

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 6525 OF 2010

MINASINGH MAJHI . . . APPELLANT(S)

VERSUS

THE COLLECTOR, NUAPADA & ANR ETC. . . RESPONDENT(S)

O R D E R

1. We have heard the learned counsels for the parties and perused the relevant material.

2. The challenge in the present appeal is to an order of the High Court of Orissa by which the appellant an elected Sarpanch has been disqualified on the ground that after he had become a Sarpanch, he had begotten a third child which attracts disqualification under Section 25(1)(v) read with sub-Section (2) of the Orissa Gram Panchayats Act, 1965 (for short, 'the Orissa Act').

3. The provisions contained in Section 25(1)(v) and (2) are set out hereunder for a clear understanding of the issues arising in the case.

"Disqualification for membership of Grama Panchayat. - (1) A person shall be disqualified for being elected or nominated as, a Sarpanch or any other member of the Grama Panchayat constituted under this Act, if he-

(a) to (u) xxx xxx xxx

(v) has more than two children :

Provided that the disqualification under Clause (v) shall not apply to any person who has more than two children on the date of commencement of the Orissa Grama Panchayats (Amendment) Act, 1994 or, as the case may be, within a period of one year of such commencement, unless he begets an additional child after the said period of one year.

(2) A Sarpanch or any other member of a Grama Panchayat shall be disqualified to continue and shall cease to be a member if he-

(a) incurs any of the disqualifications specified in Clauses (a) to (j) [Clauses (m) to (p) and Clauses (t) to (v)] of Sub-section (1) ; or

(b) has failed to attend three consecutive ordinary meetings held during a period of four months commencing with effect from the date of the last meeting which he has failed to attend ; or

(c) being a legal practitioner appears or acts as such against the Grama Sasan ; or

(d) Being a member of a Co-operative Society has failed to pay any arrears of any kind accrued due by him to such society within six months after a notice in this behalf has been served upon him by the society."

4. The facts need not detain the Court. The appellant had two children born to him on 06.09.1995 and 12.10.1998 respectively. He had

filed his nomination and was elected in February, 2002. A third child was born to the appellant on 03.08.2002. The first child was given in adoption way back on 10.09.1999. The contention, therefore, is that the first child having been given in adoption, by virtue of provisions of Section 12 of the Hindu Adoptions and Maintenance Act, 1956, (for short, 'the 1956 Act'), the said child ceased to be a member of the appellant's family and had become a member of the family of the adoptive parents. It is accordingly contended that though the appellant was the biological father of three children in reality he is the father of two and therefore there is no infringement of the provisions of the Orissa Act so as to attract any disqualification.

5. We are unable to agree with the contentions advanced by the learned counsel for the appellant.

6. Reading the provisions of Section 25(1) (v) and (2) of the Orissa Act, we are left with no doubt that the legislative intent is to restrict the number of children that a prospective elected member of the Gram Panchayat should have. The

legislative emphasis is on the number of children that a prospective elected member has given birth to and not whether under provisions of different statutes in force, including the Hindu Adoptions and Maintenance Act, 1956, children born to such a person can be excluded from the family of the prospective elected member.

7. We may also take note of the contention advanced by the learned counsel for the appellant in the light of the provisions contained in Section 2(2) of the 1956 Act, which makes the provisions of the said Act inapplicable to the Members of the Scheduled Tribes to which category the appellant belongs. There has been no challenge to the provisions of Section 2(2) of the 1956 Act before the High Court or even before this Court. We will, therefore, proceed on the basis that the provisions of 1956 Act do not apply to the case of the appellant in which event the contention advanced that the adopted child, under the Act, had ceased to be a member of the appellant's family having become a member of the Family of the adoptive parents, will have no legs to stand.

8. On the basis of the twin findings recorded by us, we can find no fault with the view taken by the High Court in the order under challenge.

9. The appeal, therefore, has to fail. It is accordingly dismissed.

10. No costs.

.....,CJI.
(RANJAN GOGOI)

.....,J.
(SANJAY KISHAN KAUL)

.....,J.
(K.M. JOSEPH)

NEW DELHI
OCTOBER 24, 2018

ITEM NO.101

COURT NO.1

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6525/2010

MINASINGH MAJHI

Appellant(s)

VERSUS

THE COLLECTOR, NUAPADA & ANR ETC.

Respondent(s)

Date : 24-10-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPHFor Appellant(s) Mr. Puneet Jain, adv.
Mr. Abhinav Gupta, Adv.
Mr. Harsh Jain, Adv.
Ms. Pratibha Jain, AORFor Respondent(s) Mr. Sibor Sankar Mishra, AOR
Mr. Radha Shyam Jena, AORUPON hearing the counsel the Court made the following
O R D E RThe appeal is dismissed in terms of the
signed order.Consequently, pending application(s), if
any, shall stand disposed of.(NEETU KHAJURIA)
COURT MASTER(ASHA SONI)
ASSISTANT REGISTRAR

(Signed order is placed on the file.)