



IN THE HIGH COURT OF ORISSA AT CUTTACK

ELPET No. 5 of 2024

(An application under Sections 80 to 84, 100 and 117 of the Representation of the People Act, 1951 read with the Rules of the High Court of Orissa, 1948)

AFR Brajamohan Pradhan Election Petitioner

-Versus-

Aswini Kumar Patra Respondent

Advocate(s) appeared in this case through hybrid mode:

For Election Petitioner : Mr. Manas Mohapatra, Sr. Adv.
with Mr. A.P Bose, S.K.
Mohapatra, S. Swain, S.K.
Routray, D. Sahoo, D.K. Sethy &
S. Satpathy, Advocates

For Respondent : Mr. Bidyadhar Mishra, Sr. Adv.
with Mr. T. Biswal, R.P. Panda,
P. Bharadwaj & B.S. Panigrahi,
Advocates

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
22nd May, 2026

SASHIKANTA MISHRA, J

This Election Petition is filed by Brajamohan Pradhan under Sections 80 to 84, 100 and 117 of the



Representation of the People Act, 1951 (for short, 'the Act') assailing the election of the sole respondent, Aswini Kumar Patra as Member of the Odisha Legislative Assembly from 35-Jaleswar Assembly Constituency, the result which was declared on 04.06.2024.

2. The election petitioner seeks a declaration that the election of the respondent is void and liable to be set aside and further prays for consequential directions for holding fresh election/re-poll in respect of the constituency. The exact relief claimed is reproduced below:

"It is prayed therefore, that this Hon'ble Court may graciously be pleased to pass the following order:

a) Let the election of Respondent Aswini Kumar Patra elected Member of Legislative Assembly of 35 Jaleswar Assembly Constituency of Odisha Legislative Assembly be declared void and be set aside.

b) Let a declaration be made that casual vacancy has been caused so far as it relates to 35 Jaleswar Assembly Constituency.

c) Let direction be issued to the appropriate authority to conduct the election with respect to the vacancy caused in respect of 35 Jaleswar Assembly Constituency.

d) Let the nomination paper along with the affidavit in form 26 and other accompanying documents including Form no.8 and 18 filed by the Respondent in respect of 35 Jaleswar Assembly Constituency in 2024 General Election be called from the possession of the Returning Officer.



e) *For cost.*

f) *For grant of any other relief/reliefs to which the election petitioner is entitled to under the provisions of law.*

And for this Act of kindness the petitioners as in duty bound shall ever pray.”

PLEADINGS

Election Petition

3. The case of the election petitioner, in brief, is that pursuant to the notification issued by the Election Commission of India for conduct of General Elections to the Odisha Legislative Assembly, 2024, election was held in respect of 35–Jaleswar Assembly Constituency on 01.06.2024. In the election, eight candidates, including the election petitioner and the respondent, contested. After completion of the polling process through EVM and postal ballots, counting of votes was done and the result was declared on 04.06.2024, whereby the respondent was declared elected having secured 83,105 votes, whereas the election petitioner secured 82,786 votes, the margin of difference being 319 votes.



It is the case of the election petitioner that the respondent appointed one Manas Jena as his election agent and also counting agent. Said Manas Jena, at the relevant point of time was functioning as the Chairman of Jaleswar Panchayat Samiti having been elected as such in the Panchayat Samiti elections held in the year 2022. It is stated that a person holding the office of Chairman of Panchayat Samiti is not permitted to act as an election agent, polling agent or counting agent of a candidate in view of the instructions, guidelines and handbooks issued by the Election Commission of India governing the conduct of elections. Despite such bar, the respondent deliberately appointed Manas Jena as his election agent and counting agent and such appointment was illegally accepted by the Returning Officer.

The election petitioner has further stated that the appointment of a person holding a public office as election agent is in violation of law as it amounts to non-compliance with the provisions of the Act, the Conduct of Election Rules, 1961 (for short 'the Rules') and the guidelines,



instructions and circulars issued by the Election Commission of India. It is stated that by reason of such appointment, the election process stood vitiated and the result of the election, in so far as it concerns the returned candidate has been materially affected.

Written Statement

4. The sole respondent, Aswini Kumar Patra on the other hand, filed written statement stating that the election petition is devoid of merit and does not disclose any valid cause of action. It is stated that appointment of Manas Jena as election agent and counting agent was made in accordance with the provisions of the Act and there is no statutory bar under the Act or the Rules prohibiting a person holding the office of Chairman of a Panchayat Samiti from being appointed as an election agent or counting agent. The respondent has denied that the instructions contained in the Handbooks issued by the Election Commission of India have any binding force. It is also stated that Manas Jena was appointed in his individual and



personal capacity and not in his official capacity as Chairman of the Panchayat Samiti. The said appointment was notified to the Returning Officer in the prescribed form and was accepted without any objection at any stage of the election process. The election petitioner had full knowledge of such appointment but did not raise any objection before the Returning Officer or any competent authority during the course of the election and is hence, estopped from challenging the same subsequently

Interlocutory Applications

5. Be it noted that during pendency of the election petition, the respondent filed two interlocutory applications being I.A. No. 132 of 2024 and I.A. No. 133 of 2024.

I.A. No. 132 of 2024 was filed under Section 83(1) of the Act read with Rule 94-A of the Rules and Order VII Rule 11(d) of CPC seeking dismissal of the election petition at the threshold on the ground of non-compliance of the provisions of law. I.A. No. 133 of 2024 was filed under Order



VI Rule 16 of the CPC for striking out certain pleadings of the election petition.

Both applications were heard together and disposed of by this Court by order dated 11.03.2025. This Court, upon consideration rejected I.A. No. 132 of 2024 holding that the election petition cannot be dismissed at the threshold as it discloses a cause of action warranting trial. However, I.A. No. 133 of 2024 was allowed in part, whereby the pleadings contained in paragraphs 9(D) and 9(F) of the election petition were struck out on the ground that the same were vague, lacking in material particulars and did not satisfy the requirements of Section 83 of the Act. Said order has since been upheld by the Supreme Court by order dated 16.07.2025 passed in SLP(C) Nos. 17838-17839 of 2025.

Issues

6. In view of the pleadings of the parties, the following issues have been framed for consideration.

(I) *Whether the Election Petition is maintainable?*



(II) *Whether the appointment of sitting chairman of Jaleswar Panchayat Samiti as Election Agent and counting agent of the respondent is barred under Section 40 and 41 of the Representation of the People Act, 1951?*

(III) *Whether appointment of Manas Jena Chairman of Jaleswar block as election agent is permissible or violates the Handbook supplied to candidate as well as the Handbook for Returning Officer and therefore otherwise vitiates the election of the respondent?*

(IV) *To what other relief (s) the election petitioner is entitled to?*

(V) *Whether Manas Jena was appointed as the Election Agent of the sole respondent in his personal capacity or in the capacity and/or position of the Chairman of Jaleswar Panchayat Samiti?*

(VI) *Whether at the relevant point of time such appointment of Manas Jena as the Election Agent of the sole respondent was within the knowledge of the Election Petitioner and whether despite such specific knowledge either the Election Petitioner himself or any of his proposer/authorized agent has/have not raised any objection to that effect before the Returning Officer/Election Commission of India during the entire process of election?*

(VII) *Whether on account of appointment of Manas Jena as the Election Agent of sole respondent, the result of the election insofar as it concerned the returned candidate (sole Respondent), has been materially affected and whether the election of the sole respondent is liable to be declared as void?*

Evidence

7. The Election Petitioner examined himself as the sole witness from his side (PW-1). Four documents, marked Exhibits-1 to 4 were proved by him. On the other hand, the respondent examined two witnesses- Manas Jena as RW-1



and respondent himself as RW-2. Besides, twelve documents being Exhibits-A to L were proved from his side.

8. Heard Mr. Manas Mohapatra, learned Senior Counsel with Mr. A.P. Bose, learned counsel appearing for the election petitioner and Mr. Bidyadhar Mishra, learned Senior Counsel with Mr. T.K. Biswal, learned counsel for the respondent.

FINDINGS (ISSUE-WISE)

Issue No.I

“Whether the Election Petition is maintainable?”

9. It is contended by Mr. Bidyadhar Mishra, learned Senior Counsel appearing for the respondent that the election petition as laid, is not maintainable for non-compliance with the mandatory requirement of filing an affidavit in Form-25 as prescribed under Proviso to Section 83(1) of the Act read with Rule 94-A of the Rules, despite making allegations of corrupt practice against the respondent. This, according to Mr. Mishra is an incurable



defect. He draws attention of this Court to Paragraph Nos.9(C) and 9(E) of the election petition to submit that the allegations contained therein fall squarely within the meaning of 'undue influence' as per sub-Section 2 of Section 123 of the Act.

10. He further submits that while hearing I.A. Nos.132 of 2024 and 133 of 2024, this Court has held that the pleadings under paragraphs 9(D) and 9(F) of the election petition relate to allegations of corrupt practice but being vague, were struck out exercising power under Order VI Rule 16 of CPC.

11. Per contra, Mr. Manas Mohapatra, learned Senior Counsel submits that the election petitioner has not alleged any corrupt practice whatsoever as his entire case is based on grounds provided under Section 100(1)(d)(i). Since no corrupt practice has been alleged, the requirement of specific pleading and filing of affidavit in Form No.25 does not arise. Mr. Mohapatra further argues that by order dated 11.03.2025 passed in I.A. Nos. 132 of 2024 and 133 of



2024, this Court held that the pleadings under paragraphs 9(D) and 9(F) of the election petition contain allegations of corrupt practice within the ambit of Section 123 of the Act. Though not designated as such but they do not satisfy the requirement of Section 83. On the above ground, as also on the ground of non-pleading of material facts, this Court directed striking out of the pleadings under the aforesaid two paragraphs. Said order being challenged before the Supreme Court in SLP(C) Nos.17838-17839 of 2025 was not interfered with. Therefore, according to Mr. Mohapatra, the paragraphs containing the allegations of corrupt practice having been struck out, there is no further requirement of filing affidavit in Form-25.

12. As already stated, the respondent sought rejection of the plaint under Order VII Rule 11 of CPC and other relevant provisions of the Act in I.A. No.132 of 2024 as also for striking out of the pleadings under Order VI Rule 16 of CPC in I.A. No.133 of 2024. Rejection of the plaint was inter alia, sought for on the ground that the election petition does not disclose a valid cause of action and despite alleging



corrupt practice, is not accompanied by the required affidavit in Form-25. As already stated, this Court, in its detailed common order passed in both the above I.As. held that the pleadings under paragraphs 9(D) and 9(F) constitute corrupt practice and are otherwise vague and do not state the material facts necessary to constitute a valid cause of action. It is now contended by the respondent that paragraphs 9(C) and 9(E) also contain allegations of corrupt practice and therefore, non-filing of Form-25 renders the election petition non-maintainable. For immediate reference paragraphs 9(C) and 9 (E) of the election petition are reproduced below:

“9 (C) That the provisions under Section 40 and 41 of the Representation of the People Act, 1951 deals with the appointment of election agent and disqualification of election agent. For better appreciation of the fact, the provisions under Section 40 and 41 of the Representation of the People Act, 1951 are quoted hereunder:

*“40. **Election agents** - A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.*



41. Disqualification for being an election agent -
Any person who is for the time being disqualified under the Constitution or under this Act for being a member of either House of parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.

In exercise of the power conferred under Article 324 of the Constitution of India and several judgments passed by the Hon'ble High Courts and Hon'ble Supreme Court of India the Election Commission of India has issued the guidelines and circulars and the same has got the effect of law. As per the circulars the Chairman of the Panchayat will not be allowed to act as Election Agent, Polling Agent or Counting Agent.

Chapter -6 of the Hand Book for candidate 2023 issued by the Election Commission of India elaborately stated about appointment of election agents. The relevant provisions are contained in clauses 6.1.1 and 6.1.2 of the Chapter 6 and the same are quoted here under:

6.1.1. A candidate may appoint any person to be his/her election agent. Note that under the law, it is not necessary or incumbent on a candidate to appoint an election agent at the time of filing of his nomination paper. Such appointment may, if the candidate so desires, be made at any time after the nomination as a candidate or not at all. Every such appointment has to be made by a formal communication by the candidate in Form 8 (under Rule 12 of the Conduct of Election Rules, 1961) (Annexure -7) in duplicate, which has to be submitted to Returning Officer. The Returning Officer will retain one copy thereof and return the second copy to the candidate/ election



agent after affixing thereon his seal and signature in token of his approval of the appointment.

6.1.2 Important points to note:

> Any person who currently stands disqualified under the Constitution or under the Representation of the People Act, 1951, for being a member of either House of Parliament or either House of the Legislature of a State or for voting at elections is disqualified for being election agent so long as the disqualification subsists.

> No person with security cover can be allowed to surrender the security cover to enable him to become an election agent.

> No sitting Minister either of Union Government or of a State Government, sitting Member of Parliament, sitting Member of Legislative Assembly/Legislative Council, Chief/ Head/ Chairperson of Urban Local Bodies, viz. Mayor of a Corporation or Chairperson of Municipality/ Zila Parishad/ Panchayat Union, Chairperson/ Vice Chairperson of District Level/ Block Level/Mandal Parishad, Panchayat Samiti etc., shall be allowed to act as Election agent. Polling Agent, or counting agent of any candidate during an election (latest instruction to be referred)

> Chairpersons and members of Central PSUs / State PSUs, Govt. Bodies / Corporation, Cooperatives.

> Persons receiving any honorarium or aid from Government or Persons working on part time in any Govt./Govt. Aided Institutions shall not act as Election agent.

> Para Medical/Healthcare staff working in Govt./ Govt. Aided institutions, Fair Price shop dealers, Anganwadi Employees.



> No person in the service of the Government can act as an Election agent. This is an offence and under Section 134-A of the R.P. Act 1951, such appointees are punishable with imprisonment for a term which may extend to 3 (three) months, or with fine, or with both”

In view of the aforesaid provisions of law and the other provisions contained in the Constitution of India, the Representation of the People Act, 1951, the Conduct of Election Rules, 1961 and the guidelines, instructions and circulars issued by the Election Commission of India, the appointment of Manas Jena who is holding the post of Chairman of Jaleswar Panchayat Samiti from 2022 till date and during the time of the General Election of 35-Jaleswar Assembly Constituency is unconstitutional, illegal and in clear violation of law. A person having disqualification has been appointed as election agent by the Respondent. The Respondent in conscious violation of the mandatory requirement of law has appointed the Chairman of the Panchayat Samiti as election agent in order to obtain/ procure the assistance for the furtherance of the prospects of his election and therefore the election of the Respondent is liable to be declared as void.

9(E) That the Election Commission is a constitutional entity entrusted under Article 324 of the Constitution of India with Superintendence and control over conduct of the elections. In order to ensure free and fair elections and integrity of the electoral process the Election Commission of India has issued the guidelines/ circulars / instructions. It is well settled that the instructions / circulars / guidelines issued by the Election Commission of India has the effect of law and the same are to strictly adhered to and any violation of the same has got dire consequence. When the Election Commission of India issued the instructions / circulars / guidelines that no sitting



Chairperson of the Block shall be allowed to act Election Agent and counting agent, the appointment of Manas Jena, the Chairman of Jaleswar Block (Panchayat Samiti) as Election Agent and Counting Agent by the Respondent for the general election 2024 in respect of 35-Jaleswar Assembly Constituency being clear violation of applicable law amounts to interference with a free, fair and transparent election. Hence the entire election process has been vitiated and as such the result of election of the Respondent be declared as void.”

13. A perusal of the quoted pleadings makes it clear that, firstly, the contention now raised is hit by the principles of *constructive res-judicata* as well as *res-judicata* inasmuch as the respondent never raised such contention specifically referring to these paragraphs in his application seeking rejection of the plaint. Even otherwise, if such application seeking rejection of the plaint is considered as an objection to the pleadings as a whole, then also, this Court having already rendered its decision on the point, re-agitation of the matter would be hit by the principle of *res-judicata*.

14. This Court, after careful examination of the pleadings held that only the pleadings contained in paragraphs 9(D) and 9(F) contained allegations of corrupt



practice and were struck out. Said order has since become final with the Supreme Court refusing to interfere with it.

15. This Court therefore, holds that the election petition having raised a valid cause of action and triable issues that have been framed, is maintainable in the eye of law.

16. Issue No.I is answered accordingly in favour of the election petitioner.

17. Before deciding into the pivotal issues, namely Issue Nos. II, III and VII, it would be proper to decide Issue Nos.V and VI at this stage.

Issue Nos. V & VI

“(V) Whether Manas Jena was appointed as the Election Agent of the sole respondent in his personal capacity or in the capacity and/or position of the Chairman of Jaleswar Panchayat Samiti?”

“(VI) Whether at the relevant point of time such appointment of Manas Jena as the Election Agent of the sole respondent was within the knowledge of the Election Petitioner and whether despite such specific knowledge either the Election Petitioner himself or any of his proposer/authorized agent has/have not raised any objection to that effect before the Returning Officer/Election Commission of India during the entire process of election?”



18. Mr. Mohapatra, learned Senior Counsel contends that the respondent has admitted that Manas Jena (RW-1) was appointed as Election Agent when he was Chairman of Jaleswar Panchayat Samiti. He refers to the admission of RW-1 in his cross-examination under paragraphs 50 and 51 in this regard. He also refers to the admission of the respondent (RW-2) in paragraphs 61 and 63 of his cross-examination. As regards the question of knowledge of the election petitioner regarding appointment of Manas Jena as election agent of the respondent and raising of objection to that effect before the authorities, Mr. Mohapatra submits that the fact of such appointment came to the knowledge of the election petitioner for the first time only on 1st June, 2024, which was after acceptance of the nomination papers. As such, the petitioner had no occasion to submit any objection regarding appointment of Manas Jena before any higher authority.

19. Per contra, Mr. Bidyadhar Mishra would submit that it is not disputed that Manas Jena (RW-1) was serving as Chairman of Jaleswar Panchayat Samiti at the relevant



time but he was appointed as election agent of the respondent purely in his personal capacity. Mr. Mishra has referred to the document marked Exhibit-2 to substantiate his contention. Exhibit-2 does not contain any endorsement whatsoever to the effect that Manas Jena had been appointed as election agent of the respondent in his capacity as Chairman of Jaleswar Panchayat Samiti. On the contrary, the election petitioner has not been able to prove that such appointment of Manas Jena was in the capacity of Chairman of Panchayat Samiti.

20. As regards the knowledge of election petitioner regarding the status of Manas Jena, Mr. Mishra refers to the pleading in paragraph 9-B of the election petition which states that according to the petitioner, he came to know about the position of Manas Jena through information obtained from the A.B.D.O., Jaleswar Block under the RTI Act on 28.06.2024, which is after declaration of the result of the election i.e., on 04.06.2024. Further, the election petitioner has admitted in his cross-examination in paragraph-80 that he had not lodged any complaint against



the appointment of Manas Jena as election agent before any authority.

21. The first question that arises for consideration is, whether Manas Jena was appointed as election agent of the respondent in his individual capacity or as Chairman of Jaleswar Panchayat Samiti.

22. Appointment of election agent by a candidate in an election is provided under Section 40 of the Act, which is reproduced below:

“40. Election agents —A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.”

23. Thus, the statute provides that the candidate can appoint any one person other than himself to be his election agent and notice of such appointment is to be given to the Returning Officer in the prescribed manner. Rule 12 of the Rules, which is reproduced below provides that notice of such appointment is to be made in Form-8.

“12. Appointment of election agent —(1) Any appointment of an election agent under section 40 shall be made in Form 8 and the notice of such appointment shall be given by forwarding the same in



duplicate to the returning officer who shall return one copy thereof to the election agent after affixing thereon his seal and signature in token of his approval of the appointment.

(2) The revocation of the appointment of an election agent under sub-section (1) of section 42 shall be made in Form 9.”

24. The respondent has exhibited Form-8 submitted on 10.05.2024 marked Exhibit-2, which shows that he appointed Manas Jena as his election agent on that day and Manas Jena has endorsed his acceptance of such appointment by signing at the appropriate place. The Returning Officer has signed and affixed his seal on the form. There is no mention whatsoever of the status of Manas Jena as being the Chairman of Jaleswar Panchayat Samiti in Exhibit-2. No other evidence has been adduced to show that such appointment of Manas Jena was in his capacity of Chairman of Jaleswar Panchayat Samiti. Admittedly, Manas Jena was functioning as the Chairman of Jaleswar Panchayat Samiti at the time of his appointment as election agent but merely because he was so functioning, in the absence of any evidence, it cannot be said that he was appointed as election agent of the respondent in such



capacity. Only because a person is functioning in a particular capacity does not and cannot mean that he is to be identified in such capacity in all his dealings. Acting as election agent has absolutely no nexus with the work of the Chairman of Panchayat Samiti. It is obvious that the individuality of a person does not get lost, if he functions in different capacities in his life.

25. Even otherwise, it would lead to an absurd position of identifying the person only in his official capacity and not in his individual capacity in all his dealings and activities in life. Of course, this Court is not required at this stage to consider whether Manas Jena being the Chairman of Jaleswar Panchayat Samiti could have been appointed as election agent in the first place, which is a question to be decided under Issue No.2, but for the present analysis, it would suffice to say that his appointment was in his individual capacity and not in the capacity of the Chairman of Panchayat Samiti.

26. As regards the knowledge of the election petitioner regarding appointment of Manas Jena, it is borne



out from the evidence on record that on 1st June, 2024, he came to know about it for the first time. The election petitioner (PW-1) has stated the following in his cross-examination under paragraph 54:

“54. I do not remember the date on which Aswini Kumar Patra appointed Manas Jena as his election agent. I came to know on 1st June, 2024 for the first time that Manas Jena had been appointed as election agent of Aswini Kumar Patra. I came to know about the above appointment from the polling officer when I found Manas Jena entering into the polling booth. I do not remember the number of the said polling booth. I cannot say if I have mentioned the above fact in the election petition as well as the evidence affidavit.”

27. He however, admits under para-80 as follows: -

“80. I came to know about the appointment of Manas Jena as election agent of the respondent for the first time on the day of polling. I have not lodged any complaint against the appointment of Manas Jena as election agent before any authority.”

28. It is therefore, clear that the appointment of Manas Jena was within the knowledge of the petitioner at least on 01.06.2024 which was the date of poll. Obviously by such time, the nominations had already been filed and accepted.

29. In view of the admission of the election petitioner as referred above, there is no doubt that he had not raised any objection before any authority, which was obviously



because of the fact that there was no scope at that stage to do so.

30. Thus, Issue Nos.V and VI are answered accordingly.

Issue Nos. II & III

“II. Whether the appointment of sitting Chairman of Jaleswar Panchayat Samiti as Election Agent, and counting agent of the respondent is barred under Section 40 and 41 of the Representation of the People Act, 1951?

III. Whether appointment of Manas Jena, Chairman of Jaleswar Block as election agent is permissible or violates the Handbook supplied to candidates as well as the Handbook for Returning Officer and therefore otherwise vitiates the election of the respondent?

31. This Court, while deciding issue Nos.V and VI has held that Manas Jena (RW-1) was appointed as Election agent and Counting agent of the respondent in his individual capacity leaving open the question to decide as to whether, being the Chairman of Jaleswar Panchayat Samiti, he was eligible to be appointed as such.

32. Mr. Manas Mohapatra, learned Senior Counsel submits that Manas Jena was admittedly appointed as Election agent and Counting Agent during his incumbency as Chairman of Panchayat Samiti. Such appointment,



according to him is, dehors the provisions of the Act making him disqualified to be so appointed. He cites the provisions under Sections 40, 41 and 50 of the Act to contend that as per the language employed in Section 40, it is not mandatory for a candidate to appoint an election agent. But if he does, then such appointment has to meet the requirements of the statute. Referring to Section 41 of the Act, Mr. Mohapatra submits that a person disqualified by the existence of one or the other conditions mentioned in the provision is disqualified for being an election agent. Since Manas Jena was holding the post of Chairman of Panchayat Samiti, he is automatically disqualified. To further justify his contention, Mr. Mohapatra refers to various provisions of the Odisha Panchayat Samiti Act, 1959, particularly Sections 19 and 52. He also refers to Rules 3, 4, 5 and 7 of the Odisha Panchayat Samiti (Administration of Affairs) Rules, 1987. On such basis, he submits that the Executive Authority of the Samiti vests in the Chairman and that he is deemed to be a public servant within the meaning of Section 21 of IPC. Mr. Mohapatra



draws attention of the Court to Sub-Section (7) of Section 123 of the Act to submit that the Chairman of the Samiti must be held to be a person in the service of the Government and therefore, disqualified. He has referred to the evidence of RW-1 in this regard which shall be adverted to at the relevant place. Mr. Mohapatra then refers to the 'Handbook for Candidate- 2023' issued by the Election Commission of India, particularly to paragraph 6.1.2 thereof, which according to him, specifically bars a Chairman of Panchayat Samiti from being appointed as election agent of a candidate. To buttress his contention, Mr. Mohapatra has cited the following judgments.

- ***Indira Nehru Gandhi v. Raj Narain*¹,**
- ***Dr. Y.S. Parmar vs. Sh. Hira Singh Paul and Anr*².**

33. Per contra Mr. B. Mishra, learned Senior Counsel submits that the election petitioner has notably failed to plead and prove as to under which provision was Manas Jena disqualified to be appointed as election agent. He refers to Section 41 of the Act to submit that disqualification

¹ 1975 Supp SCC 1

² [1959] Supp. 1 SCR 213



relates either to the Constitution of India or for being elected as a Member of either House of the Parliament or the Legislature of State. No provision of the Constitution debars the Chairman of Panchayat Samiti to be appointed as election agent. In this context, Mr. Mishra has referred to Articles 84, 101, 102, 103, 173, 190, 191 and 192 of the Constitution of India. Similarly, there are provisions in the Act, in this context. He has referred to the provisions under Sections 3, 4, 5, 6, 7, 8, 8A, 9, 9A, 10, 10A and 11A. On such basis, Mr. Mishra reiterates that Section 41 of the RP Act does not apply to Manas Jena.

34. In seeking to refute the arguments of Mr. Mohapatra with reference to different provisions of Odisha Panchayat Samiti Act and Rules, Mr. Mishra submits that Manas Jena is a public representative and not a public servant. Further, Panchayat Samiti is a local body and does not come within the definition of Government. Therefore, Chairman of Panchayat Samiti cannot be treated as a Government Servant. He does not hold an office of profit nor comes within the persons named under Sub-Section 7 of



Section 123 of the Act. In response to the arguments made by Mr. Mohapatra with reference to Handbook for Candidate, 2023, Mr. Mishra submits that the said Handbook for Candidate does not have the force of law as the Supreme Court has held that only the Handbook for Returning Officers has the force of law. In any case, the relevant provision under Paragraph 6.1.2. in the Handbook for Candidate cannot override the law laid down by Constitution Bench of the Supreme Court. To buttress his arguments, Mr. Mishra has relied upon the following judgments.

- ***Raja Krushna Bose Vs. Binod Kanungo and Ors.***³
- ***Satya Dev Bushahri Vs. Padam Dev and Ors.***⁴
- ***S. Umrao Singh Vs. Darbara Singh and Ors***⁵
- ***S. Umrao Singh Vs. Darbara Singh and Ors***⁶.
- ***Ramlal Vs Vishveshwar Nat***⁷
- ***C.M. Stephen Vs Atal Behari Vajpayee*** ⁸
- ***Anokh Singh Vs Punjab State Election Commission***⁹
- ***Kishore Chandra Deo Bhanj Vs Raghunath Mishra***¹⁰

³ AIR 1954 SC 202

⁴ AIR 1954 SC 587

⁵ AIR 1968 P&H 450

⁶ AIR 1969 SC 262

⁷ AIR 1968 RAJ 249

⁸ MANU/DE/0304/1980: 18 (1980) DLT 337:

⁹ (2011) SCC 181

¹⁰ AIR 1959 SC 589



35. Before delving into the merits of the rival contentions it would be apt to mention at the outset that it is an admitted fact that Manas Jena was the incumbent Chairman of Jaleswar Panchayat Samiti.

36. In paragraph-4 of his cross-examination, Manas Jena has himself stated that he was the election agent of the respondent in the last assembly election (2024). In paragraph 51 (RW-1) he says as follows:

“51. It is a fact that in Ext -2 it has not been mentioned that I was the Chairman of Jaleswar Panchayat Samiti. It is a fact that I was Chairman on the date Ext-2 was issued. Witness volunteers- I was appointed as election agent in my personal capacity.”

37. In paragraph-69 and 84 of the cross examination, the Election petitioner (PW-1) has stated as follows:

“69. I cannot say if Manas Jena is disqualified from contesting in any election. To my knowledge Manas Jena was a valid voter of 35-Jaleswar Assembly Constituency and he was not disqualified for voting.

84. It is a fact that to my knowledge Manas Jena was not disqualified to be elected as member of Legislative Assembly or either house of the parliament. I cannot say if Manas Jena was qualified to vote at elections.”



38. We may now refer to some statutory provisions, namely, Sections- 40 and 41 of the Act.

*“40. **Election agents** —A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.”*

*41. **Disqualification for being an election agent.** —Any person who is for the time being disqualified under the Constitution or under this Act for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.”*

39. Plain reading of the aforesaid provisions makes it clear that a person who is disqualified either under the Constitution or under any of the provisions of the Act to be elected as a Member of Parliament of both houses or the State Legislature is disqualified to be appointed as election agent.

40. The election petitioner has not specifically referred to any provision of the Constitution or the Act in this context. The respondent has referred to Articles 84, 101, 102, 103, 173, 190, 191 and 192 of the Constitution. It



would be useful to reproduce these provisions for immediate reference.

“84. Qualification for membership of Parliament. — A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

[(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

101. Vacation of seats — (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State 1 ***, and if a person is chosen a member both of Parliament and of a House of the Legislature of 2 expiration of such period as may be specified in rules [a State], then, at the made by the President, that person’s seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 102; or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant:



Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

102. Disqualifications for membership —(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—
(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;]
(b) if he is of unsound mind and stands so declared by a competent court;
(c) if he is an undischarged insolvent;
(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
(e) if he is so disqualified by or under any law made by Parliament.

[Explanation.—For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]

103. Decision on questions as to disqualifications of members.— (1) If any question



arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

173. Qualification for membership of the State Legislature.—A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he— 2 [(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

190. Vacation of seats.—(1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one house or the other.

(2) No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules 1 made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—



(a) becomes subject to any of the disqualifications mentioned in 2 [clause (1) or clause (2) of article 191];
or

(b) resigns his seat by writing under his hand addressed to the speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,] his seat shall thereupon become vacant:

[Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

191. Disqualifications for membership. —(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.



[Explanation.—For the purposes of this clause], a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.]

192. Decision on questions as to disqualifications of members. — *(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.*

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.”

41. After perusing the provisions under Articles 101, 102 and 103, this Court finds nothing therein to show that Manas Jena was disqualified to be a member of either house of the Parliament. Same conclusion is also drawn after perusing the provisions under Article 190 and 192 to the effect that there is nothing to show that Manas Jena was disqualified for being a member of the State Legislature.



42. The Constitutional Provision being taken care of, we may now refer to the relevant provisions of the Act, which are reproduced below.

“3. Qualifications for membership of the Council of States.—A person shall not be qualified to be chosen as a representative of any State or Union territory in the Council of States unless he is an elector for a Parliamentary constituency in India.

4. Qualifications for membership of the House of the People.—A person shall not be qualified to be chosen to fill a seat in the House of the People unless—

(a) in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;

(b) in the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of the State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;

(c) in the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district;

(cc) in the case of the seat reserved for the Scheduled Tribes in the Union territory of Lakshadweep, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of that Union territory;

(ccc) in the case of the seat allotted to the State of Sikkim, he is an elector for the Parliamentary constituency for Sikkim;]

(d) in the case of any other seat, he is an elector for any Parliamentary constituency.



5. Qualifications for membership of a Legislative Assembly.—A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

(b) in the case of a seat reserved for an autonomous district of Assam, he is a member of a 7 [Scheduled Tribe of any autonomous district] and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and

(c) in the case of any other seat, he is an elector for any Assembly constituency in that State:

Provided that for the period referred to in clause (2) of article 371 A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that article.

6. Qualifications for membership of a Legislative Council.—(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor unless he is ordinarily resident in the State.

7. Definitions—In this Chapter, —

(a) “appropriate Government” means in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government;

(b) “disqualified” means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or



Legislative Council of a State 4 [under the provisions of this Chapter, and on no other ground.

8. Disqualification on conviction for certain offences.—A person convicted of an offence punishable under— (a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) or the Indian Penal Code (45 of 1860); or (b) the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the preaching and practice of “untouchability”, and for the enforcement of any disability arising therefrom; or (c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or (d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or (e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or (f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or (g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or



(h) section 7 (offence of contravention of the provisions of section 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub-section (2) of section 136 (offence of Fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or

(j) section 6 (offence of conversion of a place or worship) of the Places of Worship (Special Provisions) Act 1991; or

(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971); or (l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or (m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002), shall be disqualified, where the convicted person is sentenced to—

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 6 [1961 (28 of 1961)];,

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.



(4) Notwithstanding anything 2 [in sub-section (1), sub-section 2 and sub-section (3)] a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court. Explanation.—In this section—

(a) “law providing for the prevention of hoarding or profiteering” means any law, or any order, rule or notification having the force of law, providing for—

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be brought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity; (iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) “drug” has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) “essential commodity” has the meaning assigned to it in the Essential Commodities Act, 1955 (10 of 1955);

(d) “food” has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

8A. Disqualification on ground of corrupt practices.—(1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, 4 [as soon as may be within a period of three months from the date such order takes effect], by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period: Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect. (2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the



commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period. (3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.

9. Disqualification for dismissal for corruption or disloyalty. — (1) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal. (2) For the purposes of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of that fact:

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.

9A. Disqualification for Government contracts, etc.—A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government.

Explanation. —For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.

10. Disqualification for office under Government company. —A person shall be disqualified if, and for



so long as, he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent. share.

10A. Disqualification for failure to lodge account of election expenses. —If the Election Commission is satisfied that a person—

(a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act; and

(b) has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

11A. Disqualification arising out of conviction and corrupt practices.—(1) If any person, after the commencement of this Act,— is convicted of an offence punishable under section 171E or section 171F of the Indian Penal Code (45 of 1860), or under section 125 or section 135 or clause (a) of sub-section (2) of section 136 of this Act, he shall, for a period of six years from the date of the conviction or from the date on which the order takes effect, be disqualified for voting at any election.

(2) Any person disqualified by a decision of the President under sub-section (1) of section 8A for any period shall be disqualified for the same period for voting at any election.

(3) The decision of the President on a petition submitted by any person under sub-section (2) of section 8A in respect of any disqualification for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State shall, so far as may be, apply in respect of the disqualification for voting at any election incurred by him under clause (b) of sub-section (1) of section 11A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), as if such decision were a decision in respect of the said disqualification for voting also.”



43. All these provisions are to be found in Chapters- III and IV of Part-II of the Act. Section 7(b) provides that the term 'disqualified' means disqualified under the provisions of this Chapter and on no other ground. The grounds for disqualification have been provided under Section 8, 8A, 9, 9A, 10, 10A and 11A of chapters- III & IV. It has not been demonstrated in the least as to under which provision Manas Jena must be held to be disqualified to be a member of either House of Parliament or State legislature.

44. It has been argued that notwithstanding the provision under Section 41 of the RP Act, Manas Jena being a public servant within the meaning of Section 21 of IPC must be held to be in the service of Government and therefore, is governed by the provision under Sub-Section 7 of Section 123 of the Act. Before proceeding to determine the applicability of the provision under Section 123(7) of the Act it would be profitable to first refer to different provisions of Odisha Panchayat Samiti Act, 1959 forming the basis for raising such contention. It has been argued that Section 19 of the Act provides that the executive authority of the Samiti



shall vest in the Chairman. Section 20 lays down the power and functions of Samiti and Section 20A lays down the powers and functions of the Chairman of the Samiti. These provisions are reproduced below:

“19. (1) The executive authority of the Samiti shall vest in the Chairman and it shall be his duty to have the resolution of the Samiti implemented through the Executive Officer of the Samiti.

(2) The Block Development Officer shall be the Executive Officer of the Samiti and subject to such rules as may be prescribed in this behalf, shall function under the control of the Chairman of the Samiti.

(3) The Executive Officer of the Samiti shall exercise such other powers and perform such other functions as may be prescribed].

20. (1) A Samiti shall, subject to such terms and conditions, as Government may, from time to time by order specify, exercise the powers and perform the functions hereinafter provided-

(a) planning, execution and supervision of development programmes, scheme and works in the Block relating to Community Development including those pertaining to "Tribal Development Blocks" for the time being recognised by Government as such and of such other programmes, schemes and works as Government may from time to time by general or special order, direct in respect of any Samiti; [(a-1) preparation of plans for economic development and social justice; (a-ii) implementation of schemes for economic development and social justice and execution of any other scheme, performance of any act or management of any institution or organisation, as the Government may entrust to it including those in relation to matters listed in the Eleventh Schedule to the Constitution of India;.

(b) management, control and spread of primary education in the Block;



(c) management of such trusts and endowments and other institutions as may be entrusted to them under any law for the time being in force or under orders of Government;

(d) supervision of enforcement of laws relating to vaccination and registration of births and deaths;

(e) borrowing of money and granting of loans subject to such terms and conditions as may be prescribed for carrying out the purposes of this Act with the previous approval of Government;

(f) supervisory powers over the Grama Panchayats within the Block to be exercised in such manner and to such extent as may be prescribed; and

(g) such other functions as may be assigned to it by the Government from time to time:

Provided that the powers and functions of the Samiti in relations to Primary Education as specified in clause (b) shall not include the powers and functions in respect of appointment, removal and transfer of and in respect of sanction of leave to the teacher and other members of the staff engaged in Primary Education.

(2) The Chairman and every other non-official member of a Samiti shall, subject to such restrictions as may be prescribed, have power to supervise all works undertaken by the Samiti and all institutions under the control of the Samiti.

(3) The Samiti may entrust the execution of any work in any Municipal Area within the Block to the concerned Municipality [] and may exercise such control and supervision over such Municipality [**] as may be necessary for the proper execution thereof.*

(4) For the efficient discharge of its functions the Samiti shall constitute Standing Committees whose numbers, composition, powers and functions shall be as may be prescribed:

Provided that the Samiti shall have power to co-opt such number of persons from outside as may be specified in rules made in that behalf.]

(5) Notwithstanding anything to the contrary in this Act, in the Scheduled Area, the Samiti shall, in consultation with the Grama Sasan, be competent-



(i) to exercise control and supervision, the nature and extent of which shall be such as may be prescribed, over institutions and functionaries of various sectors in relation to the programmes and measures, as the Government may, by Notification, specify; and
(ii) to prepare the local plans including tribal sub-plans for the area and to exercise control over the resources for such plans.]

20-A (1) The Chairman of the Samiti shall-

(a) convene and conduct the meetings of the Samiti; and

(b) have power to inspect and supervise all works undertaken by the Samiti.

(2) The Vice-Chairman of the Samiti shall exercise such powers and perform such functions of the Chairman as the Chairman may, from time to time, delegate to him in writing and the Chairman may in like manner withdraw all or any of the powers and functions so delegated.

(3) When the Office of the Chairman is vacant the Vice-Chairman of the Samiti shall, for all the purposes of this Act exercise the powers and perform the functions of the Chairman until a new Chairman is elected.

(4) The Chairman and in his absence the Vice-Chairman shall preside over the meetings of the Samiti and in the absence of both at the meeting any other non-official member of the Samiti present may be elected to preside over the meeting.

(5) When the Office of the Chairman is vacant or the Chairman has been continuously absent from the Block for more than fifteen days or is incapacitated for more than fifteen days and there is either a vacancy in the Office of the Vice-Chairman or the Vice-Chairman has been continuously absent from the Block for more than fifteen days or is incapacitated for more than fifteen days, the powers and functions of the Chairman shall devolve on a member of the Samiti from out of a panel of three such members in order of priority nominated by the Chairman in that behalf who shall be the Officiating Chairman and shall exercise the powers and perform the functions of



the Chairman, subject to such restrictions and conditions as may be prescribed, until a Chairman or Vice-chairman assumed office on being duly elected or, as the case may be, taken charge of his office.

(6) The Chairman shall nominate the panel as referred to in sub-section (5) within a period of one month from the date of the first meeting of the Samiti, failing which the Samiti shall nominate the panel in its first meeting held after the expiry of this aforesaid period of one month.

(7) Where the Chairman of a Samiti existing immediately before the commencement of the Orissa Panchayat Samiti (Amendment) Act, 1986, has not nominated the panel, he shall nominate it within a period of one month from the date of commencement of the said amendment Act, failing which the Samiti shall nominate the panel in its first meeting held after the expiry of the aforesaid period of one month.

45. In this context, it would also be worthwhile to refer to the evidence of RW-1. He has stated the following under paragraphs- 36 and 54 of the cross-examination.

“36. It is not a fact that as Chairman of Panchayat Samiti all recommendations regarding disbursement of benefits under different Government Schemes, such as, old age pension, PM Awas Yojana, Ration Cards, Widow Pensions etc. are passed by me.

54. It is a fact that I was supervising all developmental works of the Panchayat Samiti prior to coming into force of model code of conduct for election and after expiry thereof. I used to attend office sometimes during that period. It is not a fact that the post of Chairman of the Panchayat Samiti had been suspended during that period.”



46. As already stated, Section 52 provides that the Chairman and other shall be deemed to be public servants within the meaning of Section 21 of the IPC.

47. In the case of **Umrao Singh** (supra) the Supreme Court held that the allowances paid to the Chairman of Panchayat Samiti is not salary, remuneration or honorarium. Therefore, the same does not convert the office of the Chairman into an office of profit.

48. A similar matter engaged the attention of the Supreme Court in the case of **Raja Bahadur K.C. Deo Bhanj v. V. Raghunath Misra and others**¹¹. In the said case, the question was, whether Sarpanch of a Gram Panchayat could be treated as a person in the service of the Government so as to come within the provisions of Section 123(7)(f) of the Act. Analysing the different provisions of the Odisha Gram Panchayat Act (prior to its amendment in 1964), the Supreme Court held as follows:

11. In our opinion, there is a distinction between 'serving under the Government' and 'in the service of the Government', because while one may serve under a Government, one may not necessarily be in the service of the Government; under the latter expression

¹¹ AIR 1959 SC 589



one not only serves under the Government but is in the service of the Government and it imports the relationship of master and servant. There are, according to Batt (On the Law of Master and Servant), two essentials to this relationship: (1) The servant must be under the duty of rendering personal services to the master or to others in his behalf and (2) the master must have the right to control the servant's work either personally or by another servant or agent and, according to him,

"It is this right of control or interference, of being entitled to tell the servant when to work (within the hours of service) or when not to work, and what work to do and how to do it (within the terms of such service), which is the dominant characteristic in this relation and marks off the servant from an independent contractor, or from one employed merely to give to his employer the fruits or results of his labour. In the latter case, the contractor or performer is not under his employer's control in doing the work or effecting the service; he has to shape and manage his work so as to give the result he has contracted to effect. Consequently, a jobbing gardener is no more the servant of the person employing him than the doctor employed by a local authority to act as visiting physician to its fever hospital." None of the provisions of the Orissa Act suggest that as between the State Government and the Grama Panchayat and its Sarpanch any such relationship exists. It is true that the State Government, the District Magistrate and the Sub-divisional Magistrate have been given certain powers of control and supervision over the Grama Panchayat but those powers of control and supervision are in relation to the administrative functions of the Grama Panchayat and the Sarpanch. The Grama Panchayat is an autonomous body exercising functions conferred under the statute. It can hardly be said that the Grama Panchayat in so functioning is in the service of the Government. Its administrative functions are akin to the functions generally performed by Municipalities and District Boards. It would be a conception hitherto unknown to suppose that any Municipality or District Board was in the service of the Government merely because it exercised administrative functions and to some extent



was under the control of the Government. Co-operative societies generally are very much under the control and supervision by the State Government or one of its offices authorized in that behalf. It would be difficult to accept the suggestion that because of that a Co-operative society and its members must be regarded as in the service of the Government. Even with respect to companies, progressively, legislation has been giving power to the Government to control and supervise them. Under S. 259 of the Indian Companies Act, 1956, in certain circumstances, any increase in the number of its directors must be approved by the Central Government and shall become void if it is disapproved. Under S. 269, in the case of a public company or a private company which is a subsidiary of a public company, the appointment of a managing or whole-time director for the first time after the commencement of this Act in the case of an existing company, and after the expiry of three months from the date of its incorporation in the case of any other company, shall not have any effect unless approved by the Central Government; and shall become void if, and in so far as, it is disapproved by the Central Government. Under S. 408 the Government has the power to prevent mismanagement in the affairs of the company and under the proviso in lieu of passing any, order under sub-s. (1) the Central Government may, if the company has not availed itself of the option given to it under S. 265, direct the company to amend its Articles in the manner provided in that section and make fresh appointments of directors in pursuance of the Articles as so amended, within such time as may be specified in that behalf by the Central Government. Section 409 empowers the Central Government to prevent change in the number of directors likely to affect the company prejudicially. It could not be said, because of these provisions, that a company was in the service of the Government. It seems to us, therefore, that the mere power of control and supervision of a Grama Panchayat exercising administrative functions would not make the Grama Panchayat or any of its members a person in the service of the Government. Even if it could be said that the Grama Panchayat in the exercise of its administrative functions exercised duties in the



nature of governmental duties it could not thereby be said that its Sarpanch was in the service of the Government. So far as the Sarpanch is concerned, he is merely the executive head of the Grama Panchayat which carries out its functions through him. He is not appointed by the Government. He is not paid by the Government. He does not exercise his functions as one in the service of the Government and he can only be removed on the ground of negligence, inefficiency or misbehaviour. We have been unable to find a single provision of the Orissa Act from which we could say that a Sarpanch is a person in the service of the Government. Reference had been made on behalf of the respondent No. 1 to S. 31 of the Orissa Act which authorizes the Grama Panchayat to enter into a contract with the State Government to collect all or any class of taxes or dues payable to the Government at a prescribed percentage as collection charges. As the Grama Sasan is a body corporate and the Grama Panchayat is its executive authority, the statute enabled the Grama Panchayat by provisions of S. 31 to enter into a contract with the State Government to collect its taxes and its dues. It cast no obligatory duty upon the Grama Panchayat to collect such taxes or dues of the Government. No provision of the Orissa Act has been placed before us by which the State Government could order a Grama Panchayat to collect its taxes or its dues. Furthermore, under cl. (b) to S. 31, a Grama Panchayat is authorized to enter into similar contracts with proprietors or land holders to collect their rents. The provisions of S. 31 militate against the theory that the Grama Panchayat is in the service of the Government. There would be no occasion for such a provision if the Grama Panchayat was in the service of the Government in which case it would have to carry out the orders of the Government to collect its taxes or its dues.

12. Even if on a reasonable construction of the provisions of the Orissa Act it could be held that a Sarpanch of the Grama Panchayat was a person in the service of the Government, it would have to be further held that he was of the class of officers mentioned in S. 123(7)(f). Clause (f), in the first instance, speaks of a person in the service of the Government who is a revenue officer and then further



extends the class to village accountants. The words "such as patwaris, lekhpals, talatis, karnams and the like" are merely descriptive of the words "Revenue officers including village accountants". Under cl. (f) it is essential that a person in the service of the Government must be a revenue officer or a village accountant, by whatever name such officer or village accountant may be described. The exclusion of every other village officer from the provisions of cl. (f) compels the conclusion that before this clause can apply to a Sarpanch of the Grama Panchayat under the Orissa Act it must be proved that he is either a revenue officer or a village accountant. The mere fact that under S. 31 of the Orissa Act a Grama Panchayat is enabled to enter into a contract with the State Government to collect its taxes or its dues cannot convert a Sarpanch into a revenue officer. No doubt a Grama Panchayat would have to supervise and maintain village and field boundary marks and village records if required to do so by the State Government under S. 21(r) of the Orissa Act. In the present case there is no proof that the Grama Panchayats in question were required to do any such thing by the Government. It is significant that under S. 54(1)(xiv) of the Orissa Act it is a choukidar appointed under that Act by the District Magistrate on whom a statutory duty is cast to keep watch over boundary marks and report to the Grama Panchayat any loss or damage caused to the boundary marks defining villages. The Grama Panchayat, however, has not been assigned positively any functions under the Orissa Act which are discharged by a revenue officer. The provision of S. 21(r) would not by itself convert a Sarpanch of a Grama Panchayat into a revenue officer. Similarly, there is no provision of the Orissa Act which shows that a Sarpanch is a village accountant. It had been suggested on behalf of respondent No.1 that if it could be established that a Sarpanch was a revenue officer or a village accountant, then the very fact that he was such a person made him a person in the service of the Government. It is doubtful whether any such necessary conclusion arises, but there is no need to make further reference to this submission as, in our opinion, a Sarpanch of the Grama Panchayat under



the Orissa Act is neither a revenue officer nor a village accountant.

13. It follows, therefore, that in the present case the two essential elements that a Sarpanch must be a person in the service of the Government and that he belongs to the class mentioned in cl. (f) of sub-s. (7) of S. 123 have not been established. Even if one of them had been established and not the other the provisions of S. 123(7) would not apply to such a person. In our opinion, the High Court erred in supposing that because a Sarpanch of a Grama Panchayat under the Orissa Act exercised governmental duties he must be regarded as a person in the service of the Government. The High Court did not give any clear finding that a Sarpanch, even if a person in the service of the Government, was either a revenue officer or a village accountant. In our opinion, the provisions of S. 123(7) do not apply to him. Therefore, it cannot be said that any corrupt practice under S. 123 had been established in the case and the election of the appellant could not be set aside on the only ground on which his election had been set aside by the High Court. The appeal is accordingly allowed with costs and the election petition of respondent No. 1 is dismissed.”

49. Be it noted that though the judgment in the cited case was rendered interpreting the provisions of the Odisha Gram Panchayat Act (prior to its amendment), yet the principle laid down shall also apply to the present case for the reason that the Odisha Panchayat Samiti Act, which provides for the appointment of Chairman of Panchayat Samiti, is intrinsically similar, if not identical to the Odisha Gram Panchayat Act. In the cited case also, the question that arose for consideration was whether an elected office



bearer of a local self-government institution could be treated as a person in the service of the Government so as to attract the provisions of Section 123(7) of the Act. The Supreme Court, held that mere supervisory or administrative control exercised by the Government over such body would not create a relationship of master and servant between the Government and the elected office bearer thereof.

50. The provisions of the Odisha Panchayat Samiti Act, 1959, particularly those relating to the constitution, powers and functions of the Panchayat Samiti and its Chairman as already stated, resemble the statutory framework that was examined by the Supreme Court in the ***Raja Bahadur K.C. Deo Bhanj*** (supra). The Chairman of the Panchayat Samiti is an elected representative functioning under a statutory scheme of local self-government and not a person appointed in Government service. Therefore, merely because the Chairman exercises certain executive or supervisory powers under the statute or is deemed to be a public servant within the meaning of



Section 21 of the IPC, it cannot be held that he is a person 'in the service of the Government' for the purpose of the Act.

51. Thus, this Court is of the considered view that the ratio decided in **Raja Bahadur K.C. Deo Bhanj** (supra) shall apply in full force to the facts of the present case. Accordingly, this Court holds that the provision under Section 123(7) of the RP Act will not apply as Manas Jena cannot be treated as a person in service of the Government.

52. The only question that remains for determination is applicability of 'Handbook for Candidate' issued by the Election Commission of India. Undisputedly, Election Commission of India has issued two such Handbooks, one for the Returning Officers and the other for the candidates. In the Handbook for the Returning Officer, paragraphs- 5.25.3 and 5.25.4 deal with appointment of election agents. Paragraphs- 5.25.3 and 5.25.4 being relevant are reproduced below:

"5.25.3 Any person who is disqualified under the Constitution or under the Representation of the People Act, 1951, for being a member of either House of Parliament or either House of the Legislature of a State or for voting at elections shall, so long as the disqualification subsists,



be disqualified for being an election agent at any election.

5.25.4 The Commission has instructed that the ministers of the union or states and MP, MLA, MLCs and any other person provided with security cover by the state shall not be appointed as election agents (and also as polling and counting agents) as the security personnel accompanying them cannot be permitted to enter polling station and counting centre, nor can their security be jeopardized in the absence of their security personnel. No person with security cover can be allowed to surrender the security cover to enable him to become an election agent.”

53. There is no mention of Chairman of Panchayat Samiti as being disqualified to act as election agent. Mr. Mohapatra submits that though the Handbook for Returning Officers may not specifically include the Chairman of Panchayat Samiti within the prohibited category, paragraph 6.1.2 of the Handbook for Candidates specifically prohibits Chairperson/Vice-Chairperson of Panchayat Samiti from acting as Election Agent, Polling Agent or Counting Agent. According to him, the instruction having been issued by the Election Commission of India in exercise of powers under Article 324 of the Constitution of India has binding force and any violation thereof vitiates the election process. On the other than, Mr. Mishra has argued



that Handbook for Candidates is merely advisory in nature and cannot override the statutory provisions contained in the Constitution or the Act. He further contends that even the Handbook for Returning Officers which has force of law as per the decision of the Supreme Court does not include Chairman of Panchayat Samiti within the category of disqualified persons. Therefore, according to Mr. Mishra, the Election Commission by way of executive instructions cannot enlarge the scope of disqualification prescribed under Section 41 of the Act.

54. Having gone through the rival submissions, this Court finds it worthwhile to discuss about the binding nature of the two Handbooks issued by the Election Commission of India. It is apt here to refer to the judgment of the Supreme Court in the case of **Ramesh Rout v. Rabindra Nath Rout**¹², wherein it has been held as follows:

“The Returning Officer plays an important role in the election management and to ensure that there is no scope left for any complaint, the Commission has issued a handbook for Returning Officers (for short “the handbook”) The handbook, as it states, has been designed to give to the Returning Officers the information and guidance which they may need in

¹² (2012) 1 SCC 762



performance of their functions; to acquaint them with up-to-date rules and procedures prescribed for the conduct of elections and to ensure that there is no scope for complaint of partiality on the part of any official involved in the election management. We shall refer to the relevant provisions of the handbook a little later. The handbook does not have statutory character and is in the nature of guidance to the Returning Officers.”

[Emphasis added]

Similarly, in the case of **Jitu Patnaik v. Sanatan Mohakud**¹³, the Supreme Court reiterated the same principle in the following words:

“38. In a recent decision of this Court in Ramesh Rout v. Rabindra Nath Rout [(2012) 1 SCC 762] one of us (R.M. Lodha, J.) speaking for the Bench observed as follows: (SCC p. 770, para 14)

“14. ... The Handbook, as it states, has been designed to give to the Returning Officers the information and guidance which they may need in performance of their functions; to acquaint them with up-to-date rules and procedures prescribed for the conduct of elections and to ensure that there is no scope for complaint of partiality on the part of any official involved in the election management. We shall refer to the relevant provisions of the Handbook a little later. The Handbook does not have statutory character and is in the nature of guidance to the Returning Officers.”

39. In view of the above legal position that the Handbook does not have statutory character and there being no non-compliance with the provisions of the Constitution or the 1951 Act or any Rules framed or orders made under the 1951 Act by the Returning Officer insofar as the death of an independent candidate was concerned, the averments made in Para 7(A) of the election petition do not furnish any cause of action for declaring the election of the returned candidate to be void under Section

¹³ (2012) 4 SCC 194



100(1)(d)(iv). The High Court seriously erred in holding otherwise and ordering trial of the election petition on the pleadings set out in Para 7(A).”

[Emphasis added]

55. A plain reading of the aforesaid judgments leaves no room for doubt that the Handbooks issued by the Election Commission are merely administrative/executive guidelines meant to facilitate smooth conduct of elections and do not possess statutory force. When the Handbook for Returning Officers, who are statutorily empowered and responsible for smooth conduct of elections, does not have statutory force, the Handbook for Candidate obviously cannot have such force. Any departure from the guidelines cannot therefore, entail any penal consequence. Therefore, unless there is violation of any provision of the Constitution, the Representation of the People Act, 1951 or the Rules framed, mere deviation from any instruction contained in such Handbooks cannot invalidate the appointment of Manas Jena as Election agent.

56. This Court has already held that Manas Jena does not suffer from any disqualification contemplated under Section 41 of the RP Act nor can he be treated as a person in



the service of the Government so as to attract the provision under Section 123(7) of the RP Act. Therefore, even if paragraph 6.1.2 of the Handbook for Candidate contains an instruction prohibiting Chairperson/Vice-Chairperson of Panchayat Samiti from acting as Election Agent, Polling Agent or Counting Agent, such instruction, per se, cannot enlarge the scope of statutory disqualification prescribed under Section 41 of the Act.

57. It is well settled that executive instructions cannot override statutory provisions. The field relating to disqualification for being appointed as Election Agent is specifically provided under Section 41 of the RP Act. Once the Parliament has exhaustively prescribed the grounds of disqualification, the same cannot be expanded by way of administrative instructions issued by the Election Commission. The powers of the Election Commission under Article 324 of the Constitution are intended to supplement the law and not to supplant it.

58. For the forgoing reasons therefore, this Court is unable to accept the contention advanced on behalf of the



election petitioner that appointment of Manas Jena as Election Agent and Counting Agent of the respondent was barred under Sections 40 or 41 of the RP Act.

59. Issue Nos. II and III are answered accordingly against the election petitioner.

60. The main issues having been decided in the manner narrated above, this Court would now consider Issue No.VII.

Issue No.VII

(VII) Whether on account of appointment of Manas Jena as the Election Agent of sole respondent, the result of the election insofar as it concerned the returned candidate (sole Respondent), has been materially affected and whether the election of the sole respondent is liable to be declared as void?

61. Mr. Mohapatra, learned Senior Counsel has argued that Manas Jena has admitted to have played a vital role in the election process in paragraphs-42 and 43 of his evidence. Since it is admitted that Manas Jena was also the Chairman of Panchayat Samiti it is evident that he utilized his official position to influence the voters and garner votes



in favour of the respondent thereby materially affecting the result of the election.

62. Per contra, Mr. Mishra argues that in the absence of any evidence worth the name as to who the influenced voters were, how they were influenced and/or how the alleged influence affected the outcome of the election, such inference cannot be drawn more so as the same has neither been pleaded nor proved by the election petitioner.

63. This Court has carefully perused the pleadings of the parties, particularly the election petition which contains 12 paragraphs excluding paragraphs 9 (D) and 9 (F) struck out by the Court by its earlier order dated 11.03.2025. There is not a single pleading containing any allegation against Manas Jena of influencing the voters. The evidence affidavit runs into 21 paragraphs. There is not a single statement made by the election petitioner (PW-1) making such allegation. It has only been argued that being the Chairman of Panchayat Samiti he must be held to have automatically influenced the voters and the outcome of



election. It is also significant to take note of the admission made by PW-1 in his cross-examination as follows:

“80. I came to know about the appointment of Manas Jena as election agent of the respondent for the first time on the day of polling. I have not lodged any complaint against the appointment of Manas Jena as election agent before any authority.

81. It is not a fact that I had not lodged any complaint against the appointment of Manas Jena as election agent of the respondent as there was no illegality or impropriety committed by them in the election process.”

He further admitted in paragraphs 91 and 92 as follows;

“91. I have not given any specific instance of the respondent procuring the assistance of his election agent in furtherance of his prospects of winning the election.

92. I have not given any specific instance that the election was not fair, transparent and free because of appointment of Manas Jena as election agent of the respondent.”

64. This Court has found no merit in the contention advanced that Manas Jena was disqualified to act as an election agent. Under such circumstances, it was incumbent upon the election petitioner to plead and prove specific instances to demonstrate that even acting in his individual capacity Manas Jena had influenced the voters to vote in



favour of the respondent or that, but for his appointment as election agent, the result of the election would have been different.

65. As held in the case of **Jagan Nath v. Jaswant Singh**¹⁴ it is no doubt true that the statutory requirements of election law are required to be strictly observed and that an election dispute is a special proceeding created by statute, unknown to the common law, wherein the Court exercises only such jurisdiction as is conferred by the statute itself. It is equally well settled that the mandate of the electorate in favour of a returned candidate ought not to be lightly disturbed and any challenge to such election must strictly conform to the requirements prescribed under law. At the same time, one of the fundamental objects of election law is to preserve the purity of the electoral process and to ensure that no candidate secures election by flagrant violation of law or by resorting to corrupt practices. Therefore, where the statute itself does not prescribe any consequence or penalty for non-compliance of a procedural

¹⁴ (1954) 1 SCC 57



requirement, such non-compliance by itself would not automatically vitiate the election or affect the jurisdiction of the Court to adjudicate the dispute. The distinction between a mandatory statutory disqualification and a mere procedural irregularity, for which no penal consequence is provided, assumes importance in the facts of the present case. As already discussed, neither the Constitution nor the provisions of the Act create any disqualification against Manas Jena to act as Election Agent or Counting Agent of the respondent. At best, the objection raised by the election petitioner is based upon certain executive instructions contained in the Handbook for Candidate, which as already held, does not possess statutory force. Therefore, in absence of any statutory prohibition and further in absence of any pleading or proof of material effect on the election result, the contention advanced by Mr. Mohapatra cannot be accepted.

66. Issue no. VII is accordingly answered against the petitioner.



Issue No. IV

“(IV) To what other relief (s) the election petitioner is entitled to?”

67. In view of the finding on the other issues, this Court holds the election petitioner not entitled to the relief claimed in the election petition.

68. Issue No. IV is answered accordingly.

CONCLUSION.

69. In the result, the election petition being devoid of merit, is dismissed. There shall be no order as to costs.

70. Office is directed to communicate the substance of this order to the Election Commission and the Speaker of the State Legislative Assembly at the earliest, so also send an authenticated copy of this order to the Election Commission in terms of Section 103 of the R.P. Act read with Rule 16 under Chapter-XXXIII of the Rules of the High Court of Orissa, 1948.

.....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 22nd May, 2026/ A.K. Rana, P.A.