**(2015) 03 OHC CK 0045**

**In the Orissa High Court**

**Case No :** Writ Petition (C) No. 1166 of 2010

Sanjukta Patra — APPELLANT

Vs

Sub-Collector and Others — RESPONDENT

**Date of Decision :** 20-03-2015

**Acts Referred:**

**Citation :** (2015) 120 CLT 4 : (2015) 1 OLR 767

**Hon'ble Judges :** S.N. Prasad, J

**Bench :** Single Bench

**Advocate :** Trilochan Nanda and B.K. Panda, for the Appellant

**Final Decision :** Allowed

## Judgement

S.N. Prasad, J.—Petitioner has challenged the order dated 12.1.2010 passed by the Sub-Collector, Balangir in Misc. Appeal No. 30 of 2009.

2. Brief facts of the case is that the petitioner had applied for issuance of residential certificate for the purpose of getting job as an Anganwadi Worker and the authorities have issued such residential certificate in exercise of power under Section 6 of the Orissa Miscellaneous Certificate Rules, 1984, (hereinafter referred to as ''Rules, 1984''). Thereafter the authorities have exercised of power under Rule-7 of the Rules, 1984 for examination suo motu for review in connection with the order issued under Rule 6 of the Rules, 1984 initiated a proceeding bearing Misc.-Certificate Case No. 4799 of 2009 wherein an order has been passed on 7.8.2009 and it has been held that the residential certificate issued under Section 6 of the Rules, 1984 has its validity. Opposite party No. 2 preferred an appeal bearing Misc. Appeal No. 30 of 2009 under Rule 8 of the Rules, 1984 and the appellate authority has allowed the said appeal and held that residential certificate issued by the lower Court is illegal and cancelled the residential certificate issued in favour of the petitioner in Misc. Certificate No. 4799 of 2009.

3. Petitioner being aggrieved with the order dated 12.1.2010 passed in Misc.

Appeal No. 30 of 2009 has preferred this writ petition. Grounds of challenge of the order dated 12.1.2010 is that the appellate authority has passed the order invoking his jurisdiction conferred under Rule 8 of the Rules, 1984 which is not within his jurisdiction since appeal under Rule 8 of the Rules, 1984 will lay only against the order passed under Rule 6 of the Rules, 1984.

4. Since the appellate authority has entertained the appeal against the order passed by the authority under Rule 7 of the Rules, 1984 invoking jurisdiction under Rule 8 of the said Rules, order dated 12.1.2010 is without any jurisdiction and as such the same is not sustainable.

5. Having heard learned counsel for the parties for adjudicating this issue it is important to refer to Rules 2, 6, 7 and 8 of the Rules, 1984 which are quoted below:

"2. Definitions - In these Rules, unless the context otherwise requires.

(a) "Certificate" means a miscellaneous certificate specified in Rule 3, and

(b) "Revenue Officer" means the Chief Officer in charge of Revenue Administration in the District, Sub-division or Tehsil and includes and Additional District Magistrate sand an Additional Tahasildar.

6. Orders on the application--(1) If on the basis of the documents, records, and the result of the inquiry, if any, the Revenue Officer is of the view that the certificate applied for may be granted, he shall pass necessary orders in the case record and sign the appropriate certificate specifying the purpose solely for which it has been granted. The certificate shall be handed over to the applicant or his duly authorized agent on due acknowledgment of receipt.

(2) If the Revenue Officer is of the view that the certificate applied for may not be granted, he shall pass necessary orders in the case record, briefly recording the reasons therefore.

7. Review of the orders - Notwithstanding anything contained in these rules, it is revealed on subsequent verification or otherwise that the certificate should not, have been granted or the contents thereof require modification the Revenue Officer or any other superior to him in the Revenue Administrative hierarchy shall be competent to review the orders granting the said certificate and after giving the person concerned an opportunity of making any representation which he may wish to make, pass such orders as he deems just and proper in the circumstances of the case.

8. Appeal--(1) Any person aggrieved by an order passed by the Revenue Officer under Rule 6 may prefer an appeal before -

(a) the Sub-divisional Officer concerned if the order was passed by a Revenue Officer, below the rank of the Sub-divisional Officer,

(b) the Collector concerned if the order was passed by the Sub-divisional Officer or the Additional District Magistrate, and

(c) the Revenue Divisional Commissioner concerned if the order was passed by the Collector;

Provided that no appeal under these rules shall be entertained unless it is preferred within a period of three months from the date of the said order.

(2) The orders of the appellate authority shall be final."

6. It appears that power is conferred upon the Revenue Officer for issuance of residential certificate if he is satisfied that on the basis of the documents produced by the application that residential certificate is to be issued, he issued the same.

7. Clause 2(b) of the Rules, 1984 provides power upon Revenue Officer for subsequent verification of the decision taken by the concerned authority under Rule 6 of the Rules, 1984. Rule 8 provides that person aggrieved by order passed by the Revenue Officer under Rule 6 may prefer an appeal before the higher authority as prescribed under Rule 8(a)(b)(c) of the Rules, 1984. On perusal of the contents under Rule 8, statute is very clear that power of appeal vested on the different authority under Rule 6. There is no reference of appeal which lies on the appellate authority under Rule 7.

8. It is settled position of law that review, revision or appeal is creation of a statute. Authority which is not vested with power of review, revision or appeal cannot exercise said powers. As per statutory provision as contained in Rule 8 of the Rules, 1984, the authority has not been vested power to entertain the appeal against order passed under Rule 7. I find substance advanced by learned counsel for the petitioner on the basis of scrutiny of the statutory Rules, 1984.

9. Learned Counsel for the petitioner placed reliance upon a decision rendered by this Court in Chautara alias Chatura Suna alias Nag Vs. Sub-Collector, (2010) 110 CLT 385 : (2010) 2 OLR 408 wherein this Court held that Rule 8 is the provision for preferring an appeal which prescribe? that any person aggrieved by the order passed by the Revenue Officer under Rule 6 may prefer an appeal before the concerned authority mentioned in the schedule. In this case, appeal was preferred against the order of review cancelling the residential certificate under Rule 7.

10. After going through the records of the case and peculiar facts of the case and after also scrutiny of the statutory provisions contained under Rule 8 of the Rules, 1984, Sub-Collector, Balangir has exercised the power of appellate jurisdiction which cannot be said to be within the jurisdiction being not provided under Rule 8 of the Rules, 1984 and as such order dated 12.1.2009 passed in Misc. Appeal No. 30 of 2009 is without any jurisdiction.

11. Thus, order dated 12.1.2009 is not sustainable in the eye of law and the same is quashed.

 

12. The writ petition is accordingly allowed.

13. Issue urgent certified copy.

 