
(2010) 08 MP CK 0034
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1495 of 2009

S.M. Sharma

APPELLANT

Vs

Addl. Commissioner

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities Act, 1961 — Section 180(1), 180(2), 183(5), 184, 185

Registration of Births and Deaths Act, 1969 — Section 12, 7, 8, 9

Citation : (2010) 5 MPHT 323

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—Heard.

2. Correctness of order dated 4-8-2008 passed by Additional Collector, Panna, District Panna is being questioned in present petition filed under Article 226 of the Constitution of India.

3. By order dated 4-8-2008 the Additional Collector, Panna, while invoking powers under Sections 307 and 308 of M.P. Municipalities Act, 1961 (referred to as Act of 1961) allowed the appeal preferred by Respondent No. 4 and set aside the death certificate dated 21-4-2008 issued by Registrar (Births and Deaths).

4. Relevant facts briefly are that, wife of the Petitioner Smt. Rajkumari Sharma expired on 16-4-2008. The death was informed to Registrar (Births and Deaths), i.e., Chief Municipal Officer, Municipal Council, Panna as required u/s 8 of the Registration of Births and Deaths Act, 1969 (hereinafter shall be referred to as Act of 1969): consequent whereof certificate (in common parlance known as death certificate), was issued on 21-4-2008 by the Registrar (Births and Deaths) as per the stipulations contained u/s 12 of the Act of 1969.

5. Respondent No. 4 who happens to be the brother of deceased Rajkumari

Sharma being aggrieved of the issuance of death certificate preferred an appeal before the Additional Collector, District Panna invoking Sections 307 and 308 of the Act of 1961. It was alleged that the deceased Rajkumari though married to the Petitioner did not live with him as he solicited the company of one another lady who reportedly died on 18-7-2002. It was contended that the Petitioner and deceased Rajkumari Sharma never lived as husband and wife though married as such.

6. The Additional Collector after considering the material evidence on record set aside the death certificate dated 21-4-2008 and directed the Registrar (Births and Deaths), Chief Municipal Officer, Municipal Council, Panna to prepare a certificate recording death of Rajkumari Sharma in favour of Respondent No. 4.

7. Being aggrieved, the Petitioner preferred an appeal before Additional Commissioner, Sagar Division, Sagar on the ground that it was beyond competence of Additional Collector to adjudicate upon the correctness/authenticity of death certificate issued by Registrar (Births and Deaths) as per the provision contained under the Act of 1969 and the Rules made thereunder, viz., the M.P. Registration of Births and Deaths Rules, 1999. The appeal preferred by the Petitioner was, however, dismissed by the Additional Commissioner, Sagar Division, Sagar by his order dated 10-10-2008.

8. Assailing the order passed by the Additional Collector invoking Sections 307 and 308 of Act of 1961, it is contended by learned Counsel for the Petitioner that the order passed by Additional Collector of cancelling the death certificate issued on 21-4-2008 was without jurisdiction.

9. Commending this Court through various provisions contained under Act of 1969 and the Rules framed therein, viz., the Madhya Pradesh Registration of Births and Deaths Rules, 1999, it is submitted by learned Counsel for the Petitioner that the power to effect any correction in the death certificate vests with the Registrar (Births and Deaths) and the same is not appealable u/s 307 and 308 of Act of 1961. It is contended that since the impugned order dated 4-8-2008 and exercise of power by Additional Collector was without any jurisdiction, is a nullity in the eyes of law and an order passed by the Appellate Authority, i.e., Additional Commissioner, Sagar Division, Sagar is also patently erroneous. It is accordingly urged that, the impugned order dated 4-8-2008 and the consequential order dated 10-10-2008 and the action thereunder taken by the Respondents by issuing a fresh death certificate (Annexure R-4/1) are liable to be quashed.

10. Learned Counsel appearing for the Respondents made a vain effort to protect the order dated 4-8-2008. However, when the matter was dwelt with in depth, learned Counsel for Respondent No. 4 does not dispute that it is beyond the jurisdiction of Additional Collector to quash the death certificate in an appeal preferred under Sections 307 and 308 of the Act of 1969.

11. Indisputably the Chief Municipal Officer of Municipal Council, Panna is the

Registrar u/s 7 of the Act of 1969.

12. Chapter III of the Act of 1969 makes a provision for registration of births and deaths. Section 8 lays down the procedure regarding furnishing of information of births and deaths. It stipulates:

8. Persons required to register births and deaths.-- (1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under Sub-section (1) of Section 16,--

(a) in respect of births and deaths in a house, whether residential or non-residential, nor being any place referred to in Clauses (b) to (e), the head of the house or, in case more than one household live in the house, the head of the house-hold, the head being the person, who is so recognised by the house or the house-hold, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

(b) in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the Medical Officer in charge or any person authorised by him in this behalf;

(c) in respect of births and deaths in a jail, the jailors in charge;

(d) in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;

(e) in respect of any new-born child or dead body found deserted in a public place, the headman or other Corresponding Officer of the village in the case of a village and the officer in charge of the local police station elsewhere:

Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;

(f) in any other place, such person as may be prescribed.

(2) Notwithstanding anything contained in Sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in Clause (a) of Sub-section (1) instead of the persons specified in that clause.

13. Section 11 provides for that every person who has orally given to the

Registrar any opinion required under the Act of 1969 shall write in the register maintained in this behalf, his name, description and place of abode, and, if he cannot write, shall put his thumb mark in the register against his name, description and place of abode, the particulars being in such a case entered by the Registrar.

14. Section 12 provides for Extracts of Registration entries to be given to informant which stipulates:

12. Extracts of registration entries to be given to informant.--

The Registrar shall, as soon as the registration of a birth or death has been completed, give, free of charge, to the person who gives information u/s 8 or Section 9 an extract of the prescribed particulars under his hand from the register relating to such birth or death.

15. Similarly, Rule 8 of Rules of 1999 provides for:

8. Extracts of registration entries to be given by Section 12 --

(1) The extracts of particulars from the register relating to births or deaths to be given to an informant u/s 12 shall be in Form No. 5 or Form No. 6 as the case may be.

(2) In the case of domiciliary events of births and deaths referred to in Clause (a) of Sub-section (1) of Section 8 which are reported direct to the Registrar of Births and Deaths, the head of the house or household as the case may be, or in his absence, the nearest relative of the head present in house may collect the extracts of birth or death from the Registrar within thirty days of its reporting.

(3) In the case of domiciliary events of births and deaths referred to in Clause (a) of Sub-section (1) of Section 8 which are reported by persons specified by the State Government under Sub-section (2) of the said section, the person so specified shall transmit the extracts received from the Registrar of Births and Deaths to the concerned head of the house or household, as the case may be, or in his absence, the nearest relative of the head present in the house within thirty days of its issue by the Registrar.

(4) In the case of institutional events of births and deaths referred to in Clauses (b) to (e) of Sub-section (1) of Section 8, the nearest relative of the new born or deceased may collect the extract from the officer or person in charge of the institution concerned within thirty days of the occurrence of the event of birth or death.

(5) If the extract of birth or death is not collected by the concerned person as referred to in Sub-rules (2) to (4) within the period stipulated therein, the Registrar or the officer or person incharge of the concerned institution as referred to in Sub-rule (4) shall transmit the same to the concerned family by post within fifteen days of the expiry of the aforesaid period.

16. Whereas Rule 11 makes a provision regarding correction or cancellation of entry in the Register of Births and Deaths stipulating therein:

11. Correction or cancellation of entry in the register of births and deaths.--

(1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in Section 15 and shall send an extract of the entry showing the error and how it has been corrected to the State Government or the officer specified by it in this behalf.

(2) In the case referred to in Sub-rule (1) if the register is not in his possession, the Registrar shall make a report to the State Government or the officer authorized by it in this behalf and call for the relevant register and after enquiring into the matter, if he is satisfied that any such error has been made, make the necessary correction.

(3) Any such correction as mentioned in Sub-rule (2) shall be counter-signed by the State Government or the officer authorized by it in this behalf when the register received from the Registrar.

(4) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed u/s 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(5) Notwithstanding anything contained in Sub-rule (1) and Sub-rule (4) the Registrar shall make report if any correction of the kind referred to therein giving necessary details to the State Government or the Officer authorized in this behalf.

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorized by the Chief Registrar by general or special order in this behalf u/s 25 and on hearing from him take necessary action in the matter.

(7) In every case, in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information u/s 8 or Section 9.

Thus, there are clearly delineated provisions regarding registration of births and deaths.

17. Sections 307 and 308 of the Act of 1961 makes a provision regarding appeal against the order of President, Chief Municipal Officer and of the Council; close look whereof would reveal that appeal would lie against an order arising out the enumerated Sections of the Act of 1961, i.e., Sections 180 (1) and (2), 183 (5)

(a) and (b), 184, 185, 187, 190, 191, 192, 194, 203, 205, 206, 207, 208, 209, 210, 211, 213, 220, 221, 223, 229, 242, 251, 283 and 285.

18. None of the provisions against which an appeal lies u/s 307/308 are under the Act of 1969 would empower the Municipal Council to Additional Collector to entertain an appeal against a death certificate issued in accordance with the Act of 1969. Therefore, the Additional Collector apparently exceeded his jurisdiction while entertaining an appeal against the issuance of death certificate. Since the order dated 4-8-2008 is without any jurisdiction, the same is non est in the eyes of law and does not confer any right in favour of Respondent No. 4.

19. During the course of hearing it was pointed out by learned Counsel for the Petitioner that during the interregnum period, i.e., pendency of this petition before this Court the Respondents have issued a certificate dated 1-4-2009 in favour of Respondent No. 4, it is urged that the same is since on the basis of verdict by the Additional Collector be also quashed.

20. Though, learned Counsel appearing for Respondent No. 4 supports the conclusion arrived at by the Additional Collector; however, when put to the query as to whether it is within the jurisdiction of Additional Collector to have entertained an appeal u/s 307/308 of the Act of 1961 against the grant of death certificate, learned Counsel for Respondent No. 4 fairly submitted that no appeal would lie under the aforesaid provisions. However, it is submitted that Respondent No. 4 be given liberty to avail the remedy available to him under law seeking quashment of the certificate issued in favour of the Petitioner regarding the death of Smt. Rajkumari.

21. Since the impugned order passed by the Additional Collector is without jurisdiction, the same, in the considered opinion of this Court, shall not confer any right in favour of Respondent No. 4. As such, the certificate issued in favour of Respondent No. 4 on 1-4-2009 (Annexure R-4/1) also deserves to be and is hereby quashed.

22. In the result the petition is allowed. The impugned order dated 4-8-2008 is hereby quashed. Consequent whereof, the appellate order dated 10-10-2008 and the certificate dated 1-4-2009 issued in favour of Respondent No. 4 also crumbles. Death certificate dated 21-4-2008 is revived. Needless to say if the law permits, the Respondent No. 4 is at liberty to question death certificate dated 21-4-2008 before an appropriate forum. However, no costs.