

**A.F.R.**



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.34287 of 2025**

In the matter of an application under Article 226 & 227  
of the Constitution of India.

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Sidheswar Pradhan ..... **Petitioner**  
-versus-

1. State of Odisha ..... **Opposite Parties**  
2. District Election Officer-cum-  
Collector, Boudh  
3. The Election Officer-cum-  
B.D.O., Boudh  
4. Prafulla Kumar Padhi

**For Petitioners** : Mr. S.K. Padhy, Advocate

**For Opposite Parties** : Mr. S.K. Swain, AGA  
Mr. L. Samantaray, Advocate  
(For O.P.4)

**CORAM:**  
**JUSTICE V. NARASINGH**

**DATE OF FINAL HEARING :21.01.2026**

**DATE OF JUDGMENT :28.01.2026**

**V. Narasingh, J.**

1. Heard Mr. Padhy, learned counsel for the  
Petitioner, Mr. Swain, learned AGA for the State



and Mr. Samantray, learned counsel for the Opposite Party No.4.

2. Assailing the judgment dated 18.11.2025 passed by the learned District Judge, Boudh in Election Appeal No. 02 of 2025 affirming the judgment dated 17.04.2025 passed by the learned Civil Judge (Junior Division)-cum-Election Tribunal, Boudh in Election Petition No. 04 of 2022, thereby declaring the election of the Petitioner as Sarpanch of Badhigaon Gram Panchayat of Boudh Panchayat Samiti as null and void, the present writ petition has been filed under Article 227 of the Constitution of India<sup>1</sup>.

3. The brief facts germane for adjudication are that the Petitioner had filed his nomination for the post of Sarpanch of Badhigaon Gram Panchayat of Boudh Panchayat Samiti along with

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<sup>1</sup> **227. Power of superintendence over all courts by the High Court.**—(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;  
(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and  
(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.



Opposite Party No. 4-Prafulla Kumar Padhi. The said election was conducted on 18.02.2022 and during scrutiny of the nomination papers, Opposite Party No. 4 submitted a written objection that the Petitioner has more than two children on the date of nomination and had also tampered with the date of birth of his 4th daughter (xxx) in the school admission register in order to avoid the disqualification in terms of Section 25(1)(v)<sup>2</sup> of the Orissa Grama Panchayats (Amendments) Act, 1994.

*(Redacted)*

4. It was stated in the objection that though the date of birth of the said 4<sup>th</sup> child is 06.03.1996, but an affidavit has been filed by the Petitioner indicating the same as 21.11.1994.

5. Such objection was filed in the light of the Orissa Grama Panchayat Act, 1994, which came into effect on 18.04.1994, as per the Orissa Grama Panchayats (Amendments) Act, 1994, as published in the Orissa Gazette Ext. No. 426

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<sup>2</sup> **25. Disqualification for membership of Grama Panchayat :-** (1) A person shall be disqualified for being elected or nominated as, a Sarpanch or any other member of the Grama Panchayat constituted under this Act, if he-

(a) to (u). xxx xxx xxx

(v) has more than two Children :

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

xxx xxx xxx



dated 19.04.1994 (Notification No. 6139-Legis/19.04.1994). As per the said notification, any child begotten after one year, i.e., 18.04.1995, would ipso facto attract the disqualification under Section 25(1)(v)<sup>2</sup> of the Orissa Grama Panchayats (Amendments) Act, 1994.

The provisions and the relevance thereof would be adverted to at a later stage.

6. Since despite the Opposite Party No.4's written objection, the Petitioner was allowed to contest the election and was subsequently declared elected as Sarpanch of Badhigaon Gram Panchayat of Boudh Panchayat Samiti, being aggrieved, the said Opposite Party No.4 filed Election Petition No.04 of 2022 in the Court of learned Civil Judge (Junior Division)-cum-Election Tribunal, Boudh and in the said Election Petition, the Petitioner- the returned candidate was arrayed as Opposite Party No.1, and the Election Officer-cum-B.D.O., Boudh and District Election Officer-cum-Collector, Boudh were cited as Opposite Party Nos.2 & 3.

The Opposite Parties filed their written statements fortifying their respective stands.

7. It is apt to note that the Opposite Party Nos.2 & 3, the Election Officer-cum-B.D.O.,



Boudh and the District Election Officer-cum-Collector, Boudh in their written statements admitted that during scrutiny of nomination papers, the Opposite Party No.4- Prafulla Kumar Padhi (hereinafter referred to as the "Election Petitioner") had filed a written objection seeking rejection of the nomination of the Petitioner (Opposite Party No.1 before the learned Election Tribunal) on the ground that the Petitioner has more than two children by the cut-off date.

8. In the written statement the Petitioner-the returned candidate stated that the allegations are false and took a positive stand that his daughter in question was born on 21.11.1994.

9. On the basis of pleadings of the parties, the Election Tribunal framed the following issues for adjudication:-

- (i) Whether the election petition is maintainable in the eye of law?
- (ii) Whether there is any legal cause of action that compels the petitioner to file this case?
- (iii) Whether the election petition is barred by law of limitation and bad for misjoinder of parties?
- (iv) Whether O.P. No.1 had more than two children at the time of election?
- (v) Whether the election of the winning candidate (O.P. No.1) be declared null and void?



(vi) To what other reliefs, the petitioner is entitled?"

10. In support of their respective claims, the Election Petitioner (Opposite Party No.4 before this Court) examined himself and two other witnesses. The Petitioner as the "returned candidate" examined himself as O.P.W.1 and the doctor, who issued the birth certificate, as O.P.W.2. Several documents were exhibited on behalf of the Election Petitioner as well as the Opposite Party No.4. Out of the same, Ext.7-R.T.I. reply and Ext.A-Birth Certificate of the child in question are of significance.

11. The Election Tribunal took note of Ext.7, which is on record before this Court at page-74, indicating that the daughter of the Petitioner appeared in annual HSC examination of 2011 and the date of publication of the result was 25.06.2011 and the date of birth of the daughter of the Petitioner in question was 06.03.1996.

For convenience of ready reference Ext.7 is culled out hereunder;



BOARD OF SECONDARY EDUCATION, ODISHA, ZONAL OFFICE, BERHAMPUR, GANJAM  
 Letter No. 1088 (RTI. Sec.)  
 Date: 09.07.2024

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By speed. Post



From  
 The Deputy Secretary,  
 B.S.E. Odisha,  
 Zonal Office, Berhampur

Sri Prafulla Padhi,  
 S/o: Narayan Padhi,  
 At/Po: Badhigaon, Via: Sarsara,  
 Dist: -Boudh752026 Cell- 9078239175.

Ext. 7  
 S.O. (D) / Boudh  
 6.9.24

Sub: - Disposal of RTI application under RTI Act. 2005.

Ref:- This office letter No-1086(RTI) Dtd.06.07.2024.

Sir,

With reference to the letter on the subject cited above I provide the following information available at this Zonal Office as required by you .

Details of information:-

Roll No. [redacted] of the AHSC Exam.2011, Enrolment No: [redacted]  
 Name of the Candidate:- [redacted]  
 Name of the mother:- Indumati Pradhan  
 Name of the Father:- Sidheswar Pradhan, Date of Birth-06.03.1996  
 Date of Publication of result:- 25.06.2011.

This is for your information.

Yours faithfully,

*[Signature]*  
 Deputy Secretary-cum-PIO  
 BSE, Odisha, Zonal office, Berhampur  
 Board of Secondary Education Odisha  
 Boudh, Zonal Office, Berhampur-1 (Gm)  
 BY REGD POST

Memo No. 1089 / (RTI. Sec.)

Date: 09.07.2024

Copy forwarded to the Nodal Officer, (RTI), B.S.E. Odisha, Cuttack for his information and necessary action with reference to this office letter no. 1087 (RTI. Sec.) dt. 06.07.2024 and case record no. RTI/ B.S.E.(O)/68/2024.



Deputy Secretary-cum-PIO  
 BSE, Odisha, Zonal Office, Berhampur

S. S. Behera/ 09.07.2024

Examined & found to be a true  
 Copy. Folio correctly assessed,  
 Stamps properly paid.

*[Signature]*  
 Comparing Clerk

CERTIFIED TO BE A TRUE COPY

*[Signature]*  
 Head Clerk  
 Authorised under section 78 Act 1 of 1972

The name of the Petitioner's daughter in question, Roll No. as well as the Enrolment No. have been redacted to protect privacy.

12. The learned Election Tribunal also took note of the entry in Ext.5-the School Admission Register of Badhigaon Primary School indicating that the date of birth of daughter of the Petitioner is 06.03.1996.

12-A. It is apt to note that recording of such date of birth is in vernacular and the learned Election Tribunal discarded the stand of the Petitioner



that the same was corrected as 03.10.1994 on the basis of his application-Ext.6.

12-B. In arriving at such conclusion, the learned Election Tribunal referred to the evidence of P.W.3 (Jangyaseni Pattnaik), the present Headmaster of Badhigaon Primary School, indicating that the date of birth of the daughter of the Petitioner-the returned candidate was recorded as 06.03.1996. The said date of birth has been corrected "by rounding in red colour ink as 03.10.1994" by one B. Sahu. "No endorsement is there with regard to such correction. Also the register doesn't contain anything about any document on the basis of which the date of birth of xxx was corrected."

*(Redacted)*

13. In this context, it is apt to note the deposition of the Petitioner, who in cross-examination has stated thus:-

"16. I have not given any application to change or correct the date of birth of my daughter in her M.E school admission register."

14. Ext.A- the Certificate of Birth issued under Section 12<sup>3</sup> of the Registration of Births and

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<sup>3</sup> **12. Certificate of registration of births or deaths.**—The Registrar shall, as soon as the registration of a birth or death has been completed, but not later than seven days, give, free of charge, electronically or otherwise under his signature, to the person who gives information under Section 8 or Section 9, a certificate



Deaths Act, 1969 and Rules of Odisha Births and Deaths, Rule 2001<sup>4</sup>, heavily relied upon by the learned counsel for the Petitioner- returned candidate and marked as Ext.A, indicating the date of birth of the child in question of the Petitioner as 21.11.1994, was discarded by the Election Tribunal, since admittedly the said Ext.A was issued on 04.05.2022, after the institution of the Election Petition on 14.03.2022. Disregarding the contention that the certificate of birth, in terms of Section 35<sup>5</sup> of the Indian Evidence Act, having been issued under the statutory provisions as contained in the Registration of Births and Deaths Act, 1969, ought to have primacy, the learned Election Tribunal negated the defence of the Petitioner- the returned candidate, and allowed the Election Petition, concluding that the date of birth of the daughter of the Petitioner- the returned candidate is 06.03.1996, and as such he has incurred the disqualification under Section 25(1)(v)<sup>2</sup> of the Orissa Grama Panchayat

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extracted from the register relating to such birth or death in such form and manner as may be prescribed.

<sup>4</sup> The Orissa Registration of Births and Deaths Rules, 2001

<sup>5</sup> **35. Relevancy of entry in public record or an electronic record, made in performance of duty.**—An entry in any public or other official book, register or record [or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.



(Amendment) Act, 1994, and consequentially declared his election as null and void.

15. The relevant finding in paragraph-7 under Issues Nos. IV & V relating to the date of birth vis-à-vis the Orissa Grama Panchayat (Amendment) Act, 1994 is extracted hereunder for convenience of reference:-

“In this case the date of birth of the daughter of O.P.No.1 is 06.03.1996. So, her estimated conception date is 6<sup>th</sup> March 1996 - 266 days =14<sup>th</sup> June 1995. So, if the cut-off date under the Orissa Gram Panchayat (Amendment) Act is 18.04.1995, then a child conceived on 14.06.1995 would be considered as begotten by O.P.No.1 after the expiry of one-year grace period (which ended on 17.04.1995), hence, thereby rendering O.P.No.1 disqualified under Section 25(1)(v) of the Orissa Gram Panchayat Act. His election as Sarpanch is therefore liable to be declared null and void.”

16. Questioning the same, the Petitioner filed Election Appeal No.02 of 2025. And, the judgment of the learned Appellate Court assailed in this writ petition, as noted hereinabove.

17. The learned Appellate Court, taking into account the submissions of the Petitioner as well as the Election Petitioner (Opposite Party No.4),



formulated the following points for determination and the same is extracted hereunder:-

- “(i) Whether Dipanjali Pradhan is the fourth child of the appellant.
- (ii) Whether the appellant had more than two children after the cut-off date.
- (iii) Whether the date of birth of Dipanjali Pradhan is **06.03.1996** or **21.11.1994**.
- (iv) Whether the entries made in the School Admission Register has been subsequently interpolated.
- (v) Whether the evidentiary value of the entry made in the School Admission Registers would prevail over the Birth Certificate which is a post litigated document.”

17-A. He also referred to the judgments relied upon by the respective parties.

18. On an analysis of the evidence on record, the learned Appellate Court noted thus:-

“.....The crux is whether the entries in the school admission registers are to be believed or the Birth Certificate issued by a competent authority is to prevail over those entries. In this regard the evidence of P.W. 2 and 3 is relevant who have proved the said entries in the School Admission Registers where the date of birth of xxx is noted as 06.03.1996.”

*(Redacted)*

And, considering the rival submissions in the light of Section 35<sup>5</sup> of the Indian Evidence



Act, 1872 that the returned candidate, the Petitioner has not been able to discharge the burden that the death of birth of his daughter is 21.11.1994 even in the light of Ext.A affirmed the judgment of the Election Tribunal.

19. In paragraph-16 of the judgment passed by the learned Appellate Court, the discrepancy between Ext.A, on which, the case of the Petitioner solely rests, and the corrected date of birth in the School Register at Ext.5 as 03.10.1994 has been noted and taking note that the steps for obtaining Ext.A were initiated only after the filing of the Election Petition, and taking into account its probative value in the background the same was applied for, it was held that Ext.A cannot override the clinching evidence on record that the date of birth of the Petitioner's daughter is 06.03.1996. As such, the learned Appellate Court concurred with the finding of the Election Tribunal that the Petitioner- the returned candidate has incurred the disqualification in terms of Section 25(1)(v)<sup>2</sup> of the Orissa Grama Panchayat (Amendment) Act, 1994 and dismissed the appeal.

20. In assailing the judgment of the Election Tribunal and the Appellate Court Learned counsel



for the Petitioner, Mr. Padhi relies on the following judgments:-

- i) **Birad Mal Singhvi v. Anand Purohit**<sup>6</sup>
- ii) **Brij Mohan Singh v. Priya Brat Narain Sinha and others**<sup>7</sup>
- iii) **Chakamana Naik vs. Collector, Kalahandi and others**<sup>8</sup>

21. Leaned counsel for the Petitioner submits that the Election Tribunal as well as the Appellate Court have grossly erred in law in evaluating the evidentiary value of Ext.A, which clearly indicated the date of birth of the daughter of the Petitioner as 21.11.1994. Therefore, the judgment of the Courts below is liable to be set-aside and the Petitioner, who was democratically elected, ought not to be unseated.

22. Per contra, learned counsel Mr. Samantaray for the Opposite Party No.4 (Election Petitioner) supports the findings of the Appellate Court as well as the Election Tribunal and submits that the stand of both the parties has been discussed threadbare and the order of the Appellate Court is based on sound reasoning, which does not call for any interference.

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<sup>6</sup> **Birad Mal Singhvi v. Anand Purohit**, 1988 Supp SCC 604: AIR 1988 SC 1796

<sup>7</sup> **Brij Mohan Singh v. Priya Brat Narain Sinha**, 1964 SCC OnLine SC 16: AIR 1965 SC 282

<sup>8</sup> **Chakamana Naik v. Collector**, 2010 SCC OnLine Ori 472: (2011) 111 CLT 718



23. The learned counsel for the Opposite Party No.4 (Election Petitioner) relies on the decision of this Court in the case of ***Bideshi Sethi vs. Smt. Monalisa Das & ors***<sup>9</sup>.

24. There is no dispute that Ext.A, on which the Petitioner- the returned candidate heavily relies, was issued on 04.05.2022 i.e., after the institution of the Election Petition.

25. In the said certificate, the date of birth of the daughter of the Petitioner has been shown as 21.11.1994 and one doctor Antaryami Behera was shown as the issuing authority and the said doctor has been examined as O.P.W.2. In his cross-examination he has stated that "The Birth certificate of xxx has been issued on the basis of the Aadhaar Card of her father Sidheswar Pradhan (O.P No. 1)".

Paragraph-7 of the further cross-examination of O.P.W.2 runs thus:-

"It is a fact that in the said register, names of other kids have not been mentioned in Col. No.5 except the name of xxxx against entry no. 2427 which has been made in a different ink. I cannot say who made entries in the said register. Before issuing the birth certificate I have not verified any document with regard to birth and identification of xxx except the affidavit submitted by her father. I have also not made any local

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<sup>9</sup> ***Bideshi Sethi v. Monalisa Das***, 2011(Supp. I)OLR614



enquiry as to why such application was made at a later stage.”

(Redacted)

26. It is of great relevance and significance to note that the date of birth in Ext. A is at variance with the date of birth of the Petitioner’s daughter as reflected in Ext. 5. Inasmuch as in Ext. A it is stated as 21.11.1994, whereas in Ext. 5 the date of birth, which was initially 06.03.1996 in vernacular, later corrected and shown as 03.10.1994.

There is no explanation relating to such material discrepancy which, in the given circumstances lends credence to the allegation that Ext. A has been procured after initiation of the Election Misc. Case. Hence, credence was not accorded by the Appellate Court as well as the Election Tribunal.

26-A. In the light of such discrepancy, as noted and the evidence on record including the background of issuance of Ext.A, the judgments cited by the learned counsel for the Petitioner have to be analysed.

27. The judgment of the Apex Court in the case of ***Birad Mal Singhvi (Supra)***<sup>6</sup> relates to rejection of nomination papers of three candidates, namely, Smt. Umrao Ben,



Hukmichand and Suraj Prakash Joshi, inter alia, on the ground that they were below 25 years of age.

The High Court of Rajasthan came to a finding that the rejection of nomination papers of Hukmichand and Suraj Prakash Joshi was improper since both the candidates had attained the qualifying age of 25 years on the date nomination, and on such finding, the Petitioner's election was set-aside which was assailed before the Apex Court.

While considering the appeal preferred by the Petitioner- the returned candidate in the said judgment, the Apex Court has clearly noted while referring to Section 35<sup>5</sup> of the Indian Evidence Act that mere proof of documents would not tantamount to proof of all the contents or correctness of the date of birth stated in the documents, and the Apex Court further noted that "*the truth or otherwise of the facts in issue, namely, the date of birth of the candidate as mentioned in the documents must be proved by admissible evidence*" and negated the finding by the High Court of Rajasthan merely referring to the entries in Exts. 8 to 12 therein relating to the



date of birth in the absence of any independent evidence.

27-A. The primary ground on which the Apex Court interfered is that though the School register is relevant and admissible under Section 35 of the Indian Evidence Act but such entry is not of much evidentiary value to prove the age of the persons in the absence of the material on which the age was recorded.

27-B. In the considered view of this Court, in the factual matrix of the case at hand, the decision cited is clearly distinguishable, inasmuch as in the present writ petition the discrepancy in the School Register- Ext.5 and the certificate of birth issued- Ext.A has remained unanswered.

The change in the date of birth in the School Register assumes significance since, though initially a stand was taken that the same was done on the application of the Petitioner, such application being on record as Ext. 6, the Petitioner in his evidence as noted, has unambiguously stated that he has not sought such correction.

28. It also does not stand to reason that no steps were taken for correction of the date of birth of the daughter of the Petitioner as



mentioned in Ext. 7- the certificate issued by the Board of Secondary Education for the annual HSC Examination, 2011 indicating her date of birth to be 06.03.1996, as against the presently claimed date of birth in Ext.A i.e. 21.11.1994.

28-A. The decision relating to the case of **Chakamana Naik (Supra)**<sup>8</sup> does not throw any light on the issue involved in the case at hand. Inasmuch as, the question for consideration in the said case was whether the birth certificate-Ext.A therein issued by the medical officer who had authority under the Registration of Births and Deaths Act, 1969, could be discarded and a birth recorded by an unauthorised clerk accepted.

28-B. Similarly, the other judgment of the Apex Court in the case of **Brij Mohan Singh (Supra)**<sup>7</sup> is also clearly distinguishable on facts.

The principal issue in the said case was whether Brij Mohan Singh had incurred disqualification for election to the Bihar Legislative Assembly on the ground of being underage and for allegedly committing corrupt practices. The Apex Court examined the evidence relating to the age of Brij Mohan Singh



as well as the allegation regarding publication of defamatory pamphlets.

It was observed that the evidence on record did not establish that Singh was below 25 years of age on the date of nomination, nor did it prove the commission of any corrupt practice. Consequently, the appeal was allowed, the order of the High Court was set aside, and the decision of the Election Tribunal dismissing the election petition was restored, with costs awarded to Brij Mohan Singh.

29. Learned counsel for Opposite Party No. 4 has relied on the judgment of this Court in the case of ***Bideshi Sethi (supra)***<sup>9</sup> and referring to the said judgment, it is submitted that Ext. A in the case at hand, on which much reliance is being placed, is liable to be rejected since the same is not a contemporaneous document, having admittedly been issued during the currency of the litigation i.e., after filing of the Election Petition.

30. On considering the rival submissions, referring to the evidence on record and the analysis thereof by the Election Tribunal as well as the Appellate Court, this Court is of the considered view that the Petitioner has not been



able to establish that the date of birth of the child is 21.11.1994 as claimed, inter alia on account of discrepancy as noted, regarding the date of birth in Ext.A as well as the corrected date of birth i.e. 03.10.1994 reflected in Ext.5-School Admission Register.

In the light of the discussion of evidence as above, the submission that Ext.A ought to be accorded primacy have to be negated.

As such there being no infirmity in the findings recorded by the learned Election Tribunal and affirmed by the learned Appellate Court vide the impugned judgments dtd.17.04.2025 and 18.11.2025 at Annexures-1 Series & 2 respectively, the writ petition assailing the same being devoid of merit is dismissed.

31. The interim order stands vacated.

32. Consequential steps in terms of the order passed by the learned Election Tribunal be taken in accordance with the provisions of the Orissa Grama Panchayats (Amendments) Act, 1994.

33. Costs made easy.

**(V. Narasingh)  
Judge**