
(2011) 05 AHC CK 0416

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23848 of 2011

Samiullah

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 498A

Citation : (2011) 6 ADJ 68

Hon'ble Judges : Ran Vijai Singh, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Ashish Kumar Srivastava, for the Appellant; H.N. Shukla, Mahesh Narain Singh and R.R. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Ashish Kumar Srivastava, learned counsel for the petitioner, Sri H.N. Shukla learned counsel appearing for respondent No. 7 and the learned Standing Counsel. Counter and rejoinder-affidavits have been exchanged and the writ petition is being finally decided by consent of the learned counsel for the parties.

2. By this writ petition, the petitioner has prayed for quashing the order dated 14th March, 2011 passed by the Sub-Divisional Officer appointing respondent No. 7 as second fair price shop dealer in the Gram Panchayat Kamhariya Bujurg.

3. Brief facts, which emerge from pleadings of the parties, are; the Sub-Divisional Officer wrote a letter dated 24th January, 2011 to the Block Development Officer for obtaining a resolution of the Gram Panchayat for appointment of fair price shop dealer in view of the fact that number of units in the village are more than 4000. The petitioner made an application dated 5th February, 2011 to the Sub-Divisional Officer praying that he is also an applicant for fair price shop. One Subhawati and Mohd. Ali also made similar applications. A resolution dated 9th February, 2011 was passed by the Gaon Sabha in favour

of respondent No. 7. Against the resolution dated 9th February, 2011 complaint was filed by the petitioner on which a report was obtained by the Sub-Divisional Officer from the Block Development Officer, who submitted report dated 20th February, 2011 that resolution has been passed in accordance with the procedure prescribed. The Sub-Divisional Officer issued order dated 14th March, 2011 appointing respondent No. 7 as fair price shop dealer. This writ petition has been filed challenging the aforesaid order.

4. Learned counsel for the petitioner, challenging the order, has contended that respondent No. 7 is the wife of brother of present Pradhan of the village, hence she was disqualified to be appointed as fair price shop dealer in view of the Government order dated 3rd July, 1990. It is submitted that respondent No. 7 being disqualified allotment in her favour is illegal and is liable to be set-aside. He further submits that brother's wife is also included within the definition of family as contemplated under paragraph 4.7 of the Government order dated 3rd July, 1990. Learned counsel for the petitioner also submits that there was no proper Munadi for the meeting of the Gaon Sabha, hence the order deserves to be set-aside.

5. Sri H.N. Shukla, learned counsel appearing for respondent No. 7, refuting the contention of counsel for the petitioner, has submitted that brother's wife of Pradhan is not included in the definition of family as mentioned in paragraph 4.7 of the Government order dated 3rd July, 1990. He submits that only members who are prohibited allotment of fair price shop are; self, wife, son, unmarried daughter, mother, father and brothers. He submits that respondent No. 7 being brother's wife is not covered by the prohibition and the allotment in her favour is valid and is in accordance with law. Sri Shukla further submits that the husband of respondent No. 7 has been living separately from his brother who is Pradhan of the village for the last more than 15 years and both the brothers have separate kitchen, hence prohibition is not applicable on the respondent No. 7. It is further submitted that resolution was passed after proper Munadi and respondent No. 7 received 710 votes as compared to 241 votes received by one Saifullah.

6. We have considered the submissions of learned counsel for the parties and have perused the record.

7. The main issue, which is to be considered in the writ petition, is as to what is the content and extent of prohibition as enforced by paragraph 4.7 of the Government order dated 3rd July, 1990. The first issue to be considered is as to whether brother's wife is also included in the prohibited relationship. It is useful to quote paragraph 4.7 of the Government order, which is to the following effect:

8. A perusal of the aforesaid clause indicates that the said clause prohibits resolution in favour of members of family/relatives of Pradhan and Up Pradhan. The Government order uses two words "members of family" and "relatives" and the word "family" has been defined as self, wife, son, unmarried daughter,

mother, father and brother. There cannot be any dispute that members of the family as enumerated therein are clearly in the prohibited category. After enumerating the aforesaid members of family, there is one phrase The aforesaid words of the Government order clearly indicate that relationship is not confined to the relationship as mentioned in the Government order but it includes other members also. The definition of family/relatives given in the Government order is thus not exhaustive, rather illustrative.

9. The definition clause in a statute or a Rule may be either restrictive of its ordinary meaning or it may be extensive of the same. When the definition clause is not exhaustive and inclusive or extensive, it has to be given extensive meaning. The Apex Court in the case of Narmada Bachao Andolan Vs. Union of India (UOI) and Others, has laid down following in paragraphs 62 and 63:

62. It is now well-settled that when the interpretation clause used an inclusive definition, it would be expansive in nature.

63. In G.P. Singh's "Principles of Statutory Interpretation", Ninth Edition - 2004, at page 166, it is stated:

The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used these words and phrases must be construed as comprehending not only such thing as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include.

10. It is relevant to note that clause 4.7 of the Government order dated 3rd July, 1990 uses two phrases, namely, . The Government order thus itself contemplates inclusion of relatives also. The word "relative" has been defined in P. Ramanatha Aiyar Law Lexicon 1997 Edition as follows:

Relative. Having relation; conditional, opposed to absolute.

"RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act (IV of 1912), S. 3]

An illegitimate son of the father of a lunatic is not a relative of the lunatic and so he can file an application under S. 63 of the Lunacy Act Lakshmikutty Vs. Mohandas and Another, . [Lunacy Act (4 of 1912), S. 3(11)]

The words in the Indian Succession Act express relationship denote only legitimate relationship, such relationship as originate from lawful wedlock (30B 500 = 8 Bom LR 22)

11. A person can be relative to another person by blood, by marriage or by adoption. The word relative is thus more comprehensive word than family. The Apex Court had occasion to consider the word "relative" in context of Section 498A of the Indian Penal Code in Criminal Appeal No. 938 of 2009 (U. Suvetha v. State by Inspector of Police and another) decided on 6th May, 2009. Following was laid down in paragraph 12 of the said judgment:

12. In the absence of any statutory definition, the term "relative" must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or grand-daughter of an individual or the spouse of any person. The meaning of the word "relative" would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption.

The word "relative" has been defined in P. Ramanatha Aiyar

Advanced Law Lexicon - Volume 4, 3rd Edition as under:

Relative, "RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act].

The expression "RELATIVE" means a husband wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act].

"RELATIVE" means in relation to the deceased,

- (a) the wife or husband of the deceased;
- (b) the father, mother, children, uncles and aunts of the deceased, and
- (c) any issue of any person falling, within either of the preceding sub clauses and the other party to a marriage with any such person or issue [Estate Duty Act].

A person shall be deemed to be a relative of another if, and only if,-

- (a) they are the members of a Hindu undivided family, or
- (b) they are husband and wife; or
- (c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].

"RELATIVE" in relation to an individual means -

- (a) The mother, father, husband or wife of the individual, or
- (b) a son, daughter, brother, sister, nephew or niece of the individual, or
- (c) a grandson or grand-daughter of the individual, or
- (d) the spouse of any person referred to in sub-clause (b) [Income tax Act].

"RELATIVE" means--

- (1) spouse of the person;
- (2) brother or sister of the person;
- (3) brother or sister of the spouse of the person;
- (4) any lineal ascendant or descendant of the person;
- (5) any lineal ascendant or descendant of the spouse of the person;

[Narcotic Drugs and Psychotropic Substances Act].

Random House Webster's Concise College Dictionary defines "relative" at page 691 to mean:

Relative No. 1 a person who is connected with another or others by blood or marriage. 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else; not absolute or independent: Happiness is relative. 7. having relation or connection. 8. having reference: relevant; pertinent (usually fol. by to): two facts relative to the case. 9. correspondent; proportionate: 10. depending for significance upon something else: "Better" is a relative term. 11. of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called." 12. (of a musical key) having the same key signature as another key: a relative minor.

12. A learned Single Judge of this Court while considering the definition of word family in the Government order dated 28th October, 1982 in context of grant of fair price shop in the case of Naeem Ahmad Vs. State of U.P. and Others, has held that giving a restricted meaning of the word would defeat the very purpose of the provision. Following was laid down in paragraph 8 of the said judgment:

8. To my mind, giving it any restricted meaning, would defeat the very purpose of the said provision. Grant of license is for a public distribution system through a "fair price shop". This cannot be permitted to function so as to create a monopoly in favour of the members of one family. This appears to be a more reasonable interpretation as it serves the purpose and also eliminates any possibility of nepotism and favouritism. If the Rule making authority has left some gap, it is the duty of the Court to cull out the intent through purposive interpretation. One can easily apply Heydon's Rule to construe that the prohibition contained in Clause 19(e) aforesaid is a reasonable restriction so as to exclude any other grant of license to a member of the same family. To give a narrow or constricted meaning to my mind would be to do violation to the Rule itself. In my considered opinion the widest possible meaning should be given as understood ordinarily in such matters. However in the present case since the relationship of father and son is admitted, it would not be necessary to venture to give any exhaustive definition for deciding the issue involved herein.

13. The purpose and object for which the prohibition is contained is not far to seek. In a Gram Panchayat Pradhan plays a very pivotal role and with regard to distribution of essential commodities by a fair price shop dealer the Pradhan has specific role under the relevant Government orders and the scheme enforced by the State Government. The Pradhan supervise the distribution of commodities of

a fair price shop dealer to ensure that essential commodities are distributed to the members of the village. The distribution of essential commodities by a fair price shop dealer in public distribution system is one of the most important function entrusted to Gram Panchayat. The provision prohibiting family members and relatives of Pradhan to get a fair price shop has been incorporated with some object to achieve, i.e. there may be no favouritism or nepotism with regard to distribution of essential commodities and if a fair price shop dealer is not relative or family member of the Pradhan there shall be more transparency and faith of the villagers.

14. The word "family" in context of U.P. State Electricity Board Dying-in-Harness Rules, 1975 for appointment as dependent of deceased employee in U.P. Power Corporation has been considered by a Division Bench of this Court in Special Appeal No. 1026 of 2003 (U.P. Power Corporation v. Smt. Urmila Devi). The issue was whether daughter in law is entitled to compassionate appointment whereas the definition of family included only wife or husband, son, unmarried daughters and widowed daughters. The Division Bench of which one of us (Justice Ashok Bhushan) was a member, laid down following:

In our respectful opinion the phrase "family shall include" can mean or signify either an exclusive definition or an illustrative (i.e., inclusive) definition. A little contemplation of the phrase shows that the word "include" can mean both (i) include only or (ii) include amongst others. It is all a matter of the content. The main reason why we are constrained, with respect, to differ from our earlier Division Bench is that if the word "include" in the definition in question is given an illustrative meaning, the mention of the three items will lose all meaning. It is one of the Rules of construction that every part of the Rules or Statute is to be given some meaning unless that is impossible. In the year 2001, the Government rule, which was interpreted in the above case of Rajendra Kumar was amended to include another category being an unmarried brother. This type of addition to the items shows that the items are intended to be exclusive and not merely have an inclusive or illustrative value. A case cited by the respondent shows how an ordinary meaning of a word like the word "include" can be both narrow or wide Paradoxically, the word "include" can thus be non-inclusive, and exclusive. In this case the word "means" was interpreted by the Supreme Court. The case is of K.V. Muthu Vs. Angamuthu Ammal, . Paragraphs 10 to 15 of the judgment show that the word "means" was interpreted by the Court as prefixing a list of relations which was held only to be illustrative. Therefore, the word "means" which is usually interpreted as giving an exclusive category, was interpreted as giving an illustrative list.

In a similar way, in the present context, it is our opinion that the word "include", although usually prefixing an illustrative category, here prefixes an exclusive one. As such, the matter is referred to the Hon'ble Chief Justice for constitution of a larger Bench; until the said decision the order under appeal will have to remain stayed as contempt application is pending. Stay order passed accordingly.

15. The Full Bench was constituted to consider the reference and the judgment has been delivered by the Full Bench which has been in U.P. Power Corporation, Urban Electricity Transmission Division-H, Allahabad Vs. Smt. Urmila Devi, . At the time of hearing before the Full Bench, the appellants themselves decided to give appointment to the daughter-in-law, hence the Full Bench observed that nothing further survives in the reference. However the Full Bench has required the State Government to consider the widowed daughter-in-law in ambit of Rule seeking appointment on compassionate ground. The relevant paragraph of the same is quoted below:

8. We must, however, note one feature of the definition of the word "family" as generally contained in most Rules. The definition of "family" includes wife or husband; sons; unmarried and widowed daughters; and if the deceased was an unmarried government servant, the brother, unmarried sister and widowed mother dependant on the deceased government servant. It is, therefore, clear that a widowed daughter in the house of her parents is entitled for consideration on compassionate appointment. However, a widowed daughter-in-law in the house where she is married, is not entitled for compassionate appointment as she is not included in the definition of "family". It is not possible to understand how a widowed daughter in her father's house has a better right to claim appointment on compassionate basis than a widowed daughter-in-law in her father-in-law's house. The very nature of compassionate appointment is the financial need or necessity of the family. The daughter-in-law on the death of her husband does not cease to be a part of the family. The concept that such daughter-in-law must go back and stay with her parents is abhorrent to our civilized society. Such daughter-in-law must, therefore, have also right to be considered for compassionate appointment as she is part of the family where she is married and if staying with her husband's family. In this context, in our opinion, arbitrariness, as presently existing, can be avoided by including the daughter-in-law in the definition of "family". Otherwise, the definition to that extent, prima facie, would be irrational and arbitrary. The State, therefore, to consider this aspect and take appropriate steps so that a widowed daughter-in-law like a widowed daughter, is also entitled for consideration by way of compassionate appointment, if other criteria is satisfied.

16. Another Division Bench had occasion to consider the definition of family in context of U.P. Recruitment of Dependants of Government Servants (Dying in Harness Rules), 1974 in the case of State of U. P. and others Vs. Rajendra Kumar, . Following was laid down by the Division Bench in paragraph 5 of the said judgment:

5. The learned Single Judge agreed with this submission and we also agree with the same. The word "include" connotes that the persons mentioned in Rule 2(c) are not exhaustive of the meaning of the word family but are only inclusive. This implies that the word "family" is not limited to the persons mentioned in Rule 2(c), but more persons can also be included in the definition of the word "family"

in certain respects.

17. The aforesaid judgments, where word "family" came for consideration were in context of the definition of the family which was somewhere different as compared to prohibition which is contained in paragraph 4.7 of the Government order dated 3rd July, 1990. The definition of family under the Government order dated 3rd July, 1990 does not stop after mentioning self, wife, son, unmarried daughter, mother, father and brother, rather specifically provides for any other member, which clearly meant that any other relative either by blood or marriage or adoption shall also be covered, hence in our opinion the brother's wife can also come within the definition of any other member. Thus the submission of learned counsel for the petitioner that brother's wife is also covered by the definition has substance and has to be accepted. The submission of Sri H.N. Shukla that brother's wife cannot come under the definition of family is thus rejected.

18. Now the question which next to be considered is the phrase before which the words "any other member" has been prefixed. For applying the prohibition of any other member, there are two conditions to be further fulfilled, i.e., (a) who is living alongwith Pradhan or Up Pradhan in whose context the prohibition is to be read and (b) should receiving his meal from common mess. A Division Bench of this Court in the case of Ram Murat Vs. Commissioner, Azamgarh Division, Sub-Divisional Magistrate, Block Development Officer and State of U.P., had occasion to consider the Government order dated 3rd July, 1990 and the Government order dated 18th July, 2002 in context of aforesaid prohibition and this very Clause 4.7 was considered as point No. 4. Following was laid down in paragraphs 21, 22, 23 and 24 of the said judgment:

21. Thus according to the law of interpretation the phrase shall qualify the words only written in one continuation without any comma.

22. The contention of the petitioners that the phrase (sic) applies to all the members referred to in the para could have some force if no comma had been used after any word in the sentence or if commas had been used after the words also, but when commas have been used upto the word firki only and when thereafter no comma has been used, the phrase tks only appearing after the last comma in the sentence.

23. In other words the break up of the above definition of will be as under:

The above distinction is not unreasonable. There is sufficient rationale for it. Husband, wife, son, unmarried daughter, father and mother have got very close tie as family members, but that is not so in case of brothers and other persons. That is why the condition of joint residence and of joint kitchen has been provided for applicability of the G.O. to them, but this condition is not applicable in case of husband, wife, son, unmarried daughter, father and mother.

24. The effect of the above finding is that the disqualification for grant of fair

price shop licence as well as the provisions for cancellation of the licence shall per se apply where the licence holder himself or his wife, son, unmarried daughter, mother and father have been elected as Pradhan or Up-Pradhan, but if any brother of the licence holder or his any other relation has been elected as Pradhan or Up-Pradhan, this disqualification shall apply only in that case when they are residing together in the same house and their food is being cooked in one kitchen.

19. The interpretation put in the aforesaid Division Bench judgment is clearly applicable in the facts of the present case that for applying the prohibition against brother's wife two conditions of living together and having common mess is necessary.

20. We now revert to the pleadings in the present writ petition to find out as to whether the aforesaid two conditions are fulfilled by respondent No. 7 for attaching prohibition. The pleading in the writ petition is that respondent No. 7 belong to the family of present Pradhan. In paragraph 10 of the counter-affidavit it has been specifically pleaded by respondent No. 7 that family of her husband is separately living in a separate house and has separate mess. The said paragraph 10 of the counter-affidavit has been replied in paragraph 9 of the rejoinder-affidavit which is as under:

9. That the contents of paragraph No. 10 and 11 of the counter-affidavit are not admitted hence denied. In reply it is submitted No. 7 has been made in violation of the government order dated 3.7.1990 and as per the Government order the Pradhan cannot pass regulation in favour of his family members and in favour of his relatives. The wife of real brother is included under the definition of relative. It is further stated that mere separation will not break the relationship. The object of the Government order dated 3.7.1990 are that to stop a monopoly in favour of member of own family and Pradhan plays important role in passing resolution for allotment of fair price shop and the object is the Pradhan may not take favour of his own family member or relative and allotment may take place fairly. Therefore the widest possible meaning of relative should be understood ordinarily in such matters. It is further stated in crytina of judgment the Hon''ble Supreme Court has held that meaning of relative principally includes a person related by blood or marriage or adoption. Therefore the spouse of person will cover under the definition of relative. It is further stated that the annexure No. 6, 7, 8 of the counter-affidavit has been obtained by the respondent No. 7 only to take advantage in the present writ petition and all these annexure have been issued after filing of the writ petition. It is specifically stated that mere separation of the house will not change the relationship between the persons therefore the allotment of fair price shop by the Pradhan in favour of wife of his brother is not permissible.

21. From the aforesaid pleadings, it is clear that it is not even denied that respondent No. 7 is living separately from the Pradhan. The pleading of respondent No. 7 in the counter-affidavit that she has a separate mess has not

been even denied. The submission, which is pressed on behalf of the petitioner is that separate living has no effect on the prohibition and the prohibition shall still apply. The aforesaid submission made by the petitioner cannot be accepted in view of the law laid down by the Division Bench in Ram Murat's case (supra). For the members other than the family members as mentioned in the Government order dated 3rd July, 1990, the condition of living alongwith the Pradhan and having common mess is necessary to be proved to attract the prohibition. There being no materials in the writ petition that respondent No. 7, who is also included in the definition of relative as per paragraph 4.7 of the Government order dated 3rd July, 1990, is living with Pradhan and having common mess, the prohibition is not attracted and the allotment of fair price shop cannot be vitiated on the said ground.

22. Insofar as the submission of the petitioner with regard to proper Munadi is concerned, suffice it to say that on the complaint of the petitioner an inquiry was got conducted by the Sub-Divisional Officer and reliance has been placed on the report of the Block Development Officer who has opined that there was proper Munadi. The said submission also cannot be accepted. In view of the aforesaid, the petitioner is not entitled for any relief. The writ petition is dismissed.