

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 13th Jan. '15.

Election Petition No.43 of 2014.

Smt. Punam Parida, aged about 30 years, Wife of Amulya Kumar Parida, C/o. Srikant Sahoo, Plot No.3504, Near Kalinga House, At - Palasuni, P.S. - Mancheswar, Post - GGP Colony, Bhubaneswar-751 025, District - Khurda, Odisha.

... **Petitioner.**

-V e r s u s-

1. Sukanti Subudhi, aged about 40 years, Wife of Gourang Subudhi, Village - Pandara, Post - GGP Colony, P.S. - Mancheswar, Bhubaneswar, District - Khurda.
2. Returning Officer-cum-ADM, Bhubaneswar, District - Khurda.
3. State Election Commissioner, Odisha, Toshali Bhawan, Satyanagar, Bhubaneswar.
4. Menaka Jena, aged about (not known), Wife of Subhranta Jena, At - Pandara, Post - GGP Colony, P.S. - Mancheswar, District - Khurda.
5. Swornapriya Behera, aged (not known), Wife of Ekadashi Behera, At - Pandara, Post - GGP Colony, Bhubaneswar, District - Khurda.

6. Rita Jena, aged (not known), Wife of Ramakant Jena,
At/Post - Rasulgarh, P.S. - Mancheswar, District -
Khurda.

... **Opposite Parties.**

Counsel :

For Petitioner	--	Shri S.S. Pratap & Associates.
For O.P. No.1	--	Shri N. Satapathy & Associates.
For O.P. Nos.2 to 6	--	None (Set ex parte).

Date of arguments : 18.12.2014.

Date of judgment : 13.01.2015.

J U D G M E N T

This is an election petition filed under section 88 of the Odisha Municipal Corporation Act, 2003 (hereinafter called “the Act”) by the unsuccessful candidate (petitioner), challenging the nomination of the return candidate (opposite party No.1).

2. The factual matrix leading to the case of the petitioner is that she and opposite party No.1 contested the election for the post of Corporator from Ward No.18, which is reserved for women belonging to other backward caste. It is alleged, inter alia, that opposite party No.1 while filing her nomination paper before the Election Officer has stated that her name is Sukanti Subudhi, Wife of Gouranga Subudhi of Village - Pandara, Post - Garh Gopinath Prasad, P.S. - Mancheswar, District - Khurda and in the format of affidavit

accompanying the nomination paper, she has stated her name as such showing her educational qualification to be 9th pass from S.N. High School, Patia, Bhubaneswar, District - Khurda. The year of passing the examination has been maintained as 1998. Opposite party No.1 has submitted her transfer certificate obtained from S.N. High School, Patia, District - Khurda, where pupil's name has been described as Dhadi Jena, daughter of late Panu Jena of Village / Post - Patia, P.S. - Chandrasekharpur, District - Khurda and the date of leaving the school is shown as 31.05.1988 while she was reading in Class-X. Since the name of opposite party No.1 described in the nomination paper as well as in the affidavit do not tally with that of the name described in the transfer certificate issued by the educational institution and the year of passing Class-IX also differs on the said papers, opposite party No.1 is found to have given false and fabricated information to the Election Officer and, as such, she is disqualified for being chosen as a Corporator to Ward No.18 under the provisions of the Act. Opposite party No.2 instead of accepting such nomination, should have rejected the same. When the nomination paper is submitted with forged documents, the election of opposite party No.1 should be couched to have won the same by adopting corrupt practice. As such, the result of

the election declared on 09.01.2014 declaring opposite party No.1 as elected is also bad in law. So, there is cause of action to file the petition before this Court. It is prayed by the petitioner to allow the petition by declaring the election of opposite party No.1 as null and void.

3. Opposite party Nos.2 to 6 have been set ex parte. Opposite party No.1 has filed written statement, stating that the election petition is not maintainable in the eye of law and there is no cause of action to file the case. The entire allegation made in the petition has been refuted by opposite party No.1. The case of opposite party No.1 is that she has no disqualification to be chosen as a Corporator in Ward No.18 on the date of election inasmuch as opposite party No.1 is known as Dhadi Jena as well as Sukanti Subudhi. At the time of admission into school, her parents got her nick name Dhadi Jena recorded and she prosecuted her study till she left the school on 31.05.1988 while reading in Class-X. After marriage with Gouranga Subudhi, opposite party No.1 is called by her original name Sukanti with surname Subudhi. Accordingly, in ward No.18, she is enrolled as a voter in Bhubaneswar Assembly Constituency. It is averred in the written statement that due to typographical error in the affidavit submitted before the Election Officer, the year of leaving the school is shown as

1998 in place of 1988; but opposite party No.1 has submitted her transfer certificate obtained from that school which clearly shows the date of leaving the school and her nick name being the daughter of Dukhi Jena (mother) and Panu Jena (father) of Patia. Thus, nomination of opposite party No.1 has been rightly accepted by opposite party No.2 and there is no corrupt practice adopted. The averments made in the election petition are all false and fabricated. Since there is no improper nomination and election has been held properly, the petition has no merit for which the same is liable for rejection.

4. Basing on the pleadings of the parties, the following issues have emerged for consideration :

I S S U E S

- (i) Whether the Election Petition is maintainable ?
- (ii) Whether there is cause of action to file the election petition ?
- (iii) Whether the nomination and affidavit filed by opposite party No.1 are false and forged ?
- (iv) Whether there is corrupt practice adopted so as to declare the election of opposite party No.1 as null and void ?
- (v) To what other relief(s), the petitioner is entitled ?

F I N D I N G S

Issue Nos.(iii) & (iv) :

5. Both the issues are taken up together as they are interlinked with each other and dependent on other issues. It is the case of the petitioner that opposite party No.1 has submitted forged documents while filing her nomination to the election for the post of Corporator in ward No.18 of Bhubaneswar Municipal Corporation, whereas opposite party No.1 denied the same. When opposite party No.1 is the return candidate and her election has been challenged by the petitioner on the said ground, it is for the petitioner to prove that the nomination filed by opposite party No.1 is accompanied by forged and fabricated documents in connivance with opposite party No.2.

6. The petitioner in order to prove her case has examined herself as P.W.1 and filed documents. It is revealed from the evidence of P.W.1 that she and opposite party No.1 were contesting election for the post of Corporator, which has been reserved for Other Backward Classes (OBC) candidates, in ward No.18 of Bhubaneswar Municipal Corporation. In para-6, she submitted that opposite party No.1 while filing nomination paper before the Election Officer stated her name as Sukanti Subudhi and she also submitted Transfer Certificate of S.N. High School, Patia, Dist. - Khurda towards her educational qualification of 9th pass in the year 1988, wherein it

is found that pupil's name is described as Dhadi Jena, D/o. Late Panu Jena and the date of leaving the school is shown as 31.05.1988 while opposite party No.1 is reading in Class-X. It is further stated that since the name of opposite party No.1, as described in the nomination paper and affidavit annexed to it, is not tallying with the name mentioned in the Transfer Certificate. The year of passing shown in the affidavit by opposite party No.1 is also not tallying with the figure mentioned in the Transfer Certificate issued by S.N. High School, Patia. Thus, opposite party No.1 has given false and fabricated information to opposite party No.2 for contesting to the post of Corporator. She has stated to have obtained the documents under the Right to Information Act from the office of the Addl. District Magistrate. She has proved the copy of nomination paper of opposite party No.1 vide Ext.1 and copy of her affidavit vide Ext.1/a. She has also proved the copy of affidavit filed before Returning Officer vide Ext.1/b, copy of voter list vide Ext.1/c, copy of Transfer Certificate of one Dhadi Jena vide Ext.1/d, copy of Caste Certificate of opposite party No.1 vide Ext.1/e and copy of her Voter I. Card vide Ext.1/f. All these documents have been obtained by P.W.1 while the same were filed by opposite party No.1 before the Addl. District Magistrate, Bhubaneswar, along with the

nomination paper. There is no question of doubt that these documents have been filed by opposite party No.1 and the same have been made available under the Right to Information Act. She has also proved her nomination paper and documents vide Ext.2 series. In para-15 of her cross-examination, she has expressed her ignorance as to in what name, opposite party No.1 was being called at the time of her childhood. She has also no knowledge if opposite party No.1 was called “Dhadi Jena” at the time of her childhood, but she knew her as Sukanti Subudhi. So, she has no knowledge about the contents of the documents filed by opposite party No.1 before the Returning Officer. When she has no knowledge, the documents filed by her are only to be scrutinized to find out whether the nomination paper accompanied by documents of opposite party No.1 are correct.

7. Ext.1 shows that for ward No.18, opposite party No.1 has filed the nomination paper where she has mentioned her age as 40 years and her husband’s name as Gouranga Subudhi. There is nothing mentioned in Ext.1 that she is also known as Dhadi Jena. In the affidavit, she has clarified that Gouranga Subudhi is her spouse. In Ext.1/b, she has described her educational qualification as 9th pass from S.N. High School, Patia, Bhubaneswar, Khurda in 1998. Ext.1/d shows that in

May, 1998, Transfer Certificate of one Dhadi Jena, D/o. Dukhi Jena and Panu Jena has been issued and there she is shown to have been continuing her study in Class-X. In that certificate, the date of birth has been recorded as 12.04.1973. The Voter I. Card of opposite party No.1 vide Ext.1/f shows that on 01.01.2008, she is described as 28 years old and such I. Card has been issued for the Assembly Constituency of Khurda. Since opposite party No.1 has filed Ext.1/d along with Ext.1 as per the requirement of filing the nomination paper, Ext.1/d must belong to opposite party No.1. This conclusion could not have been arrived at had there been the evidence of P.W.1 about her personal knowledge as to who is Dhadi Jena. It is a fact that in the affidavit, opposite party No.1 has shown the year of passing 9th class as 1998, whereas in Ext.1/d the year of passing is mentioned as 1988. If we take the Voter I. Card (Ext.1/f) of opposite party No.1 into consideration, the date of birth mentioned in Ext.1/d and the nomination paper showing the age of opposite party No.1, it would only indicate that she has passed the examination in 1988 but not in 1998. In this regard, in the written statement, opposite party No.1 has admitted that in such affidavit, by mistake it has been printed as 1998 in lieu of 1988. Although the petitioner has challenged it, but could not prove personally as to on what

basis she has challenged the same to be incorrect. No other evidence has been adduced by P.W.1 to substantiate her allegations. So, the claim of opposite party No.1 that by mistake it has been typed out as 1998 instead of 1988 must be a probable one.

8. Moreover, whether the name of Dhadi Jena, as appearing in Ext.1/d, belongs to opposite party No.1 ? In this connection, only one reason has been assigned above because the said document has been accompanied by the nomination paper. It is further revealed from the affidavit by opposite party No.1, who has been examined as O.P.W.1, that she has completed her study in Class-IX in S.N. High School, Patia and while she was reading in Class-X, she discontinued her study and left the school on 31.05.1988. When her father Panu Jena was alive, he admitted her in the school showing her name as Dhadi Jena, which was her childhood name, and in the said name, she completed her study. She further revealed that after marriage with Gouranga Subudhi, she enrolled herself as a voter as Sukanti Subudhi, Wife of Gouranga Subudhi. According to her, Dhadi Jena and Sukanti Subudhi are one and the same person. She admitted that she has not mentioned her father's name in the nomination paper filed on 20.12.2013. In fact, Ext.1 does not disclose her father's name because there

are two columns, namely, father's name or husband's name. Either of the said columns should be filled up by the candidate. She has filled up the same by showing her husband's name and, in fact, her husband's name is Gouranga Subudhi as appeared from Ext.1/f, copy of the Voter I. Card, and Ext.1/c, copy of the Voter List. So, writing of her childhood name in the school certificate and her real name in the nomination paper after being enrolled in the electoral roll, there is preponderance of probability that she is Dhadi Jena @ Skanti Subudhi, as she has stated that both the names belong to one and the same person. The evidence of O.P.W.1 could not have been read, but when the petitioner has no personal knowledge as to the childhood name of opposite party No.1 and no other evidence is adduced in that direction, the evidence of O.P.W.1 is the only source to find out the truth.

9. From the aforesaid discussion, it appears that the petitioner has failed miserably to prove by positive, clear and consistent evidence that Dhadi Jena is not Sukanti Subudhi or opposite party No.1 is not known as Dhadi Jena and her affidavit is wrong with respect to the date of passing the examination. She has also not been able to prove by clear and cogent evidence that the year of passing the IX class examination by opposite party No.1 is not 1988 but it is 1998.

On the other hand, opposite party No.1 has proved by clear and cogent evidence that the nomination paper accompanied by affidavit has been filed correctly, although the year of passing examination has been mentioned as 1998 inadvertently in the affidavit. When the Transfer Certificate of opposite party No.1 is not found to be forged and fabricated and the nomination paper has been accordingly filed, opposite party No.2 has rightly accepted the same and allowed opposite party No.1 to contest the election because the petitioner has not been able to substantiate that such acceptance of nomination paper by opposite party No.2 is wrong and illegal. Thus, the petitioner has also failed to prove that corrupt practice has been adopted by accepting the nomination paper and other annexures vide Ext.1 series illegally by opposite party No.2, which is unsustainable in law. So, issue Nos.(iii) & (iv) must be held to have been answered in negative against the petitioner.

Issue No.(ii) :

10. This issue is not pressed by either of the parties. But, section 88(2) of the Act enshrines that an election petition calling in question any election may be presented on one or more of the grounds specified in Section 89 by any candidate at such election, by any elector of the ward concerned. Section 89 of the Act speaks that on various

grounds, a petition can be presented in the Court. The ground mentioned in Cl.(d) of sub-section (1) of section 89 of the Act shows that the result of the return candidate has been materially affected by the improper acceptance of nomination or by corrupt practice committed in the interests of the return candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or his agent. It has already been held in the aforesaid paragraphs that opposite party No.1, the return candidate, has submitted nomination and the same has been accepted rightly by opposite party No.2. The petitioner is unable to prove that the educational qualification of opposite party No.1 is false and forged and there is corrupt practice adopted. As such, it can be conclusively held that there is no cause of action to file the election petition being not satisfied with the aforesaid provisions of law. Hence, issue No.(ii) is answered in the negative against the petitioner.

Issue No.(i) :

11. Since there is no cause of action to file the election petition, the nomination of opposite party No.1 has been rightly accepted by opposite party No.2 and no corrupt practice is proved, it must be held that the petition is not maintainable. Thus, issue No.(i) is answered in the negative

against the petitioner.

Issue No.(v) :

12. When there is no improper acceptance of nomination of opposite party No.1 by opposite party No.2, there is no cause of action to file the election petition and the election petition is not maintainable, no relief can be granted to the petitioner. Hence ordered :

O R D E R

The Election Petition filed under section 88 of the Act being devoid of merit stands rejected on contest against opposite party No.1 and ex parte against opposite party Nos.2 to 6. No cost.

**District Judge, Khurda
at Bhubaneswar.**

13.01.2015

Dictated, corrected by me and pronounced in the open Court this day the 13th January, 2015.

**District Judge, Khurda
at Bhubaneswar.**

13.01.2015.

List of witnesses examined for petitioner.

P.W.1 -- Punam Parida.

List of witnesses examined for contesting opposite party.

O.P.W.1 -- Sukanti Subudhi.

List of documents admitted in evidence for petitioner.

Ext.1 -- Copy of nomination paper of O.P.No.1,

Ext.1/a -- Copy of affidavit of O.P.No.1,

Ext.1/b -- Copy of affidavit,

- Ext.1/c -- Copy of voter list,
 Ext.1/d -- Copy of transfer certificate,
 Ext.1/e -- Copy of caste certificate,
 Ext.1/f -- Copy of voter I. Card,
 Ext.2 -- Copy of nomination paper of P.W.1,
 Ext.2/a -- Copy of notice by political party,
 Ext.2/b -- Copy of money receipt,
 Ext.2/c -- Copy of affidavit of P.W.1,
 Ext.2/d -- Copy of affidavit of P.W.1,
 Ext.2/e -- Copy of affidavit of P.W.1,
 Ext.2/f -- Copy of voter I. Card of P.W.1,
 Ext.2/g -- Copy of transfer certificate,
 Ext.2/h -- Copy of caste certificate, &
 Ext.3 -- Letter No.2944 dated 12.12.2013.

List of documents admitted in evidence for contesting opposite party.

- Ext.A -- Original Adhaar Card of Sukanti Subudhi
 (O.P.W.No.1).

**District Judge, Khurda
 at Bhubaneswar.**

13.01.2015.