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RENU BISOI AND ORS.

v

GOUR CHANDRA PRADHAN AND ORS.

JULY 16, 1999

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[B.N. KIRPAL AND S. RAJENDRA BABU, JJ.]

Orissa Zilla Parishad Act, 1991.

C *S.36—Oath of allegiance by elected members of Zilla Parishad—To be taken within three-months of holding office or at one of first three meetings of Parishad whichever is later—some of the members could not take oath at first and second meetings—They were present at third meeting which was adjourned after condolence resolution was passed—When notice was sent for a meeting on next date, a dispute arose as to whether oath could be administered to the members—High Court opined against the members—*
D *Held, High Court erred in concluding that provisions of s.36 got attracted—Members were not at fault as they were present at the third meeting which stood adjourned—At the adjourned meeting they were prevented from taking oath—Collector would administer oath to appellant-members.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3806 of 1999.

From the Judgment and Order dated 5.5.98 of the Orissa High Court in O.J.C. 18371 of 1997..

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Jana Kalyan Das for the Appellants.

B.B. Ratho, (Ms. Shashindra Tripathi) for Ms. Mridula Ray Bharadwaj, Jayant Das, General for the State of Orissa and Radha Shyam Jena for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

The short question which arises for consideration in this appeal is whether the appellants, who had been elected as the members of the Zilla
H Parishad, cease to hold office for the reason that they had not taken the oath

of allegiance as contemplated by Section 36 of the Orissa Zilla Parishad Act (for short 'the Act'). A

The brief facts are that a election to the said Zilla Parishad took place and the results were declared on 29-1-1997. According to Section 36 of the Act the elected members, including the President and the Vice-President of the Parishad are required to take oath of a allegiance within three months of the date with effect from which they hold office or at any one of the first three meetings of the Parishad, whichever is latter. If the oath is not taken then such person ceases to hold office. B

In the present case first meeting of the Parishad was held on 15-2-1997. According to the counter-affidavit of Shri S.K. Satpathi, Collector-cum-District Magistrate, Ganjam, filed in this Court 69 members were elected to the said Zilla Parishad. On 15-2-1997, 36 members who came at 10.30 AM were administered oath. The said Collector waited for other members till 11.20 AM and after that time no oath was administered. At the said meeting the President of the Parishad was elected. The second meeting took place on 25-2-1997. In the said meeting oath was administered to 26 members out of the 33 members who had come at 10.30 AM. The appellants on that date also came after 10.30 AM and, therefore, oath was not administered to them because by that time the District Magistrate had left the place of meeting. The third meeting was called on 1-5-1997. The appellants were present at the time when the meeting was called. It transpires that a condolence resolution was passed on account of the demise of Shri Biju Pattanaik and no oath was administered to the appellants. Notice was then sent for a meeting on 30-7-1997 where a dispute arose as to whether oath could be administered to the appellants. It was contended by some of the members that as the appellants had not taken oath in the first three meetings, therefore, by virtue of Section 36 they had ceased to be the members of the Zillas Parishad. The District Collector wrote a letter dated 14th August, 1997 to the Secretary, State Election Commission in which, he inter alia, stated that the third meeting got adjourned after the condolence resolution of late Shri Biju Pattnaik. A clarification was sought from the Election Commission as to whether the appellants herein ceased to be the members of Zilla Parishad. The Election Commission opined in favour of the appellants. It is thereafter that a writ petition was filed in the High Court of Orissa by respondent No.1, inter alia, contending that by virtue of the provisions of Section 36 the appellants had ceased to hold office as they had not complied with the said provisions. C
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A By the impugned judgment the High Court came to the conclusion that three meetings of the Parishad had been held and the appellants herein had not taken oath in any of the said meetings and, therefore, they had ceased to hold office.

B There is no dispute that in the first two meetings oath was not administered to the appellants. With regard to the meeting which was held on 1-5-1997, the letter dated 14th August, 1997, written by the Collector States that the said meeting "got adjourned after condolence resolution of late Shri Biju Pattnaik." In the affidavit of the said Collector, filed in this Court it is sated that on 1-5-1997 no member was given oath of allegiance and the same was cancelled after the condolence was held for the demise of Shri Biju Pattnaik.

C It is clear from the aforesaid that the third meeting stood adjourned after the passing of the condolence resolution and, therefore, technically speaking, the meeting which was called for 30-7-1997 would be the adjourned meeting.

D We do not agree with the conclusion of the High Court and the submission of the learned counsel for the respondent that the third meeting stood concluded on 1-5-1997 with the passing of the condolence resolution and that the meeting on 30-7-1997 was the fourth meeting. There is no material on record which can persuade us to hold that what was stated by the Collector in his letter dated 14th August, 1997, written to the State Election Commission to the effect that the third meeting got adjourned is incorrect.

E It is an admitted case that on 30-7-1997 the appellants were denied from being administered oath because the contention was raised that Section 36 had not been complied with as first three meetings had been held. The appellants were not at fault as they were present at the meeting held on 1-5-1997 but could they not be administered oath because the meeting stood adjourned. At the adjourned meeting on 30-7-1997 they were again prevented from taking oath. Under the circumstances the High Court was not correct in concluding that the provisions of Section 36 got attracted to the present case.

F For the aforesaid reasons this appeal is allowed and the writ petition filed by respondent No. 1 is dismissed. Direction is given to the Collector, Ganjam to administer oath to the appellants within four weeks from today.