

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.15170 OF 2022
With
W.P.(C) NOS.16825 & 16833 OF 2022

A F R

In the matter of Applications under Articles 226 & 227 of the Constitution of India.

In WP(C) NO.15170 OF 2022

Manjulata Panda & ors. : ***Petitioners***
-Versus-
State of Odisha & ors. : ***Opp.Parties***

For Petitioners : M/s.S.K.Dalai & P.Dash
For O.Ps.1 to 4 : Mr.S.Mishra, ASC
For O.Ps.5 to 13 : None

In WP(C) NO.16825 OF 2022

Bishnupriya Biswal & ors. : ***Petitioners***
-Versus-
State of Odisha & ors. : ***Opp.Parties***

For Petitioners : M/s.S.K.Dalai & P.Dash
For O.Ps.1 to 4 : Mr.S.Mishra, ASC
For O.Ps.5 to 9 : None

In WP(C) NO.16833 OF 2022

Sradhanjali Padhi : ***Petitioner***
-Versus-
State of Odisha & ors. : ***Opp.Parties***

For Petitioner : M/s.D.Nayak, Sr.Adv.,
B.Mishra & P.Nayak
For O.Ps.1 to 5 : Mr.S.Mishra, ASC

For O.P.6 : None

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing : 20.10.2022 & Date of Judgment : 03.11.2022

1. All these Writ Petitions since involve almost similar facts and point of law, on consent of the learned counsel for the Parties, the same are taken up together, heard analogously and decided by this common judgment.

2. W.P.(C) No.15170/2022 involves a challenge to the order dated 24.5.2022 at Annexure-6 issued by the Sub-Collector, Sadar, Cuttack nominating Smt. Sumitra Rout, wife of Purna Chandra Rout of Ward No.5, as Naib Sarapanch in Jalarpur Gram Panchayat in exercise of power under Section 13 of the Orissa Gram Panchayat Act, 1964.

W.P.(C) No.16825/2022 involves a challenge to the order dated 24.6.2022 issued by the Sub-Collector, Puri at Annexure-4 thereby nominating Smt. Pravasini Pradhan, wife of Bhramar Pradhan of Ward No.11 as Naib Sarapanch of Alanda Gram Panchayat under Krushnaprasad Block.

Similarly, in filing W.P.(C) No.16833/2022 the Petitioner herein challenges the communication dated 2.7.2022 at Annexure-3 whereby the

Sub-Collector, Bhadrak has nominated one Smt. Truptilata Ray, wife of Nihar Ray of Ward No.6 as Naib Sarapanch of Aradi Gram Panchayat.

3. W.P.(C) No.115170/2022 is filed by the Petitioners being the Sarapanch and Ward Members of Jalarpur Gram Panchayat under Niali Block involving a challenge to the nomination of Naib Sarapanch of Jalarpur Gram Panchayat, whereas W.P.(C) No.16825/2022 is at the instance of some Ward Members in their challenge to the nomination of Naib Sarapanch in respect of Alanda Gram Panchayat. The third one being W.P.(C) No.16833/2022 appears to be filed by a Voter of Bhadrak District in respect of challenge to the nomination of Naib Sarapanch of Aradi Gram Panchayat.

4. All the three Writ Petitions involved a common question of law as to whether the nominations made under the impugned orders involved herein are in terms of the provisions in the Orissa Gram Panchayat Act, 1964 (herein after called as “the Act”) read with provisions in the Orissa Gram Panchayat Election Rules, 1965 (herein after called as, “the Rules”)? Further for common ground of attack involved herein, this Court takes into account the common ground of challenge, as raised by the respective Counsel, Mr.S.K.Dalai and Mr.D.Nayak, both appearing for the respective Petitioners. This Court taking into account the learned Counsel herein in their challenge to the aforesaid aspect, taking into

account the factual aspect as well as legal aspect finds, all the Writ Petitions involve a common factual background after the election for the post of Sarpanch of the respective Gram Panchayats on issuing Notifications for election for the post of Naib Sarpanch and in spite of presence of majority of the Members on the date of election of Naib Sarpanch in the respective Gram Panchayat instead of proceeding to conduct election of Naib Sarpanch in terms of the provision at Section 14 of The Odisha Grama Panchayats Act 1964, the Public Authority in supersession of the resolution of the majority Members present in the Panchayat meeting for the purpose brought out the impugned orders in illegally nominating altogether different persons, as their choice for the post of Naib Sarpanch of the respective Gram Panchayats. There is no dispute to the fact at the Bar, however, on the total Member strength of the Gram Panchayats respectively as well as on the legal provision taking place herein, further on the number of Members present in the so-called meeting in respect of each Gram Panchayat. Factual and undisputed position further reveal, so far as W.P.(C) No.15170/2022 involving Jalarpur Gram Panchayat is concerned, on the election of the Gram Panchayat came to be over and the Sarpanch being selected, there was notice for convening meeting of the Members on 11.3.2022 at 10. A.M. by the B.D.O.-cum-Election Officer, Niali, vide Annexure-3. Even in the

meeting dated 11.3.2022 all total ten Members were available out of nineteen Members including the Sarapanch in a body of nineteen Members and Sarapanch (19+1) but the Ward No.2 remaining vacant. The meeting of the Presiding Officer ended with observation of the Election Commissioner that the meeting failed for non-availability of Coram resulting therein issuing of the directive under Annexure-6 by the Competent Authority entering into nomination of Naib Sarapanch in exercise of power under Section 13 of the Act.

Similarly so far as W.P.(C) No.16825/2022 is concerned, background involved herein, after completion of the election of the Sarapanch of Alanda Gram Panchayat and the Gram Panchayat consisted of eleven Wards and Sarapanch (11+1) there used to be twelve Members but for there is one Ward particularly Ward No.8 remained vacant, there was all total ten Ward Members available plus Sapananch (10+1) taking it to be total eleven voters. Here also a meeting was convened on 11.3.2022 under the B.D.O.-cum-Election Officer for undertaking the exercise of election of the Gram Panchayat, vide Annexure-1 and in spite of six Members including Sarapanch being present in the proceeding with one Ward remaining vacant, there has been illegal observation by the Election Officer observing the meeting has no Coram and while deferring the meeting later on issuing the impugned order under Annexure-4

nominated the Naib Sarapanch of the Gram Panchayat, which action is impugned herein.

Similarly, so far as W.P.(C) No.16833/2022 is concerned, involving Aradi Gram Panchayat after election of the Sarapanch is over, in a Panchayat consisting of thirteen Wards, there is election of twelve Wards, one Ward remaining vacant. Making the Panchayat having twelve Members + Sarapanch (12+1) thereby the total available is twelve and Sarapanch for election of Naib Sarapanch got attended by all total seven with one Ward remaining vacant. While matter stood thus, there appears to be convening of a meeting on the same date, i.e., 11.3.2022 under the B.D.O.-cum-Election Officer for selection of Naib Sarapanch from out of total thirteen Members as there was one vacancy out of total thirteen Members and a Sarapanch, in spite of availability of seven including the Sarapanch here also the Election Officer closed the proceeding observing there is non-availability of Coram and thereby deferring the proceeding of the meeting and at a subsequent stage, there is issuing of communication by the Sub-Collector regarding nomination of Ward Member as the Naib Sarapanch of Aradi Gram Panchayat impugned herein.

In W.P.(C) No.16825/2022, it appears, there is nomination of Ward Member of Ward No.11 as Naib Sarapanch in favour of Pravasini Pradhan, who was even absent in the election proceeding. So far as

W.P.(C) No.15170/2022 is concerned, there is nomination in favour of Smt.Sumitra Rout, Ward Member of Ward No.5, who is also found to be absent in the election of Naib Sarapanch.

5. This Court here records the common argument of the respective Counsel appearing in all the Writ Petitions while keeping in view the above factual aspect, in order to convince their claim in each of the Writ Petitions while advancing their submissions through the above factual aspect and taking this Court to the legal aspect involved herein, an attempt is made by the learned counsel appearing for the respective Petitioners taking this Court also to Section 10 of the Act, argument is advanced on the composition of the Gram Panchayat, there is also attempt to take this Court to the provision at Section 15 of the Act requiring convening of meeting for election of Naib Sarapanch required to be elected in presence of majority of the Members of the Gram Panchayat. It is here also reading the provision at Section 13 of the Act, learned counsel for the Petitioners submitted on the aspect of Quorum required for such meeting. Taking to the provision available at Sections 10 & 14 of the Act together with Rule-76 of the Rules, an argument is advanced on the premises that the Ward remaining vacant should not come in the way of assessing the Members present and accordingly, majority of such Members present or not is to be understood. At this stage, demonstrating

through the Members present in taking to the pleading with regard to total Members of the Gram Panchayat further with the admitted pleading that in two of the Writ Petitions, one Ward Member each remaining vacant, Mr. Dalai, learned counsel for the Petitioners contended, in reference to the Members' present status discussed herein above that there was availability of majority of Members. It is thus argued, since there was availability of majority of Members, the only option available with the Election Officer to remain adhered to the provision at Section 15 of the Act and proceeding for holding the election of Naib Sarapanch therein. It is in such view of the matter, it is further argued that in the above whole background of the matter, there was no room for the Election Officer to declare the meeting convened postponed and further bringing in the impugned Notification in forcing through their choice of nomination in clear ignorance of their choice in the nomination of Naib Sarapanch in the election process or amongst the elected Members. It is thus urged, such action not permissible in the eye of law. Learned counsel for the respective Writ Petitioners thus prayed, the impugned orders involving the Writ Petitions should be interfered with and set aside and the Writ Petitions be disposed of with clear direction for proceeding from the stage of the meeting declared postponed in the conducting of election to the Post of Naib Sarapanch. Learned counsel also urged, once there is

provision to go for nomination only after the Panchayat fails to select Naib Sarapanch even after its second attempt, it is claimed in no circumstance, there was any room for undertaking an exercise for nomination of the Naib Sarapanch only at the end of the first meeting.

6. In response to the claim of the Petitioners, there has been filing counter affidavit in one case and adoption of grounds in the said counter in the other Writ Petitions. Advancing submission Mr.S.Mishra, learned Additional Standing Counsel appearing for the State taking this Court to the counter affidavit in one of the Writ Petitions, similar counter affidavit adopted in other Writ Petitions and through the counter averments while admitting the number of Members including Sarapanch as shown through the proceedings in each Gram Panchayat involved, vide Page-33 of W.P.(C) No.15170/2022, Page-28 of W.P.(C) No.16825/2022 and Page-9 of W.P.(C) No.16833/2022, further taking to the observations of the Election Officer for his finding no Coram for requiring to further conduct the meeting and on reading through the provision at Section 13 of the Act claimed, the impugned orders involved herein are justified. Mr.Mishra further in reference to the written note of submission on behalf of the State-O.Ps., while referring to the provision at Section 13(1) & 14(1) of the Act and the Rules contended, the B.D.O. with all his competency has passed the reasonable orders impugned herein looking to the situation

available at the relevant point of time and for there is already observation of the Election Officer, the meeting lacking Quorum, the impugned orders become justified. Mr.Mishra however in reference to the Members available in the meeting for election of Naib Sarapanch referred to the Election Commissioner, vide letter bearing no.3812/SCCC dated 7.3.2012 filed through written notes of submission, vide Annexure-E/4 and Annexure-E/5 contended, for the instruction of the State Election Commissioner, the total number of Members assigned should include even the vacant Wards to determine the majority for the purpose of Coram while admitting that the Sarapanch is also taken as a Member for the purpose. So far as W.P.(C) No.15170/2022, there is clear admission that the Gram Panchayat involved herein was having all total nineteen Ward Members and the Sarapanch (19+1) since taken as a Member also for the purpose of voting making it twenty and also admitting that Ward No.2 remaining vacant thus available vote becoming nineteen, at the same time, claiming that total number of Members since twenty submitted there since available only ten Members present, it did not attain majority of eleven Members being present, thus there was no Quorum. So far as W.P.(C) No.16825/2022 is concerned, while admitting that the Gram Panchayat involved herein having eleven Members and taking Sarapanch as another Member, the Panchayat appears to be having total

twelve Members for vote and six Members present with Ward No.8 remaining vacant, claimed, there was no majority as Quorum required in the minimum presence of seven Members. So far as W.P.(C) No.16833/2022 is concerned, Mr.Mishra, learned Additional Standing Counsel claimed, the Panchayat involves fourteen Members including Sarapanch though one Ward remaining vacant and for there is seven Members available all total and Quorum since required in the minimum eight Members, the meeting was bound to be postponed. Mr.Mishra thus contended, situation involved herein automatically making way of nomination claimed there is no illegality in going for nomination involving all these Gram Panchayats.

In the above circumstance, Mr.Mishra, learned Additional Standing Counsel claimed, as none of the Panchayats' meeting got the presence of minimum requirement and for the meeting suffering on account of Coram, there ought to play of Section 13 of the Act and in the circumstance, Mr. Mishra claimed, there is no illegality in bringing out the Notification, vide the impugned orders on application of provision under Section 13 of the Act. To strengthen the stand of the State, Mr.Mishra also relied upon two decisions of the Hon'ble apex Court in *Senior Superintendent of Post Officers, Allahabad & ors.* : (1989) 4 SCC 318 and *State of Jharkhand & ors vrs. Jitendra Kumar Srivastava*

& anr : (2013) 12 SCC 210 and taking this Court through the said decisions, Mr.Mishra also attempted to justify the State's act.

7. From the whole submission of the respective Counsel, this Court finds, both sides have relied on provisions at Sections-4, 10, 13, 14 & 15 of the Act and Rule-76 of the Rules, which are taken note as herein below

:-

“Section 4 - Constitution and incorporation of Grama Sasan

:- (1) For every Grama there shall be a Grama Sasan which shall be composed of all persons registered by virtue of the Representation of the People Act, 1950 (43 of 1950) in so much of the Electoral Roll for any Assembly Constituency for the time being in force as relates to the Grama 1[and unless the Election Commission directs otherwise] of the roll shall be deemed to be the Electoral Roll in respect of the Grama. (2) The Grama Sasan shall be a body corporate by the name of the Grama to which it relates, having perpetual succession and common seal, with power, subject to the provisions of this Act and the rules made thereunder, to acquire, hold and dispose of property and to contract land may by the said name sue and be sued. (3) The Office and headquarters of the Grama Sasan shall be situated within the limits of the Grama and unless otherwise ordered by the State Government in the village bearing the name of the Grama.

Section-10 - Constitution of Grama Panchayat :- (1) Every Grama Panchayat shall be composed of the following members, namely :

(a) a member to be elected by the persons referred to in Sub-Section (1) of Section 4 from amongst themselves who shall be the Sarpanch; and

(b) a member to be elected from each of the Wards by the persons on the Electoral Roll for the Ward from amongst themselves;

(c) * * *]

(2) There shall be a Naib-Sarpanch in respect of every Grama Panchayat to be elected in accordance with the provisions of Section 14.

(3) (a) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Grama Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Grama Panchayat as the population of the Scheduled Castes in the concerned Grama or of the Scheduled Tribes in that Grama bears to the total population of that Grama and such seats shall be allotted by rotation to different Wards in a Grama Panchayat :

Provided that where the Population of the Scheduled Castes or, as the case may be, the Scheduled Tribes in a Grama is not sufficient for the reservation of any Seat, one seat for the Scheduled Castes or, as the case may be, one seat for the scheduled Tribes shall be reserved in that Grama:

[Provided further that in the Scheduled Areas, not less than one-half of the total number of seats to be filled by direct election shall be reserved for the Scheduled Tribes]

(b) As nearly as may be, but not less than [one-half] of the total number of seats reserved under Clause (a) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes :

Provided that where only two seats are reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes, one of the two seats shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

[(b-1) As nearly as may be, but not less than, twenty-seven per centum of the seats of every Grama Panchayat shall be reserved in favour of backward class of citizens as referred to in Clause (6) of Article 243-D of the Constitution in the prescribed manner; [and shall be allotted by rotation to different Wards thereof.]

[(b-2) As nearly as may be, 4[one-half] of the total number of Seats reserved under Clause (b-1) shall be reserved for women belonging to the Backward Class of Citizens.]

(c) As nearly as may be, but not less than 4[one-half] (including the number of Seats reserved for women belonging to the Scheduled Castes. 2C[the Scheduled Tribes and the Backward Class of Citizens]) of the total number of Seats to be filled by direct election in every Grama Panchayat shall be reserved for women and such seats shall be allotted by rotation to different Wards in a Grama.]

[(4) The procedure regarding reservation of seats for the purposes of Sub-Section (3) shall be as follows :

(a) The Wards in which the density of Population of the Scheduled Castes and the Scheduled Tribes is higher in the Grama shall be reserved by the Collector for the Scheduled Castes and the Scheduled Tribes, respectively and shall rotate in the descending order [at every General Election] [and in case of Backward Class of Citizens such reservation and rotation shall be in the prescribed manner];

(b) The Wards shall be serially numbered in a list in the prescribed manner and the Collector shall reserve the required number of Wards in the Grama for women in the following manner, namely :

(i) in computing [one-half] of the total number of Wards, the Wards reserved for women belonging to the Scheduled Castes, [the Scheduled Tribes and the Backward Class of Citizens] and the Scheduled Tribes shall be taken into account;

(ii) reservation of Wards for women belonging to the Scheduled Castes shall be made at the first instance [then for the Scheduled Tribes and thereafter for the Backward Class of Citizens];

(iii) out of the Wards left in the list for Candidates other than the Scheduled Castes, [the Scheduled Tribes and the Backward Class of Citizens], the ward which appears first and, thereafter, [every Second ward] shall be reserved for women, until the required quota is completed;

(iv) as nearly as may be, but not less than [one-half] of the Wards reserved for the members of the Scheduled Castes and the Scheduled Tribes shall be reserved for women belonging to the Scheduled Castes and the Scheduled Tribes in the manner hereinbefore provided; and

(v) the Wards not covered in a General Election for reservation for Women shall be covered in the subsequent General Election of the Grama Panchayat in the same manner as hereinbefore provided.

(c) The Collector shall, by order, after previous Publication in the prescribed manner inviting objections and suggestions from all persons interested within the prescribed period, and after considering all such objections and suggestions, publish a statement, showing the division of the Grama into Wards and the Seats to be reserved therein, in his Office notice board, which shall be final.]

(5) Notwithstanding anything to the contrary in this Section-

(a) the Offices of Sarpanchas in Grama Panchayats shall be reserved for the Scheduled Castes and the Scheduled Tribes and the number of offices so reserved for the Scheduled Castes and the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of such Offices as the population of the Scheduled Castes and the Scheduled Tribes respectively in the State bears to the total population of the State; and

[(b) as nearly as may be, but not less than 2[one-half] of the total number of Offices of Sarpanches reserved under Clause (a) shall be reserved for Women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes;

(c) as nearly as may be, but not less than, twenty-seven per centum of the Offices of Sarpanches in Grama Panchayats shall also be reserved in favour of Backward Class of Citizens as referred to in Clause (6) of Article 243-D of the Constitution and shall be allotted by rotation to different Gramas;

(d) as nearly as may be, but not less than, [one-half] of the total number of Offices of Sarpanches reserved under Clause (c) shall be reserved for Women belonging to the Backward Class of Citizens; and

(e) as nearly as may be, but not less than, 2[one-half] (including the number of Offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Class of Citizens) of the total number of Offices of Sarpanches in Grama Panchayats shall be reserved for Women.]

[(6) For the purpose of reservation of Offices of Sarpanchas in Grama Panchayats and subject to the provisions of Sub-Section (5)-

(a) the Grama Panchayats in relation to Gramas in which the density of Population of the Scheduled Castes and the Scheduled Tribes is higher in the Block shall be reserved by the Collector for the Scheduled Castes and the Scheduled Tribes respectively and shall rotate in the descending order 2[at every two term of General Election]; and

(b) after arranging the names of the Gramas within a Block in Oriya alphabetical order, as nearly as may be, but not less than [one-half] of the total number of Offices of Sarpanchas in each Block shall be reserved by the Collector for women and,

for such reservation, the procedure provided in Clause (b) of Sub-Section (4) shall, as far as may be, apply.]

(7) The reservation of Seats under Clauses (a) and (b) of Sub-Section (3) and the reservation of Offices of Sarpanchas (other than the reservation for Women [and Backward Class of Citizens]) under Sub-Section (5) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

13. Nomination on failure of election [reservation in certain cases] - (1) If for any reason whatsoever the concerned electorate fails to return a Sarpanch, or a Naib-Sarpanch, or any other member a fresh election shall be held for the purpose; and if at such fresh election no person is elected the Sub-Divisional Officer shall nominate a person eligible for election to such Office to be the Sarpanch, Naib-Sarpanch or such other member, as the case may be, who shall on being so nominated be deemed to have been duly elected.

[(2) Where the Office of the Sarpanch or the Seat of any member is reserved under Section 10 for any particular category and the Sub-Collector fails to nominate under Sub-Sec. (1) a person to such Office or seat, as the case may be, for non-availability of an eligible person belonging to that category, such Office or Seat shall, on recommendation being made to that effect by the Sub-Collector, be de-reserved by the Collector after such enquiry as he may deem fit and shall, thereafter, be filled up by fresh election]. सत्यमेव जयते

14. Election of Naib-Sarpanch :- (1) As soon as may be after the Publication under Section 15 of the names of the members elected at a General Election such members shall at the first meeting of the Grama Panchayat specially convened in that behalf elect in the prescribed manner from among themselves a Naib-Sarpanch :

[* * *]

[Provided [* * *] that in the case of every Grama Panchayat, the Sarpanch elected under Clause (a) of Sub-Section (1) of Section 10 or nominated under Section 13 is not a Woman, the Office of the Naib-Sarpanch in respect of that Grama Panchayat shall be deemed to have been reserved for Women.]

(2) No election of a Naib-Sarpanch shall be made unless a majority of the members of the Grama Panchayat be present at the meeting held under Sub-Section (1).

(3) No election of a Naib-Sarpanch of a Grama Panchayat required to be held under Sub-Section (1) shall be deferred merely on the ground that any member thereof has been prevented by any order of a Court of competent jurisdiction from participating in such election.

(4) The members of a Grama Panchayat shall not be debarred from proceeding with the election of a Naib-Sarpanch merely by reason of there being any Causal Vacancy in the membership of the Grama Panchayat as a result of death, resignation, removal or otherwise.

15. Publication of Result of Election :- Subject to the rules, if any, made in that behalf the names of all persons elected or nominated as Sarpanch, Naib-Sarpanch or any other member of the Grama Panchayat shall, as soon as may be after such election or nomination, be published by the prescribed authority in such manner as may be prescribed :

[Provided that if the prescribed authority is satisfied that the majority of members including the Sarpanch of the Grama Panchayat have been duly returned, he shall publish the names of such members, without awaiting for the result of election whether conducted or not of the remaining members.]

Rule-76 of the Odisha Grama Panchayats Election Rules, 1965.

Rule-76 - Notwithstanding any other provision to the contrary contained in these rules, the following procedure shall be followed for conducting the election to the office of the Naib-Sarpanch.

(a) All the members other than the Sarpanch shall be eligible to stand for the office of the Naib-Sarpanch.

(b) The Presiding Officer shall proceed to conduct the election, if a majority of the member of the Grama Panchayat are present on the date and at the time fixed for the purpose.

If a majority of the members are not present, no election shall be made and a fresh notice shall be issued in accordance with the foregoing rules fixing another date. In case of failure of election for the second time, the Presiding Officer shall report the result to the Election Officer who shall thereupon move the Sub-Collector for nomination of a Naib-Sarpanch in pursuance of the provisions of Section 13. On the nomination of Naib-Sarpanch by the Sub-Collector, the Election Officer shall publish the name of the person so nominated in the noticeboard of the Block Office as required under Section 15.

(c) If a majority of the members are present on the date fixed for the first or second meeting as the case may be, the Presiding Officer shall call upon the members to elect a Naib-Sarpanch from among themselves and allow time for one hour to receive nomination in Form No. 4.

(d) Every nomination paper shall be signed by two members as proposer and seconder and the candidate should sign a declaration on it expressing his willingness to stand for election. Every nomination paper shall be presented by the candidate himself or his proposer or seconder to the Presiding Officer at the meeting.

(e) After expiry of the time allotted for receiving nomination papers, the Presiding Officer shall proceed to scrutinise the nomination papers. Scrutiny shall be made only with a view to check if nomination is duly proposed and seconded and also accepted by the candidate. It shall be open to the Presiding Officer to get omissions rectified then and there. No objections on any other ground whatsoever shall be entertained in respect of nominations.

(f) If only a single candidate is nominated, he shall be declared elected forthwith.

(g) In case no nomination is filed within the time allowed, the Presiding Officer shall allow one more hour for filing nominations and this shall be treated as an election for the second time. If no nomination is filed on the second occasion also, the Presiding Officer shall report the result to the Election Officer who shall thereupon move the Sub-Collector for nomination of the Naib-Sarpanch.

(h) In the event of there being a contest, the Presiding Officer shall announce the names of the contesting candidates and shall proceed to hold the poll then and there.”

8. Section-10 of the Act deals with constitution of Gram Panchayat. Section-10(b) deals with election of a Member from each of the Wards by persons on the electoral roll for the Ward from amongst themselves and Section 10(b) speaks a Member to be elected by the persons referred to in Sub-Section (1) of Section 4 from amongst themselves, who shall be

Sarapanch. Section 10(2) says, there shall be a Naib Sarapanch in respect of every Gram Panchayat to be elected in accordance with the provisions of Section 14 of the Act. Section 4(a) of the Act deals with incorporation of Gram Sasan, which speaks for every Gram, there shall be a Gram Sasan, which shall be composed of all persons registered by virtue of the Representation of the People Act, 1950 in so much of the electoral roll for any Assembly Constituency for the time being in force as relates to the Gram of the roll shall be deemed to be the electoral roll in respect of the Gram. Undisputedly, Members in the Electoral roll meant for State Assembly of particular Gram shall be the Members of the Gram for the purpose of election of Gram Panchayat, thus making a clear distinction in between the Member and the Ward Member. First one which comes from Electoral roll meant for Assembly of a Gram and the second one comes by way of election of the Ward involved. Provision at Section 10(1) of the Act makes it clear that Sarapanch of a Panchayat is to be elected by the Members. So far as Naib Sarapanch, a Naib Sarapanch gets elected in terms of Section 14 of the Act, which speaks- as soon as may be after the publication under Section 15 of the names of the Members (means Ward Members) elected at a general election, such Members shall at the first meeting of the Gram Panchayat specially convened on that behalf elect from amongst themselves a Naib Sarapanch. Thus undisputedly, a Gram

Panchayat consisting of Members of each Gram as voters of a Ward being electing, there use to be fixed numbers of Ward Members, a Sarapanch being elected by Members of Gram and a Naib Sarapanch shall be from amongst the Ward Members taking the Members of Gram Panchayat to Ward Members + Sarapanch. Section 14 clarifies the election of Naib Sarapanch shall be held at a general election of such Member dependent on a final publication through Section 15 of the Act from amongst themselves. This Court here observes, when Section 14 indicates election of Naib Sarapanch requires to be taking place in the first meeting of Panchayat as soon as may be after publication under Section 15 of the names of Members elected at a general meeting of such Members where as publication under Section 15 included names of Sarapanch, Naib Sarapanch or any other Member of the Gram Panchayat. There is definite confusion in bringing a publication under Section 15 of the Act even including name of Naib Sarapanch and looking to the provision at Section 14, election of Naib Sarapanch appears to be undertaken as the vote on Naib Sarapanch is dependent on first publication under Section 15 already there. This Court leaves this aspect for the State Legislature to take care of the issue and to find if Section 15 publication also includes Naib Sarapanch when Naib Sarapanch election is dependent on Members included in publication, vide Section 15 or

there should be a second publication under Section 15 of the Act no sooner Naib Sarapanch election gets over.

In the available provision for the time being, there is clear provision at Section 14 of the Act enabling election of Naib Sarapanch in the inclusion of Members and Sarapanch already published under the provision of Section 15 of the Act and not only in the first meeting of the Panchayat after being elected but such meeting can also be convened even in absence of Member on account of casual vacancy as a result of death, resignation, removal or otherwise. This provision takes care of election of Ward Members, vide W.P.(C) Nos.15170/2022, 16825/2022 & 16833/2022, where admittedly, there was casual vacancy. This Court also gives emphasis here to the provision at Section 14(2) of the Act, which makes it clear that no election of a Naib Sarapanch shall be made unless a majority of Members of the Gram Panchayat be present at the meeting held under Sub-Section (1) herein. Essential requirement here is there must be majority of the Members of the Panchayat, which means in a meeting of attendants, there should be election of a Naib Sarapanch by the majority of Members. Nowhere it is prescribed all Members must be attending such meeting. Factual background involving all these three cases appearing to be so far W.P.(C) No.15170/2022 undisputedly the Gram Panchayat having nineteen Ward Members + a Sarapanch making

total strength to twenty. Meeting invited all Members, the meeting attended by ten including Sarpanch with one casual vacancy this Court therefore finds, there was no difficulty in proceeding in conducting the election of Naib Sarpanch. As per provisions at Section 14(2) of the Act needs no election of Naib Sarpanch shall be made unless a majority of Members present at the meeting under Section 14(1) of the Act. This Court finds, there is no dispute in the Bar of presence of ten Members including Sarpanch on the fateful date out of all total nineteen Members including Sarpanch already elected, thus there was no possibility getting into scope of nomination. Similarly in W.P.(C) No.16825/2022, out of total body of eleven Ward Members and a Sarpanch with Ward No.8 remaining vacant, there was presence of six including Sarpanch in the availability of whole eleven Members. In W.P.(C) No.16833/2022 out of total house of 13 + Sarpanch, twelve elected Members and elected Sarpanch making the availability to thirteen and seven Members being present in the meeting, there was no possibility of getting into nomination here also.

9. Now coming to deal with Rule 76 of the Rules, 1965, the Rule as taken note in Paragraph-7 mandates all Members except Sarpanch can stand for the post of Naib Sarpanch. The Presiding Officer shall proceed to conduct election, if a majority of Members of the Gram Panchayat are

present on the date and at the time fixed for the purpose with further specifically mandating that in case of failure of election for the second time, the Presiding Officer reporting the result to the Election Officer, who shall thereupon move the Sub-Collector for nomination of a Naib Sarapanch on application of provision at Section 13 of the Act and whereafter a Notification under Section 15 of the Act shall be brought. Under Rule 76(1), it is even made clear that if a majority of Members are present on the date fixed for first or second meeting, the Presiding Officer shall call upon the Members means Members present to elect a Naib Sarapanch from amongst themselves and allow time for one hour to receive nominations in Form No.4. The election of the Naib Sarapanch shall be completed following other requirements therein through Rules-76(d), (e), (f), (g) & (h). In the case at hand, firstly for presence of majority of Members, there should have been commencement of proceeding through Rule-76(c) and for there is no second attempt for such election taking place and failed, in no circumstance, scope of nomination comes in.

10. Considering the rival contentions of the Parties, this Court finds, for the clear material filed in W.P.(C) No.15170/2022 at Pages-26 & 27, Pages-20 & 21 of W.P.(C) No.16825/2022 and Pages-11 & 12 of W.P.(C) No.16833/2022, absence of the nominated Ward Members is clearly

visible. For the legal provision through Section 14 of the Act upon Sarapanch election being over and followed with publication of election of Sarapanch, Section 15 of the Act indicates names of Members elected in General Election; the provision clearly shows that there should be undertaking of exercise of electing the Naib Sarapanch from amongst the Ward Members. It is obvious, on a meeting being called for election of Naib Sarapanch, the Notification under Section 15 of the Act will bear only the elected Members and Sarapanch and this strength will be ultimately showing the voters available for the purpose of Naib Sarapanch, consequently determining the Quorum and majority automatically. Since non-availability of Ward Members cannot be taken into account, there is knowingly no inclusion of such vacant Member for the purpose of majority and State cannot adopt a short circuit method in an action de horse the statutory provision to incorporate such necessity by way of executive instruction. In the circumstance, majority of the Members attending such meeting should be the voice of the elected Panchayat existing on the relevant date. It is here observed, in spite of presence of the majority of Members, as herein, observed, in W.P.(C) No.15170/2022, ten Members including Sarapanch out of nineteen of total Members available in W.P.(C) No.16825/2022, even though 11+1 all total but one since falls vacant, its strength available for the purpose

reduced to 11 including Sarapanch, six Members were present, definitely there is crossing of majority. Similarly, in W.P.(C) No.16833/2022 even though it appears, in a body of 13+1, as the Panchayat having total of fourteen Members and one remaining vacant reducing the strength available to thirteen and there is appearance of seven Members including Sarapanch clearly showing majority of the Members available to proceed to elect their Naib Sarapanch. This Court finds, since the situation in the meeting in respect of all the three Panchayats cleared the stage at Section 14(2) of the Act following the provision at Rule-76(b) of the Rules, the Presiding Officer ought to have given nod for election of Naib Sarapanch. This Court here finds, the Election Officer instead of getting the choice of the majority of Members present by further proceeding to get their choice proceeded in issuing nominated candidates runs not only contrary to the wish of the majority of Members in the elected Panchayat but also an action in absence of any reasonable cause in deferment of the proceeding in spite of majority of the Members available, further in derogation of the power provided under the Act at Section 14 as well as Rule 76 of the Rules involving election of Naib Sarapanch.

Considering the rival contentions of the Parties and as much stress has been given by the learned State Counsel on the Notification, vide Annexure-E/5, this Court proceeds here to consider the effect of the

Notification dated 7.3.2012 (Annexure-E/5) vis-à-vis the provisions in the statute to find the Notification issued and referred if in terms of the provision or in contravention of the provision taken note herein above. This Court here taking into consideration the provisions at Section 15 of the Act finds, this provision enables to bring out a publication of result of election of persons elected or nominated as Sarapanch and this publication has a bigger role to play on conducting election of Naib Sarapanch under Section 14 of the Act, the only meaning comes there is the participants in such meeting as the Members as per Notification under Section 15 and Quorum and majority automatically follows. Thus issuing circulars of instruction also to include the vacant position also at this stage contrary to the statutory position both at Sections-14 & 15 of the Act and such instruction since remains contrary to the above provisions becomes redundant and unworkable. This Court thus rejects the State Counsel's stand involving the instruction Memo, vide Annexure-E/4 and E/5.

11. In the circumstance, this Court finds, the impugned orders dated 24.5.2022 (Annexure-6), 24.6.2022 (Annexure-4) and 2.7.2022 (Annexure-3) involving W.P.(C) Nos.15170/2022, W.P.(C) No.16825/2022 & W.P.(C) No.16833/2022 respectively are not sustainable in the eye of law.

12. In the circumstance and for the reasoning herein above, this Court interfering with the aforesaid impugned orders at Annexure-6, 4 & 3 in W.P.(C) Nos.15170/2022, W.P.(C) No.16825/2022 & W.P.(C) No.16833/2022 respectively sets aside the same and directs the Election Officer concerned to re-commence the meeting from the stage of presence of the Ward Members on 11.3.2022 in the so called first meeting of each of the above Gram Panchayat and to proceed in the matter of election of Naib Sarapanch of the Gram Panchayat involved herein from the stage it was left in the first meeting of the Panchayat and to re-commence the proceeding strictly in terms of Rule-76(1)(c) of the Rules, dependent on the proceeding outcome to bring out a Notification indicating the election of particular Members as Naib Sarapanch, as required under Section 15 of the Act. The entire work should be completed within a period of fifteen days from the date of this judgment.

13. The Writ Petitions succeed. No cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 3rd November, 2022/MKR, A.R.-cum-Sr.Secy.