

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3707 of 2023

(In the matter of an application under Articles 226 and 227 of the Constitution of India)

Sri Trailokyanath Swain

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Petitioner

-versus-

Pabitra@Pabitra Mohan Upadhaya and another

Opposite Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. S. Mishra, Advocate

For Opposite Parties : Mr. D.P. Nanda, Sr. Advocate
along with Mr. S. Lal, Advocate
For O.P. No.1

Mr. Sonak Mishra, A.S.C.

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

13th October, 2023

B.P. Routray, J.

1. Heard Mr. S. Mishra, learned counsel for the Petitioner, Mr. D.P. Nanda, learned Senior Advocate along with Mr. S. Lal for Opposite Party No.1 and Mr. Sonak Mishra, learned Additional Standing Counsel for the State-Opposite Party No.2.

2. Present Petitioner is the unsuccessful Election Petitioner. His Election Petition, i.e. Election Misc. Case No.19 of 2017 was

dismissed by the learned Civil Judge (Jr. Divn.), First Court, Cuttack and then confirmed in the appeal, i.e. Election Appeal No.1 of 2020 by the learned District Judge, Cuttack. The election petition was filed by the present Petitioner with a prayer to set aside the election of Opposite Party No.1 as he is disqualified having more than two children.

3. Learned Civil Judge (Jr. Divn.), First Court, Cuttack framed five issues, which are as follows:

“I. Whether the election petition is maintainable ?

II. Whether there is any cause of action to file the election petition ?

III. Whether the election of O.P. No.1 for the post of Sarpanch, Nakhara Gram Panchayat is void as he has more than two children and his nomination paper was improperly accepted by the election officer ?

IV. Whether the present petitioner can be declared as Sarpanch of Nakhara Gram Panchayat ?

V. Whether the petitioner is entitled for any other relief(s) ?”

4. Among such issues, the vital is Issue No.III, which deals with disqualification of Opposite Party No.1 for having more than two children. This is the entire dispute involved in the election case.

5. The admitted fact remains that Opposite Party No.1 had three children, namely, Sweta Upadhyay born on 10.08.2023, Smruti Upadhyay born on 21.10.2007 and Sumit Upadhyay born on 27.11.2008. Among such children, Smruti Upadhyay died on

01.08.2008. The election to the Office of Sarpanch, Nakhara Gram Panchayt was held in February, 2017.

6. The Petitioner filed the election case alleging that since Opposite Party No.1 had three children on the date of filing of the nomination, he is disqualified from contesting as Sarpanch in terms of the provisions contained in Section 25(1)(v) of the Odisha Gram Panchayats Act, 1964.

7. As stated above, the Petitioner is seen misconceived on the facts and the provisions of law. It is for the reason that admittedly one of the daughters namely, Smruti Upadhyay died on 1.8.2008 and as such on the date of nomination to the Office of Sarpanch, Opposite Party No.1 has two children only. Here it is important to relook to the provisions in clause (v) of sub-section (1) of Section 25 of the Odisha Gram Panchayats Act, 1964, which is reproduced below:

*“(v) has more than two children.
xx xx xx”*

8. From bare reading of the aforesaid clause, it is clear that the person contesting for the Office of Sarpanch should not have more than two children on the date of filing of nomination. But in the instant case, since one of the children of Opposite Party No.1 was already dead from 2008, it is apparently clear that he did not have more than two children on the date of nomination, and has two children only. Thus no merit is seen in the contention of the Petitioner to disqualify Opposite Party No.1 from the Office of the Sarpanch.

9. Accordingly, the orders of the learned Civil Judge (Jr. Divn.), Cuttack and the learned District Judge, Cuttack are confirmed.

10. The writ petition is dismissed.

(B.P. Routray)
Judge



B.K. Barik/Secretary