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ORISSA HIGH COURT : CUTTACK

I.A. No.68 of 2024

(Arising out of ELPET No.11 of 2024)

An application under Order VII, Rule 11 of the CPC, 1908 read with Order VI, Rule 16 thereof and Section 87 of the Representation of the People Act, 1951.

* * *

Gorachand Mangaraj

...

Election Petitioner.

-VERSUS-

Ananta Narayan Jena

...

Respondent.

Counsel appeared for the parties:

For the Election Petitioner : Mr. B. Mishra, Sr. Advocate &
Mr. T.K. Biswal, Advocate.

For the Respondent : Mr. S.K. Dash, Sr. Advocate &
Mr. Prabin Das, Advocate.

P R E S E N T:

**HONOURABLE
MR. JUSTICE ANANDA CHANDRA BEHERA**

Date of Hearing: 15.04.2025 :: Date of Order : 16.05.2025



ORDER

ANANDA CHANDRA BEHERA, J.—

This Interlocutory Application under Order VII, Rule 11 of the CPC, 1908 read with Order VI, Rule 16 thereof and Section 87 of the Representation of the People Act, 1951 has been filed by the returned candidate of the 112-Bhubaneswar Central (Madhya) Assembly Constituency i.e. (respondent in Election Petition No.11 of 2024) against Gorachand Mangaraj, (Election Petitioner in Election Petition No.11 of 2024) praying for rejection/dismissal of the Election Petition No.11 of 2024 filed by the Election Petitioner as per Sub-Section (1) of Section 86 of the Representation of the People Act, 1951 (in short the R.P. Act) only for non-compliance of the provisions of Sub-Section (3) of Section 81 of the R.P. Act, 1951, as he (Election Petitioner) has not furnished the documents (those documents have been relied by the Election Petitioner indicating under the heading i.e. *List of documents relied upon* in the Election Petition No.11 of 2024 after its prayer portion) to the respondent along with the copies of the Election Petition.

2. It is the case of the respondent in this I.A. No.68 of 2024 that, after the prayer portion in the Election Petition No.11 of 2024, the Election Petitioner has given a list of documents relied by him to substantiate his prayers made in his Election Petition against the respondent (Ananta Narayan Jena).



In order to have a clarity about the list of documents relied by the Election Petitioner in Election Petition No.11 of 2024, I thought it proper to place the same on record for the just decision of this Interlocutory Application and the said list of documents are as follow:-

“List of Documents relied upon

- 1. All nomination papers in Form-2B along with all the accompanying documents including all the Affidavits in Form-26 of the sole respondent Ananta Narayan Jena (BJD) and Prakash Chandra Jena (INC) presented before the Returning Officer of 112-Bhubaneswar Central (Madhya) Assembly Constituency in the last General Assembly Election, 2024.*
- 2. All the original Form 17-C Part-I, Form 17 C Part-II with respect to all the 200 nos. of Polling Stations, Form-20, Form-21E with respect to 112-Bhubaneswar Central (Madhya) Assembly Constituency prepared/notified in the last General Assembly Election, 2024.*
- 3. Such other documents as would be found necessary as per Rule-10, Chapter-XXXVII under the heading ‘Election Cases’ of Orissa High Court Rules and/or during trial of the case.”*



3. It is also the case of the respondent in the I.A. No.68 of 2024 that, though, the Election Petitioner has referred the above documents in his Election Petition No.11 of 2024 as the foundation of the case against him (respondent), but the contents of the said documents have not been reproduced in the Election Petition, for which, the said documents relied by the Election Petitioner-Gorachand Mangaraj are the integral part of the Election Petition. Therefore, the copies thereof were required to be supplied by the Election Petitioner to the Respondent along with the copies of the Election Petition as per the provisions of law envisaged in Sub-Section (3) of Section 81 of the Representation of the People Act, 1951, but the Election Petitioner has not provided copy of any of the above documents relied by him under the above heading i.e. “*list of documents relied upon*” to the respondent.

When the Election Petitioner has not supplied/provided copy of any of the above documents relied by him with the notices of the Election Petition in Election Petition No.11 of 2024 to the respondent-Ananta Narayan Jena, for which, there is total non-compliance of the mandatory provisions of Sub-Section (3) of Section 81 of the R.P. Act, 1951 by the Election Petitioner and for non-compliance of such mandatory provisions of law by the Election Petitioner, the Election Petition No.11 of 2024 of the Election Petitioner-Gorachand



Mangaraj is liable to be rejected/dismissed as per Sub-Section (1) of Section 86 of the R.P. Act, 1951.

4. The Election Petitioner has vehemently objected to the above prayer of the respondent-Ananta Narayan Jena made in I.A. No.68 of 2024 stating in his objection that, he (Election Petitioner-Gorachand Mangaraj) is one elector (voter) of 112-Bhubaneswar Central (Madhya) Assembly Constituency. He has specifically indicated the contents of all the documents relied by him in his Election Petition No.11 of 2024 at Page No.70 after its prayer portion under the heading i.e. *List of documents relied upon*, for which, the said documents cannot be treated as the integral part of his Election Petition. So, there is no requirement under law to provide the copies of the said documents to the respondent along with the copies of the Election Petition, because, the said documents are not the integral part of the Election Petition. For which, it is not a case of non-compliance of the provisions of Sub-Section (3) of Section 81 of the R.P. Act, 1951 by the Election Petitioner. Therefore, the Election Petition No.11 of 2024 filed by the Election Petitioner cannot be dismissed as per Sub-Section (1) of Section 86 of the R.P. Act.

The copies of the Election Petition containing the contents of the documents relied upon in the Election Petition by the Election Petitioner have already been served upon the Respondent as per law along with the notices of



the Election Petition in both the ways i.e. through Registered Post as well as through Process of the Court, for which, the Election Petition No.11 of 2024 filed by the Election Petitioner does not fall under the trappings of Sub-Section (1) of Section 86 of the R.P. Act, 1951 for its dismissal summarily as per Section 86(1) of the R.P. Act, 1951 on the ground of non-compliance of the provisions of Sub-Section (3) of Section 81 of the R.P. Act, 1951.

That apart, the respondent of the Election Petition No.11 of 2024 has neither pleaded in the I.A., nor in his written statement that, he has been prejudiced to set up his defence for non-furnishing the copies of the documents relied by the Election Petitioner. The documents, those have been referred to in the Election Petition by the Election Petitioner and the contents of which have been reflected/indicated in the body of the Election Petition are the public documents and the same are available under the public domain i.e. in the Website of the Election Commission of India and the said documents have been supplied to the pooling agents/counting agents/election agents of the respondent at the end of the pooling of votes and during the course of counting of votes. In addition to that, the respondent of the Election Petition No.11 of 2024 has not stated anything in the Interlocutory Application or in his written statement about the non-availability of the said documents with him. As such, the documents referred to in the Election Petition by the Election Petitioner are neither out of



reach of the respondent nor there is any averment to show on behalf of the respondent that, the said documents have not been supplied to him by the authorities of election either personally or through his Pooling Agents/Counting Agents or Election Agents.

Therefore, the Election Petition No.11 of 2024 filed by the Election Petitioner-Gorachand Mangaraj can never be rejected/dismissed as per Sub-Section (1) of Section 86 of the R.P. Act, 1951 on the ground of non-compliance of the provisions of Sub-Section (3) of Section 81 of the R.P. Act, 1951, as there is no material on behalf of the respondent to show about the non-compliance of the provisions of Sub-Section (3) of Section 81 of the R.P. Act, 1951 by the Election Petitioner.

5. I have already heard from the learned Sr. Counsel for the Respondent of the Election Petition No.11 of 2024 and learned Sr. Counsel for the Election Petitioner of the said Election Petition No.11 of 2024.

6. In support of the prayer made by the respondent of Election Petition No.11 of 2024 for rejection/dismissal of Election Petition No.11 of 2024, his learned counsel relied upon the following decisions:

i. U.S. Sashidharan Vs. K. Karunakaran:(1989) 4 Supreme Courts Cases 482.

ii. Mithilesh Kumar Pandey Vs. Baidyanath Yadav & Others:(1984) 2 Supreme Courts Cases 1.



iii. Mulayam Singh Yadav Vs. Dharampal Yadav & Others: AIR 2001 SC 2465.

iv. Jyoti Basu & Others Vs. Debi Ghosal & Others: AIR 1982 (SC) 983.

v. Order dated 11.03.2025 in I.A. No.13/2025 arising out of ELPET No.3/2024 of this Hon'ble Court.

7. In order to defeat/nullify the petition for rejection of the Election Petition filed by the respondent, the learned Sr. Counsel for the Election Petitioner relied upon the following decisions:

i. Ajay Maken Vs. Adesh Kumar Gupta & Another: (2013) 3 Supreme Courts Cases 489.

ii. Orissa High Court Order dated 20.06.2022 passed in I.A. No.20 of 2019 arising out of ELPET No.06 of 2019.

iii. SahIodrabai Rai Vs. Ram Singh Aharwar: AIR 1968 SC 1079.

8. As per the provisions of law envisaged in Sections 80 & 83 of the R.P Act, 1951, an Election Petition shall contain only the concise statements of the material facts, on which, the election petitioner relies. The documents/annexures relied by the Election Petitioner in his/her Election Petition, whose contents are not described/reflected in the body of the Election Petition, the said documents would become the integral part of the Election Petition, but when, the contents of the documents/annexures, on which, the Election Petitioner relies in his/her Election Petition are described/reflected in the body of the Election Petition, the said documents/annexures shall not be the integral part of the Election Petition.



On this aspect, the propositions of law has already been clarified by the Apex Court in the ratio of the following decisions:

- i. In a case between **Ramesh Rout Vs. Rabindra Nath Rout** reported in **2012 (I) OLR (SC) 130** that, an Election Petition shall contain a concise statement of the material facts on which the Election Petitioner relies. **(Para No.52)**
- ii. In a case between **AshrAf Kokkur vs. K.V. Abdul Khader, Etc.** at Para Nos.14 & 16 reported in **2014 (4) Civil Law Times Page-81 (SC)** that, as per Section 83 of the R.P. Act, 1951, Election Petition need contain only concise statement of material facts and not material particulars. Schedule or Annexure which is merely an evidence in case and included only for sake of adding strength to petitioner, does not form integral part of Election Petition.
- iii. In a case between **Ajay Maken Vs. Adesh Kumar Gupta & Another** reported in **116 (2013) CLT (SC) 130** that, an annexure to an election petition, whose content is not fully described in the body of the main petition, would become the integral part of the election petition.

9. Here in this Election Petition at hand vide Election Petition No.11 of 2024 filed by the Election Petitioner, he (Election Petitioner) has specifically described/indicated the contents of the documents relied by him in Para Nos.5,7,8,9,11,12, 14 & 15 of his Election Petition.

For which, in view of the propositions of law clarified by the Apex Court in the ratio of the aforesaid decisions, the documents relied upon in the Election Petition No.11 of 2024 by the Election Petitioner are not the integral part of his



Election Petition. Therefore, as per law, the respondent of the Election Petition No.11 of 2024 is not entitled to get the copies of the documents relied by the election petitioner in his Election Petition along with the copies of the Election Petition. Because, in the copies of the election petitions (those have been served upon the respondent along with the notices of the Election Petition), the contents of all the documents relied by the Election Petitioner have been indicated/reflected.

10. It is the settled propositions of law that, an Election Petition under the R.P. Act, 1951 cannot be thrown out at its initial stage as per Section 86(1) of the R.P. Act, 1951 only for non-compliance of the provisions of Section 81(3) of the said Act.

It has been envisaged in Section 81 (3) of the R.P. Act, 1951 that,

“every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

The purpose and object of the provisions of Section 81 (3) of the R.P. Act, 1951 is to put the returned candidate on notice of various allegations alleged against him in order to enable him to defend himself effectively in the Election Petition and this is a stipulation flowing from requirement of one of the basic postulates of the principles of natural justice.



11. When the contents of the documents relied upon in the Election Petition by the election petitioner has been specifically indicated/reflected in Para Nos.5,7,8,9,11,12, 14 & 15 of his Election Petition No.11 of 2024, then, as per law, the said documents have not become the integral part of the Election Petition of the Election Petitioner. For which, non-supply of the copies of the said documents (the contents of which, have been described in the body of the Election Petition by the Election Petitioner) to the respondent along with the Election Petition shall not entail for dismissal of the Election Petition filed by the Election Petitioner at the threshold on such ground.

On this aspect the propositions of law has already been clarified by the Apex Court in the ratio of the following decisions:

- i. In a case between **Ajay Maken Vs. Adesh Kumar Gupta & Another** reported in (2013) 3 SCC 489 that, the purpose of the stipulation under Section 81(3) of the R.P. Act, 1951 is to put returned candidate on notice of various allegations made against him in order to enable him to defend himself effectively in the Election Petition. This is a stipulation flowing from requirement of one of the basic postulates of the principles of natural justice.
- ii. In a case between **Sardar Harcharan Singh Brar vs Sukh Darshan Singh & Ors.** reported in AIR 2005 SC 22 that, if the Court feels that the particulars as given in the Election Petition are deficient in any manner, the petitioner can be directed to supply the particulars and make the deficiency good. In any case, deficiency in particulars could not have been a ground for dismissing the Election Petition at the threshold.
- iii. In a case between **Kimneo Haokip Hangshing Vs. Kenn Raikhan & Others** reported in 2024 (4) Civ.C.C. 302 that, an



Election Petition should not be rejected at the very threshold where there is a “substantial compliance” of the provisions.(**Para No.7**)

12. As per the discussions and observations made above, when it is held that, the documents relied upon by the Election Petitioner in his Election Petition No.11 of 2024 are not the integral part of his Election Petition, as the contents of the said documents have been indicated/reflected in Para Nos.5,7,8,9,11,12, 14 & 15 of that Election Petition and when there is no material in the record on behalf of the respondent of the Election Petition No.11 of 2024 to show about the total non-compliance of the provisions of Section 81 (3) of the R.P. Act, 1951 by the Election Petitioner and when the respondent has already taken his defence in his written statement after being fully aware about the contents of the said documents relied upon in the Election Petition by the Election Petitioner and when the respondent of the Election Petition has his full knowledge about the contents of the documents relied by the Election Petitioner and when the documents relied in the Election Petition by the Election Petitioner are available under the public domain having its easy access to the same including the respondent, then, at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions indicated in Para Nos.8 & 11 of this Judgment, the Election Petition vide ELPET No.11 of 2024 filed by the Election



Petitioner (Gorachand Mangaraj) can never be rejected/dismissed as per Sub-Section (1) of Section 86 of the R.P. Act, 1951.

For which, the decisions relied on behalf of the respondent of the Election Petition No.11 of 2024 indicated in Para No.6 of this Judgment have become inapplicable to the Interlocutory Application filed by him (respondent) on facts and law as discussed above.

Therefore, there is no merit in this I.A. filed by the respondent of the Election Petition No.11 of 2024. For which, this I.A. filed by the respondent in Election Petition No.11 of 2024 is liable to be dismissed.

13. In result, this I.A. filed by the respondent of the Election Petition No.11 of 2024 i.e. Ananta Narayan Jena is dismissed on contest against the Election Petitioner-Gorachand Mangaraj.

14. Accordingly, the I.A. is disposed of finally.

**(ANANDA CHANDRA BEHERA)
JUDGE**

*High Court of Orissa, Cuttack
The 16.05.2025// Rati Ranjan Nayak
Sr. Stenographer*

Signature Not Verified

Digitally Signed
Signed by: RATI RANJAN NAYAK
Reason: Authentication
Location: High Court of Orissa, Cuttack, India.
Date: 17-May-2025 18:23:05

