
(1988) 10 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 3181 of 1987 (J.)

G.L. Saxena

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 03-10-1988

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Registration of Births and Deaths Act, 1969 — Section 8(1)(a)

Citation : (1989) MPJR 71

Hon'ble Judges : Y.B. Suryavanshi, J;C.P. Sen, J

Bench : Division Bench

Advocate : M.L. Chansoriya, for the Appellant; Anoop Chaudhary, Dy., A.G. for Respondents 1 to 3 and None for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sen, J.

In this petition the Petitioner is challenging cancellation of entry at serial No. 359 dated 21-11-1983 in the Births & Deaths Register of the Municipal Council Hoshangabad relating to the death of Petitioner's elder brother Dr. B.L. Saxena on 8-10-1983 who died in the house of his wife at Gwalior in Hoshangabad.

Dr. B.L. Saxena was the elder brother of the Petitioner and Shri B. M. Lal, a Judge of this High Court, Dr. Rani Saxena was his wife and she was posted as District Health Officer at Hoshangabad at the relevant time and she died on 27-1-1987. Dr. Saxena was serving in the Medical & Health Department of the State of M. P. having been appointed as Assistant Surgeon in the year 1953. His wife Dr. Rani Saxena was also Assistant Surgeon. In the year 1962-63 Dr. Saxena was posted as Malaria Medical Officer at Dhar and his wife was also posted as Assistant Surgeon in the Main Hospital. Dr. Saxena was prosecuted u/s 161, IPC and under Prevention of Corruption Act, 1954. Dr. Saxena was convicted by the Special Judge in Special Case No. 1/68 and 1/69 and sentenced to rigorous imprisonment for three years. He preferred an appeal in the High Court which

was dismissed. He then preferred appeal to the Supreme Court on 18-5-1976 and was released on bail. His younger brother Shri B. M. Lal stood as a surety in the sum of Rs. 5,000/-. At that time Shri Lal was a practising Advocate. Conviction of Dr. Saxena was maintained but sentence reduced from 3 years" to 18 months. It appears thereafter Dr. Saxena failed to surrender before Chief Judicial Magistrate, Dhar, and proceeding for forfeiture of the surety bond was taken against Shri B. M. Lal (as he then was). According to affidavit filed in Supreme Court by Shri Lal, after the decision of the Supreme Court, Dr. Saxena had left Hoshangabad and stopped visiting his family. At that time, Dr. Rani Saxena was posted at Hoshangabad. According to him, Dr. Saxena died of cardiac arrest in the house of his wife at Hoshangabad where he had come a few days before his death. He was cremated in the Rajghat at Hoshangabad in the banks of Narmada river on 9-10-1983. The amount of Rs. 5000/- was forfeited by the Chief Judicial Magistrate and appeal was preferred before the Sessions Judge. In the meanwhile, Shri B. M. Lal was elevated as a Judge of this High Court. Respondent No. 4 Mujeeb Qureshi who is a practising Advocate at Dhar and claims to be a social and political worker, filed an application in the Supreme Court for transfer of the appeal of Shri Lal outside the State of M. P. as he happened to be a Judge of the M. P. High Court. The Supreme Court transferred the case to the Sessions Judge, Hyderabad, and the appeal has been allowed and forfeiture of the surety bond set aside. Revision preferred before the Andhra Pradesh High Court was also dismissed. According to the Petitioner, due entry was made about the death of Dr. Saxena in the Rajghat cremation ground register on 9-10-1983. On 11-11-1983 the Petitioner approached the Chief Municipal Officer, Hoshangabad, for the death certificate of his brother Dr. Saxena and he was asked to furnish information as required u/s 8 (1) (a) of the Registration of Births & Deaths Act, 1969, (hereinafter referred to as the Act of 1969);-Accordingly, the Petitioner submitted an affidavit about the death of his brother and then entry was made about the death of Dr. Saxena on 8-10-1983 in the Births & Deaths Register on 21-11-1983. The death certificate was issued to the Petitioner.

It appears that Shri B. M. Lal, J. sitting with J. S. Verma then Acting Chief Justice, in a division Bench in *Nandlal Jaiswal v. State of M. P.* 1986 M.P.L.J. 742 decided on 28-3-1986 passed severe strictures against the State Governments about underhand dealings in granting licences under Excise Act. The State went up in appeal before the Supreme Court and it was allowed on 24-10-1986 and all the strictures were expunged by the Supreme Court as without any basis in State of M.P. and Others Vs. *Nandlal Jaiswal and Others*, . In the meanwhile, the Respondent No. 4 filed an application before Respondent No. 3 Chief Municipal Officer, who was Registrar of Births and Deaths under the Act, on 23-8-1986 that on enquiry he found that an entry has been made in the Births & Deaths Register at serial No. 359 dated 21-11-1983 that Dr. Saxena had died at Gwaltoli in Hoshangabad on 8-10-1983 on the basis of an affidavit of a person in whose name stamp for the affidavit was not purchased and no action could have been

taken on the basis of such an affidavit Dr. B.L. Saxena never resided in Gwaltoli in Hoshangabad nor anyone by that name died there as per his information. Along with the application, an affidavit of a resident of Gwaltoli in Hoshangabad, one Rajkumar Gupta was enclosed. The Respondent No. 4 had every doubt that the entry has been falsely made and the same be cancelled. The application was forwarded by the Respondent No. 3 to the Respondent No. 2 i. e. District Registrar of Births & Deaths, who in turn forwarded the application to the Chief Registrar of Births and Deaths of the State of M. P. at Bhopal on 1-10-1986. The Deputy Chief Registrar informed the Respondent No. 2 on 21-10-1986 that there is no provision under the rules for cancelling the entry in the Register on the basis of an affidavit and, therefore, the application is being returned. The Respondent No. 2, in turn, informed the Respondent No. 3 on 4-11-1986 that after making due enquiry necessary action be taken and the Respondent No. 3 endorsed that appropriate action be taken. The Respondent No. 4 made fresh application to the Respondent No. 3 on 5-2-1987 for proper enquiry u/s 15 and Rule 12 after he was informed by the Respondent No. 3 on 4-2-1987 that there is no provision in the rules for cancellation of the death entry of Dr. Saxena on the basis of affidavit filed. The Respondent No. 3 in the meanwhile had entrusted the enquiry to V.K. Sarathe, Vaccinator, and P. C Sindhwa, Registration Clerk, who prepared a panchnama on 6-2-1987 that Dr. Saxena was not residing in Gwaltoli nor he died there. Shri S. B. Shah was the then Chief Municipal Officer and he was promoted and sent as Deputy Director, Sagar. He was succeeded by the present incumbent S. C. Maheshwari who passed the impugned order dated 31-8-1987 cancelling entry No. 359 dated 21-11-1983 regarding the death of Dr. Saxena on 8-10-1983 on the basis of enquiry conducted by himself his subordinates, panchanama prepared and the affidavit filed holding that Dr. Saxena did not die in Gwaltoli on 8-10-1983 and nobody has confirmed that he was residing there. It was, therefore, clear that Dr. Saxena did not die in Gwaltoli on 8-10-1983. The affidavit given by the Petitioner on 11-11-1983 was not on proper stamp nor there is any stamp of the Notary about payment of fee, while the address of Dr. Rani Saxena was c/o D.H.O., Hoshangabad. As such, the entry was made without proper enquiry. The Respondent No. 3 had sought permission of the Respondent No. 2 on 30-7-1987 for taking necessary action in the matter. He also visited Gwaltoli and made enquiries from residents there and recorded statement of one S.R. Mourya. He also verified from the record, for round about the year 1983 and there was no proof that Dr. Saxena was residing in Gwaltoli either as an owner or as a tenant nor his name was there in the ration card. This confirmed that there was no one by name Dr. B.L. Saxena nor he died their in the year 1983. So in exercise of the power u/s 15 of the Act read with Rule 12 (6) of M. P. Registration of Births & Deaths Rules, 1974, (hereinafter referred to as the Rules), the entry No. 359 was cancelled. Therefore, this petition has been filed on 9-10-1987 saying that Saxena has died on 8-10-1983 in Ludha Laddha Ki Chal, Station Road, Gwaltoli, in the house of his wife Dr. Rani Saxena which was allotted to her. Show cause notices were issued to the Respondents on the same day and the operation of the order dated 31-8-1987 was stayed.

The Petitioner's case is that the impugned order passed by the Respondent No. 3 is in violation of the principles of natural justice and the Petitioner on whose information the entry regarding the death of his brother Dr. Saxena was made, was not given an opportunity to rebut the false charge made by the Respondent No. 4. The Respondent No. 3 had no authority to set aside the order passed by the Respondent No. 2 making the entry regarding the death as Respondent No. 2 was superior to Respondent No. 3. The Respondent No. 3 has not been duly appointed as Registrar under the Act and he had no jurisdiction to pass the impugned order. By first amendment, it was further submitted that Dr. Rani Saxena had applied on 28-9-1985 for a succession certificate u/s 377 of the Indian Succession Act, 1925, before the Court of Civil Judge, Class-I, Hoshangabad, which was registered as M.J.C. No 20/85 and in consequence thereof a c tation was issued in Daink Al k published from Kanti and Bhopal on 30-9-1985 inviting objections. On 9-4-1986 the Civil Judge granted succession certificate to Dr. Rani Saxena which established beyond doubt that Dr. Saxena died at Hoshangabad on 8-10-1983. It is incomprehensible that a married Hindu woman would declare her living husband to be dead and obtain a succession certificate. By subsequent amendment, it was further alleged that the Respondent No. 4 had submitted an application to the President and the Prime Minister of India that the entry regarding death of Dr. Saxena in the Births & Deaths Register has been cancelled by the C.M.O. on 31-8-1987, knowing fully well that the operation of the order has been stayed in this petition. This has been deliberately and purposely done at the instance of certain interested politicians to harm the Petitioner and his family members, so it cannot be said that the Respondent No. 4 is contesting the petition in public interest. The petition was admitted on 4-12-1987 and the ad-interim stay was confirmed in spite of it being opposed by the Respondents who filed a detailed reply supported by documents.

The Respondents 1 to 3 opposed the petition and contended that Ludha Laddha Ki Chal is in Civil Lines and not in Gwaltoli and at present there is no such Chal. It is not known whether Dr. Saxena breathed his last in the house occupied by his wife Dr. Rani Saxena on 8-10-1983 and whether his cremation was performed at the Rajghat Cremation Ground on 9-10-1983. An entry regarding his death was recorded on 21-11-1983 on the basis of the affidavit of the Petitioner dated 11-11-1983 who is a resident of village Papera, district Bhandara in Maharashtra State. Under Rule 10(2) of the Rules, in case of delay of more than 30 days but before one year, the entry can be made on payment of late fee and production of an affidavit and, therefore, written permission of the District Registrar was obtained and the entry was made by the Respondent No. 3. The matter was reopened on the basis of an application moved by the Respondent No. 4 u/s 15 of the Act and advance copy was also sent to the Secretary, Local Self Government. On being directed by the District Registrar to make enquiry as per rules, the matter was enquired into and on being satisfied that there was no such death of Dr. Saxena in Gwaltoli, Hoshangabad, on 8-10-1983, the entry was

found to be erroneous and, therefore, cancelled. The matter was not closed earlier as alleged by the Petitioner but the Respondent No. 4 was informed that no action was possible on the basis of the affidavit alone. The Respondent No. 4 filed another application on 5-2-1987 mentioning that the entry can be cancelled u/s 15 read with Rule 12. There is no provision for giving an opportunity to the person concerned at whose instance the entry was recorded. The enquiry was personally conducted by the Respondent No. 3. The C.M.O. has been duly authorised by the State Government to act as Registrar of Births & Deaths and, therefore, he was competent to correct the entry. In support, the affidavit of C.P. Shah, the then C.M.O. was filed but he deposed that he did not order for preparation of panchnama dated 6-2-1987 nor he directed P.C. Singhna and V.K. Sarathe to make spot enquiry. But subsequently he filed another affidavit saying that the earlier affidavit was sworn by him on being pressurised by the then Dy. Advocate General that unless he gives such an affidavit, his services will be in danger and the Deputy A. G. would see that he is dismissed from service. The affidavit was filed by the then Dy. A. G. and per force he had to swear it. The Respondent No. 4 in his return submitted that in order to escape punishment imposed for corruption on Dr. Saxena, a false entry was got made about his death. The Respondent No. 4 has no knowledge about allotment of the house in Ludha Laddha Ki Chal to Dr. Rani Saxena. That Chal was in Civil Lines and not in Gwaltoli. There is no entry regarding the death and cremation of Dr. Saxena in the Rajghat cremation ground on 9-10-1983. He, therefore, filed an application for cancellation of the entry supported by an affidavit and on being informed that no action was possible on the basis of the affidavit, he met the C.M.O. and informed him that such an action was possible u/s 15 read with Rule 12. Thereupon, the C.M.O. C.P. Shah directed the enquiry to P.C. Singhna and B. K. Sarathe. Affidavits of these two persons have been produced showing that they did make the enquiry on being instructed by the C.M.O.

The Petitioner filed an application for direction to the Respondents to produce the original record and register of Rajghat cremation ground and the Respondents 1 to 3 were directed to produce the record at the time of hearing. The Respondents 1 to 3 produced the original record and a letter from C.M.O. that when he contacted the President of the Rajghat Samiti about the register he was informed that the Samiti having been superseded by the Collector, the enquiry be made from the Collector. The Petitioner also produced a copy of the allotment order dated 12-3-1987 that on account of the death of Dr. Rani Saxena, the house occupied by her is being allotted to her daughter Ku. Kalpana Saxena, L.D.C. in the office of Chief Medical Officer, Hoshangabad. The petition was heard and the case was closed for orders on 18-8-1988. The case was relisted on 22-8-1988 and the Dy. A. G. was directed to produce Rajghat cremation ground register of the year 1983. The Dy. A. G. informed on 30-8-1988 that the C.M.O. had contacted Shri Bhavani Shankar Sharma, Ex-President of the Rajghat Samiti regarding cremation ground register but he gave evasive reply. So this Court issued notice to Shri Sharma for appearing in this Court with the register on

8-9-1988. On that day, Shri Sharma did not appear and the learned Dy. Advocate General informed that he has been duly served. So a bailable warrant of arrest was issued to Shri Sharma. He appeared on 19-8-1988 and informed that he still continues to be President of the Rajghat Samiti but the management of the cremation ground has been taken over by the Collector in 1985 and it is not being managed by the Municipal Council. The Samiti used to maintain register up to the year 1981-82 but thereafter the work was entrusted to the Chowkidar who was not maintaining it regularly as he was not getting any extra remuneration. No register of the year 1983 was available nor the Chowkidar of that year is traceable. Therefore, the case was finally closed for orders.

The Petitioner has challenged the cancellation of the entry dated 21-11-1983 in the Births & Deaths Register regarding the death of his brother Dr. Banshiil Saxena on 8-10-1983 on the grounds that he was not heard before cancellation and so there is violation of the principles of natural justice, the Respondent No. 3 had no authority to cancel the entry made by his superior, the Respondent No. 2, and the Respondent No. 3 has not been duly appointed as Registrar. By amendment, it was brought out that Dr. Rani Saxena, widow of the deceased, got a succession certificate in respect of his debts and securities in M.J.C. No. 20/85 on 9-4-1986 and by further amendment submitted that all this has been deliberately and purposely done at the instance of certain interested politicians to harm the Petitioner and his family. During arguments further submission has been made that the copy of the impugned order supplied to him Annexure P.2 is materially different from the copy of the impugned order produced by the Respondents Annexure R-VII and fraud has been practised. The Respondent No. 4 having been informed on 4-2-1987 that no action is possible under the rules, the matter could not have been reopened on the basis of a fresh application as there is no power of review. The Respondent No. 4 has no locus standi to move such an application.

The Respondents contend that in the Act there is no provision for issuing show cause notice before Cancellation. Dr. Banshiil Saxena was neither living in Gwaltoli nor he died there on 8-10-1983. The entry about his death was wrongly made on the basis of an invalid affidavit of the Petitioner and there was no enquiry. So an action could be taken and rightly taken u/s 15 read with Rule 12(6) and the entry has been cancelled after due enquiry. The entry was got made falsely by the Petitioner to save his from the ignominy to undergo jail sentence. During arguments it is submitted that Dr. Banshilal Saxena, after the decision of the Supreme Court maintaining his conviction, was leading a life of recluse and was not living with his family at Hoshangabad, so it is unlikely that he died suddenly in the house of his wife due to cardiac failure. It is surprising that though the deceased was a doctor and his wife District Medical Officer, no medical certificate about his death has been produced nor any affidavit of a neighbour or any prominent citizen produced in support. How is that the affidavit about his death was given after a month not by any of his own family members but by one of his brother living 1000 kms. away in Maharashtra State. The stamp

of the affidavit was purchased in the name of Dr. Rani Saxena but she did not swear an affidavit about her husband's death. The application for succession certificate was filed after 11/2 years.

Under Section 4 of the Registration of Births and Deaths Act, the State Government has to appoint the Chief Registrar for the State and District Registrars u/s 6 for each District and may appoint Registrar for each municipal area or such local area as it may define u/s 7. The State Govt. by notification dated 30-4-1971 appointed Chief Municipal Officers of Municipalities as Registrars. A duty is cast on the head of a household u/s 8(a) to give information about death of a person in the house. Section 13(2) prescribes that in case of any birth or death of which delayed information is given to the Registrar after 30 days but within one year of its occurrence, it shall be registered only with the written permission of the prescribed authority and on payment of prescribed fee and the production of an affidavit made before a Notary public or any authorised officer. Section 15 about correction or cancellation of is as under:

If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry and shall sign the marginal entry and add thereto the date of the correction or cancellation.

Rule 12 (4) of M. P. Registration of Births & Deaths Rules prescribes that if any person asserts that any entry in the register of births and deaths is erroneous in substance the Registrar may correct the entry in the manner prescribed u/s 15 upon production by that person a declaration, setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case. Under Sub-rule (6) if it is proved that an entry of death was fraudulently or improperly made, the Registrar may take action. Rule 5 requires the information of death to be given within 3 days of the death. Same is the Rule 7 and its proviso enjoins that every cremation or burial ground shall maintain a register in the manner prescribed and the management shall give such all information every week regarding the dead bodies disposed of at the ground to the Registrar.

The contention of the Petitioner that the Chief Municipal Officer, Respondent No. 3, was not duly appointed as Registrar is incorrect. As mentioned earlier all Chief Municipal Officers have been notified to act as Registrars within their local limits. It is also not correct to say that the Respondent No. 3 by the impugned order has cancelled the order of his superior, Respondent No. 2, dated 21-11-1983 making the entry about the death of Dr. Banshilal Saxena. The earlier entry was made by the Respondent No. 3 and not by the Respondent No. 2, the Respondent No. 3 only took written permission of the Respondent No. 2 since there was delayed

information about the death. It is again not correct to say that by the impugned order, the Registrar has reviewed his earlier order dated 4-2-1987, when he has no power of review. It is true that under the Act the Registrar has no power of review but u/s 15 he can correct or cancel an entry on being satisfied. The Registrar did inform the Respondent No. 4 on 4-2-1987 that as per rules an entry cannot be cancelled on the basis of affidavit alone, regarding death of a person, Annexure R. IV. But it appears that the District Registrar vide order dated 4-11-1986 had further asked the Registrar to make enquiry as per rules and thereupon the Registrar ordered enquiry. As such, no final order was passed on 4-2-1987, which was merely an intimation and there is no question of review. The submission of the learned Counsel for the Petitioner is that Dr. Rani Saxena having obtained succession certificate in MJC No. 20/85 on 9-4-1986 and it being a judgment in rem is binding on all that Dr. Banshiial died on 8-10-83. Again this submission is not correct. u/s 381 of the Indian Succession Act, 1925, a succession certificate shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities and afford full indemnity to all such persons as regards all payments made or dealings in good faith in respect of such debts and securities. The only effect of this section is that if the debt remained unpaid up to the grant of the certificate is conclusive and compels the debtor to pay it to the certificate holder and he is indemnified against all other claimants to the debt. The succession certificate is not conclusive about the date of death. Regarding the question about the locus standi of the Respondent No. 4 in making the application for cancellation of the entry, he is an Advocate and claims to be a social and political worker and made the application bona fide and to the best of his belief. u/s 15 and Rule 12 any person can make such an application in respect of correction or cancellation of a death entry if it was erroneously made. The Supreme Court in S.P. Gupta Vs. President of India and Others, has enlarged the definition of locus standi and held that any member of the public having sufficient interest can maintain an action for redress but he must be acting bona fide with the view of to vindicate the cause of justice and is not acting for personal gain, private profit or out of political motivation or other oblique motive. So the Respondent No. 4 could make such an application and it is a different question whether he had acted bona fide or out of some other consideration in order to harm the Petitioner and other family member as is alleged.

As has been mentioned earlier, the Supreme Court maintained the conviction of Dr. B.L. Saxena on 19-11-1981 but reduced his jail sentence to half and thereafter Dr. Saxena was required to surrender before Chief Judicial Magistrate, Dhar. The Respondent No. 4 is a practising Advocate at Dhar and may be he was interested as a citizen in the result of the case. The Chief Judicial Magistrate on 1-10-1982 directed Shri B.M. Lal (as he then was) to produce Dr. B.L. Saxena on the next date. Since Dr. Saxena did not appear on the next date on 2-11-1982, his bail bonds were forfeited and Shri Lal was required to pay penalty of Rs. 5000/-. Against that order, Shri Lal filed an appeal before Addl. Sessions Judge,

Dhar, and subsequently informed the Court about the death of his brother Dr. Saxena on 8-10-1983 at Hoshangabad. In the meanwhile, Shri Lal was elevated to the Bench of this Court on 14-5-1984 as additional Judge for a period of two years.

It was argued that after Shri Lal, J. passed strictures in the excise case against the State Government, things started moving against him. The Respondent No. 4 moved an application in the Supreme Court for transfer of the appeal of Shri Lal pending before Addl. Sessions Judge, Dhar, which case was then transferred to the Sessions Judge, Hyderabad. At that time, confirmation of Shri Lal, J. was said to be under consideration and instead he was given extension of one year in view of pendency of the appeal. The Respondent No. 4 then moved an application to the Registrar on 23-8-1986 at Hoshangabad for cancellation of the entry dated 21-11-1983 in the Births and Deaths Register regarding the death of Dr. B.L. Saxena on 8-10-1983 supported by affidavit of one Raj Kumar Gupta, said to be resident of Gwaltoli, Hoshangabad, where Dr. Saxena is said to have died. In his application, the Respondent No. 4 mentioned that he had doubts about the death of Dr. Saxena on 8-10-1983 and the entry regarding his death has been erroneously made on the basis of an affidavit which was invalid. No one in Gwaltoli has confirmed about his residence or death in that locality to the Respondent No. 4. Rule 12 (4) requires the declaration to be supported by two affidavits. The Registrar informed the Respondent No. 4 on 4-2-1987 that the entry cannot be cancelled only on the basis of the affidavit filed and the Respondent No. 4 thereafter moved a fresh application saying that the entry can be cancelled u/s 15 read with Rule 12 after making enquiry. Thereupon, it seems that the enquiry was made by the Registrar. In the meanwhile, the appeal of Shri Lal, J. was allowed by the Sessions Judge, Hyderabad and forfeiture set aside and the revision against that order was dismissed by the Andhra Pradesh High Court. So there is reason to argue that the Respondent No. 4 was pursuing his application before the Registrar for cancellation of the entry which may stall extension or confirmation of Shri Lal, J. Subsequently it is said that Shri Lal has not been confirmed but his term again extended by one year although he was due for confirmation and two of his juniors have been confirmed. So there seems to be some basis for the Petitioner's contention that the proceedings initiated by the Respondent No. 4 may have been partly responsible for non confirmation of Shri Lal, J. as a Judge of this Court.

A serious allegation was made during the course of the arguments that the copy of the impugned order supplied to the Petitioner Annexure-P. 2 materially differs from the copy of the impugned order filed by the Respondents Annexure-R-VII inasmuch as the last 3 paras seems to have been subsequently added that the Registrar made on the spot enquiry and made enquiries from ex-member Ram Prasad and S.R. Mourya and from the records and ration card, he could not find that Dr. Saxena was living in Gwaltoli and so in exercise of the powers u/s 15 read with Rule 12 (6), the Registrar bona fide and in good faith cancelled the entry dated 21-11-1983. Why the words "bona fide and in good faith" have been

used while passing the order is not clear. The first 3 paras which were communicated to the Petitioner also differs inasmuch as there is difference in the wordings. It cannot be said that Annexure-P. 2 is mere intimation about the order passed when it is styled as order and below the third para, there is signature of the Registrar. So the original record was directed to be produced and on going through it, we feel that this Annexure-R. 7 was subsequently incorporated in the record where in there is also a copy of the order Annexure-P. 2. It is not understood that when an order was already passed Annexure-P. 2, what was the necessity of passing another order Annexure-R. 7. By the subsequent order, the Registrar wanted to impress that he was not acting mechanically on the basis of some enquiry made by his clerical staff but he himself made personal enquiry. In the record also there is statement of S.R. Mourya recorded on the same day when the impugned order was passed. Statement of other witness ex-member Ram Prasad mentioned in the impugned order is not on record. There is also panchnama said to have been recorded by the clerical staff on 6-2-1987 on the very next day when the Respondent No. 4 moved a second application for enquiry on 5-2-1987. In the statement of Mourya and panchnama, there is assertion that Dr. B.L. Saxena did not reside in Gwaltoli nor he died there. The original record produced runs into 35 pages and there is also one communication addressed to the President of the Rajghat Samiti dated 12-10-1987 with the endorsement of the President that the Samiti is not functioning in view of the order of the Collector and the Registrar can talk to the President personally. President Bhavani Shankar Sharma was summoned by this Court and he expressed his inability to produce the Register of 1983 since in the cremation ground no register was regularly maintained and the Chowkidar who was in charge was also not traceable. The Petitioner has asserted that there was an entry made in the cremation ground register and in natural course a copy would have been taken since the matter regarding production of Dr. B.L. Saxena before C. J. M. Dhar was very much there. Whatever that be, non-production of the register will not show that there was no such cremation on that day, the Respondents merely denied their knowledge about it.

Regarding the original record produced, after page No. 6 the other pages have been renumbered. Originally the page numbers were from 1 to 23 in ink. Pages nos 4 to 23 have been renumbered from 6 to 26. This shows that pages 5 and 6 have been inserted subsequently and re-paging done. The typed pages introduced at page Nos. 5 and 6 contain the impugned order, appear to be newly typed on a fresh paper which stands out distinctly from all the papers in the record. So Annexure-R. VII is not the order originally passed. Original order passed in Annexure- P. 2 under which the entry was cancelled. So we have to ignore Ann. R. VII. This Annexure-P. 2 is based on the enquiry made by the two members of the clerical staff and the panchnama R. VI containing statements of certain witnesses. The first two witnesses mentioned in the panchnama Tulsiram and Ramprasad have no knowledge about the death of Dr. B.L. Saxena in the year 1983 Gwaltoli". The third witness is a barber Raghuvar and he did not come

across any person by name Dr. Banshilal in Gwaltoli. So is also the statement of 4th & 5th witness Babulal and Khemchand that they do not know whether in the year 1983 Dr. Banshilal Saxena was living in Gwaltoli. The Respondent No. 4 along with his application has appended affidavit of Raj Kumar Gupta who is residing in Gwaltoli and running a railway canteen. This affidavit was held to be insufficient for cancellation. According to him, Dr. B. L Saxena did not reside in Gwaltoli nor he died there. There is no corroboration to his statement. The Registrar disbelieved the affidavit of the Petitioner dated 11-11-1983 giving intimation about the death of his brother Dr. Banshilal on technical ground that the stamp was not purchased in his name but in the name of Dr. Rani Saxena, his sister-in-law, and the affidavit does not show payment of the requisite fee for swearing affidavit. It bears seal and signature of the Notary swearing the affidavit and once the affidavit has been acted upon by the Registrar, it cannot be rejected after lapse of 5 years on some technicalities. These were the material on the basis of which the impugned order was passed. According to us, this was not sufficient for cancellation of entry of death u/s 15 of the Act after 5 years for which some definite material has to be on record. The Registrar has to be satisfied that the entry was fraudulently or improperly made and the Registrar ought not to have proceeded to make roving enquiry on the basis of a vague allegation of the Respondent No. 4 that he had suspicion regarding the death of Dr. B.L. Saxena. In the return also the Respondents 1 to 3 have merely stated that it is not known whether Dr. Saxena died at Gwaltoli on 8-10-83 or cremated on 9-10-83 and also the Respondent No. 4 in his return stated that he has doubts about the death of Dr Saxena. There is a presumption under Illustration (e) to Section 114 of the Evidence Act that all official acts are properly and regularly done and so entry about death cannot be cancelled on mere suspicious and strong evidence is necessary for rebuttal.

Now there is further infirmity in the order inasmuch as before passing the impugned order, no show cause notice was given nor the Petitioner was heard at whose instance the entry was made before cancellation of that entry. It is true that u/s 15 or the Rules there is no requirement of hearing the informant at whose instance the entry was made before cancelling the same. Rule 12 (7) only requires that intimation about cancellation shall be sent to the person who gave the information u/s 8. Of course, this intimation was sent to the Petitioner about cancellation which gave rise to the filing of this petition. The Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, held:

The aim of the rules of natural justice is to secure justice or to put in negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years.

Again the Supreme Court in *Sayeedur Rehman v. State of Bihar* AIR 1983 SC 240, held that this unwritten right of hearing is fundamental to a just decision by

any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of natural justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties. The Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, held:

Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The enquiry must, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected.

Admittedly, no show cause notice was given to the Petitioner before the Registrar passed the impugned order cancelling the entry dated 21-11-1983 regarding the death of his brother on 8-10-1983 which entry was made on the basis of the information given by him. Therefore, although there is no provision for giving show cause notice before cancellation of that entry, there is a violation of the principles of natural justice which is attracted here requiring giving of such notice and, as such, the impugned order of the Registrar dated 31-8-1987 Annexure-P. 2 is invalid and inoperative and has to be struck down.

With the result, the petition is allowed, the impugned orders Annexure-P. 2 & R. VII are quashed and the Respondents are directed to restore the original entry dated 21-11-1983 about the death of Dr. Banshilal Saxena on 8-10-1983. There shall be no order as to costs. The outstanding security amount be refunded to the Petitioner.