



whereby the High Court dismissed both the writ petitions and upheld the order of the Court of the learned 1<sup>st</sup> Additional District Judge, Puri<sup>4</sup>, disqualifying the respondent-turned candidate from the post of Panchayat Samiti Member, Harirajpur Gram Panchayat as well as of Chairman of the Delang Panchayat Samiti and directing re-election for the said post.

### **I. BRIEF FACTS**

**3.** Briefly stated, facts relevant and essential for the disposal of the appeal are as below.

**4.** The appellant-election petitioner and the respondent-turned candidate contested the elections for the post of Panchayat Samiti Member, Delang Kothabad Gram Panchayat, and Harirajpur Gram Panchayat, respectively, in the year 2022. Both were duly elected as members from their respective constituencies.

**5.** Pursuant to being elected as members of Panchayat Samitis, both the appellant-election petitioner and the respondent-turned candidate contested the election for the post of Chairman of the

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<sup>4</sup> Hereinafter, referred to as the “Election Appellate Tribunal”.

Delang Panchayat Samiti. It is important to note here that the appellant-election petitioner and the respondent-turned candidate were the only two contestants for the post of Chairman. The respondent-turned candidate was declared elected, whereas the appellant-election petitioner lost the election for the post of Chairman.

**6.** The appellant-election petitioner instituted Election Misc. Case No. 01 of 2022 before the learned Civil Judge (Senior Division), Pipili<sup>5</sup> challenging the election of respondent-turned candidate as the Panchayat Samiti Member, Harirajpur Gram Panchayat and Chairman of the Delang Panchayat Samiti, on the ground that she was disqualified from contesting the said election, as she had given birth to a third child after the cut-off date and hence, she was barred from contesting the election to the post of Panchayat Samiti Member, Harirajpur Gram Panchayat in view of the embargo contained in Section 45(1)(v) of the Orissa Panchayat Samiti Act, 1959<sup>6</sup>.

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<sup>5</sup> Hereinafter, referred to as the “Election Tribunal”.

<sup>6</sup> Hereinafter, referred to as the “1959 Act”.

**7.** In the proceedings before the Election Tribunal, the appellant-election petitioner examined herself as PW-1, and two more witnesses were examined in support of her case. Ten documents were produced and exhibited in order to substantiate the plea that the respondent-turned candidate stood disqualified on the ground of having a third child born to her after the cut-off date. The respondent-turned candidate, despite being afforded ample opportunities, neither cross-examined the appellant-election petitioner and her witnesses, nor did she lead any evidence in her own defense. Consequently, the evidence of the appellant-election petitioner remained uncontroverted.

**8.** The election petition was allowed by the Election Tribunal, declaring the election of the respondent-turned candidate as Panchayat Samiti Member, Harirajpur Gram Panchayat to be invalid and as a consequence, her election to the post of Chairman of the Delang Panchayat Samiti was also declared to be void.

**9.** The Election Tribunal also passed a consequential order in favour of the appellant-election petitioner and declared her to be the

Chairman of the Delang Panchayat Samiti, being the candidate who secured next highest number of votes. The competent authority was accordingly directed to fill up the post of the Chairman of the Delang Panchayat Samiti by appointing the appellant-election petitioner to the said post.

**10.** Being aggrieved, the respondent-turned candidate preferred Election Appeal No.10/3 of 2024 before the Election Appellate Tribunal. The said appeal was disposed of by upholding the declaration of the Election Tribunal that the election of the respondent-turned candidate as Panchayat Samiti Member of the Harirajpur Gram Panchayat was invalid. However, the consequential declaration made in favour of the appellant-election petitioner directing her appointment as the Chairman of the Delang Panchayat Samiti, was set aside. The Election Appellate Tribunal accordingly directed fresh election for the said post.

**11.** Aggrieved by the decision of the Election Appellate Tribunal, both the appellant-election petitioner and the respondent-turned candidate

filed writ petitions<sup>7</sup> before the High Court. The appellant-election petitioner challenged the direction for fresh election to the post of Chairman of the Delang Panchayat Samiti, whereas the respondent-returned candidate assailed the finding whereby she had been disqualified from holding the office of Panchayat Samiti Member, Harirajpur Gram Panchayat and that of Chairman of the Delang Panchayat Samiti. The High Court, by the impugned judgment, dismissed both the writ petitions and upheld the judgment of the Election Appellate Tribunal. Aggrieved thereby, both the appellant and the respondent are before this Court by way of separate special leave petitions.

## II. SUBMISSIONS ADVANCED

**12.** Shri Umakant Misra, learned counsel representing the appellant-election petitioner, urged that the plea taken by the respondent-returned candidate that she was not granted an opportunity to defend herself is wholly unfounded. He referred to the findings recorded in paragraph 12 of the High Court

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<sup>7</sup> W.P. (C) No. 5565 of 2025 (filed by appellant-election petitioner); W.P.(C) No. 5196 of 2025 (filed by respondent-returned candidate).

judgment, wherein reference has been made to the proceeding sheets of the Election Tribunal, and submitted that ample opportunities had been provided to the respondent-turned candidate to contest the case and to cross-examine the witnesses. However, she did not avail of such opportunities and her endeavour was aimed at delaying the disposal of the election petition.

**13.** He further submitted that the evidence of the appellant-election petitioner, examined as PW-1, was not completed on a single day but was deferred on several dates at the request of the respondent-turned candidate. However, when cross-examination was not conducted and the proceedings were sought to be lingered on, the cross-examination was closed by the Election Tribunal. The order closing cross-examination of the witnesses was never challenged thereafter and has thus attained finality. Similar was the situation for the other witnesses examined by the appellant-election petitioner. Thus, the case set up by the appellant-election petitioner seeking disqualification of the respondent-turned candidate on the ground of having a third child born to her after the cut-off date remained uncontroverted

leading to the inevitable consequence of voiding of respondent-returned candidate election as Panchayat Samiti Member, Harirajpur Gram Panchayat and consequently as Chairman of the Delang Panchayat Samiti.

**14.** Shri Misra further submitted that the Election Appellate Tribunal as well as the High Court fell into grave error in denying the consequential relief of appointment to the post of Chairman to the appellant-election petitioner. He urged that Section 45(1)(v) of the 1959 Act, which provides for disqualification on the ground of having more than two children, once attracted, renders the returned candidate statutorily disqualified from holding the office. It was urged that where a returned candidate suffers from such a statutory disqualification, the election petitioner is entitled as of right to seek setting aside of the election of the disqualified candidate along with consequential reliefs flowing therefrom. He further urged that the provisions of the 1959 Act, more particularly, Sections 44-E and 44-J aim to provide an effective and meaningful remedy in election disputes so as to avoid unnecessary elections where the outcome is effectively determinable on the

basis of the votes already polled. In the present case, only the appellant-election petitioner and the respondent-returned candidate contested the election for the post of Chairman. He thus contended that once the election of the respondent-returned candidate was set aside, the only permissible and natural consequence was to declare the appellant-election petitioner elected to the post of Chairman, as she had secured the next highest number of valid votes.

**15.** *Per contra*, Shri Kedar Nath Tripathy, learned counsel appearing for the respondent-returned candidate, vehemently and fervently contended that: (i) the Election Tribunal did not have jurisdiction to try the election petition filed by the appellant-election petitioner; and (ii) the respondent-returned candidate was not afforded adequate opportunity to contest the election petition and to adduce evidence in her defense.

**16.** He further submitted that, as a matter of fact, only one child was born to the respondent-returned candidate, whereas the other two children were born from her husband's first marriage and thus, she was

wrongly and unjustly declared disqualified from the posts.

### **III. ANALYSIS**

**17.** We have heard and considered the submissions advanced by the learned counsel for the parties and have gone through the impugned orders.

**18.** The issue of jurisdiction of the Election Tribunal was not seriously contested by the respondent-returned candidate on any valid legal ground and thus, the same does not merit consideration.

**19.** So far as the decision of the Election Tribunal, as affirmed by the Election Appellate Tribunal and the High Court, disqualifying the respondent-returned candidate is concerned, the same does not require any interference whatsoever, because manifestly, from the material available on record, it is clear that the respondent-returned candidate failed to cross-examine the appellant-election petitioner and her witnesses, despite ample opportunities having been granted to her.

**20.** It is apparent that, by avoiding cross-examination of the witnesses, the respondent-returned candidate was attempting to buy time and

defer the inevitable consequence *i.e.*, declaration of her election as Panchayat Samiti Member, Harirajpur Gram Panchayat, invalid on account of the disqualification contained in Section 45(1)(v) of the 1959 Act. The appellant-election petitioner having led clinching evidence (which remained uncontroverted) of facts necessary to prove such disqualification, the necessary consequence was the disqualification of the respondent-turned candidate. Hence, the three concurrent findings of the Election Tribunal, Election Appellate Tribunal, and the High Court on this aspect require no interference of this Court.

**21.** Insofar as the claim of the appellant-election petitioner for the post of Chairman is concerned, reference may be gainfully made to Sections 44-E and 44-J of the 1959 Act, which read as follows:

**“Section 44-E. Relief that may be claimed by the petitioner. –**

**A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate, has been duly elected.**

**Section 44-J. Decision of Civil Judge (Senior Division). –**

(1) If the Civil Judge (Senior Division), after making such enquiry, as he deems necessary, finds in respect of any person whose election is called in question by a petition that his election was valid, he shall dismiss the petition as against such person and may award costs at his discretion.

(2) If the Civil Judge (Senior Division) finds that the election of any person was invalid, it shall either-

(a) declare that a casual vacancy to have been created; or

**(b) declare another candidate to have been duly elected;**

whichever course appears, in the circumstances of the case to be more appropriate and in either case, may award costs at his discretion.

(3) In the event of the Civil Judge (Senior Division) declaring a casual vacancy to have been created, it shall direct the Collector of the district or such other authority prescribed in this behalf to take proceedings for filling the vacancy.

(4) All orders of the Civil Judge (Senior Division) shall, subject to any order passed in an appeal, if any, be final and conclusive.”

(Emphasis supplied)

**22.** A plain reading of Sections 44-E and 44-J of the 1959 Act makes it amply clear that the former provision permits the election petitioner to claim relief not only for having the election of the returned

candidate declared invalid, but also for declaring the election petitioner duly elected to the post. The latter provision, *i.e.*, Section 44-J(2)(b), confers jurisdiction upon the Civil Judge/Election Tribunal to declare any other candidate as duly elected in cases where the election of the originally returned candidate is found to be invalid.

**23.** Indisputably, in the present case, the appellant-election petitioner and the respondent-turned candidate were the only two contesting candidates for the post of Chairman of Delang Panchayat Samiti. With the disqualification of the respondent-turned candidate having been affirmed, no other contestant except the appellant-election petitioner remained in fray for the post of Chairman of the Delang Panchayat Samiti, as only the respondent-turned candidate and the appellant-election petitioner had contested the said election.

**24.** It is noteworthy that the elections were held way back in the year 2022. The process of adjudication of the election petition, the appeal and the writ petition consumed more than 3 years. Thus, in our opinion, if at this stage, the appellant-election petitioner is deprived of the fruits of her successful challenge to

the election of the respondent-returned candidate, by asking her to contest a fresh election, that would amount to a travesty of justice.

**25.** In this background, we are of the firm opinion that the declaration made by the Election Tribunal, to the effect that the appellant-election petitioner was duly elected as the Chairman of the Delang Panchayat Samiti and directing her appointment to the said post is just, legal and equitable. The Election Appellate Tribunal fell into clear error in reversing the said declaration on the premise that other members of the Delang Panchayat Samiti should be given an opportunity to contest for the post of Chairman. The High Court too, erred in affirming the judgment of the Election Appellate Tribunal to that extent.

**26.** At the cost of repetition, it may be noted that, for election to the post of Chairman of the Delang Panchayat Samiti, only the appellant-election petitioner and the respondent-returned candidate had contested and hence setting aside of the declaration issued by the Election Tribunal in favour of the appellant-election petitioner on the premise that an opportunity should be given to other

members of the Delang Panchayat Samiti, was wholly unwarranted and uncalled for.

#### **IV. CONCLUSION**

**27.** Consequently, the impugned judgment dated 3<sup>rd</sup> February, 2025 passed by the Election Appellate Tribunal, and the judgment dated 15<sup>th</sup> December, 2025 passed by the High Court, to the extent that the appellant-election petitioner has been deprived of the consequential declaratory relief of being elected as the Chairman of the Delang Panchayat Samiti, are hereby set aside.

**28.** Resultantly, the direction issued by the Election Appellate Tribunal declaring a casual vacancy for the post of Chairman of the Delang Panchayat Samiti is also set aside. The direction given by the Election Tribunal declaring the appellant-election petitioner elected to the post of Chairman of the Delang Panchayat Samiti is restored. Consequential steps for compliance be taken within two weeks from today.

**29.** The appeal is allowed accordingly. Cost made easy.

**30.** Pending application(s), if any, shall stand disposed of accordingly.

**SPECIAL LEAVE PETITION(CIVIL) NO(S). 3528 OF 2026**

**31.** In view of the findings recorded by us by allowing Civil Appeal @ SLP(Civil) No. 4129 of 2026, the special leave petition preferred by the petitioner herein fails and is hereby dismissed. Cost made easy.

**32.** Pending application(s), if any, shall stand disposed of.

.....**J.**  
**(VIKRAM NATH)**

..... **J.**  
**(SANDEEP MEHTA)**

**NEW DELHI;**  
**MARCH 10, 2026.**