

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 24851 of 2019

Samarendra Beura

....

Petitioner

Mr. Sidharth Prasad Das, Advocate

-versus-

*Principal Secretary to His
Excellency The Governor of
Odisha*

....

Opposite Party

Mr. M.S.Sahoo, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE S.K. PANIGRAHI**

**ORDER
13.07.2021**

Order No.

04.

1. This matter is taken up by video conferencing mode.
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The grievance of the Petitioner is that his application dated 28th May, 2019 (Annexure-15) to the Governor of Odisha to treat the earlier petition dated 21st May, 2019 (Annexure-11) afresh as a post-election petition under Article 192 of the Constitution of India seeking disqualification of the persons listed in Schedule-I for being chosen as, and for being, Members of the Legislative Assembly (MLAs), under Article 191(1)(a) of the Constitution of India at the time of their election, has not yet been disposed of in accordance with law.

4. It is noted that the Odisha Offices of Profit (Removal of Disqualifications) Amendment Act, 2016 was enacted with a retrospective effect from 18th January, 2016 including certain categories of offices that would not attract such disqualification. Thereafter, the Government of Odisha appointed Chairpersons to the 30 District Planning Committees with Minister of State rank and status on 9th August, 2019. The Petitioner then filed a fresh petition before the Governor on 27th September, 2019 under Article 192 of the Constitution of India seeking their disqualification.

5. Since members of the High Court Bar were on strike, the Petitioner approached the Supreme Court with Writ Petition (Civil) No.2009 of 2019 under Article 32 of the Constitution of India. The said writ petition was disposed of granting him liberty to the approach the High Court. Thereafter, the Petitioner approached the High Court of Delhi with Writ Petition (Civil) No.11310 of 2019 which was dismissed on 23rd October, 2019 on the ground of lack of territorial jurisdiction.

6. Thereafter, the Petitioner filed the present petition seeking the aforementioned reliefs.

7. Learned counsel for the Petitioner has placed reliance on a decision of the Supreme Court in *Brundaban Nayak v. Election Commission of India (1965) 3 SCR 53* and urged that The Governor should obtain the opinion of the Election Commission of India (ECI) and dispose of his applications within a prescribed period.

8. In *Brundaban Nayak (supra)*, the Supreme Court observed as follows:

there should be no difficulty in holding that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191(1) and should, therefore, vacate his seat.”

9. In the same decision it was further observed that:

“in view of the said provision, it is of utmost importance that complaints made under Article 192(1) must be disposed of as expeditiously as possible.”

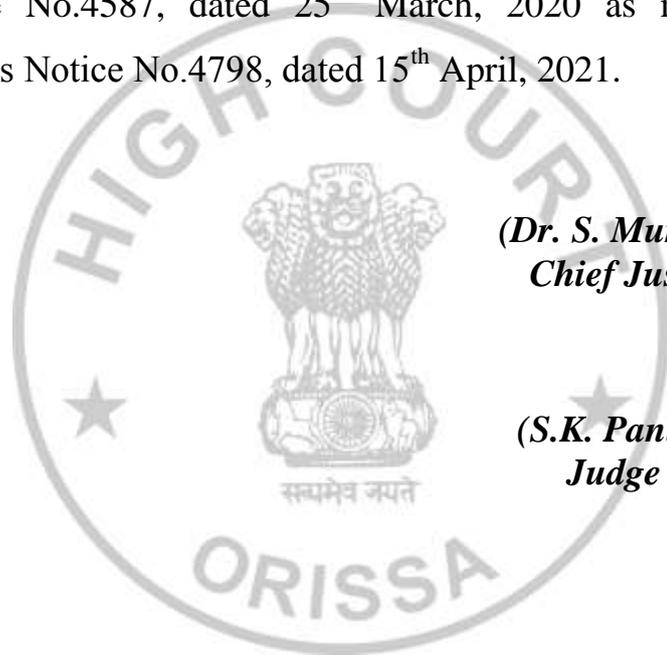
10. A specific query was posed to the learned counsel for the Petitioner that he has not challenged the validity of the Odisha Offices of Profit (Removal of Disqualifications) Amendment Act, 2016. Learned counsel for the Petitioner replied that irrespective of the Petitioner challenging the said amendment, his petitions would nevertheless have to be decided in accordance with law by the Governor of Odisha after obtaining the opinion of the ECI as that was mandatory in terms of the aforementioned decision of the Supreme Court.

11. In view of the limited nature of relief sought for and without expressing any opinion whatsoever on the merits of the petition, or the Odisha Offices of Profit (Removal of Disqualifications) Amendment Act 2016, this Court directs that Petitioner's two petitions dated 28th May, 2019 and 27th September 2019 shall be disposed of by the Governor of Orissa, after obtaining opinion from the Election Commission of India, not later than 8th November, 2021. The decision of the

Governor of Odisha shall be communicated to the Petitioner not later than 15th November, 2021.

12. The writ petition is disposed of in the above terms.

13. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.



(Dr. S. Muralidhar)
Chief Justice

(S.K. Panigrahi)
Judge

Ajit Kumar Dutta