



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 30558 of 2024

(An Application under Articles 226 & 227 of the Constitution of India)

Mona Keshri

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Petitioner

-Versus-

**Election Officer, Panposh
Regulated Market Committee
-cum-Sub-Collector, Panposh
cum-Chairmen, R.M.C., Panposh
and Another**

....

Opposite Parties

For Petitioner : Mr. P.K.Jena, Advocate,

For Opp. Party : Mr. S.N.Pattnaik, AGA

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

22nd August, 2025

SASHIKANTA MISHRA, J.

This writ application involves interpretation of the provision under sub-Rule (7) of Rule-3 of Odisha Agricultural Produce Markets Rules, 1958 (for short OAPM Rules), invoking which the nomination paper of the petitioner in the election of members of Panposh



Regulated Market Committee (RMC) was rejected by the Election Officer.

2. Facts

Bereft of unnecessary details, the facts of the case are that the petitioner is an elected ward member of Biramitrapur Municipality. By Notification dated 12.09.2024, the Election Officer-cum-Sub-Collector, Panposh notified the dates of election of members to Panposh RMC. The petitioner submitted her nomination paper on the date fixed. At the time of scrutiny on 23.10.2024, the Election Officer rejected the nomination paper of the petitioner on the ground that her husband Bijay Bhengara is an employee of Panposh RMC for which she is disqualified as per the Rule 3 (7) of the OAPM Rules.

3. Case of the Petitioner

According to the petitioner, such rejection of her nomination is entirely illegal as Sub-Rule (7) of Rule-3 does not apply to her because she has her own income



from a Women's Self-help Group whereas her husband was appointed on contractual basis by the secretary of Panposh, RMC on daily wage basis and is not a regular employee. Further, her husband was subsequently engaged to work against the post of market guard which has not yet been approved though the Secretary, Panposh, RMC has recommended for the same. The result of election was declared on 12.11.2024 and because of rejection of the petitioner's nomination paper no nominated member could be a part of the RMC. It is stated in addition that the petitioner gets allowance of Rs. 1,000/- from the Municipality as a Councilor and being the only daughter of her parents besides a brother, she resides in the house of her parents at Biramitrapur and runs a grocery shop earning about Rs. 6,000/- per month. According to the petitioner, the Election Officer has misinterpreted the provision under Rule 3(7) of the Rules.

4. Stand of the State Opposite Parties



The stand of the Opposite Parties is that the petitioner's husband Bijay Bhengara was appointed as Market Guard vide order dated 04.10.2018 under Rehabilitation Assistance Scheme with approval of the OAPM Board. The election Officer has acted strictly within the rules to reject the nomination of the petitioner. Since her husband works for the Market Committee, it must be held that she indirectly benefits from such employment and therefore, Rule 3 (7) applies.

5. Submissions:

Heard Mr. P.K.Jena, learned counsel for the petitioner and Mr. S.N.Pattnaik, learned AGA for the State.

6. Mr. Jena would argue that the Election-Officer has completely misinterpreted the relevant statutory provision inasmuch as the petitioner's husband is admittedly not a regular employee but engaged on daily wage basis with his engagement yet to be approved. He further submits that no opportunity of hearing was accorded by the election officer to the petitioner before rejecting her nomination paper. Had such opportunity



been given, the petitioner could have demonstrated the fact that she has her own independent source of income and that she does not depend on her husband's income in any manner. The Election Officer has however drawn adverse inference and acted on presumption.

7. Mr. Pattnaik, learned AGA on the other hand, would submit that the disqualification clause is clear and unambiguous. It does not make any distinction between regular or temporary employees. Since it is a fact that the petitioner's husband is working under the RMC though on daily wage basis, the same would operate as a bar for her to be elected as a member of the RMC. The election Officer has duly considered the relevant facts and rightly rejected the nomination paper.

8. Analysis and Findings:

The facts are not disputed inasmuch as the petitioner is an elected Ward Member of Biramitrapur Municipality and was recommended as a nominated member of RMC, Panposh. It has not been disputed that her husband was initially appointed on contractual basis by the Secretary



Panposh, R.M.C. on 20.03.2015 on daily wage basis and subsequently against the post of Market Guard under Rehabilitation Assistance Scheme. His appointment has not yet been approved. The appointment order dated 04.10.2018 shows that the petitioner's husband was engaged as Market Guard in R.M.C, Panposh on consolidated monthly remuneration of Rs. 8070/- under the Rehabilitation Assistance Scheme on contractual basis. Turning to the relevant Rule i.e., Rule 3 of OAPM Rules it is seen that the same relates to disqualification of membership for being chosen a member of a market committee. Sub-Rule Rule 7 reads as follows:

*["(7) if he has directly or indirectly any share or interest in any contract or employment with , or on behalf of, or under the Market Committee :
Provided that a person shall not be chosen as a member representing the traders' constituency if he does not ordinarily reside within 10 miles of the market yard and it he has not been registered under Rule 60. Explanation - For the purpose of this rule a person shall be deemed to be ordinarily residing within 10 miles of the market yard, if he resides in such yard for not less than 180 days in a calendar year."]*

Now the question is, whether the above rule applies to the petitioner. According to the State, the employment of the petitioner's husband attracts the mischief of the rule.



On a plain reading of the rules, this Court is inclined to accept such view. To amplify, the rule provides that if a person directly or indirectly has any share or interest in any contract 'or employment' under the market committee, he shall be disqualified. Though the word 'directly' or the words 'share' and 'interest in any contract' would have no application but the words 'indirectly' and 'employment' and 'under the market committee' would be highly relevant and apply to the facts of the case. The petitioner's husband being employed under the Market Committee the same obviously enures to the benefit of the petitioner albeit indirectly.

9. It has been next argued that the rule would apply only in case of regular employment but not contractual employment like that of the petitioner's husband. This Court is unable to accept the argument for the reason that the word 'employment' occurring in Sub-Rule 7 is not qualified in any manner whatsoever. Per force, the plain and ordinary dictionary meaning of the word



‘employment’ is to be considered. Considered thus, the word ‘employment’ would take within its ambit every kind of employment, permanent and temporary etc. In the case of **UPSC v. Dr. Jamuna Kurup**, (2008) 11 SCC 10, the Supreme Court observed as follows:

“14. The term ‘employee’ is not defined in the Delhi Municipal Corporation Act, 1957, nor is it defined in the advertisement of UPSC. The ordinary meaning of “employment” is any person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word “employee” would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD, whether permanent or contractual will be ‘employees of MCD’”

In an almost similar case, this Court in the case of **Malati Sahu vrs. State of Odisha** relied upon the judgment in **Jamuna Kurup** (supra) and held that even if a person is not holding a civil post, he is to be treated as employee of the department as long as his engagement subsists.

10. It has been also argued that no opportunity of hearing was granted to the petitioner by the Election Officer before rejecting her nomination paper. Without entering into the controversy as to whether any such opportunity was granted or not, this Court would rather rely upon the Doctrine of Empty Formality in the facts of the case. To amplify, had an opportunity been given, the



petitioner obviously could not have denied the fact that her husband was working as Market Guard under the RMC, Panposh. In fact, she has admitted the same before this Court in the present writ application. At the most she would have stated that she does not depend on her husband's income but then, even if such a plea had been taken, it would have not cut much ice as there is nothing in the rules to serve as an exception to the disqualification clause under Sub-Rule 7.

11. For the foregoing reasons therefore, this Court finds no reason to interfere with the impugned order of rejection of the petitioner's nomination paper. Resultantly, the writ application is found to be devoid of merit and is therefore, dismissed.

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Sashikanta Mishra,
Judge

Deepak