

(2006) 10 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1153 of 2006

Sambhu Prasad Sati

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Uttar Pradesh Document Writers Licensing Rules, 1977 — Rule 16, 16(1), 16(2)

Citation : (2007) 2 UC 1016

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Lokpal Singh, for the Appellant; Learned Standing Counsel for State, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties and perused the record.

2. The Petitioner has filed the present writ petition with a prayer to quash the order dated June 1, 2006, passed by the District Magistrate, Pauri Garhwal (Annexure No. 5 to the writ petition) whereby the deed-writer licence of the Petitioner has been suspended till further orders.

3. The main contention of the Petitioner is that no opportunity of hearing has been given by the District Magistrate before suspending the licence in question. The learned Counsel for the Petitioner vehemently argued that in the present case, the impugned order is hit by the provisions of Sub-rule (2) of Rule 16 of the U.P. Document Writers Licensing Rules (1977), which specifically provides that no order under Sub-rule (1) shall be passed, unless the document writer has been given an opportunity of being heard in his defence, therefore, the order impugned is violative of principle of natural justice. In support of his contention, the learned Counsel has placed reliance upon the Division Bench judgment of the Allahabad High Court in the case of "Vijay Kumar v. District Registrar/Additional Collector, Pilibhit and Anr." 1999 ALJ 2674.

4. Rule 16 of the U.P. Document Writers Licensing Rules, 1977, as amended by Second Amendment Rules, 1981, reads as under:

16. Cancellation of licence- (1) The licensing Authority may at any time suspend or cancel the licence of a document writer on any of the following grounds, namely-

- (a) breach of any of these rules or conditions of licence;
- (b) failure to attend the registration office for a continuous period exceeding one month without permission of the Licensing Authority or the Registering Officer;
- (c) for being guilty of participation in any illegal transaction or unfair dealings with public servants in the registration Department;
- (d) for being found negligent or inefficient in his work or dishonest in his dealings with the public;
- (e) for being convicted by a court for an offence involving moral turpitude; and
- (f) for any other sufficient cause to be recorded in writing.

(2) No order under Sub-rule (1) shall be passed, unless the document writer has been given an opportunity of being heard in his defence.

5. On behalf of the State, a counter affidavit duly sworn in by Sri Mohan Singh, Tehsildar, Kotdwar, has been filed. In paragraph No. 3 of the counter affidavit, it was stated that the licence of the Petitioner was cancelled on the ground that the Petitioner was found to be indulged in preparing forged document (will) of one Sri Ram Singh, S/o Diwan Singh and Smt. Khemwati Devi wife of Prem Singh in respect of land situated at village Devram Pur having Khata No. 24 of area 0.690 hectare land. It was further stated that the order was passed on the basis of inquiry conducted by Sub Divisional Magistrate, Kotdwar dated 27-04-2006 and the order of suspension of license has been passed in accordance with the Rules and procedure in the interest of public at large. It was also contended that the Petitioner had already filed an appeal against the impugned order before Commissioner, Garhwal Region.

6. The Petitioner has filed rejoinder affidavit and specifically denied the averment made in the counter affidavit and it was stated that no opportunity of hearing was ever given to the Petitioner and he had not preferred any revision or appeal before the Commissioner Garhwal Region.

7. It reveals from the impugned order that the District Magistrate passed the order on the basis of enquiry report of Sub Divisional (Magistrate), Kotdwar, dated 27-4-2006. The impugned order does not indicate that any opportunity was given to the Petitioner before passing the order of suspension of licence.

8. I have considered Rule 16 of the Uttar Pradesh Document Writers Licensing Rules, 1977 as amended by 1981 Rules as well as the Division Bench judgment of the Allahabad High Court in the case of Vijay Kumar (supra). In Sub-rule (1)

the grounds have been mentioned on which orders including suspension of licence can be passed and Sub-rule (2) specifically provides that no order under Sub-rule (1) shall be passed unless opportunity of being heard is given to the document writer. Clearly, in the instant case, there is nothing to show that any opportunity of hearing in his defence was given to the Petitioner, therefore the order impugned is not sustainable.

9. Having considered the Rule 16 aforesaid as well as the decision of the Allahabad High Court, I find that in the instant case, no opportunity of hearing was given to the Petitioner, therefore, the order impugned is liable to be set aside and writ petition is liable to be allowed.

10. The writ petition is allowed. The impugned order dated 1-06-2006 (Annexure No. 5) is hereby set aside. However, it is provided that the District Magistrate concerned may proceed with the matter afresh in accordance with the Rules.