

**HEADING OF A DECISION IN A CIVIL SUIT
IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.) KHURDA.**

PRESENT :-

Sri Abhilash Senapati,LL.B
Civil Judge (Jr. Divn.), Khurda.

Dated the 1st day of August, 2014

Election Misc Case No.10/2012

1. Nilakantha Swain, aged about 40 years

S/o: Late Rama Chandra Swain

At/P.O/P.S: Begunia, Dist: Khordha

..... Petitioner

-Versus-

1. Naba Kishre Swain, aged about 59 years,

S/o: Late Banambar Swain,

At/P.O/P.S: Begunia, Dist: Khordha

2. Kasinath Sahoo, aged about 52 years,

S/o: Late Bula Sahoo

Vill: Balarampur, P.O/P.S: Begunia, Dist: Khordha

3. Deepak Kumar Swain, aged about 25 years,

S/o: Ratnakar Swain,

At/P.O/P.S: Begunia, Dist: Khordha

4. Election Officer-Cum- Block Development Officer,

Begunia, At/P.O/P.S: Begunia, Dist: Khordha

5. Presiding Officer, Gadadhar Samantary, aged about 51 Yrs

In booth No.11 , Jagannathpur, Begunia G.P serving in

Badapari High School as Assistant Teacher of Dist : Khordha

Permanent Address: At/P.O/P.S: Tanbgi, Dist: Khordha

6. Chief Election Commissioner, Odisha, Tahasil Bhawan,
Satyanagar, Bhubaneswar, Dist: Khordha

... Opposite Parties

Counsel for Petitioner	...	Sri B.C Mohanty Advocate & Associates
Counsel for O.Ps	...	Bijay Ch. Mohanty, Adv. & Associates

.....
Date of Argument – 15.07.2014

Date of Judgment – 01.08.2014
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JUDGEMENT

1. The petitioner has filed this misc case for declaring the election of Opposite party No.1 to the post of Sarapanch, Begunia G.P as void , declaring that the petitioner having secured the highest number of votes i.e the second highest , being declared as the winner , permanently injunctiong the O.P No.1 from holding the post of Sarapanch of Begunia G.P and any other relief.

2. The petitioner's case in short is as follows;

That he has filed this case against the O.P for the post of Sarapanch in Begunia G.P stating that the O.P No.1's election to the said post was void and illegal thereby violating (a)(R) (S)(T) and (V) and sub Section (1) of Section 25 of the Orissa G.P Act , 1964 and the relevant rules therein. The petitioner is a permanent resident of village Begunia, the petitioners house is under ward No.13 where he has been residing with his family members. Due to his good attitude and helping nature the petitioner

was given the confidence and moral support by his other locality person, for which he took part in this election. Begunia G.P consists of 21 wards comprising of about 7650 voters. By virtue of notification issued by the election commissioner, it was duly notified by Government of Orissa to hold election for the post of Sarapanch. Keeping in view of such notification the petitioner filed his nomination papers, accompanied with other necessary documents including the relevant affidavits and declaration in respect of the post of Sarapanch of Begunia G.P. The petitioner in his nomination papers furnished all details with regard to his candidature. Apart from O.P No.1 &3, 8 others persons of the said G.P namely Ananta Kumar Baral, Kailash Chandra Behera, Jogesh Sahu , Bishnu Prasad Swain , Janaki Swain, Ramesh Ch. Pradhan, Chitaranjan Pattaniak and Nabakishore Sahu had also filed their respective nominations after the scrutiny in support of the petitioners candidature. However the above eight persons withdrew their nominations and after their such withdrawal the petitioner along with O.P Nos. 1 to 3 were only in the fray. The O.P No.1 namely Naba Kishore and the his wife Kumudini were previously the Sarapanch in the same Begunia G.P and during their such incumbency they have misutilised their office and the power derived therefrom and also had misused the funds of the properties of the G.P. With respect to such misappropriation committed by O.P NO.1 and his wife during the course of audit it was also pointed out that Naba Kishroe Swain had misappropriated Rs.3857,06/- whereas his wife Kumidini had misappropriated Rs.145038 and that apart he had also unduly allotted shop No.51 of the market complex in the said G.P. The O.P No.1 is also a defaulter lonee of the service Co-operative society , Begunia and that the U.C.O Bank , Begunia branch. His wife Kumudini is also a defaulter lonee

of the said service co-operative society. The O.P No.1 in his affidavit accompanying his nominations papers has declared that there are two pending cases against him in the court of S.D.J.M, Khurda but as a matter of fact there are various other cases in which he has been impleaded. The details over the landed properties as furnished by O.P No.1 in his such affidavit also are not correct.

3. In so far as the candidature of O.P No.2 Kasinath Sahu is concerned, he has a total of children i.e two sons and three daughters. Gayatri Sahu, Prakash Sahu, Pravati Sahu , Sasmita Sahu and Ganesh Sahu born on 11.05.1987,02.06.1999,21.04.1994,19.06.1995 and 13.05.1997 respectively. But he has not furnished such details in his affidavit . More so Kasinath Sahi i.e O.P No.2 also was a defaulter lonee to the tune of Rs.32,000/- in the service of co-operative society , Begunia. Surprisingly hiding all the above facts O.P No.2 filed his nomination. O.P No.2 received 276 votes in his favour.

4. After the scrutiny all the seven persons as named above have withdrawn themselves from the election, deliberately however, their names were printed in the ballot with a mischievous intention i.e to confuse the voters. In the ballot papers so printed it was revealed that the “ sun” symbol was allotted to O.P No.2 and was at Sl. NO.3, whereas the “ Open Umbrella” was allotted to the petitioner as Sl. NO.4. The presiding officer and his polling staff at the instance of local political people belonging to the party in power have been unduly gained over by them tried to mar the chances of victory of this petitioner. The O.Ps in connivance with the election authorities had folded the Ballot papers in

vertical manner and thereafter in horizontal manner while trying to conceal the “Open Umbrella” symbol. Their intention being to conceal the symbol of the petitioner from the voters view, so that at the time of casting their respective votes , the voters could be confused and that thereafter could give their votes to other candidates. Many voters after the election reported to him that they could not find the symbol of “ Open Umbrella” in the ballot paper , they therefore instead of casting their votes have dropped the same in the ballot boxes without stamping on any other symbols. And in such manner the substantial principle of votes which could have been casted in favour of this petitioner were made invalid and thereby frustrating the winning chances of this petitioner and that apart the very inclusion of the name and symbols of the withdrawing candidates also had accepted and about and decreased in the number of votes in favour of the petitioner. Although complaint in written form were lodged before the respective presiding officer of each booth on behalf of the petitioner but none of the presiding officers had granted any receipt for that complaint. Therefore the petitioner had reason to believe about foul play in this matter. Polling agents and supporters of this petitioner staged “ Dharana” in front of the poling booths and did not allow the polling staffs members to take away ballot box. During such protest by the local people without obtaining the signatures of the polling agents the ballot boxes of all the booth No.11 was sealed cunningly and till in the next day morning there was no shifting of the ballot boxes from the respective booths. In view of such protest by local people the election officer -Cum- B.D.O , The Tahasildar, superintendent of police, S.D.P.O, Khurda and PDRDA, Khurda along with Tahasildar, Bolagarh rushed to the spot and tried to convince the protestors and supporters of this petitioner to pacify

their such protest and apprehension. Thereafter by agitating the wrong , fanciful and malicious counting it was declared that the O.P No.1 was already elected by polling 2528 booths and whereas the petitioner was defeated by polling of 2413 votes i.e the margin of only 115 votes differentiated between the first candidate and the second candidate. It is further more submitted that about 200 booths have been made invalid by such process and that apart the number of votes given on the symbol allotted to the other candidates those who were not at all in the fray of election have been officially withdrawn from the contest in the election. During the first instance the nomination papers of the O.P No.1 should have been rejected as it had violated under Section 25 of the Orissa G.P Act as he was defaulter in the co-operative society . The petitioner applied to the office of the relevant authorities to supply him with relevant information regarding loan default of O.P No.1 and his wife and about their mis-appropriation, as was revealed in the audit report and more so about capturing by them the shop room of the G.P and other relevant information which have been supplied to this petitioner. Another curious aspect was that although majority of voters in Begunia G.P were literate and know how to sign have in their ballot papers given thumb impression as if those voters are illiterate. None obtaining of the signatures in the ballot papers rendered the election as invalid and violative of natural justice. Therefore if the disqualified candidates i.e Kasinath Sahu as O.P No.2 had not been allowed to contest and file his nomination paper, then the 270 members votes which were polled in his favour could have been casted in favour of the petitioner. All the above action creates a doubt with regard to the conduct of the O.P No.1 and election authorities. The cause of action on the part of this petitioner first arose on 10 &11 , January, 2011

for the filling of the nomination by the petitioner. And it again arose when the result of the election was published on 21.02.2012

5. Hence the petitioner has prayed to declare the election of O.P No.1 to the post of Sarapanch of Begunia G.P void, to declare himself having the second highest members of votes as the winning candidates, to permanently injunct and restrain the O.P No.1 from holding the post of Sarapanch and to make any further direction if deemed necessary.

6. The O.P No.1 has filed his show cause stating therein that the present misc case has been filed without any merit and needs to be rejected. The petitioner has not supplied any material to show that the O.P No1 and his wife namely Kumudini have misused their office and power and the fund property of G.P which is ab-initio false. Further the allegation of misappropriation of funds for personal gain is equally false. The audit report served to O.P No.2 doesnot prove misappropriation . That apart no party of the Panchayat administration has ever filed any case or proceeding against the O.P NO.1 for alleged misappropriation of Panchayat funds. Hence the bald allegation of the petitioner regarding misappropriation and thereby loss to the Panchayat is not tenable in the eye of law. Furthermore the sancction of loan from U.C.O Bank , Co-Oprative society , Begunia are not based on facts and that neither O.P No.1 nor his wife had ever been declared as defaulter by the above institution. For adjudication of this election petition, non mention of any fact in affidavit cannot be said as disqualification for the post of Sarpanch, since the act provides specific ground for disqualification. The allegation of involvement of the petitioner with regard to a case pending before

S.D.J.M, Khurda and similarly the allegation of non-mentioning of landed properties are not relevant and should not hamper this case. Further more the O.P No.2 was pleaded as dummy candidate as stated by the petitioner, these allegations of the petitioner are only figment of imagination. Further more the allegations of the petitioner about symbols of the withdrawing candidates being not removed , it is said that the election process was completed after proper scrutiny, hence no question with regard to any malicious motive and faulty intention can be attracted. Lastly, the allegations of folding ballot papers by the presiding officer and polling officer in an unlawful manner will not make this O.P NO.1 any liable. Neither the petitioner nor his agents had every objected before presiding officer regarding any of the dispute at the spot.

7. The election report was also prepared by the election officer after carrying enquiry in this regard and it was found that out of some of the faulty ballot papers, in some ballot papers votes were casted in favour of the petitioner and in some votes were accepted in favour of O.P No.1, accordingly the election officer -Cum- B.D.O , Begunia prepared a report stating that the election of the petitioner were not proper. These allegation are completely imaginary and to attract sympathy has been filed by the petitioner. The allegation of the petitioner that he had applied before presiding officer of each booth and that no measures were taken by the presiding officers are false. No such “ Dharana” was staged infront of the state administration. Further the allegation about 200 votes having been made invalid due to improper conducting of polling party and number of votes being given to the symbol alleged to withdrawing candidates is totally false and fabricated and the petitioner has no document to prove the

same. Such allegation of the petitioner is contrary to the result published by the election officer , Begunia block. Hence all the allegations being imaginary are not sustainable in the eye of law. Similarly the allegation of the petitioner that votes exhibited in favour of the withdrawing candidates and O.P No.2 should have been in his favour is totally imaginary. In fact the voting was clearly shown and the margin of 115 votes showed the popularity of the O.P. The O.P No.1 is a very popular person and he has won the election for three consecutive terms and due to his good work he has been elected again.

8. O.P No.2 has appeared and has filed his show cause stating therein that he has no child after the cut off date and that the question of loan is not a matter of concerned G.P Act. The petitioner with an alternative motive alleged about a loan of the O.P for a Nationalized Bank namely U.C.O Bank . Hence i.e no point of disqualification as per G.P law.

9. O.P No.3 have filed their show cause stating therein that although the petitioner and the O.P Nos. 1,2 &3 were contesting the said election but the main contest was held between the petitioner and the opposite Party No.1. The O.P No.3 squarely states in his showcause that most part of the allegations made by the petitioner are false. It could be out of senses to say that the votes received by Kasinath Sahu could have been accepted in favour of the petitioner if Kasinath Sahoo could not have contested in the election is another figment of imagination. Further more the O.P No.3 has strongly objected that their has been no influence of any political party interference in the Sarapanch election in Begunia, G.P.

10. Objections filed by O.P Nos. 4 to 6 that the present petition is liable to be dismissed for mis-joinder of parties. Although a special audit was conducted in Begunia, G.P to recover Rs.14,50,38/- from Shri Naba Kishore Sahu for the period of incumbancy as Sarpanch , but no arrear pay of G.P has been shown during PRI election , 2012. hence the election officer accepted the nomination of OP 1 as Sarpanch and nominated him to take part in the election. The O.Ps have no knowledge of the objection and it needs to be proved by the petitioner. The petitioner has never agitated any objection during the time of scrutiny of nomination paper of the candidates before election officer. As per allegation raised by the petitioner about scrutiny , the election officer examined the nomination paper of Shri Kasinath Sahoo and accepted as it was as per section 11 of the OGPE Act, 1964. regarding division of votes it is in no way connected to election rules and procedures. Furthermore it is wrong to allege that they had any mischievous motive and in favour of O.P No.1. To add to it names of the candidates are not apprehended in the ballot paper of Sarpanch election and only symbols are printed as per Section 17 of OGPE Rules, 1965. The presiding officer and polling parties connected in the election , 2012 had conducted their appearance in any question of doubt. The symbol of “ open Umbrella” lodged to the petitioner was perfectly visible as per the rules. In fact on the written articles of the petitioner the election officer allowed to check the ballot paper at the time of recounting of Sarpanch vote of booth No.11. During such recounting it was found that Sl No.301 to 312 were misfolded out of which Sl. No.302,306,311 votes have been accepted in favour of the petitioner. After thorough checking of ballot papers of booth NO.3,5,8 & 14, the candidates and their agents got satisfied and then signed on the proceeding before

final publication. The facts of “ Dharana” as alleged by the petitioner is not true. The petitioner and his supporters gathered before the polling party on hearing that the polling party had concealed the symbol “ Open Umbrella” . Counting was conducted in presence of counting agents and after counting the same was sealed properly by the pooling party. The scrutiny was also perfectly done as O.P Nos. 1,2 &5 nomination were properly scrutinized by the election officer . These opposite parties have nothing to show about the statement made in para-16 of the objection. All the allegation of the petitioner is baseless and imaginary and manufactured one. The true facts of the case is that in all the 21 booths of Begunia G.P PRI election was conducted on 13.02.2012 , and the same was done peacefully and impartially and as per law. After completion of election the presiding officer of the concerned booths had counted the votes and recorded the results of votes in presence of the candidates and their agents. Basing on such result sheets, submitted by the presiding officer , the result was declared on 21.02.2012 for the office of Sarapanch of Begunia G.P as per O.G.P.E election Rules, U/s.51(1)(2)(3)(4) and (5). On 13.01.2012 at the time of scrutiny of nomination papers of the candidates the allegation against Kasinath Sahu by one of the candidates for the post of Sarapanch was examined and accepted. Counting was conducted in presence of the counting agents and then it was sealed and taken to the strong room of block office as per schedule with police protection. The polling was done peacefully and polling personells had conducted the pool perfectly. After thorough counting of ballot papers of booth NO.3 , 5 ,8 &14. The candidates and their agents had got satisfied and signed on the proceedings. The entire process of election of Begunia G.P was conducted peacefully without any disturbance.

11. From the rival contention of the contesting parties , the following issues are drawn up for consideration.

ISSUES :-

- i. Whether the plaintiff has any cause of action to file this petition ?
- ii. Whether the petition is maintainable according to law ?
- iii. Whether the O.P No.1 & 2 are disqualified due to having outstanding dues ?
- iv. Whether the O.P No.2 is a dummy candidates of O.P NO.1 and that OP 2 is disqualified has he has more than 3 children before the cut off date ?
- v. Whether the ballot papers were all folded so that the voters could not see the election symbol of the petitioner ?
- vi. Whether there has been improper admission of facts in favour of the O.Ps ?
- vii. To what relief, is the plaintiff entitled ?

6. In order to prove its case the petitioner has examined 9 witnesses and has exhibited 26 documents in his behalf. While on the other hand to disprove the averments of the petitioner the O.P has examined only 2 witnesses and has exhibited only 4 documents in his behalf.

7. **Issue NO. 3 ,4,5 & 6 :-**

As these issues are most important and being interlinked with each

other, hence they need to be take up together and at first. Let us first discuss the evidence adduced by both the parties with respect to the above issues.

P.W.1 who is the voter of booth No.20 in ward No.20 of Begunia G.P has in his evidence stated that the last G.P election was held on 13.02.2012 , the petitioner Nilakantha Swain was contesting the said election having “ Open Umbrella” symbol which was allotted to him in the election. But unfortunately the “ Open Umbrella” symbol was printed at the bottom of the ballot paper. At the instance of O.P No.1, the presiding and polling officer of booth No.2 under ward No.20 distributed the ballot papers by folding it horizontally, in such a manner that he himself could not find the “ Open Umbrella” symbol. When he enquired about the same to the election officer, they told him to cast the votes on that paper only. Therefore not finding “ Open Umbrella” symbol he dropped the ballot paper in the ballot box without casting his votes. Due to such actions, many voters like him had reason to believe that the officer in -charge of the election while conducting the same was gained over by the O.P No.1 in such manner that they purportedly benefitted the OP 1. In his cross examination he has stated that he could not say the sl. No. of his in the voter list. He was restrained from casting his votes in the Panchayat election because of quarrel and dispute between the two sides. The voting was done on 28th Magha. He could not say the details as per english calender . He also could not say as to for which posts the election was being held. To his knowledge except the petitioner and O.P No.1 there were no other contestant taking part in the said election . He was not issued with a ballot paper to cast his votes and prior to deposing in court, he had not disclosed before any other authority regarding the fact of non

issuance of ballot paper. He could not say as to how many candidates had taken part in the said election. He had not applied to the presiding officer in writing regarding non-issuance of ballot papers to him. The symbol of Umbrella was present in the ballot paper. He could not however say as to which other symbols were present in the ballot paper. He has got no knowledge and idea about folding of ballot paper.

P.W.2 has in his evidence stated that he is the voter of the booth No.20 and ward No.20 of Begunia G.P. The last G.P election was held on 13.02.2012. Nilakantha Swain and Nabakishore Sahu were the main contesting candidates for the post of Sarapanch. Nilakantha Swain was contesting the said election having “ Open Umbrella” symbol which was allotted to him. At the instance of O.P No.1 Naba Kishore Sahu the presiding and polling officer of booth No.20 had distributed the ballot papers folding it horizontally so that the voters could not find the “Open Umbrella” symbol and when he asked the officers about the same problem he was told to cast the votes on that paper only. Not finding the “Open Umbrella” symbol he dropped the ballot paper in the ballot box without casting his votes. In his cross examination he has stated that the ballot papers which was supplied to him contained two symbols visually “Umbrella and Sun”. The ballot paper was supplied to him as per due procedure of law. He casted his votes inside the secrete cubical and then to put the ballot paper inside the votes . He was not aware of the contents of Ext.2. He is also not well versed with the procedure and formalities on publication of ballot paper . He was a supporter of the petitioner during the election in question.

P.W.3 has in his evidence has stated that he is a voter of ward No.19 of village Begunia . During last G.P election 9 Nos. of candidates

had filed their nominations for the post of Sarapanch and finally the petitioner and only four candidates had contested. On the date of withdrawal of nomination he was near the block office when the withdrawal was going on. One Kasinath swain who had filed his nomination for the post of Sarapanch told him to withdraw his nomination because he has five children and that Nilakantha Swain had lodged a complaint about the same before the election officer. On the relevant time Naba Kishore Swain came to the spot and told Kasinath not to withdraw his nomination paper and gave him Rs.30,000/-at the spot. Naba Kishore also told to Kasinath at the spot as not to withdraw his nomination paper and further told him that if he will withdraw his nomination paper then Naba Kishore will be defeated and Nilakantha Swain will automatically win and that his nomination paper will not be rejected in spite of the complaint because the election officer had joined their hands with Naba Kishore Swain. The house of Kasinath was about 100 meters from his house and he knew that Kasinath had five children. On the next day he got to know that the nomination paper of Kasinath were not rejected. He had heard form his villagers and wardmember that Naba Kishroe Swain and his wife during their tenure had misappropriated Panchayat funds of Begunia G.P . In his cross-examination he has stated that he was present at the time of scrutiny of the nomination papers. The date of withdrawal was after the datae of scrutiny. He was not present at the spot during the date of nomination but he was present during withdrawal. The petitioner raised objection against the nomination of O.P No.2 , however his objection was rejected and the nomination of O.P No.2 was accepted. He had not disclosed the fact that O.P No.2 refrained from withdrawing his nomination after taking Rs.30,000-/ from O.P No.1 before any of the

contestants. He had also not complained before the election officer on these issues. Apart from him Jati Das, Bibjuti Mohanty , Bijay Swain & Prafulla Sahu had seen that the O.P No.1 taking Rs.30,000/- from O.P No.2. He had not given any written complaint before any authority regarding the election , as regards payment of Rs.30,000/- . He has never contested in any Panchayat election and has never been a proposer or seconder for any candidate in any such election. He could not say the exact date when the payment of Rs.30,000/- was made by the O.P No.1. The petitioner had never asked him to depose as a witnesses in this case. Soon after the election he came to know from Bibhuti Mohanty about filling and pendency of this case. He has not made any complaint before the police or the before any court as regards to such payment made by O.P No.1 . He has not seen any document which can show any misappropriation by O.P No.1 or his wife. He has also could not filed any document to show about the misappropriation .

P.W.4 has in his evidence also stated that he is the voter of ward No.7 of Begunia G.P. After filling of nomination papers, Kasinath Swain had told him that he had filed nomination paper for the post of Sarapanch of Begunia G.P. and had told him that Nilakantha Swain had taken doucment from the school headmaster and from the Anganwadi workers about the age proof of their children. On the date of withdrawal he had seen Kasinath Swain and Nilakantha Swain together in the evening and asked Kasinath whether he had withdrawn his nomination paper or not. In reply he had told him that Naba Kishore Swain had given Rs, 30,000/- made his nomination paper folded in respect of complaint raised by Nillakantha as all the election conducting officers were supporting him. Nilakanth Swain who was present at the spot told him that he could be

defeated if Kasinath could not contest. He knows that Kasinath has five children out of which two were born before 1994 and three were born after 1994 i.e on 1995 to 1997 and another in 1997. The said Naba Kishroe Swain and his wife has misappropriated the Panchayat fund during their period of Sarapanch of Begunia G.P then which was now pending upon Naba Kishore Swain from the period of his previous Sarpanch tenure. In his cross examination he has stated that he could not say about the dates of birth of his children . He has also no asked the counsel to mention about the same in Ext.4. He had never been involved in the election and other affairs of the Panchayat. He could not say the date when he discussed about the payment of money etc with O.P No.2 . He had not taken part in the election campaigning and had not seen the certificate of the children of Kasinath . Four candidates were contesting in the election for Sarapanch and that he could not say the date of nomination or he could not say the date of scrutiny of the nomination. He also could not say as to the date of withdrawal of nominations. He had not accompanied any candidate to the block office either on the date of scrutiny or on the date of withdrawal. He had not gone to the block office in any of those dates. He had also not told to anybody about the factum of payment of money either to the proposer or secondor of the petitioner or to the proposer and secondor of O.P No.2 .He has got no direct knowledge about any misappropriation or corruption by O.P No.1 and his wife.

P.W.5 has in his evidence stated that he is the voter of ward NO.13 of Begunia G.P and his house is situated just behind the house of Kasinath Swain who had filed his nomination to contest as Sarapanch in Begunia G.P. He was asked by others on the date of withdrawal of nomination that Kasinath Swain had contested that election for the post of Sarapnch and to

cast his votes in favour of Kasinath Swain. In surprise he asked Kasinath as to that he had five children and that how could he contest in th election. Kasinath replied him that all the Government official who were scrutinizing the nomination papers were gained over by the OP and at the instance of Naba Kishore Swain the nominatioin paper had became folded in respect of the complaint Nilakantha Swain. He knows all the five children of Kasinath Swain along with their date of birth. Gayatri Swain the first child was born on 11.05.1987, Prakash Sahu was born on 02.06.1990. Pravati Sahu on 21.04.1994, Sasmita Sahu on 19.06.1995 and Gaensh Sahu on 13.05.1997 all the voters of Begunia G.P also filed that almost all the government officials such as presiding officer, pooling officer, as well as other officials were supporting Naba Kishore , because in almost all the booths the ballot papers were folded in such a way that the “ Open Umbrella” symbol of Nilakantha Swain was folded inside the booths. He had also given oral complaint before the presiding officer and the presiding officer had also folded the same in the Sl. No. manner. The people were disastisfied with Naba Kishore Swain as during his and his wife tenure they both had misappropriated the public money for which his wife was also suspended from post of Sarapanch. In his cross-examination he has stated that there were four candidates in the election which were under challenge in this case. He was neither a proposer nor seconder for any of such four candidates. He could not say the dates of nomination, scrutiny or withdrawal appertaining to such election. He has not seen anyone making any payment to any candidate. The ballot papers in the disputed election contained symbols such as “Sun, Book, fish and Umbrella”. The first symbol was "sun" and the last symbol was umbrella. After casting his votes , he came out and waited outside the booth. He

could not produce any document or material to show any such irregularity , corruption or misappropriation by O.P No.1. He could not say the date , month and year of his birth. The date of birth of his sons are 25.04.1975 and 21.03.1983 and that he is not a family member of Kasinath Sahu. He has not obtained the birth certificate of his children. Kasinath Swain had secured four votes , whereas Naba Kishore and Nilakantha had secured 71 and 95 votes respectively in ward NO.1. Around a month ago he came to know about this case. Prior to deposing in court he had never approached any other authority with the elections that the objections of the petitioner were ignored at the time of scrutiny of nomination. He could not say the date of birth of the children of Kasinath. He had himself not verified any document relating to their dates of birth.

P.W.6 has in his evidence stated that he is at present the custodian of the school admission registrar, T.C register and other documents of this school . He knows that his predecessors Champa Dei had issued an information as regards the date of birth of the children of Kasinath Swain. He is acquainted with the written signature of Champa Dei. He also got marked in Ext.6, the school admission register bearing entries from 11.07.1988 to 20.07.1993. the date of birth Gayatri Sahoo as per the register was 11.05.1987. One Bula Sahu has signed the entry as the guardian of Gayatri Sahu. He also got marked in Ext.8, school admission register, from 04.07.1994 to 30.06.2000. Prakash Sahu son of Kasinath Saho the date of birth is 02.06.1990, Sasmita Sahu , daughter of Kasinath and Sarojini as date of birth is 09.06.1995 and in the both the entries Kasinath Swain had given his signatures , the school admission register of their school bearing entries from 07.07.2000 to 20.07.2004 contained entry pertaining to Pravati Sahu , daughter of Kasinath , whose date of

birth is 21.04.1994. the entry pertaining to Ganesh Kumar Sahu shows his date of birth is 13.05.1997 and that he is the son of Kasinath , Sarojini Sahu. Kasinath Swain had signed as the guardian only in the case of Ganesh Swain but not ever signed or gave his signature in the case of Pravati Sahu. In his cross-examination he has stated that he had received summons in this case from the peon of this court . Kasinath Swain during his tenure had never signed in any register of the school. In fact he has never put his signature in any document in his presence. He could not say as to which are the disputed entries . No such document supporting the date of birth of his students is written by the school at the time of admission of such students. He could not say if Kasinath had made an application in the school in the admission of any of his children. He does not know O.P no.2 and none of the five entries Kasinath had been shown as resident of Balarampur in case of Ext.7/1 i.e entry of Gayatri Sahu . It is seen that the mothers name of the students has not mentioned and that admission was effect on 22.06.1992. as per such Ext.7/1 the admission was effect on 22.06.1992. The guardian of students , father was “ GruhaKarjya” . As per Ext.9/1 i.e the entry of Pravati Sahu the guardian of the students voter of ward “ Jainika Hindu” . In case of other entries passed were Ext.9/1 has been made the guiardans have put their signatures . Kasinath had signed as a guradian. In case of entry relating to Bipin Bihari Jena. Kasinath Swain had signed as a guardian . Both these signatures appears to have been put by the same persons. He could not say as to who had made interpolation and over writting, nor could he say as to under what circumstances it had been done.

P.W.7 has in her evidence stated that she is the ward member of ward NO.17 and Naib Sarapanch of Begunia G.P. The said Begunia G.P

consists of 21 wards out of which 6 wards are in Mouza Begunia, this under Kusupalla, one of Golak Patra one of Bhimpur, two in Zagirbad, but two in Balarampur, one in Odagoan, one of Jagannathpur and one of Balabhadrapur. The G.P election was held on 13.02.2012 and Naba Kishore Swain was elected as Sarapanch of the Begunia G.P. The main contest took place between Naba Kishore Swain and Nilakantha Swain , one Kasinath Sahu contested the said election as dummy candidates of Naba Kishore Swain. It took him by surprise that Kasinath who had five children and three after the year 1994 took part in the election. After he had taken charges of Naib Sarapanch he was approached by the defeated Sarapanch candidate shri Nilakantha Swain who had given a photocopy of the “ Samikhya” report dtd.02.03.2012 obtained through RTI. After obtaining “ Samikhya” report, and comparing the same with their proceeding book, they found that all the allegations made against the continuing saparanch Naba Kishore Swain are correct. On 20.03.2012 Nilakantha Swain had also sealed and given him a photocopy of surchage report obtained through RTI Act. He came to know that an amount of Rs.343706.70 Paise has been mis-appropriated by the then Sarapanch and present Sarapanch Naba Kishore Swain. As per the notice of the Surchage notice was verified , all the defeat Nos. of the proceeding book and the surchage report was submitted by Finance Department , Government of Orissa was fully tallied with the proceeding book. In the surchage notice it was also mentioned that the B.D.O-Cum- Election Officer had known about the misappropriation of Panchayat fund because it was directed by the Finance Department to serve the surchage notice to the Sarapanch Naba Kishore Swain in the year 2011. In his cross examination he has stated that he got married in 2003 , he could not say as to who was the

present ward member of ward No.4 or ward No.12 and 19. Out of the 4 contestants for the post of election , Deepak Swain had secured lowest number of votes. He came to know about the O.P nO.2 in 2003. He could not say as to when the first child of the O.P was born nor could he say as to when the last child was born. He was elected as Naib Sarpanch in Begunia G.P on 10.03.2012. he does not remember as to when he had taken charges of the office of Naib Sarpanch. Since the date of taking over charges as Naib Sarpanch he had till date never remained in charge of the Sarpanch. The analysis report “ Samikhya report” denotes to that report which shows a accurate copy of the resolution book of the Panchayat . The petitioner had given a photo copy of the report as he was the Naib Sarpanch . There is no such rule or law which empowers him to accept any such copy or report. As he was the Naib Sarpanch , he received the copy of the report from the petitioner . He had not applied to the B.D.O- Sarpanch about this incident. Naib Sarpanch is not the custodian of the resolution book. In march 2011 he had compared the copy given to him by the petitioner. Both the entries made in the resolution board of the Panchayat were verified by him. He found no discrepancies between entries of the two i.e the resolution board and the analysis report. He could not say as to whether the allegation against the O.P No.1 in such report or book was correct. The petitioner had also given him a copy of Surcharge report. He could not say as to why and what the said report was prepared. He also could not say as to who had prepared the same nor could he say as per which provision the same was prepared. He could not say before whom the said report was again submitted . But he only knows that the details of misappropriation under different habits made by O.P no.1 was present in that report. He does not remember as to under which head

how much amount was mis appropriated . He could not report about it before anyone or any authority. No such copies of the analysis report or surcharge has ever cannot to him and that he had never made any such verification of the register and documents of the Panchayat.

P.W.8 has in his evidence stated that there were four candidates in the said election for the post of Sarpanch. Earlier eight candidates had withdrawn their nomination supporting the candidature of Nilakantha Swain, however they had their symbols in the ballot paper. The petitioner had got “Open Umbrella” and was placed at serial No.4. He being the agent had casted his votes just before closing of voting. While exercising his votes he found that the ballot papers were so folded that the “Open umbrella” symbol of Nilakantha Swain was sealed. He immediately pointed out about the concealment of “Open umbrella” symbol to the presiding officer. But the coimplaint was not accepted by the presiding officer , pooling agent of Nilakantha Swain had also lodged and protested but the presiding officer refused to accept the same. Due to such concealment of the symbol of Nilakantha Swain a large number of people had gathered infront of the booth. The pooling agents were forcibly locked inside the booth and the police along with other Government officials who were conducting the election were kept inside the booth NO.11. During the protest S.P of police, D.S.P of police, Tahasildar, B.D.O, Begunia and Collector, Khurda rushed to the spot and convinced him to put his signature over the voter boxes and in the result sheet form. Due to such irregulariteis the pending of booth No.11 of Begunia G.P got started at about 6.30 P.M. he was the ward member of ward No.11 during 2007 to 2012 election and during that period Kumudini Swain was the Sarpanch of Begunia G.P during the said period of theft of Rs.37,000/- was reported

to the police from Begunia G.P and after enquiry it was found that the allegation was false. The present O.P No.1 was holding the post of Sarpanch of Begunia G.P before term of his wife and as per audit report he had misappropriated Rs.343,706 from the Panchayat fund , whereas his wife had misappropriated Rs.145038 . A surcharge notice was issued against O.P No.1 by the Finance Department. Being aware of all such facts the election officer of Begunia, block allowed him to contest the election which violated the very concept of fair and legal procedure of election. In his cross examiantion, he has stated that there has been no irregularity in the election of the ward member of Panchayat Samiti. He was an agent of one of the aspirants of member of Panchayat Samiti. He had submitted his written complaint at the time of voting about the irregularity to the Sarpanch. The presiding officer did not however receive his complaint. After closing of voting process there was a gathering of about 500 persons . He, Raghunath, Sridhar and three other agents of some were locked inside the booth by the police and Revenue authority. Some official had also been locked inside the booth along with them. He could not say about the names of such officials nor could he say as to how many people were locked inside the booth. As he refused to sign on the box containing votes pertaining to Sarpanch election , but the officials tried to convince him for such counting . He did not know the names of the officials, who tried to convincing him. After being released from the locked room he had not complained about the same before any police or election officials. The votes on different parts were kept in different packets . He had signed the packet containing votes for the post of member of Panchayat Samiti. He had signed on the result sheet relating to the member of panchayat Samiti. He had not signed the sealed vote box.

He refused to sign even the packet containing the votes of Sarapanch were also kept in some packets. He had done all that was required of him, in his capacity as the agents of a candidate. He could not say as to which officers had given the assurance of repoll. Prior to this election he had once been as a polling agent for a candidate. He could not produce any document to show that Satya Narayan as pointed out as a polling agent. He is not aware if the election of the post of Sarapanch and that for the post of member of Panchayat Samiti are held as per two separate enactments. He had not been with any training for working as a pooling agent. A polling agent is duty bound to remain present in the booth for identification of voters and for signing the voting boxes. He could not say as to what could happen if a pooling agent refused to sign on a vote box. He is not aware of any provision that states about deposit of prosecuted if before lodging of any written complaint before the presiding officer he as well as the Sidheswar had raised objection before the presiding officer. He could not produce the written complaint or its copy which the presiding officer had refused to receive from him. He had never approached the Collector or said election commission either in presence or through written complaint. The Sl. NO. of the petitioner in the polling box was 4. below him the names of 7-8 candidates were also present. The ballot papers were folded in such a way that only Sl. Nos. 1 to 3 were visually Sl No.4 and below were not visually at all. The aforesaid 7 to 8 persons related to the above candidates who had withdrawn their nomination prior to the date of election. Prior to him no other voter had complained before the presiding officer in this matter. He had not no direct knowledge about the misappropriation made by O.P NO.1.

P.W.9 has in his evidence has corroborated his entire objections and

has in his cross-examination stated that he had gone through the show cause filed on behalf of O.P Nos. 4 to 6. he had not filed any document before election officer or scrutinizing officer. After acceptance of nomination of candidates the election officer or presiding officer or election officer cannot act any response of any allegation of misappropriation of fund. The statement of the presiding officer in Ext.15 has been written by him. The dairy of the presiding officer is a part of Ext.15. There was only one ballot box at Jagannathpur booth. Around 1500 people had gathered around the booth at around 1.30 P.M on the date of election. These people remained there till 4 A.M of the succeeding day. He or his supporters had never detained the presiding officer and other associates in a room at the booth. He had made an application before the election officer for recounting of votes. At the time of recounting it came to their notice that ballot papers will at Sl. No.302, 306 and 311 contained votes casted in his favour. He was not present in the booth at the time of counting of votes. His agents had lodged a written complaint regarding the irregularities in the election. He had not filed a copy of any complaint before the court. After the ballot box was sealed that is after the process of counting , his agents did not put his signatures in it. He later told them that he had not signed on the sealed ballot box and that agents of Sridhar had not been examined as a witness in this case. The margin of votes between him and the O.P No.1 is 115, around 450 voters were present in booth No.11. 313 votes were in the said booth. He does not remember as to from this 313 votes how many votes were secured by him and how many votes were secured by the O.P No.1. All the documents exhibited him him today has been obtained as per the provision of R.T.I Act. He understood the meaning of confessional statement. As per the confessional statement the

presiding officer admitted that there had been misfolding of ballot papers and that such misfolding had been done at his instance. He could not remain present in the booth and he could not say the exactly as to what was written by him. The B.D.O, Sub-Collector and IIC, Begunia were all present during the said occurrence. At the time of filing of this case he came to know about the existence of such submission within 15 days for his application to the R.T.I, he received the information and the copy of such statements. He has filed the copies of his R.T.I application as well as receipts given to him in this such application. Oin the date of election at around 1.15 P.M, his agents Sridhara Pradhan for the first time told him about the irregularities in the election process . He was aware of the content and details of Ext.22. As per Ext.22 only the Sarapanch and anybody else was responsible for the misappropriation and irregularities of Government funds. He could not say if Naba Kishore was asked to show cause about any such misappropriation . He is also no aware for any framing of charges against Naba Kishore on the eletion on misappropriation of government funds. Naba Kishore has been found guilty for misappropriation by the auditor of the finance department. He has submitted all the related documents in court. Ext.25 i.e photos sheet showing an agitation against the Sarapanch during his incumbency period i.e O.P No.1 as the Sarapanch. He contested this election for the first time . He had had submitted his nomination on 10.01.2012. he could not say as to when O.P NO.2 had filed the nomination . He had objected in writing before the scrutining officer regarding the candidature of O.P No.2. His objection could not upheld. He thereafter had been approached the election officer or S.D.O, Collector or the said election commission to resolve the issue. He has filed the birth certificate of the children of O.P

No.2 and that he had obtained such certificates prior to the election. He could not say as to whether exactly the children of O.P No.2 were born. He was born at his residence in the house of O.P No.2. He could not say as to who had made the entries about the date of birth of O.P No.2 witness son. he could not say as per whose information the dates of birth have been mentioned in the birth certificates. He could not say as to who got the children of O.P No.2 admitted in the school. There are nine religions in Mouza Begunia. Recounting was made on his prayer. He himself and O.P No.1 had signed on them after such recounting . He could not produce any document to so that 8 Nos. of candidates had withdrawn their nominations papers in his support. He could not produce any proof to show that O.P No.1 was bearing all election expenditure of O.P No.2 only to ensure his defeat.

8. O.P No.1 has in his evidence stated that he was the election officer of Begunia block in the G.P election of 2012. The election for the post of Sarapanch of Begunia was held on 13.02.2012 along with all 21 booths. After completion of election the presiding officer of the concerned booths counted the votes and recorded the result of votes in presence of candidates and the agents. Basing on such result submitted by the presiding officers, result was declared on 21.01.2012. At the time of scrutiny it was seen that all the nomination papers were valid for which the nomination papers was accepted as per Section 11 of OGPE Act . After election of post of Sarapanch and other ward members of the said G.P, the counting was done in presence of agents and thereafter the same was sealed and taken onto the strong room of block office. The pooling had taken place peacefully and the polling officials had conducted the same

transparently . As per written request of the petitioner he was allowed to take the ballot papers at the time of recounting of Sarapanch votes. In his cross examination he has stated that he and the B.D.O in August 2011 were not the in-charge officers of the scrutiny of nomination paper. He however came to know that the petitioner had filed an objection challenging the nomination of one of the candidates before the in-charge of scrutiny. He could not say as to whether any such document showing the dates of birth of children of O.P No.2 had been filed along with such objection. He is also not aware of any such Surcharge notice received by his predecessors which was addressed against the then Sarapanch of Begunia G.P whenever the PIO issued an information he called for the record from the G.P and after verifying such record issued information. He is aware of the audit undertaken in Begunia G.P . The final result of such audit is still awaiting he could not say about the details of special audit . He also could not show as to who was the special auditor as, he had only heard about such special audit after filling of this case. The result of the audit is awaiting from the finance department. He had verified all necessary records before coming into the court. He had not verified the surcharge notice. The executive officer of the Panchayat remains present in the meeting in G.P pertaining to developmental work and he also records the proceedings of such meeting. Nilakantha and some others had sat on a strike in front of the block office Begunia G.P premises , Balarampur in mouza Begunia G.P

9. D.W.2 who is the O.P No.1 in this election misc- case has in his examination in chief corroborated his entire objection. In his cross examination he has stated that the entire election was conducted peacefully without any disturbance. As some miscreants created

disturbances after counting was over, sealed ballot boxes were sent to the block office. In para 12 he states that this is for the 4th crime that he has been elected as a Sarapanch of Begunia G.P. The earlier three occasions were 1992 to 1997, 1997 to 2002 and 2002 to 2007. His wife was the Sarpanch from 2007 to 2012 but he does not remember the year and date of the affidavit filed by him along side his nomination paper. He has got two sons . Siba Prasad and Bishnu prasad are his sons. He does not remember if he has not filled up the column in the affidavit regarding age of his sons. The G.P comprises of 21 wards and these 21 wards are spread over the entire village. As per his knowledge the O.P No.2 has got two children and had filed his nomination paper correctly and he does not remember if he had mentioned in his nomination paper that he not pending recovery proceeding against him. On 23.06.2011 he had received a notice from local fund auditor in this mater. He had not received any notice before NO.1021/dtd.07.03.2011 from the office of “ Samikhya “ Nirdeshalaya account Bhubaneswar . His sons Siba Prasad and Bishnu Prasad have got two homestead land measuring Ac 0.007 decimals in Mouza Zagirbad. He was himself present at the time of filing of nomination paper. His wife was also a Sarapanch. During his tenure as Sarapanch all undertaking and expenditure of the Panchayat had been duly approved by the Panchayat and Block authorities. For the post of Sarapanch there were four candidates in the fray. No resolution had ever been drawn by the executive officer Begunia G.P for the recovery of money on the ground of irregularities in execution of development work. The symbol of “ Open umbrella” of the petitioner was present at sl NO.4 in ballot paper and his symbol was purportedly given at Sl NO.3. No complaint was made at any booth during election. He is not aware of any

such complaint made before the scrutiny officer.

10. The first question which needs to be discussed is whether the O.P Nos. 2 is disqualified by having more than the required number of children before the cut off date . The petitioner has relied on Ext.6 along with Ext.7,8 & 9 stating that the O.P No.2 has five children. Ext.6 shows that headmaster of center primary school , Begunia has submitted a letter wherein she has reported that the said Kasinath Sahu has five children namely Gayatri Sahu born on 11.05.1987, Prakash Sahoo born on 02.08.1990, Pravati Sahoo born on 21.04.1994, Sasmita Sahu born on 19.07.1995 and Ganesh Sahoo born on 23.05.1997. P.W.6 who was the headmaster of Begunia . During his examination he has deposed that in his presence the above documents were not prepared. In my opinion the question of preparation of documents in his presence are irrelevant as the post of headmaster cannot remain the same for all times to come. However interestingly he has in his cross-examination admitted that Kasinath Sahoo has never given his signature on any document in his presence. He had not made the relevant entries in question i.e Ext.7/1,8/1,8/2,9/1 and 9/2 . In paragraph 8 of his cross-examination he states that Ext.7/1 does not contain the signatures of Kasinath Sahoo. The evidence of P.W.6 casts a doubt on the genuinity of Ext.7. The said Ext.7 refers to Gayatri Sahoo and her admission. The signature of Kasinath Sahoo is not present their in. This raises a doubt with respect of Ext.7. Coming into Ext.8, it is seen that one Prakash Kumar Sahoo got admitted in the school but in the column of signature of father the name of Banamali Jena has been written. This also creates a doubt regarding genuinity of Ext.8. Coming into Ext.8/2 it is again seen that the name of the child Kumari Mamita Saho has been

interpolated and below the said name another name has also been written. This creates a doubt with respect to the genuineness of Ext.8/2. Coming into Ext.9 it is seen that the child who got admitted vide this column was Pavati Sahoo. Ext.9 does not contain the signature of Kasinath Sahoo. From the above analysis of all the above documents filed by the P.W.6 it is quite clear that the said admission register suffers from various defects. The petitioner has failed to prove that the O.P No.2 has five children before the cut off date as he has failed to prove the genuineness of Ext.6 to Ext.9. Further more P.W.6 has in para 11 of his evidence clearly stated that there has been interpolations and over writing in Ext.8/2, in fact he has gone ahead to state that he could not say as to under what circumstances the said interpolation were made. Lastly with regard to Ext.6 to Ext.9 in para 6 of his evidence, P.W.6 has stated that no such documents supporting the date of birth of the students was retained by the school at the time of admission of such student. He also could not say as to whether Kasinath Sahoo had made any such application in the school for admission of any of his children therein. In view of petitioner not being able to prove Ext.6 to Ext.9 it is quite clear that the O.P2 is a qualified candidate and does not suffers from any disqualification regarding number of his children. More so ever none of the witnesses who have deposed that the OP2 had more children than required before the cut off date have not been able to substantiate their claims during the searching questions of cross examinations .

11. The next question which now needs to be decided is as to whether there was any outstanding dues in favour of the O.P NO.1 . On perusal of the documents filed by the petitioner it is seen that in Ext.22

the petitioner has filed a document from the Finance Department dtd. 23.06.2011 which shows that there has been shortage of about Rs 3,43,707/- and that Naba Kishore Swain was sent notice from the said department in that respect. On the back of Ext.22 a detailed list of the heads of money is given. The said document is of a period from 01.04.2006 to 31.03.2009. the plaintiff petitioner has nowhere proved that during the period of election or nomination the said misappropriation/ alleged misappropriation was still pending. In fact the said Ext.22 only shows that a notice was given to the O.P NO.1 and apart from the notice the said document does not prove anything. However, furthermore the petitioner in order to prove its case has also supported the Ext.X series which he had filed during argument. The said Ext.X series has neither been relied on in the evidence nor has been proved by the petitioner through evidence of other witnesses. As the said documents was filed at a belated stage and has not been proved in evidence through the mouths of any witnesses, hence the above document cannot be taken into account. In view of the above opinion and the evidence of the witnesses for example of *P.W.3 at para 21* and other witnesses, clearly show that they have not seen any document which could show any misappropriation by O.P NO.1 or his wife. PW3 at para 21 clearly states that he has not seen any document containing any misappropriation done by the OP1 or his wife. PW4 at para 20 clearly states that has not seen any document containing any misappropriation done by the OP1. PW7 has stated that he doesnot know the details of the surcharge notice or the details of misappropriation at Para 15. PW9 at para 35 has stated that he doesnot know as to whether the OP1 has submitted his showcause or not and

whether the case is still pending or not.

The petitioner has not filed any other document to show that during the election the petitioner had still misappropriated the money or where there was any pending dues at the time of the election. Hence this allegation against the petitioner regarding misappropriation of money does not stand any ground. Furthermore the petitioner has also stated about the surcharge notice being issued against the O.P. The surcharge notice has been decided in the above said being Ext.22. In my opinion calling for report to file show cause in Ext.22 cannot by any stretch of imagination , be held as misappropriation . The petitioner needs to prove through oral and documentary evidence as to how come there has been a misappropriation . Filing of Ext.22 itself could not prove such misappropriation. Hence in my humble opinion, it can be said that the petitioner has failed to prove any misappropriation or that any dues were pending against the O.P No.1.

The next question which now needs to be decided is as to whether the ballot papers were all folded so that the voters could not see the election sign of the petitioner. P.W.1 in paragraph 10 of his evidence has stated that he had not gone to the pooling booth and had not seen the ballot papers. In paragraph 13 he has stated that he had not approached the presiding officer regarding issuance of a folded ballot paper. In view of the admission of P.W.1 that he had not gone to the pooling booth , it can be said that his evidence with regard to folding of ballot papers does not hold much ground. P.W.2 in para 9 has clearly stated that the ballot papers contained the symbol of Umbrella i.e the sign of the petitioner. Hence the P.W.2 has also not been able to prove

the allegation of folding of ballot papers. P.W.3 has nowhere stated anything with regard to folding of ballot papers. PW4 had in para 16 stated that he had casted votes to his candidate. PW8 in para 22 had stated that he had not complained to anyone about the irregularities. This evidence of pw8 creates a doubt in his entire evidence as to why he had neither reported to police or senior election officials or Collector but later signed on the ballot packets. None of those witnesses have stood strong during their cross-examination . Further more the admission of the witnesses that no complaint was made during election regarding folding of ballot papers casts a doubt with regard to such claim . Further more P.W.8 who claims to be an agent of one of the contestants that he and Sidheswar had raised objection before presiding officer who has not filed any copy of the said objection in the court. Hence from the above analysis of evidence adduced by the witnesses, it quite clear that the petitioner has not been able to prove the folding of votes against the petitioner and thereby disabling the voters to casts their votes in favour of the petitioner.

12. The last allegation of the petitioner is regarding improper admission of votes in favour of O.P NO.1 and improper rejection of votes in favour of the petitioner. In order to ascertain such claims the petitioner has not given any specific example in whose case there has been improper admission or improper rejection of votes. The petitioner has while filling Exts not filed any such document with regard with improper admission or improper rejection of votes. None of the witnesses have also spoken anything with regard to the improper admission or improper rejection of the votes and whatever little

allegations have been made are mere bald suggestions. This being the evidence of the petitioner and other witnesses adduced by the petitioner, it can be clearly stated that the petitioner has failed to prove the allegation of improper admission and improper rejection of votes.

13. **Issue No.1**

The petitioner has clearly stated that the cause of action for filing of this suit arose on 10/11th day of January, 2012 . when the nomination of the petitioner were filed and further when the letters of election was published. The O.P has clearly denied to the cause of action and has stated that these are all false allegation filed by the petitioner. Cause of action is a bundle of right asserted by one party and denied by another. In this case the plaintiff has asserted about the cause of action while the defendants has denied about the cause of action. There being rival claims with respect to the dispute, it can be said that the petitioner has got cause of action to file this suit.

14. **Issue NO. 2 &7**

As no specific prayer has been made in this regard, hence ordered

ORDER

The suit be and the same is dismissed on contest against the O.Ps, but without costs.

(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 1st day of August, 2014.

(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.

List of witnesses examined on behalf of Plaintiff :-

P.W.1: Bhramar Nayak
P.W.2: Pankaj Nayak
P.W.3 Gobinda Barad
P.W.4 Prafulla Kumar Sahoo
P.W.5 Surendra Behera
P.W.6 Renubala Devi
P.W.7 Gitanjali Subudhi
P.W.8 Laxmidhara Jena
P.W.9 Nilakantha Swain

List of witnesses examined on behalf of Defendants. :-

O.P.W1 Suranjan Pradhan

List of documents proved on behalf of the Plaintiff :-

Ext.1 Affidavit evidence of P.W.1
Ext.2 Affidavit evidence of P.W.2
Ext.3 Affidavit evidence of P.W.3
Ext.3/1 to 3/2 Signatures of P.W.3 on Ext.3
Ext.4 Affidavit evidence of P.W.4
Ext.4/1 to 4/2 Signatures of P.W.4 on Ext.4

- Ext.5 Affidavit evidence of P.W.5
- Ext.5/1 Signatures of P.W.5 on Ext.5
- Ext.6 Information under R.T.I Act. As regards the date of birth of children of Kasinath Sahoo
- Ext.6/1 Signatures of Champa Dei
- Ext.7 School admission register form 11.07.1988 to 20.07.1993 of Begunia centre U.P School
- Ext.7/1 Entry pertaining to Gayatri sahuo on Ext.7
- Ext.8 School admission register being entries from 04.07.1994 to 30.06.2000 of Begunia Centre primary school
- Ext.8/1 Entry pertaining to prakash kumar sahuo on Ext.8
- Ext.9 School admission register bearing entries from 07.07.2000 to 20.07.2004
- Ext.9/1 Entry pertaining to Pravati Sahoo on Ext.9
- Ext.10 Affidavit evidence of P.W.7
- Ext.10/1 Signature of P.W.7 on Ext.10
- Ext.10/2 Signature of P.W.7 on Ext.10
- Ext.11 Affidavit evidence of P.W.8
- Ext.11/1 to 11/4 Signature of P.W.8 on Ext.11
- Ext.12 Affidavit evidence of P.W.9
- Ext.12/1 to 12/5 Signatures of P.W.9 on Ext.12
- Ext.13 Postal receipt dtd. 01.03.2013
- Ext.14 Postal A.D
- Ext.15 Letter No.4506 dtd.23.03.2012
- Ext.16 Envelope
- Ext.17 Copy of the letter dtd.14.02.2012
- Ext.17/1 Endorsement showing receipt of letter

- Ext.18 Letter dtd.23.04.2008 addressed to Hadibandhu Sahu
 Ext.19 Postal receipt dtd.23.02.2012
 Ext.20 A.D card
 Ext.21 Copy of the letter No.8292
 Ext.22 Copy of the Surcharge notice No.4161 dtd.23.06.2011
 Ext.23 Information obtained from Begunia Panchayat Samit, as per R.T.I Act vide Letter No.529 dtd.02.03.2012
 Ext.24 Copy of the nomination paper of O.P No.2 obtained as per R.T.I Act. Ext.25 Photograph sheet
 Ext.26 Voter list of Begunia G.P

List of documents proved on behalf of the Defendants :

- Ext.A Entry relating to Bipin Bihari Jena
 Ext.B Affidavit evidence of O.P.W.1
 Ext.B/1 to B/3 Signatures of O.P.W.1 on Ext.A
 Ext.C Proceeding of recounting
 Ext.C/1 and C/2 Signatures of O.P.W.1 on Ext.B
 Ext.C/3 Signature of Nilakantha Swain on Ext.B
 Ext.C/4 Signature of Naba Kishore Swain in Ext.B
 Ext.C/5 Signature of Basanta Kumar Sahoo in Ext.B
 Ext.C/6 Signature of Dhoba Swain on Ext.B
 Ext.D Affidavit evidence of O.P.W.2
 Ext.D/1 to D/2 Signatures of O.P.W.2 on Ext.D

(Abhilash Senapati)
CIVIL JUDGE(JR.DIV), KHURDA.