(2016) 07 OHC CK 0025

In the Orissa High Court

Case No : Writ Petition (Civil) (PIL) No. 11701 of 2015

Hari Hara Panigrahy APPELLANT

Vs

Bhubaneswar Municipal Corporation RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Hindu Marriage Registration Rules, 1960 — Rule 12

Citation : (2016) 122 CutLT 870 : (2016) 2 ILRCuttack 529

Hon'ble Judges : Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : Mr. Hari Hara Panigrahy (In person), for the Petitioner; M/s. Mrs. Mrinalini Padhi, A. Das and B. Panigrahi, Advocates, Miss S. Ratho, Addl. Govt. Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who is stated to be a public spirited person and a practicing advocate, has filed this writ petition in the nature of public interest litigation challenging collection of fees of Rs. 1,000/- by Bhubaneswar Municipal Corporation, Bhubaneswar under the head "towards maintenance of heritage buildings in Bhubaneswar city" from the newly wedded couples, who approach the Registrar of Hindu Marriages for registration of their marriages under the Odisha Hindu Marriages Registration Rules, 1960 (for short "Rules, 1960) framed under Section 8 of the Hindu Marriage Act, 1955.

2. Mr. H. Panigrahy, the petitioner urges that as per the provisions contained in the Odisha Hindu Marriages Registration Rules, 1960, the married couples are only liable to pay fees of Rs. 2/- and Rs. 5/- fixed for registration and obtaining certified copy for an entry made in the Register respectively. Except such statutory dues, the opposite party-Bhubaneswar Municipal Corporation cannot levy any fee in the name of donation for grant of such marriage certificate, as the said donation/fee is beyond the purview of the provisions of Rules 1960. The

website of Bhubaneswar Municipal Corporation indicates that, for registration of marriages, within one month of marriage, besides Rs. 16/- in shape of treasury challan, a sum of Rs. 1000/- is required to be deposited at Bhubaneswar Municipal Corporation towards maintenance of heritage buildings in Bhubaneswar city. The collection of fees/donation of Rs. 1,000/- towards maintenance of heritage buildings in excess of the registration cost are made on the basis of the recommendation made by the Taxation, Finance and Accounts Standing Committee on 18.10.2006 to the Corporation, which was accepted vide resolution no.4 dated 30.10.2006 authorising the Municipal Commissioner to invoke power under Section 478(1) of the Odisha Municipal Corporation Act, 2003 for such purpose. It is urged that such power, which has been invoked by the Municipal Corporation, is arbitrary, unreasonable and contrary to the provisions of law.

3. Mrs. Mrinalini Padhi, learned counsel appearing for the Bhubaneswar Municipal Corporation urges that in view of sub-Section (v) of Section-657 of the Orissa Municipal Corporation Act, 2003, power has been vested with Corporation to make bye-law for registration of births, deaths and marriages. As per Orissa Municipal Corporation Rules, 2004, the Standing Committee for Taxation, Finance and Accounts is being constituted and the said Committee on 18.10.2006 has recommended that as per Section 478 (1) of Orissa Municipal Corporation Act, 2003, the Municipal Corporation can collect donation for maintenance of heritage buildings. The recommendations so made have been accepted by the Corporation in its meeting held on 30.10.2006 and as per resolution no. 4(1) decision was taken to accept Rs. 1,000/- as donation from the applicants of the marriage registration. Therefore, no illegality or irregularities have been committed by issuing intimation in the website indicating for registration of marriage, within one month of marriage, besides Rs. 16/- in shape of treasury challan, a sum of Rs. 1000/- are required to be collected by Bhubaneswar Municipal Corporation towards maintenance of heritage buildings in Bhubaneswar city. It is urged that though the deposit of Rs. 1,000/- towards maintenance of heritage buildings in Bhubaneswar city should not have been reflected in the website for registration of marriage, the same having been done inadvertently, has been withdrawn by opposite party no. 1. Learned counsel, however, further urged that leviability of Rs. 1,000/- towards donation is justified in view of the provisions indicated above.

4. Having heard the petitioner in person, Mrs. M. Padhi, learned counsel appearing for the Bhubaneswar Municipal Corporation and Miss S. Ratho, learned Additional Government Advocate for the State and as the pleadings have been exchanged, with the consent of the parties, this writ petition is disposed of finally at the stage of admission.

5. Section 8 of Hindu Marriage Act, 1955 postulates Registration of Hindu Marriages which reads as follows:

"Registration of Hindu Marriages. - (1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such condition as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified and where any such direction has been issued, and person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this Section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this Section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."

On perusal of the aforementioned provisions, it appears that subsection (2) of Section 8 of the Hindu Marriages Act, 1955 authorizes the State Government to make the registration of Hindu Marriages compulsory in a state. Contravention thereof is punishable with fine which may extend to Rs. 25/-. To give effect the provision of Section-8 of the Hindu Marriages Act, 1955, the Odisha Hindu Marriages Registration Rules, 1960 was framed. Rule-4 of the Rules, 1960 has undergone amendment by virtue of Odisha Hindu Marriages Registration (Amendment) Rules, 2006, by which registration of all Hindu marriages have been made compulsory in the state of Odisha. The amended rules have come into force with effect from 15th of July, 2006, the day on which the same has been published in the Odisha Extraordinary Gazette.

6. Rule-4 of Odisha Hindu Marriages Registration Rules, 1960 is as follows:

"4. The parties to the marriage duly solemnized in accordance with the provisions of the Act shall within a period of 30 days from the date of solemnization of the marriage compulsorily submit the application in Form B before the Registrar for registration of the marriage".

Rule 4-A inserted by the said Amendment Rules of 2006 is also extracted below:

"4-A. Any party to the marriage who contravening the provision of Rule 4, shall be punishable with fine which may extend to Rs. 25 (Rupees twenty five) only".

7. Rule-12 of the Rules, 1960, by which fees can be chargeable for the purpose of registration of marriage is as follows:

"12(1) Fees shall be charged by the Registration for the purpose and at the rate as specified below

(i) For registration of a marriage Rs. 2

(ii) For obtaining a certified copy of an entry made in the Register Rs. 5

(2) All such fees shall be credited to the State revenue under the head "0070- Other Administrative services -60- Other Services -108- Marriages Fees -0135- Registration Fees-01050- Fees for Registration of marriage and for obtaining certified copy of an entry made in the Marriage Register."

As per the said rule, if any person contravenes this provision by failing to register the marriage as required under Section-8 of the Hindu Marriages Act, 1955 read with the Rules of 1960 within 30 days of the solemnization of the marriage, he will be punished with fine which may extend to Rs. 25. In view of such position, non-registration of Hindu marriages makes both the spouses punishable under the law. Save and except the statutory dues, which are required to be deposited by a person within 30 days of his marriage for the purpose of registration, no other fee/donation is chargeable.

8. It appears that the website of the Bhubaneswar Municipal Corporation indicates the following payment for registration of marriages.

"Within one month of marriage, treasury challan of Rs. 16.

Rs. 1000/- deposit at BMC towards maintenance of heritage building in Bhubaneswar city."

The demand for deposit of Rs. 1,000/- towards maintenance of heritage buildings in Bhubaneswar city is being made in excess of registration fees prescribed under the statute. Such demand is made on the basis of the recommendation of the Taxation, Finance and Accounts Standing Committee meeting held on 18.10.2006, which is as follows:

"Proposal 4 : The Government in Department has issued Notification No. 8992 dated 11.06.2006 in which the Deputy Commissioner and in his absence x x x

As per Section 478(1) of OMC Act, 2003, the Municipal Commission can collect donation for maintenance of Heritage building. In this respect, this proposal to accept donation of Rs. 1,000/- (Rupees one thousand only) for registration of each marriage, is recommended by the Committee for consideration of the Mayer."

The recommendation dated 18.10.2006 of the Taxation, Finance & Accounts Standing Committee was considered by the Corporation in its meeting dated 30.10.2006 and an extract of the resolution no.4(1) of the Corporation Resolution is translated and quoted herein below:

" 4(1) On perusal of the minutes of the meetings dated 26.01.2006 and 18.10.2006 of the Standing Committee for Taxation, Finance and Account and

Accounts, it was approved that a sum of Rs. 1,000/- (Rupees One Thousand) only per marriage shall be accepted as donation from the applicants of marriage registration as per Proposal No.3 of the minutes dated 18.10.2006."

The Municipal Corporation undertakes to preserve and conserve Heritage Building. The Corporation may receive contributions towards preservation and conservation of heritage building. Section 478(1) of the Odisha Municipal Corporation Act, 2003 provides as follows:

" 478. Voluntary contribution and agreement with any voluntary organization, person or company:-

(1) The commissioner may receive voluntary contributions towards the cost of maintaining any heritage building and may give order as to the management and application of such contributions for the purpose of preservation and conservation of such heritage buildings."

9. By sub-section (1) of Section 478 of Odisha Municipal Corporation Act, 2003, power has been vested with the Commissioner "to receive" voluntary contributions towards the cost of maintaining any heritage building and he may give order as to the management and application of such contributions for the purpose of preservation and conservation of such heritage buildings. The power of Commissioner cannot be usurped by the Taxation, Finance and Accounts Standing Committee by recommending "to collect" Rs. 1,000/- as fee or donation for grant of marriage certificates in accordance with Rules, 1960 and such recommendation of compulsory deposit of Rs. 1,000/- and acceptance by the Corporation for grant of marriage certificate is contrary to the provisions contained in the Odisha Hindu Marriages Registration Act, 1955 read with Rules, 1960.

10. The word ''donation'' has been explained in P. Ramanatha Aiyar''s Advanced Law Lexicon 4th Edition is as follows "

"The action of donating or giving, presentation; gratuitous transfer of property from one to another, that which is presented; a gift.

Money or other asset given by a person or organisation to another person or organisation (such as a charity or political party)".

11. While considering Section 9 of Estate Duty Act, 1953 in Nirmala Kesharlal v. CED, (1982) 138 ITR 604 (Bom), Bombay High Court held as follows:

"The term ''donation'' means amounts which are given to charitable or public institutions. It would not amount to gift for the purpose of Section 9 of the Act".

12. Similarly, while considering Section 5(j) of the Expenditure Act, 1958, the apex Court in E.T. Commissioner v. P.V.G. Raju, AIR 1976 SC 140 held as follows:

"When a person who is the owner of a thing, voluntarily transfers the title and possession of the same from himself to another, without any consideration, it is donation".

Applying the meaning of the word ''donation'' to the present context, it appears that the collection of fees of Rs. 1000/- in the shape of donation does not amount to voluntarily transferring the same rather the amount in question is being collected under a compulsion, which is not permissible under law, more particularly, the compulsory charging of fees of Rs. 1,000/- towards maintenance of heritage buildings is contrary to the provisions contained in Odisha Hindu Marriages Act, 1955 read with Rules, 1960.

Bhubaneswar Municipal Corporation is charging a sum of Rs. 1,000/- towards fees for maintenance of heritage buildings in the shape of donation in excess of fees prescribed under Rule 12 of the Rules, 1960, but nonpayment of such fee/ donation of Rs. 1,000/- to the Corporation, the registration of marriage is not being made even though the requirement of Rule 12 of the Rules 1960 has been complied with that itself amounts to arbitrary and unreasonable exercise of power by the authority and cannot sustain in the eye of law.

13. In the counter affidavit filed by Corporation it is stated that as per Section 478 of the Odisha Municipal Corporation Act, 2003 the Municipal Corporation is authorised under law "to collect" voluntary contributions for maintenance of the heritage buildings. But, on perusal of the provisions under Section 478 of the said Act, power has been vested with the Commissioner "to receive" voluntary contributions towards the cost of maintaining any heritage building. Therefore, nowhere power has been vested with the Municipal Corporation "to collect" compulsory contributions for maintenance of heritage buildings. There is difference between the word "to receive" and "to collect". The power "to collect" is not being vested with the Municipal Corporation under Section 478 of the Act, rather power has been vested with the Commissioner, who may "receive" voluntary contributions towards cost in maintaining heritage buildings. Therefore, voluntary contributions can be received by the Corporation for maintenance of heritage buildings. Nowhere power has been vested with the Municipal Corporation to collect the contributions compulsorily.

14. The word ''contribution'' has been mentioned in P. Ramanatha Aiyar''s Advanced Law Lexicon 4th Edition as follows:

"Contribution is where everyone pays his share, or contribution against another; one anything. One parcener shall have contribution against another; one heir shall have contribution against another heir, in equal degree, and one purchaser, shall have contribution against another. (Tomlin)

Money earned or paid in addition to another sum, often used to describe extra profit that accrues once a product''s break even point has been reached.

In a popular sense it is "the act of giving to a common stock, or in common with others, that which is given to common stock or purpose."

15. While considering Section 59 (2)(b) of Punjab Co-Operative Sureties Act, the

Punjab Haryana High Court in Issah Das v. State of Haryana, AIR 1975 P & H 29, 31 held as follows:

"The word ''contribution'' includes debts which are recoverable from the members of the Society."

16. Similarly, the apex Court in Gestetner Duplicators Pvt. Ltd. v. Commissioner of Income Tax, West Bengal, AIR 1979 SC 607 while considering Rule 2(c) of Part A of the Fourth Schedule defined "contribution" as follows:

"Contribution" as meaning any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest."

17. Applying the said meaning to the present context, it appears that the statement made that the Taxation, Finance and Accounts Standing Committee recommending for collection of fees and in response to same resolution was passed to approve such recommendation in the shape of "Daan" i.e. ''contribution'' is far from the meaning attached to the word ''contribution'' and more particularly, it cannot be construed that it is voluntary contribution by the persons. Rather the said amount of Rs. 1,000/- is being collected on compulsory basis for registration of the marriages, which is not permissible under law.

18. In the aforesaid facts and circumstances, we are of the considered opinion that except fees prescribed for registration of marriages as per Rule 12 of the Rules 1960, the compulsory collection of Rs. 1,000/- towards maintenance of heritage buildings under the Bhubaneswar Municipal Corporation at the time registration of marriages is arbitrary, unreasonable and contrary to the provisions of law. Therefore, the recommendations dated 18.10.2006 made by the Standing Committee of Taxation, Finance and Accounts and acceptance thereof by the Corporation in Resolution No. 4(1) of the Municipal Corporation dated 30.10.2006 cannot sustain in the eye of law. Accordingly, the same are hereby quashed. The writ petition is allowed to the extent indicated above. No order as to cost.

