

Ashok

