

(2025) 12 OHC CK 1855

In the Orissa High Court

Case No : Writ Petition (C) No. 1519, 31945 Of 2024

Jagabandhu Rout And Another

APPELLANT

Vs

Suresh Kumar Rout And Other

RESPONDENT

Date of Decision : 05-12-2025

Acts Referred:

Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 4, 4(1), 5

Citation : (2025) 12 OHC CK 1855

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : Biswajit Nayak, S.N.Patnaik, P.K.Mishra

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J

1. Since the same order passed by the Collector, Cuttack is impugned in both the Writ Petitions, both were heard together and are being disposed of by this common judgment.

2. This a dispute between the parents on one hand and their son on the other. W.P.(C) No.1519/2024 has been preferred by the parents while the other Writ Petition (W.P.(C) No.31945/2024) has been preferred by their eldest son questioning the correctness of order dtd.27.9.2023 passed by the Collector, Cuttack in Maintenance(A) No.39/2022.

Case of the parents:

3. They claim that their elder son has not been coming to their house nor taking care of them since the past four years and is residing at Angul with his wife. The parents are unable to take care of themselves. As such, they filed a case being Maintenance Case No.9/2023 before the Sub-Collector, Cuttack under Sections 4 and 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "2007 Act").

Case of the Son:

4. Pursuant to notice, the son entered appearance and filed his objection basically stating that his parents are able to maintain themselves as his father is a retired Government employee and is in receipt of pension. That apart, he earns money from his agricultural lands, fishing, dairy farm etc. As a son, he has sent money to his parents for their livelihood, which can be known from the statement of bank accounts. He also provides food, clothes and medical treatment regularly as and when required. Having availed loan of Rs.6 lakhs for marriage of his sister, he is overburdened with re-payment of the loan liability. That apart, he has always requested his parents to stay with him at Rengali, but they have refused.

Order passed by the Maintenance Tribunal:

5. The Maintenance Tribunal took note of the salary slip of the son and found that he was getting Rs.67,020/- per month. Taking into consideration his present status, the cost of living at Rengali and the fact that had the parents agreed to stay with him at Rengali as offered by him, it would have entailed some expenditure, the Maintenance Tribunal by order dated 06.2.2022 allowed the application by directing the son to pay a sum of Rs.5,000/- each to his father and mother.

Order of the Appellate Authority:

6. The son preferred appeal before the Collector being Maintenance Appeal No.39/2022. In course of hearing before the appellate Court, the son was willing to pay Rs.3,000/- each to his parents instead of Rs.5,000/-each as directed. The Collector noted the above fact and also the report of the Tahasildar, Mahanga regarding the financial status of the parents. As such, by order dated 01.2.2023, the appeal was allowed in part by modifying the order passed the Maintenance Tribunal to the above extent.

7. The parents challenged the order before this Court in W.P.(C) No.10467/2023. By order dated 17.5.2023, a coordinate bench of this Court held that while adjudicating the appeal, the Collector should have taken into consideration the requirements of the parents vis-à-vis the capacity of the son to pay. The impugned order was set aside and the matter was remitted to the Collector for fresh adjudication.

Order of the appellate authority on remand:

8. After remand, the appellate authority passed a detailed order taking note of the income of the parents from different sources as per the report of the Tahasildar and found that they are financially stable. As such, they are not satisfactorily covered under the provision of Section 4(1) of the 2007 Act and that they are misutilizing the Act with ulterior motive. The Collector thus reiterated his earlier order by directing the son to pay Rs.3000/- each to his parents every month.

9. Being aggrieved, the parents have filed W.P.(C) No.1519/2024 with prayer to enhance the amount of maintenance awarded by the Tribunal and the son has challenged the order in WPC No.31945/2024 on the ground that the application for maintenance ought to have been rejected.

Submissions:

10. Heard Mr. P.K.Mishra, learned counsel for the parents (Petitioners in W.P.(C) No.1519/2024) and Mr. Biswajit Nayak, learned counsel for the son (Petitioner in W.P.(C) No.31945/2024).

11. Mr. Mishra would argue that the Collector has committed material irregularity in placing undue emphasis on the report of the Tahasildar which cannot be treated as conclusive in any manner. Only because a person has an interest in undivided ancestral properties cannot imply that he is capable of maintaining himself by earning income thereby. Similarly, only because a pond was being dug or that the parents possessed two cows cannot mean that they were earning so substantially as to be debarred from claiming maintenance from their son.

12. Per contra, Mr. Nayak would argue that the report of the Tahasildar is entirely unbiased and based on inquiry conducted by the local R.I. The father is a retired Government servant who receives pension every month and therefore, cannot be treated as a parent unable to maintain himself so as to attract the mischief of Section 4(1) of the 2007 Act. The Collector should have dismissed the claim of the parents for maintenance on such score alone.

Analysis and findings:

13. Be it noted that what is impugned before this Court is an order passed by a quasi-judicial authority acting under the provisions of the 2007 Act. Challenge to the same in the present Writ Petition can under no circumstances be construed as an appeal, but an effort by the parties to invoke the supervisory jurisdiction of this Court. In other words, the certiorari jurisdiction of this Court has been invoked. Law is well settled that the exercise of certiorari jurisdiction is very limited. A constitution Bench of the Supreme Court in the case of Hari Vishnu Vs. Ahmad Ishaque; AIR 1955 SC 223 laid down the following propositions:

“(1) Certiorari will be issued for correcting errors of jurisdiction, an inferior Court or Tribunal acts without jurisdiction or in it, or fails to exercise it.

(2) Certiorari will also be issued when the court or Tribunal illegally in the exercise of its undoubted jurisdiction, as decides without giving an opportunity to the parties to be violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature choose to

confer a right of appeal against that decision, in defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari.”

Thus, the interference by this Court exercising certiorari jurisdiction is very limited and confined to only seeing that the judicial or quasi-judicial Tribunals or administrative bodies do not exercise their powers in excess of their statutory jurisdiction and correctly administer the law within the ambit of the statute creating them or entrusting those functions to them.

In other words, its purpose is only to determine, on an examination of the record, whether the inferior Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Reference in this regard may be had to the judgment of the Supreme Court in the case of Nagendra Nath Bora and another -vs. Commissioner of Hills Division and Appeals, Assam and others; AIR 1958 SC 398.

14. Viewed in light of the above settled legal propositions, this Court, upon considering the contentions advanced finds at the outset no justified reason to interfere with the impugned order. Nothing has been demonstrated by either party to show as to if any jurisdictional error was committed by the Courts below or that the impugned order contains any perverse findings.

15. Nevertheless, the matter having once being remitted to the appellate Court, this Court has examined the impugned order to ascertain as to if the specific directions of this Court was followed or not. As already stated in the earlier Writ Petition, a coordinate Bench of this Court remitted the matter to the appellate authority specifically to take into consideration the requirement of the petitioners (parents) vis-à-vis the capacity of the son to pay. Reading of the impugned order reveals that the appellate authority has taken pain to ascertain both issues meticulously. The report of the Tahasildar, Mahanga has been relied upon by the appellate authority. It has not been shown as to how such report is wrong or that the same suffers from the vice of bias or prejudice. Moreover, this Court finds that in the earlier order before remand, the son had expressed his willingness to pay Rs.3,000/- each to his parents. This, obviously binds him as he cannot take a different stand now.

16. Thus, this Court finds no justified reason to interfere with the impugned order. However, it is seen that the appellate Court, after referring to the provision under Section (4) (1) of the 2007 Act held that the parents are not satisfactorily covered under the same. If such was the case, then the question of awarding any maintenance at all did not arise. Secondly, the appellate Court has cast aspersion on the parents for misutilizing the Act with ulterior motive. In the considered view of this Court, the same was uncalled for and unwarranted, as nothing was placed before the appellate authority to justify such observations. The Act provides the right to claim maintenance which may succeed or fail depending on the evidence adduced. No other intention can be attributed, that too without any

evidence to a party claiming maintenance. The observations in paragraph-12 that “the respondents are not satisfactorily covered under the provisions as envisaged under Section 4 (1) of the Maintenance and

Welfare of Parents and Senior Citizens Act, 2007” and the entire observations made in paragraph-13 are hereby expunged from the impugned order.

17. In the final analysis, both the Writ Petitions are found to be devoid of merit for which both are dismissed. However, the observations in the impugned order, as referred to in the previous paragraph, stand expunged.