
(2007) 01 AHC CK 0134

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39211 of 2006

Pooja

APPELLANT

Vs

District Magistrate, Mirzapur & Ors.

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Citation : (2007) 01 AHC CK 0134

Hon'ble Judges : B.S. Chauhan, J and Ran Vijai Singh, J

Final Decision : Dismissed

Judgement

Dr. B.S. Chauhan, J.—This petition has been filed for quashing the order dated 572006 passed by the Sub Divisional Magistrate, Lalganj, District Mirzapur where by the earlier resident certificates granted in favour of Smt. Pooja, the petitioner and one Smt. Smrita Devi have been cancelled.

2. The petitioner claims to be a resident of village Khamhariya Suryavansh, Post Halia, Tehsil Lalganj, District Mirzapur and pursuance to the advertisement issued on 26102005 for selection of Shiksha Mitra, she alongwith Smrita Devi and. Smt. Vandana Mishra submitted applications and a merit list was prepared in which the quality point marks awarded to the petitioner were highest and she was selected for the said post. For the purposes of selection, the petitioner had submitted a domicile certificate showing her as a resident of village Khamhariya Suryavansh, Post Halia, Tehsil Lalganj, District Mirzapur. A complaint was however made by one Smt. Vandana Mishra, who was also an applicant for selection of Shiksha Mitra that the domicile certificate issued to the petitioner was not correct. An enquiry was conducted and thereafter the domicile certificate Issued in favour of the petitioner was cancelled by the order dated 572006, which is impugned in the present writ petition.

3. A perusal of the order clearly shows that for the purpose of determining whether the petitioner was a resident of the aforesaid village or not, the Naib Tehsildar submitted a detailed report and thereafter the Tehsildar issued notices to the petitioner, Smt. Smrita Devi and Smt. Vandana Mishra, fixing 1422006 for

producing evidence. The parties appeared before the Tehsildar on 21/3/2006. They were also heard by the Tehsildar on the said date. The matter was thereafter adjourned fixing 28/3/2006 on which date the petitioner also appeared before the Tehsildar. The impugned order clearly shows that after considering the evidence on record including the report submitted by the Naib Tehsildar, a finding has been recorded that the petitioner was a permanent resident of village Gambhirapur not of the aforesaid village Khamhariya Suryavansh. In fact the husband of the petitioner had also been issued a resident certificate in the year 2004 showing that he was a permanent resident of village Gambhirapur. The Tehsildar has also referred to the Government Order dated 18/2/2003 which clearly provides that for issuance of a permanent resident certificate, the person must be living for at least a period of three years. Learned Counsel for the petitioner has, however, submitted that proper opportunity was not given to the petitioner before passing the order dated 5/7/2006. This submission of the learned Counsel for the petitioner cannot be accepted for the simple reason that in the impugned order, it has clearly been mentioned that the notice had been given to the petitioner and the petitioner had appeared before the Tehsildar on 21/3/2006 and 28/3/2006. This fact has also been stated in paragraph 5 of the supplementary counteraffidavit filed by Smt. Vandana Mishra.

4. In fact the claim of being resident/domicile of village Khamhariya Suryavansh is based only on a gift deed made in favour of grandfather of the petitioner's husband in the year 1963 and also on the basis of the entry of the petitioner's name in the voter list of the said village and in the family register. On the basis of the same, it has been submitted by learned Counsel for the petitioner that the voter list and family register, being public documents, are admissible in evidence under Section 35 of the Evidence Act. In support of his contention, a very heavy reliance has been placed by Shri Mishra, learned Counsel for the petitioner upon the judgment of this Court in *Swami Prasad v. Prescribed Authority & Ors.*, 1979 RD 135, wherein it has been held that a family register is a public document being prepared in ordinary course of business by a person concerned and the entry in that register should ordinarily be accepted.

5. Undoubtedly, such a document is admissible under Section 35 of the Evidence Act being a public document prepared by the Government official in exercise of his official duty. However, the question does arise as what is the authenticity of the said entry for the reason that admissibility of a document is one thing and probity of it is different. In *State of Bihar & Ors. v. Sri Radha Krishna Singh & Ors.*, AIR 1983 SC 684, the Hon'ble Supreme Court dealt with a similar contention and held as under :

?Admissibility of a document is one thing and its probative value quite another these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.....

Where a report is given by a responsible officer, which is based on evidence of

witnesses and documents and has a statutory flavour in that it is given not merely by an administrative officer but under the authority of a Statute, its probative value would indeed be very high so as to be entitled to great weight.....

The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.?

6. Therefore, a document may be admissible whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of the Hon"ble Supreme Court in *Ram Prasad Sharma v. The State of Bihar*, AIR 1970 SC 326; *Ram Murti v. State of Haryana*, AIR 1970 SC 1029; *Harpal Singh & Anr. v. State of Himachal Pradesh*, AIR 1981 SC 361. In these cases, it has been held that even if the entry was made in an official record by the concerned official in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose Information the entry has been made and as to whether the entry so made has been exhibited and proved.

7. Such entries may be in any public document, i.e., school register, voter list or family register prepared under the Rules and Regulations etc. in force, and may be admissible under Section 35 of the Evidence Act as held in *Mohd. Ikram Hussain v. The State of U.P. & Ors.*, AIR 1964 SC 1625.

8. In *Ganesh Swain & Ors. v. Nakadi Swain & Ors.*, AIR 1983 Ori 279, "the voter list was held to be admissible under Section 35 of the Evidence Act. While deciding the said case, the Orissa High Court placed reliance upon its earlier Full Bench judgment in *Kirtan Sahu v. Thakur Sahu*, AIR 1972 Ori 158, wherein the entry in the census register was held to be admissible and it was further observed that there was no necessity to call in evidence, the author thereof or the person supplying the evidence to prove its genuineness. A similar view has been reiterated by the Orissa High Court in *Raghu Nath Behera v. Balaram Behera*, AIR 1996 Ori 38. However, there may be conflicting entries in the official document and in such a situation, the entry made at a later stage has to be accepted and relied upon. Vide *Shri Raja Durga Singh of Solon v. Tholu & Ors.*, AIR 1963 SC 361.

9. In *Dayaram & Ors. v. Dawalatshah & Anr.*, AIR 1971 SC 681, the Hon"ble Supreme Court held that the order of a revenue authority based on unreliable piece of evidence cannot have any evidentiary value on the issue involved therein. Though in *Santeni Mitra v. State of West Bengal*, AIR 1999 SC 1587, the Hon"ble Supreme Court held that the entry in the register of birth and death recorded by an official in performance of his duty should not be ordinarily doubted.

10. While dealing with a similar issue in *Birad Mal Singhvi v. Anand Purohit*, AIR

1988 SC 1796, the Hon''ble Supreme Court held as under :

?To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act, but entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.?

11. Similar view has been reiterated in *Raja Janaki Math Roy & Ors. v. Jyotish Chandra Acharya Chowdhury*, AIR 1941 Cal 41; *Jagan Nath v. Moti Ram & Ors.*, AIR 1951 Pun 377; and *Sakhi Ram & Ors. v. Presiding Officer, Labour Court North Bihar, Muzaffarpur & Ors.*, AIR 1966 Pat 459.

12. A Constitution Bench of the Hon''ble Supreme Court while dealing with a similar issue in *Brij Mohan Singh v. Priya Brat Narain Sinha & Ors.*, AIR 1965 SC 282, observed as under :

?The reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high. That probability is reduced to a minimum when the public servant himself is illiterate and has to depend on somebody else to make the entry. We have, therefore, come to the conclusion that the High Court is right in holding that the entry made in an official record maintained by the illiterate Chowkidar, by somebody else at his request does not come within Section 35 of the Evidence Act.?

13. Thus, the law on the issue can be summerised that the entry made in the official record by an official or person authorised in performance of official duty is admissible under Section 35 of the Evidence Act but the party may still ask the Court/Authority to examine its probative value.

14. In the instant case, a finding has been recorded by the Statutory Authority that the petitioner's husband had been granted resident certificate in the year 2004 showing that he was a permanent residence of village Gambhirpur. The learned Counsel for the petitioner could not explain as under what circumstances the petitioner wife was a resident of village Khamhariya Suryavansh as it is nobody's case that the husband and wife are living separately. The report made by the officer after spot inspection reveal that an old house was lying vacant without containing anything therein, not even cot or any cloth or any means for preparing the food was found therein. Had the petitioner been residing therein, the report could have been otherwise. No attempt has been made by learned Counsel for the petitioner to explain as under what circumstances, such a finding has been recorded, Therefore, his mere assertion that the grandfather of the

petitioner's husband has given a house in gift in village Khamhariya Suryavansh would not make the petitioner ordinary/permanent resident of the said village.

15. This apart, the Tehsildar has recorded categorical findings of fact and nothing has been pointed out before us to show that these findings of fact are based on evidence on record. Undoubtedly, petitioner was accorded full opportunity to plead her case and she had availed the said opportunity. Had been any material in her favour to support her case, she could have definitely adduced the same before the authority concerned. Such being the position, it is not possible for us to interfere with the impugned order dated 572006. The writ petition is, therefore, liable to be dismissed and is dismissed.