
(2019) 03 UK CK 0068

In the Uttarakhand High Court

Case No : Writ Petition No. 3277 Of 2018 (M Of S)

Jashoda Rana

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Uttarakhand Panchayati Raj Act, 2016 — Section 133, 133(ka)

Citation : (2019) 03 UK CK 0068

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, K.N. Joshi, S.K. Jain, Siddhartha Jain

Final Decision : Disposed Off

Judgement

1. Sharad Kumar Sharma, J

1. Learned counsel for the petitioner does not want to press Amendment Application No. 2961 of 2019 at this stage. Accordingly, the same is dismissed as not pressed.

2. The present Writ Petition has been preferred by the petitioner, challenging the order dated 28th October, 2018, passed by the District Magistrate, which in his address made by him to the Director, Panchayati Raj, was for taking an appropriate action in terms of the recommendation which has been made in the impugned order dated 28th October, 2018.

3. The argument, which has been extended by the learned counsel for the petitioner for giving challenge to the said order dated 28th October, 2018, is from the view point that as if the order passed by the District Magistrate happens to be a concrete decision pertaining to denial of revival of his membership, which he has claimed for village Kanseru. As a matter of fact, literally, if the order impugned dated 28th October, 2018, as passed by the District Magistrate is scrutinized in its precision, it is nothing but a reference which has been made by the District Magistrate to the competent authority as provided under Section 133

of the Uttarakhand Panchayati Raj Act, 2016, which provides that the Prescribed Authority would be an authority who would be competent to decide the controversy pertaining to the membership of a person or continuance of his membership in the voter list of particular village or city, the same is to be discharged by the Director, Panchayati Raj, who has been defined as to be the Prescribed Authority under the Act to deal with the controversy. Section 133 (ka) of the Act is quoted hereunder :-

"निदेशक : राज्य की सीमा के अन्तर्गत जिला पंचायत का विहित प्राधिकारी होगा और वह अपने अधिकार राज्य की सीमाओं के भीतर जिला पंचायत या उसकी समिति या संयुक्त समिति द्वारा प्रयुक्त अथवा अध्यासित किसी चल सम्पत्ति का अथवा उनमें से किसी के निर्देशाधीन में किए जाने वाले किसी कार्य का निरीक्षण कर सकता है, करवा सकेगा।"

4. It is not in controversy rather admitted by the counsel for the parties that the authority competent to decide the controversy pertaining to the continuance and non continuance of the name of the member into the voter list falls to be in an exclusive domain of decision making process of the prescribed authority as per Sub-section (ka) of Section 133 of the Act, which is Director, Panchayati Raj.

5. In view of the order under challenge dated 28th October, 2018, as passed by the District Magistrate, it was a letter which was addressed to the Director, Panchayati Raj, it was on a specified subject pertaining to the revival of the name of the petitioner in the voters list of Village Kanseru. The said letter can be treated as a reference of the dispute to a competent authority. It was not a decision itself as it would be apparent from the language of letter dated 28.10.2018.

6. After considering the impact of the application as well as the request made by the petitioner by filing an application, the District Magistrate by the impugned order has not passed any positive direction either inclusion or deletion of the name of the petitioner in the voter list but rather it had only made a reference which has been made to the competent authority as statutorily created under Section 133 (ka) of the Act to take decision on the application submitted by the petitioner for the revival of his membership in the voter list of Village Kanseru.

7. Hence, as a matter of fact, as on date, there is no decision as such by the competent authority under the Act pertaining to his continuance or non continuance in the voter list of village Kanseru.

8. Considering the impact of the impugned order dated 28th October, 2018, this Writ Petition is being disposed of with the direction to the Director, Panchayati Raj, Uttarkhand, Dehradun to take a decision on the petitioner's application for revival of his membership in the voter list of Village Kanseru, as referred by District Magistrate by his letter dated 28.10.2018 The Director, Panchayati Raj is directed to take a decision on the application of the petitioner as well as on the communication made by the District Magistrate on 28th October, 2018, within a period of two months from the date of service of the certified copy of the order to him.

9. Subject to the above observations, the Writ Petition stands disposed of.

10. As a consequence of the final disposal of the Writ Petition, all interlocutory orders passed in this Writ petition, would stand merge in the final order.