
(2009) 07 MP CK 0051
In the Madhya Pradesh High Court

Kamlesh Kumar Rajak

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Registration of Births and Deaths Act, 1969 — Section 15

Citation : (2009) 07 MP CK 0051

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Challenge in this petition is made to order Annexure P-1 dated 24/12/05 passed by the Registrar, Births and Death, Katni cancelling a Birth certificate issued to the petitioner regarding birth of a child to him vide Annexure P-3 on 10/08/02.

2. Facts in brief are that petitioner Kamlesh Kumar Rajak was elected as Sarpanch of Gram Panchayat Deori, Janpad Panchayat Bahoriband, District Katni. In the elections to the Janpad Panchayat which were held on 19/01/05, it seems that certain dispute arose in the matter of election of the petitioner as Sarpanch and one of the grounds on which his election was assailed is that a third son was born to him after 22/01/01 and, therefore, the disqualification prescribed u/s 36(1)(m) of the M. P. Panchayat Rajya Adhiniyam, 1993 are attracted and he is disqualified for being elected as Sarpanch. Proceedings u/s 36 were held before the Collector concerned and it is seen that the Collector in the said proceedings had passed an order on 14/07/05 holding the election of the petitioner to be illegal on the ground that a third son was born to him after 26th January, 2001. The said order of the Collector is assailed by the petitioner in W. P. No. 6191/05 and in the said petition, a bench of this Court has granted interim stay on 18/08/05 to the effect that pending adjudication of the said writ petition, there shall be stay to operation of the order Annexure P-1 dated 14/07/05 available in

the record of W. P. No. 6191/05.

3. Grievance of the petitioner now is that inspite of the fact that the order passed by the Collector is subjudice in the connected writ petition being W. P. No. 6191/05, the Registrar, Births and Death by exercising jurisdiction vested in him u/s 15 of the Registration of Birth and Death Act, 1969 (hereinafter referred to as Act of 1969) has cancelled the birth certificate issued in favour of petitioner's son namely, Ganesh Kumar vide Annexure P-3 on 10/08/02.

4. Challenging the aforesaid cancellation by the Registrar, this petition is filed and Shri Sujoy Paul, learned Counsel for the petitioner submitted a two fold contention before this Court. It was argued by Shri Sujoy Paul that u/s 15 of the Act of 1969, power is vested in the Registrar to cancel an entry made in the register of birth and death kept under the Act if it is found to be erroneous in form of substance, fraudulently obtained or improperly made. However, Shri Sujoy Paul points out that cancellation of the entry made is to be done only if it is proved to the satisfaction of the Registrar and the entry falls under the categories as indicated hereinabove. Shri Sujoy Paul points out that in the present case, subjective satisfaction of the Registrar as required u/s 15 is not recorded. It is stated that the Registrar concerned acting on the findings recorded by the Collector in his order dated 14/07/05 impugned in W. P. No. 6191/05 proceeded in the matter and cancelled the certificate. It was argued by him that the satisfaction recorded is not in accordance with the requirement of Section 15. The findings recorded by the Collector in the proceedings held u/s 15 is accepted to be correct and the Registrar, acting on the said basis has proceeded in the matter. Contending that the Registrar has not applied his mind independently and has not recorded his satisfaction but has acted on the basis of an order passed by the Collector, operation of which was stayed in the writ petition by this Court, challenge is made to the order impugned.

5. That apart, Shri Sujoy Paul submits that when a certificate statutory in nature under the act of 1969 is issued to the petitioner and by virtue of which certain rights are vested on the petitioner and his son, withdrawal or cancellation of this right has to be preceded by following principles of natural justice and proceedings to cancel the certificate without hearing the petitioner is said to be illegal. It was argued that the principles of natural justice is violated. Shri Sujoy Paul points out that even though Section 15 does not provide/specify for such an opportunity in so many words but it is a settled principle of law that when right vested in a person is being taken away, applicability of the principles of natural justice have to be read into the statutory provision. Accordingly, it is argued by Shri Sujoy Paul that petitioner was entitled to an opportunity of hearing before his certificate was cancelled so that he could demonstrate to the Registrar that satisfaction recorded by the Collector and the reasons given in the order dated 14/07/05 is not correct and could persuade the Registrar not to accept the said finding. It is the case of the petitioner that in the absence of show cause notice being issued and opportunity of hearing being not extended, this right of the

petitioner is taken away and on this count also, the order passed is unsustainable.

6. Refuting the aforesaid contention, Shri Sudesh Verma, learned Counsel for respondent No. 1 and Shri Rahul Mishra, learned counsel for respondent No. 2 and 3 submitted that in the proceedings held before the Collector u/s 36 of the M. P. Panchayat Raj and Gram Swaraj Adhiniyam, 1993, detailed procedures were followed. Evidence was recorded and after giving full opportunity to the petitioner, the order was passed by the Collector on 14/07/05 cancelling the election of the petitioner by holding that the son born to the petitioner indicated in the certificate Annexure P-3 is not correct. Collector has recorded certain finding which go to show that the certificate Annexure P-3 is not properly issued and, therefore, it is argued that if the Registrar respondent No. 2 and 3 has cancelled the certificate by placing reliance on the aforesaid finding recorded by the Collector, petitioner should not have any grievance when he was heard at length by the Collector in the proceedings held u/s 36 and, thereafter, action taken.

7. Accordingly, it is stated that the principles of natural justice is not applicable in the present case and as the applicant is heard at length in the proceedings held u/s 36 and the action impugned is after recording satisfaction by the Registrar as required u/s 15 of the Act of 1969. Accordingly, learned Counsel for respondent No. 1, 2 and 3 seek for rejection of the prayer made in this petition.

8. I have heard learned Counsel for the parties and perused the record. There is no dispute with regard to factual aspect of the matter in as much as the impugned order is passed the Registrar without issuing any notice to the petitioner and granting him opportunity of hearing. It is also not in dispute that the Registrar has not conducted any enquiry and has proceeded on the basis of the findings recorded by the Collector in his order dated 14/07/05, in the proceedings held u/s 36 of the Panchayat Raj and Gram Swaraj Adhiniyam. The question is as to the whether the Registrar of Births and Deaths while discharging statutory functions under the act of 1969 can do so ? A perusal of Section 15 of the Act of 1969 indicates that the power for correction or cancellation of an entry made in the Register of Birth and Death is conferred on the Registrar. However, the Section provides that the Registrar can cancel, alter or change any entry which is found by him to be erroneous in form or substance or has been fraudulently or improperly made, this action has to be preceded by a satisfaction to be proved. The important words in this section are If it is proved to the satisfaction of the Registrar. In the present case, if the facts as have come on record are scrutinized, it would be seen that the Registrar has passed the impugned order and there is nothing to indicate that he has applied his mind independently and has recorded his own satisfaction that the certificate has to be cancelled. In the impugned order, the Registrar has referred to certain enquiry conducted by the Collector and it is indicated by him that the cancellation is ordered on the basis of such an enquiry. However, no documents evidencing any enquiry conducted by the Registrar is produced before this Court. On the

contrary, the return filed by respondent No. 1 and the averments made in para 12 indicates that the enquiry referred to by the Registrar in the order is the enquiry conducted by the Collector in the proceedings held by him in the Section 36 of the Panchayat Rajya Adhiniyam and the order passed thereof on 14/07/05, operation of which is already stayed by this Court in W. P. No. 6191/05 when the statute/law requires the statutory authority to do a particular thing in a particular manner. The authority is statutorily bound to do so. Section 15 mandates the Registrar to record his satisfaction after evaluating all the circumstances and, thereafter, take action for cancelling or correcting the entry made. In the present case, it would be seen that there is no application of mind or recording of satisfaction by the Registrar independently, what the Registrar has done is to blindly accept the finding of the Collector recorded in the order dated 17/07/05 in the proceedings held u/s 36 and thereafter, proceeded in the matter. This in view of this Court is not the correct procedure which should have been followed by the Registrar. Registrar could place reliance on the proceedings held by the Collector u/s 36, but thereafter should have recorded his own independent satisfaction showing application of mind and reasons for accepting the findings of the Collector. Nothing of this sought was done, that apart, when the order of Collector itself was stayed by this Court, the Registrar could not rely on the said document to proceed in the matter.

9. The question with regard to application of independent mind and satisfaction can be considered in the light of a judgment rendered by a Division Bench of this Court in the case of Madan Lal Narvariya v. Smt. Satya Prakash Pardesia and Ors. ILR (2008) M.P. 2542 . In the aforesaid case, while interpreting the provisions of Section 47 of the M. P. Municipalities Act, 1961 wherein similar provisions are contained. The Hon"ble Division Bench has dealt with the matter in the following manner from para 16 to 22:

16. The question in the present case is whether the Collector had satisfied himself and verified the fact that 3/4th of the councillors have signed the proposal before sending the proposal to the State Government.

17. In the present case, the Collector had endorsed the proposal of the Project Officer as approved. The question which emerges is whether said approval can be said to be satisfaction of the Collector.

18. The question in the present case is what is the difference between the words approval and satisfaction. The legislature in its wisdom has used these phrases in different statutes at different places.

19. As per Webster's New World Dictionary, the word approval means favourable attitude or opinion, formal consent or permission, approval for the customer to examine and decide whether to buy or return goods. The word approve means one's consent or sanction. The word satisfaction is defined in the said dictionary and means comfort, content, contentment, delight, enjoyment, fulfillment, gratification, happiness, pleasure etc.

20. Approval in common parlance means what has to be approved has already taken place in its nature of ratification or what has already happened or has taken place. The word approval in contradistinction to the words "previous permission", shows that the action is taken first and "approval" is to be obtained afterwards. The word "approval" does not equate with the word "appeal". The word approval does not mean anything more than either confirming, ratifying, assenting, sanctioning or consenting. While the word "satisfaction" means the act of satisfying or the state of feeling being satisfied and the action of satisfaction contemplates adequate deliberation for acceptability of the conclusions. In other words, it means that before recording satisfaction, the concerned Authority must be convinced or persuaded to come to the conclusion.

21. In case of "satisfaction" as well as "approval", the application of mind is necessary. Section 47 of the Act lays down that before forwarding proposal the Collector must satisfy himself. The word for the reasons to be recorded" are not in the act. Hence, it may be argued that objective satisfaction of the Collector is not necessary. However, still the subjective satisfaction is necessary. Thus, application of mind in both the cases is necessary. The degree of application of mind in the word "satisfaction" is greater than the word "approval". Normally the approval is granted to an act of some other persons and of his own. However, so far as satisfaction is concerned, said satisfaction is personal satisfaction. Said satisfaction can also be on the proposal or any other material or report submitted by some other authorities, still personal satisfaction is necessary. Hence, greater degree of application of mind is necessary, when the mandate of the law is that the satisfaction is the satisfaction of himself.

22. In the present case, the Collector has used the word approved and has nowhere stated that he has satisfied himself about the contents of the application. Thus, he has not applied his mind to a degree which is required u/s 47 of the Act. It does not mean that the Collector cannot satisfy himself on the report given by some other agency. It is open to the Collector to get report from some other agency and then satisfy himself on the basis of the said report. However, this exercise is not done by the Collector in the present case. He has merely approved the proposal of the Project Officer. That itself suggests that he has not applied his mind to a greater degree which is the requirement of Sub-section (2) of Section 47 of the Act.

10. If the case in hand is evaluated in the backdrop of the principles laid down by the Division Bench as indicated hereinabove, it would be clear that in this case except for accepting the finding of the Collector recorded in the order dated 17/07/05, there is no application of mind or recording of satisfaction by the Registrar. In that view of the matter, the Registrar having failed to apply his mind and arrive at a satisfaction in accordance with the requirements of Section 15 of the Act of 1969, the entire action stands vitiated.

11. Accordingly, this Court is of the considered view that the Registrar in the present case, has acted in a manner which is inconsistent to the requirement of

Section 15, in as much as he has to take action not by recording his satisfaction independently and by application of mind.

12. That apart, there is much force in the second contention advanced by Shri Sujoy Paul. Even though, there is nothing in Section 15 of the Act of 1969 to indicate that opportunity of hearing and issuance of show cause notice is required but when a particular action has adverse consequence on a person. It is a well settled principle of law that the requirement of natural justice has to be read into the provision. The said principle is evident from a perusal of the principles laid down by the Supreme Court and the High Courts, reference can be made to the judgment of the Supreme Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . In para 202 of the aforesaid judgment, the matter is so dealt with by the Supreme Court

It is now well settled that the "audi alteram partem" rule which is essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here.

13. Supreme Court in the case of The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, and in the case of Yoginath D. Bagde Vs. State of Maharashtra and Another, approved the principle laid down earlier by the Supreme Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, wherein the matter is considered with regard to recording of different finding by the disciplinary authority after the enquiry officer has exonerated the employee of the charges levelled against him. In these cases, the Hon"ble Supreme Court has held that in case the disciplinary authority wants to record a finding adverse to the employee after rejecting the exoneration recorded by the enquiry officer, then in such cases opportunity of hearing to the employee has to be granted by the disciplinary authority even if the rules do not provide for such opportunity. It is held that the requirement of following the principles of natural justice has to be read into the rules in such cases.

14. When the aforesaid principle is applied in the present case, it would be seen that if the Registrar had issued notice to the petitioner before taking action and has disclosed his mind to the petitioner, informing him that the Registrar proposes to accept the order of the Collector dated 14/07/05 and cancel the entry made in the Register of Births and Death, the petitioner would have been in position to give his say in the matter and would have had an opportunity to demonstrate to the Registrar that the finding recorded by the Collector was not proper and the same be not accepted. Petitioner could have further pointed out that the order passed by the Collector had been stayed by this Court and, therefore, reliance cannot be placed to the said order for taking action. As issuance of show cause notice and opportunity of hearing is dispensed with, valuable right of the petitioner is taken away. In this case, it is the considered view of this Court that the principles of natural justice has been violated as the

impugned order has adverse consequence on the rights of the petitioner. The petitioner had a legal right before any order adverse to him was passed to give his say in the matter, denial of this opportunity has deprived the petitioner of the constitutional right available under Article 14. The order impugned therefore suffers from patent illegality on this count also.

15. Accordingly, considering the totality of the circumstances and for the reasons indicated hereinabove, this Court has no hesitation in holding that the Registrar, respondent No. 2 in cancelling the certificate vide Annexure P-3 has committed grave error.

16. Accordingly, this petition is allowed. Order impugned Annexure P-1 dated 24.12.05 cancelling the certificate as contained in Annexure P-3 is quashed and liberty is granted to the Registrar to proceed in the matter if he so desires in accordance with law.

17. Petition stands allowed and disposed of with the aforesaid without any order so as to cost.