

A.F.R.

Court No. - 3

Case :- WRIT - C No. - 4138 of 2021

Petitioner :- Smt. Ram Murti Devi

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Salilendu Kumar Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Anil Kumar Ojha,J.

1. Heard Sri Salilendu Kumar Upadhyay, learned counsel for the petitioner and Sri Nitin Kumar Agarwal, learned standing counsel for the State respondent nos. 1 to 4.
2. With the consent of learned counsel for the petitioner and the learned standing counsel this writ petition is being disposed of without calling for a counter affidavit.

Facts

3. Briefly stated facts of the present case are that the petitioner is the wife of late Sri Radhey Shyam. A copy of page No.168 of family register of Village Panchayat - Dostpur, Tehsil - Karhal, District – Mainpuri, has been appended as Annexure 10 to the writ petition which shows that the name of the petitioner and six others were initially recorded in the family register. Subsequently, the office of the District Magistrate issued a certificate No.1495, dated 04.03.2020 titled as "Sansodhit Parivari Jan Praman Patra" by which he included the respondent nos. 5, 6 and 7 alongwith the petitioner and her family members. Accordingly, the names of the respondent nos. 5, 6 and 7 were entered in the family register by the Village Development Officer vide

entry dated 18.03.2020. Aggrieved with the aforesaid entry made in the family register relating to the petitioners family, the petitioner has filed the present writ petition praying for the following relief :-

“(A) Issue a writ order or direction in the nature of certiorari quashing the family certificate dated 04.03.2020 (Annexure No.9 to the writ petition) issued by second respondent.

(B) Issue a writ order or direction in the nature of certiorari quashing the amended entry in family register dated 18.03.2020 (Annexure No.10 to this writ petition) made by respondent no.4.”

Submissions

4. Learned counsel for the petitioner submits that order dated 04.03.2020, passed by the office of the District Magistrate, Mainpuri, and the consequential entries made in the family register by the Additional Village Development Officer, dated 18.03.2020 are wholly without authority of law inasmuch as the provisions of the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970, do not empower the District Magistrate to pass such an order.

5. Learned standing counsel has filed today a short counter affidavit on behalf of the respondent no.2 which runs in four paragraphs. In paragraph 3 of the short counter affidavit the respondent no.2 has stated as under :-

“That in this regard it is submitted that the case of the petitioner is respondent no.2 has issued the family certificate dated 04.03.2020, whereas in this regard it is submitted that the respondent no.2 has not issued any kind of family certificate in favour of any person annexed as Annexure No.9 of the writ petition.

In this regard it is submitted that the heading of that certificate is amended family relation certificate, which has been issued by In-charge Officer/Deputy Collector only to this extent that it relates to a matter of Rs. 5000/-. Apart from this if any dispute arises it shall be suo-moto deemed to be cancelled, therefore, contention of the petitioner is apparently absolutely incorrect.”

Discussion and Findings

6. On 23.03.2021, this Court passed an order in which the aforesaid Rules, 1970, was specifically referred and it was observed that *prima facie* the order of the District Magistrate, Mainpuri dated 04.03.2020, appears to be without jurisdiction and yet the respondent no.2 in the aforesaid short counter affidavit dated 26.03.2021 has not disclosed his source of power to issue the amended family members certificate.

7. The U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970, reads as under :-

“1. Short title and commencement. (1) *These rules may be called the Uttar Pradesh Panchayat Raj (Maintenance of Family Registers) Rules, 1970.*

(2) *They shall come into force with effect from the date of their publication in the Gazette.*

2. Form and preparation of family register.- *A family register in Form 'A' shall be prepared containing familywise the names and particulars of all persons ordinarily residing in the village pertaining to the Gram Sabha. Ordinarily one page shall be allotted to each family in the register. There, shall be separate section in the register for families belonging to the Scheduled Castes. The register shall be prepared in Hindi in Devanagari script.*

COMMENT

Family Register - Maintenance of - *Rule 2 is mandatory Panchayats to maintain a Family Register containing family-wise names and particulars of all persons ordinarily residing in the village which popularly known as kutumb Register. [Krishna Dutt Mishra v. State of u., au D986 at 1017 (LB)].*

3. General conditions for registration in the register.- *Every person who has been ordinarily resident within the area of the Gram Sabha shall be entitled to be registered in the family register.*

Explanation.- *A person shall be deemed to be ordinarily resident in a village if he has been ordinarily residing in such village or is in possession of a dwelling house therein ready for occupation.*

4. Quarterly entries in the family register- *At the beginning of each quarter commencing from April in each year,*

the Secretary of a Gram Sabha shall make necessary changes in the family register consequent upon births and death, if any, occurring in the previous quarter in each family. Such changes shall be laid before the next meeting of the Gram Panchayat for information.

COMMENT

Family Register-Necessary changes in- Necessary changes in Family Register to be made by the Secretary of Gram Sabha consequent upon birth and death if any. Such changes shall be laid before next meeting of Gram Panchayat for its information. [Kristna Dutt Mishra v. State of U.P., 2005 (2) SCD 986 at 1017 (LB)].

5. Correction of any existing entry.- The Assistant Development Officer (Panchayat) may, on an application made to him in this behalf, order the correction of any existing entry in the family register and the Secretary of the Gram Sabha shall then correct the register accordingly.

COMMENTS

Maintenance of family register- Rule 5 provides for coercion and inclusion of names. As such family register shall be under constant surveillance of the Gram Panchayat. [Krishna Dutt Mishra v. State of U.P., 2005 (2) SCD 986 at 1017 (LB)].

Safe custody of family register.- The Secretary of the Gram Panchayat shall be responsible for safe custody of family register. [Krishna Dutt Mishra v. State of U.P., 2005 (2) SCD 986 at 1017 (LB)].

6. Inclusion of names in the register-(1) Any person whose name is not included in the family register may apply to the Assistant Development Officer (Panchayat) for the inclusion of his name therein.

(2). The Assistant Development Officer (Panchayat) shall, if satisfied, after such enquiry, as he think fit that the applicant is entitled to be registered in the register direct that the name of the applicant, be included therein and the Secretary of the Gram Sabha shall include the name accordingly.

[6-A. Any person aggrieved by an order made under Rule 5 or Rule 6 may, within 30 days from the date of such order prefer an appeal to the Sub- Divisional Officer whose decision shall be final]

7. Custody and preservation of the register.-(1) The Secretary of the Gram Sabha shall be responsible for the safe custody of the family register.

(2) Every person shall have right to inspect the register and to get attested copy of any entry or extract therefrom in such manner and on payment of such fees, if any, as may be specified

in Rules 73 of the U.P. Panchayat Raj Rules.

8. It is well settled that if the statute provides to do a thing in a particular manner, then that thing has to be done in that very manner, vide **Taylor Vs. Taylor, (1876) 1 Ch.D. 426; Nazir Ahmed Vs. King Emperor, AIR 1936 PC 253; Deep Chand Vs. State of Rajasthan, AIR 1961 SC 1527; Haresh Dayaram Thakur Vs. State of Maharashtra & Ors., (2000) 6 SCC 179; Dhanajaya Reddy Vs. State of Karnataka etc. etc., (2001) 4 SCC 9; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala & Ors., (2002) 1 SCC 633** as well as this Court in **Atar Singh Vs. State of U.P. And others, 2013(1)ADJ43, Bankey Lal and another Vs. Deputy Director of Consolidation and others,2013(5)ADJ51, Phoolpati Vs. State of U.P. And others, 2014 2 AWC1291All, Paras and another Vs.and others, 2013(8)ADJ253,Ram Pratap vs. Deputy Director of Consolidation and others 2013 (6)ADJ 457, Rambali and others vs. State of U.P. and Others 2013 (2) ADJ 91.**

9. Rule 6 A provides for appeal. The appeal is creation of the Statute and once the power of appeal has been conferred upon the Sub Divisional Officer, that authority alone could exercise that power. The District Magistrate has no authority to pass an order as he is not even the Appellate Authority under the Rules 1970. The impugned order dated 04.03.2020, passed by the District Magistrate amounts to transgression of power.

10. In **Surjit Ghosh vs. United Commercial Bank, AIR 1995 SC 1053**, the Apex Court observed as under:-

“5.It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order

of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted. The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside.”

11. Similar view dealing with the transgression of power has been taken by the Apex Court in **Amar Nath Chowdhury vs. Braithwaite and Company Ltd. and Ors.**, (2002) 2 SCC 290 and in **Civil Appeal No. 1217 of 2011 Brij Bihari Singh vs. Bihar State Financial Corporation** decided on 20.11.2015.

12. For the purposes of controversy involved in the present writ petition Rules 6 and 6A are relevant. Perusal of Rule 6 would reveal that any person whose name is not included in the family register may apply to the Assistant Development Officer (Panchayat) for the inclusion of his name and if the Assistant Development Officer (Panchayat) is satisfied, after such enquiry as he thinks fit; that the applicant is entitled to be

registered in the register, he may direct to include the name of the applicant in the family register and thereupon the Secretary of the Gram Sabha shall include the name of the applicant accordingly. Rule 6-A provides for appeal within 30 days from the date of the order, before the Sub-Divisional Officer whose decision shall be final.

13. Facts of the present case clearly reveal that neither the respondent Nos. 5, 6 & 7 have moved an application before the Competent Authority i.e. the Additional Development Officer (Panchayat) for inclusion of their name in the family register nor the Assistant Development Officer (Panchayat) has passed any order for inclusion of their name after due inquiry as required under Rule 6 of the Rules. Under the circumstances the impugned order dated 04.03.2020, passed by the District Magistrate, Mainpuri, is wholly without jurisdiction. Therefore, it can not be sustained. Consequently, the consequential order dated 18.03.2020, passed by the Village Development Officer, incorporating the names of the respondent nos. 5, 6 & 7, can also not be sustained. Therefore, both the orders i.e. the order dated 04.03.2020 passed by the office of the District Magistrate and the order dated 18.03.2020 making entries of inclusion of names of the respondent nos. 5, 6 & 7 in the family register by the Village Development Officer, Village Panchayat – Dostpur, are without authority of law and are, therefore, quashed.

14. Liberty is granted to the respondent nos. 5, 6 & 7 to move an application in accordance with law before the Assistant Development Officer (Panchayat). If such an application is filed by the respondent nos. 5, 6 & 7 within three weeks, then the Assistant Development Officer (Panchayat) shall consider the application of the respondent Nos. 5, 6 & 7 for inclusion of their names and after due inquiry, pass an appropriate order, in accordance with law, expeditiously, preferably within next six weeks, after affording reasonable opportunity of hearing to all the parties

concerned and without being influenced by any of the observations made in this order.

15. It is made clear that we have not expressed any opinion on merits of the case of the petitioner for the respondent nos. 5, 6 & 7.

16. The writ petition is accordingly **allowed** to the extent indicated above.

Order Date :- 26.3.2021/vkg