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**(2016) 09 AHC CK 0288**  
**In the Allahabad High Court**  
**Case No : Writ C No. 35594 of 2016**

Munni Lal Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 28-09-2016

**Acts Referred:**

Uttar Pradesh Panchayati Raj (Maintenance of Family Registers) Rules, 1970 — Rule 5, Rule 6, Rule 6-A

**Citation :** (2017) 3 ADJ 67 : (2017) 1 AILJ 746 : (2017) 1 AllWC 288 : (2017) 120 ALR 71 : (2017) 134 RD 472 : (2016) 2 RJ 1704 : (2016) 4 UPLBEC 3299

**Hon'ble Judges :** Ran Vijai Singh, J.

**Bench :** Single Bench

**Advocate :** Niraj Tiwari, Advocate, for the Petitioner; C.S.C, Ramesh Chandra Upadhyay and Gautam, Advocates, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ran Vijai Singh, J. - Heard Sri Niraj Tiwari, learned counsel for the petitioner, learned Standing Counsel appearing for the State respondents, Sri R.C. Upadhyay learned counsel for the Gaon Sabha and Sri Gautam, learned counsel for the respondent no.7.

2. This writ petition has been filed with the following prayers:

"1. issue a writ, order or direction in the nature of certiorari quashing the impugned ex parte order dated 29.6.2016 passed by the Deputy District Magistrate, Martinganj, District Azamgarh i.e. respondent no.2 on the report of concerned Gram Panchayat Adhikari for registration of names of the contesting respondent nos. 7 to 10 in the family register of the petitioner's family (Annexure No.5 to this writ petition).

2. issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 i.e. Deputy District Magistrate, Martinganj, District Azamgarh to recall the ex parte report and order dated 28.6.2016 and 29.6.2016 by deciding

the petitioner's recall application within stipulated period as fixed by this Hon'ble Court.

3. Issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 i.e. Deputy District Magistrate, Martinganj, District Azamgarh to decide the stay application filed by the petitioner with recall application against the ex parte report and order dated 28.6.2016 and 29.6.2016 within stipulated period as fixed by this Hon'ble Court and till decide the recall application, the effect and operation as well as its implementation of ex parte order dated 29.6.2016 passed by the respondent no.3 on the ex parte report dated 28.6.2016 submitted by the respondent no.4 may be kept in abeyance, otherwise the petitioner shall suffer irreparable loss and substantial injury which cannot compensate in the terms of money.

4. issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

5. Award cost of the writ petition in favour of the petitioner."

Initially the argument was made by the learned counsel for the petitioner that the Sub Divisional Officer has no jurisdiction to pass the impugned order dated 29.6.2016 as under U.P. Panchayat Raj (Maintenance of Family Registers) Rules 1970 (in short the Rules, 1970) since the Sub Divisional Officer happens to be the appellate authority, therefore, the impugned order deserves to be quashed.

3. From the perusal of the record it transpires that the petitioner's grievance is for recording the names of respondent nos. 7 to 10 in the family register.

4. Recording the names of respondent nos. 7 to 10 in the family register amounts to inclusion of their names in the family register, which is governed under Rules 6 and 6-A of the Rules, 1970 which read as under:

"Rule 6. Inclusion of names in the register.

-- Any person whose name is not included in the family register may apply to the Assistant Development Officer (Panchayat) for the inclusion of this name therein.

(2) The Assistant Development Officer (Panchayat) shall if, satisfied, after such enquiry as he, thinks fit that the applicant is entitled to be registered in the register direct that the name of the applicant be included therein and the Secretary of the Gram Sabha shall include the name accordingly."

Rule 6-A. Any person aggrieved by an order made under Rule 5 or Rule 6 may, within 30 days from the date of such order prefer and appeal to the Sub-Divisional Officer whose decision shall be final."

5. From the perusal of the impugned order it transpires that inclusion, of the names of respondent no. 7 to 10, has been made pursuant to the order of the Sub Divisional Officer, who happens to be appellate authority under Rule 6-A of the Rules, 1970. It is well settled that if the statute provides to do a thing in a

particular manner, then that thing has to be done in that very manner. Reference may be had to the judgments of the Apex in Taylor v. Taylor, (1876) 1 Ch.D. 426; Nazir Ahmed v. King Emperor, AIR 1936 PC 253; Deep Chand v. State of Rajasthan, AIR 1961 SC 1527; Haresh Dayaram Thakur v. State of Maharashtra & Ors., (2000) 6 SCC 179; Dhanajaya Reddy v. State of Karnataka etc. etc., (2001) 4 SCC 9; Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala & Ors., (2002) 1 SCC 633 as well as this Court in Atar Singh v. State of U.P. And others, 2013(1) ADJ 43, Bankey Lal and another v. Deputy Director of Consolidation and others, 2013(5)ADJ 51, Phoolpati v. State of U.P. And others, (2014) 2 AWC 1291 All, Paras and another v. (sic)and others, 2013(8) ADJ 253, Ram Pratap v. Deputy Director of Consolidation and others 2013 (6) ADJ 457, Rambali and others v. State of U.P. and Others 2013 (2) ADJ 91.

6. It is noticeable that the Assistant Development Officer (Panchayat) (in short the A.D.O.) has power under Rule 5 of the Rules, 1970 to correct the existing entries in the family register and under Rule 6 of the Rules, 1970 there is provision for inclusion of the names in the family register. The orders passed either under Rules 5 or Rule 6 are appealable under Rule 6-A of the Rules, 1970. Herein this case without approaching the A.D.O. Panchayat the matter was brought before the Sub Divisional Officer, who happens to be the appellate authority and he passed the impugned order, meaning thereby the right of the petitioner to file appeal has been taken away.

7. The appeal is creation of the Statute and once the power of the appellate authority has been conferred upon the Sub Divisional Officer, the authority could not exercise the power of the original authority against whose order appeal lies before him as it will amount the transgression of power. Dealing with transgression of power under another Statute, the Apex Court in the case of Surjit Ghosh v. United Commercial Bank, AIR 1995 SC 1053, has observed as under:-

"5. ??..It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the

disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent- Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted. The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside."

8. The same view has been taken in *Amar Nath Chowdhury v. Braithwaite and Company Ltd. and Ors.*, (2002) 2 SCC 290 and in Civil Appeal No. 1217 of 2011 *Brij Bihari Singh v. Bihar State Financial Corporation* decided on 20.11.2015.

9. In view of the foregoing discussions I am of the considered opinion that the impugned order dated 29.6.2016 is without jurisdiction, therefore, it cannot be sustained in the eyes of law. In the result the writ petition succeeds and is allowed. The impugned order dated 29.6.2016 passed by the Sub Divisional Officer is hereby quashed.

10. The respondents concerned are at liberty to file an application for inclusion of their names in the family register under Rule 6 of the Rules, 1970 before the A.D.O.Panchayat. In case such an application is filed by the respondents along with a certified copy of this order needful be done by the A.D.O. Panchayat within a period of two months from the date of filing of the application in accordance with law after hearing all concerned.