

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

W.P.(C). No.19989 of 2022

In the matter of an application under Article 226 & 227 of the Constitution of India.

Ashok Kumar Gedi ... Petitioner

Versus

Jyotrimayee Behera & Ors. ... Opposite Parties

For Petitioner ... Mr.M.K.Panda, S.R.Nayak, S.S.
Chhualsingh & M.Mohanty.

For Opposite Parties ... Mr.A.Rath & S.Rath
(For O.P.No.1)
Mr.U.K.Sahoo, Addl. Standing
Counsel.

JUDGMENT

सत्यमेव जयते

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 25.08.2022

Biswanath Rath, J. This writ petition involves allowing an amendment application under Order 6 Rule 17 of the Code of Civil Procedure involving election dispute filed under the provisions of Orissa Gram Panchayat Act. Bringing the application, Mr.Panda, learned counsel for the petitioner taking this Court to the nature of dispute involving an election petition contended once there is inherent mistake involving an election dispute inasmuch as claiming relief

involving particular villages under Panchayat, there cannot be amendment entertainable replacing the villages under Panchayat which involved in the election dispute. Taking this Court to paragraph-4 of pleadings in the election dispute and reading through the same together with the proposed amendment available at page- 25 of the brief, Mr.Panda, learned counsel for the petitioner contended that paragraph-4 discloses clear pleading that opposite party no.1 insisting 6 P.S. Members of particular villages such as Chandanpur Bari, Madhusudanpur, Ratalanga, Arangabad & Amathpur G.P., who were very much hale hearty on that day represented the E.O., that they are not capable to cast their votes but however by thus proposed amendment attempt is made by the election petitioner to change the name of the villages involving the Grama Panchayat. For such a drastic change, it is alleged attempt is made in the election petition to change the nature and character of the dispute. Mr.Panda, learned counsel thus contested the allowing of amendment application.

2. Mr.Rath, learned counsel appearing for the contesting opposite party however taking to the nature of change through the proposed amendment contended that it is not a material defect prejudicing the case of the opposite party therein in the event such defect is cured. Mr.Rath, learned counsel further also contended that unless the proposed amendment is allowed, the effect of the election petition will go away and there will be automatic dismissal of the election petition depriving the election petitioner from his dispute exercise. Taking this Court to the proposed amendment and the observation of the trial court allowing such application, Mr.Rath, learned counsel contended that amendment being formal

in nature has been rightly allowed requiring no interference by this Court.

Further in course of hearing, Mr.Rath, learned counsel contended that the petitioner was in doubt with regard to the name of the villages mentioned and the petitioner was still awaiting for the correct information through his attempt under the R.T.I. Act provisions. Mr. Rath, learned counsel thus contended the amendment was possible only after the information comes through the development under the R.T.I. application. To this submission of Mr.Rath, counsel for petitioner opposed the same saying that in the event petitioner was waiting for correct information on the villages involved, nothing prevented the petitioner to keep his scope of giving names of particular villages later on by bringing such disclosure through specific pleading.

3. Both parties relied on citations rendered in the case of *Surekha Dash Vs. Civil Judge (Junior Division) Jajpur & Ors, 1998 (II) OLR 43*, *Dibakar Patra Vs. Jatadhari Mishra & Ors, 2005 (II) OLR 628*, *Umaballav Rath Vs. Maheswar Mohanty & Ors, AIR 1997 Orissa 204* and in the case of *Kalandi Mallik Vs. Sricharan Sethy & Ors.2007(Supp II) OLR 627*.

4. Considering the rival contentions of the parties, this Court finds the moot question involved herein even assuming the election proceeding involved herein has the scope of Order 6 Rule 17 of the Code of Civil Procedure, being considered, looking to the nature of amendment since attempted for correcting an inherent mistake, if permissible in the eye of law? This Court here takes into account the pleadings already exist the election petition in paragraph-4, which reads as follows:

“4) That while the voting process was going on unfortunately all on a sudden O.P.No.1 insisted six P.S. Members of Chandanpur Bari, Madhusudanpur, Ratalanga, Arangabad & Amathpur G.P. who were very much hale hearty on that day presented the E.O. i.e. O.P.No.2 that they are not capable to caste their votes and thus their representatives be permitted to caste their votes on their behalf to which the present petitioner and some other voters objected.”

Proposed amendment moved by the petitioner therein remains as follows:

“That in Para-4 of the election petition ‘Ratnagiri, Sahupada & Mandari’ be written in place of Chandanpur, Madhusudanpur & Amathpur.”

Reading together both the above paragraphs, this Court finds mistake committed through the pleading in paragraph-4 cannot be considered to be a simple typographical error. Keeping in view that the contesting opposite party herein moved an election petition, it is unbelievable even the petitioner is making his ground involving mal functioning in a election petition giving wrong description of the villages. For the opinion of this Court, the mistake appears to be inherent mistake by allowing change in the village names after election dispute period is over which will be amounting to extending filing of election dispute beyond the time stipulation prescribed in the Grama Panchayat Election Rules. Finding the election dispute involved inherent mistake and amendment being brought after 15 days restriction from filing the election dispute of this nature is impermissible in the eye of law. As observed earlier in the event election petitioner was unaware of names of villages so relied and he was waiting to know the names of villages in a development under the RTI exercise, nothing prevented the Election Petitioner from not disclosing the names of villages and leaving a statement that his right to giving the names of villages to be brought out subsequent stage but dependant on his RTI exercise.

Reading from the statement made in paragraph-4 it appears with close mind it already indicated the particular villages involved therein. This Court discard the plea of Mr.Rath, learned counsel on the premises of obtaining information through the R.T.I. development.

5. This Court here takes into account the decisions cited by respective parties and finds from the case of *Surekha Dash (supra)* that amendment involved therein had the reference of pleading by way of amendment was already there and the amendment attempted was relevant. Facts therein does not fit to the case at hand. The decision in the case of *Dibakar Patra (supra)* rather supports the case of the petitioner. So far as the case of *Umaballav Rath (supra)* is concerned, this is a decision involving an election dispute under Representation of the People Act.1950 and has no application to the case at hand. In the case of *Kalandi Mallik (supra)* since stand on different facts, does not apply to the case at hand. This Court from the case of *Harish Chandra Bajpai vs Triloki Singh, AIR 1957 SC 454* finds in similar situation Hon'ble Apex Court held " its powers to amend a petition under Order VI, Rule 17 of Code of Civil Procedure could not be exercised so as to permit new grounds of charges to be raised or the character of the petition to be so altered so as to make it in substance and a new petition, when a fresh petition on those allegations would be time barred". This decision is squarely applicable to the case of the petitioner at hand.

6. Perusal of the reasoning assigned in the impugned order, for the support of law of land to the case of the petitioner and for clear restriction involving limitation bringing such disputes, this

Court records that there is casual attempt by the trial court in considering such amendment application particularly involving election dispute. For there is mechanical disposal of the amendment application and allowing such application in illegal exercise of power, almost involving an attempt to extend the filing period of election dispute even there having no such power, this Court interfering in the order at Annexure-5 sets aside the same.

7. In the result the writ petition succeeds. No cost.

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Biswanath Rath, J.

*Orissa High Court, Cuttack.
Dated the 25th day of August, 2022/SKS*

