
(2005) 02 AHC CK 0189

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8138 of 2005

Ram Prasad

APPELLANT

Vs

State of U.P. and Smt. Mewati

RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 5A, 6(1), 6A
Uttar Pradesh Panchayati Raj (Maintenance of Family Registers) Rules, 1970 — Rule 5, 6, 6A

Citation : (2005) 3 AWC 2893

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : K.N. Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Kirshna Nand Yadav, learned counsel for the petitioner and Learned Standing Counsel for the respondent Nos. 1 to 3.

2. Respondent No. 5, Smt. Mewati was admittedly married to Sri Bhagwati and accordingly her name was registered in the family register of Sri Bhagwati. Sri Bhagwati expired in the year 1965. According to the petitioner, Smt. Mewati thereafter married another person known as Chauthi, as a result whereof her name was delated from the family register of Bhagwati by the Assistant Panchayat Development Officer, Mithaura, District Maharajganj. Subsequently an order dated 22nd April, 1981 was passed by the Assistant Panchayat Development Officer, Mithaura, District Maharajganj whereby the name of Smt. Mewati was again recorded as the wife of Sri Bhagwati in the family register.

3. Petitioner claiming himself to be the real brother of Sri Bhagwati moved an application referable, to Rule 5 of the U.P. Panchayati Raj (Maintenance of Family Registers) Rules, 1970, for necessary corrections in the family register of Sri Bhagwati on the ground that Smt. Mewati has married one Sri Chauthi after the death of Sri Bhagwati, and therefore, her name was liable to be deleted from the

family, register. The Sub Divisional Magistrate, Niehilaal, district Maharajganj passed an order dated 23rd January, 1998 deleting the name of Smt. Mewati from the family register of Sri Bhagwati in alleged exercise of powers u/s 6-A of the U.P. Panchayati Raj Act, 1947, (a copy of the said order has been enclosed as Annexure No. 1 to the writ petition). Smt. Mewati coming to know of the aforesaid order of Sub Divisional Magistrate dated 23rd January, 1998, moved an application for recall of the said order. The Sub Divisional Magistrate by means of the order dated 15th June, 2001 allowed the application of Smt. Mewati recalled his earlier order dated 23rd January, 1998 on the ground that same was an ex parte order and directed that the matter be put up again for evidence of Sri Ram Prasad on 29th June, 2001. In pursuance of the said order of the Sub Divisional Magistrate, necessary Amaldaramad was effected by the Assistant Development Officer, Panchayat, Mithaura, Maharajganj. The petitioner made an application on 1st July, 2001 that the aforesaid change in the family register may be suspended as no Parwana for Amaldaramad has been issued. The petitioner thereafter claims to have filed a revision u/s 6-A of the Panchayat Raj Act before the Commissioner, which has been numbered as 205/M. The petitioner contends that said revision has not yet been decided and therefore this Court may issue direction upon the Commissioner to decide the revision of the petitioner at the earliest possible.

4. In the opinion of the Court the relief prayed for by the petitioner is totally misconceived inasmuch as the revision as filed by the petitioner is legally not maintainable and no directions can be issued to any court or authority to decide the application, which are legally not maintainable.

5. For the purposes of this writ petition, it would be worthwhile to refer to the provisions of U.P. Panchayati Raj. (Maintenance of Family Registers) Rules, 1970, specifically rules as 5 and 6 of the said rules. Rules 5 and 6 are reads, as follows:

"Rule 5. Correction of any existing entry.-The Assistant Development Officer (Panchayat) may on an application made to him in this behalf order the correction of any existing entry in the family register and the Secretary of the Gram Sabha shall then correct the register accordingly.

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.

6. From the aforesaid rules it would be apparently clear that against an order making corrections in the entries by the Assistant Development Officer, before the Sub Divisional Magistrate has been provided for under the provisions of U.P. Panchayati Raj (Maintenance of Family Registers) Rules, 1970. No 2nd appeal/revision before the Commissioner against the order of Sub-Divisional Magistrate as has been provided under the 1970 Rules.

7. The petitioner has filed a misconceived appeal/revision before the Commissioner against the order of Sub-Divisional Magistrate with reference to Section 6-A refers to an order to be passed by the Prescribed Authority disqualifying a person from being elected as Pradhan or members of a Gaon Sabha.

8. For ready reference Section 6-A of the Panchayati Raj Act is quoted herein below:

"Section 6-A. Decision on question as to disqualification, -If any question arises as to whether a person has become subject to any disqualification mentioned in Section 5-A or in Sub-section (1) of Section 6, the question shall be referred to the prescribed authority for his decision and his decision shall, subject to the result of any appeal as may be prescribed, be final."

9. From the said section it is apparent that dispute with regard to disqualification of a member as mentioned u/s 5-A, and Sub-section (1) of Section-6 is to be referred to the Prescribed Authority for his decision and against such decision of the Prescribed Authority an appeal/revision, as may be prescribed, has been provided for.

10. Section 6-A as such does not confer any right of appeal/revision in respect of the orders, which are passed) by the Sub-Divisional Magistrate under Rule 6-A of the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970.

11. In such circumstances, the revision as filed by the petitioner is legally not maintainable. Therefore, there, can be no direction by this Court to the Commissioner to decide the said misconceived appeal/revision.

12. The writ petition is totally misconceived and is accordingly dismissed. No order as to cost.