(2013) 07 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5276 (MB) of 2013

Razia and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3

Citation : (2013) 4 UPLBEC 2980

Hon'ble Judges : Sibghat Ullah Khan, J;Satish Chandra, J

Bench : Division Bench

Advocate : Lalta Prasad Misra and Sri Abhishek Misra, for the Appellant;

Judgement

Sibghat Ullah Khan, J.—Heard Sri L.P. Mishra, learned Counsel for the petitioner and Sri H.P. Srivastava, learned Additional Chief Standing Counsel, for the respondents. Through this writ petition, petitioners who are 16 in numbers have challenged the recovery certificates dated 22.4.2013 issued against them by District Social Welfare Officer, District Barabanki. Recovery certificates have been issued on the ground that each petitioner with the active involvement of departmental clerk and by manipulating in the records has illegally received different amount ranging between Rs. 20,000/- to Rs. 1 lac under National Family Benefit Scheme by getting the said amounts deposited in their accounts in the main Branch of Bank of India, Barabanki. On 1.7.2013, we had directed the learned Additional Chief Standing Counsel to inform the Court regarding the action which was taken against the clerk concerned. On the date of argument i.e. 2.7.2013 learned Additional Chief Standing Counsel supplied the instructions received by him mentioning that in the embezzlement/misappropriation Sri Arvind Pratap Singh, junior clerk was involved who had been suspended and F.I.R. had also been lodged against him on 13.3.2013 and through order dated 14.3.2013 he had been suspended and departmental proceedings had been directed to be initiated against him. A copy of instructions was supplied to Dr. L.P. Mishra, learned Counsel for petitioner. We inquired from the learned Counsel as to whether he required some time to study the instructions and file something in rebuttal, if required. Learned Counsel stated that he did not require time for the said purpose and he wanted to argue the matter at once.

2. Learned Counsel for the petitioners has raised the following four points:

(I) Petitioners were provided the financial assistance under Prime Minister''s National Economic Self Help Group Scheme (hereinafter referred to as first scheme) and not under National Family Benefit Scheme (hereinafter referred to as second scheme)

(II) Before issuing recovery certificates/citations no opportunity of hearing was provided.

(III) Recovery is sought to be made under U.P. Public Money''s (Recovery of Dues) Act, 1972 but such amounts cannot be recovered under the said Act.

(IV) Identification of beneficiaries under first scheme had been done by the officers and employees of District Social Welfare Department earlier at various levels and no allegation was levelled against the petitioners.

3. It has been stated in para 9 of the writ petition that after completion of all the formalities through order dated 29.10.2012 grant was sanctioned to the petitioners under the first scheme. Copies of the said orders are Annexure No. 7 to the writ petition. In the written submissions by learned Additional Chief Standing Counsel it has been stated that the orders dated 29.10.2012 are forged. Under the orders, no signatures are there. Thereafter in each order it is mentioned that copy of the order was sent to the recipient. Only under that noting signatures of District Samaj Kalyan Adhikar, Barabanki are shown. It has also been argued by the learned Additional Chief Standing Counsel that the letters do not contain dispatch number proving forgery. Signatures of welfare officer at the bottom are denied by the respondents. Letter dated 29.10.2012 Annexure-VII are addressed to President/Secretary Mahila Uthan Self Help Group Nawab Ganj Barabanki.

4. It is a clear cut case of fraud and forgery and loot of the public property. It has also been argued by learned Standing Counsel that first scheme is administered by Rural Development Department of the State and Social Welfare Officer has got no concern therewith. It has also been stated by learned Additional Chief Standing Counsel on the basis of instructions that there is a sort of scam in the District and Inquiries are going on and Three Member Committees has been formed and the Bank of India Main Branch, Barabanki has been directed to provide details of 83 such matters. It has also been mentioned that the petitioners and other persons have been provided financial assistance more than once (which is not permissible) with the illegal assistance of the aforesaid clerk. Learned Standing Counsel has supplied a chart. Except petitioner No. 1 all other petitioners have been provided the assistance of Rs. 20,000/- several times. Petitioner No. 12 - Rehana has been supplied the assistance five times (total

amount of Rs. 1 lac). Petitioner Nos. 5, 7, 8, 10, 11 and 16 have been provided the assistance twice Rs. 40,000/- each) and petitioner Nos. 2, 3, 4, 6, 14 and 15 have been provided the assistance thrice (60,000/- each). Petitioner No. 9 has been provided the assistance four times i.e. (total Rs. 80,000/-). It is admitted to the petitioners that they were not provided any assistance under Second Scheme, however the amounts have been credited in the account of the petitioners from the Second Scheme. As far as First Scheme is concerned, no document regarding sanction of the amount has been filed. Even the application, which might have been given by the petitioner for the said purpose has not been filed. The only thing which has been filed is letters dated 29.10.2012 (Annexure-7), which is in the matter of consequential information. In the said letters, it is mentioned that amount of Rs. 20,000/- has been sanctioned however sanctioning order has not been filed. The First Scheme is not administered by Social Welfare Department.

5. Learned Standing Counsel has also argued that before issuing recovery certificate/citation notices were issued to the petitioners on 16.4.2013. It has also been pointed out that several petitioners are not even qualified for the grant of the financial assistance.

6. The argument of learned Counsel for petitioner that in any case amount could not be recovered like arrears of land revenue also deserves to be rejected. u/s 3 of U.P. Public Moneys (Recovery of Dues) Act, 1972, recovery can be made against a person who is party to any agreement relating to a loan, advance or grant given to him by the State Government. Amount of loan may be recovered, if it is not paid. Amount of advance may be recovered, if the work which was required to be done and for which advance was paid is not performed by the recipient. However grant is not meant to be recovered. It can be recovered only when it is misutilised. If a person is a party to a fraud relating to grant, the amount can very well be recovered from him under U.P. Public Moneys (Recovery of Dues) Act, 1972.

7. In any case as public money meant for welfare scheme has been misappropriated hence we are not inclined to interfere in exercise of writ jurisdiction which is discretionary vide Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another, .

8. Accordingly, writ petition is dismissed.

9. Office is directed to supply a copy of this order free of cost to H.P. Srivastava, learned Additional C.S.C. within three days. We are of the opinion that fraud of such magnitude could not be committed by the assistance of merely a junior clerk. Other officers/officials must also been involved. Involvement of bank officers can also not be ruled out. In the inquiry which has been set up the involvement of other officers/officials must also be investigated.

