

(2016) 05 OHC CK 0025
In the Orissa High Court
Case No : W.A. No. 149 of 2016

Smt. Sarojini Barik

APPELLANT

Vs

Addl. District Magistrate-Cum-Appellate Authority

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Orissa Miscellaneous Certificate Rules, 1984 — Rule 3

Citation : (2016) 1 ILRCuttack 1063

Hon'ble Judges : Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : M/s. Sameer Kumar Das, S.K. Mishra, P.K. Behera, Advocates, for the Appellant; Mr. A.S. Nandy, B. Bal, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Vineet Saran, C.J.—The petitioner is an Anganwadi Worker who was selected on the basis of a resident/nativity certificate issued by the Tahasildar on 27.11.2009 certifying that she is a resident of Dagara. Then as the petitioner, just about a month prior to the certificate dated 27.11.2009, had also been issued another Certificate bearing no. 2896 dated 16.10.2009 showing her to be the resident of Jamatkula, an enquiry was directed to be conducted by the Addl. District Magistrate, Balasore, who by his report dated 9.10.2012, held that the certificate of resident for mouza Dagara was obtained by the appellant-petitioner by submitting false/fabricated documents and that the same needs to be cancelled. Challenging the said order, W.P.(C) No. 19878 of 2012 was filed by the petitioner. On dismissal of the writ petition by the learned Single Judge, this appeal has been filed.

2. The background of the case is that earlier the petitioner had applied for a job as Anganwadi Worker in respect of village Jamatkula for which she had obtained resident certificate on 16.10.2009. Thereafter, when advertisement for village Dagara-IV Centre was made, the petitioner applied for another resident certificate on 17.11.2009 for village Dagara, apparently without disclosing that

she had already obtained a resident certificate for village Jamatkula, and the said certificate having been issued to the petitioner without even canceling the earlier certificate, the petitioner got appointment as Anganwadi Worker in respect of Dagara-IV Centre. The other applicant being respondent No.2, Smt. Sakuntala Das had also applied for engagement as Anganwadi Worker, but she was not selected and she challenged the appointment of the appellant by filing writ petition, bearing W.P.(C) No.22462 of 2013 which was also decided by the learned Single Judge.

3. Both the writ petitions bearing W.P.(C) No. 19878 of 2012 and W.P.(C) No. 22462 of 2013 have arisen out of one cause of action, which have been heard by learned Single Judge analogously, who delivered a common judgment on 26.02.2016 by which W.P.(C) No. 19878 of 2012 filed by Smt. Sarojini Barik has been dismissed and W.P.(C) No. 22462 of 2013 filed by Smt. Sakuntala Das has been allowed. Against the order passed by the learned Single Judge on 26.02.2016 in W.P.(C) No. 19878 of 2012, dismissing the writ petition, this intra Court appeal has been filed.

4. Realizing the difficulties of Revenue Officer at the time of issuance of certificates, Government after careful consideration, in supersession of all circulars and instructions issued earlier, has been pleased to frame "The Orissa Miscellaneous Certificates Rules, 1984", which came into force with effect from 21st April, 1984. Under Rule-3, it has been specifically stated that Revenue Officer shall be competent to grant miscellaneous certificates of the following categories:-

- (i) Identity Certificate (in Form No. II)
- (ii) Resident/Nativity Certificate (in Form No. III)
- (iii) Legal heir Certificate (in Form No. IV)
- (iv) Income Certificate (in Form No. V)
- (v) Solvency Certificate (in Form No. VI)
- (vi) Other Certificates of miscellaneous nature.

A person desirous of obtaining a certificate as mentioned above, shall file before a Revenue Officer an application as specified under Rule-4 of the said Rules, and as per Rule-5 the Revenue Officer shall initiate a case record, scrutinise the documents furnished by the appellant, verify the relevant records, if any, in the office and wherever necessary, may himself inquire into the matter or call for a report of inquiry by a specified date from an officer subordinate in rank. As per Rule-6 of the said Rules, 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

authorised agent on due acknowledgement of receipt. In the event, 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 thereof. Rules-7 of the said Rules states that notwithstanding anything contained in these rules, if 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 officer 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. Similarly as per Rule-8 of the said Rules, 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 the 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.

5. Heard Mr. Sameer Kumar Das, learned counsel for the appellant, Mr. B.P. Pradhan, learned Addl. Government Advocate for respondents Nos.1, 3 and 4 and Mr. A.S. Nandy, learned counsel for the private respondent no.2 and perused the record.

6. The facts as stated above are not in dispute. A person may be having two or more houses in different villages, but they would not be entitled to obtain different resident certificates for different villages. Resident/native certificate is to be obtained only for one village where the person normally resides. Although learned counsel for the appellant has vehemently argued, that since there is no bar in law for obtaining resident certificate from different villages where the person may be residing, but in our view since the certificate which is to be granted is a certificate of resident/nativity, the same can be issued only for one place. Even though the person may be having a residence in two or more places, he/she can only be a native of one village for which certificate is to be issued. Even otherwise, the facts of the present case clearly disclose, that the second certificate was issued for a particular purpose for obtaining a job and while applying for the same, there was no disclosure that the appellant/petitioner was already having a nativity certificate issued, which is about six weeks prior to the issuance of the certificate dated 27.11.2009. A person applying for a certificate of nativity is to be accepted only after disclosing all the relevant facts. It is inherent that one is to apply and obtain a nativity certificate for only one place.

Merely because law does not bar for obtaining certificate for more than one place would not mean that the person would be entitled to obtain resident or nativity certificate for more than one place, as the law does not even permit obtaining nativity certificate of places more than one.

7. It appears that petitioner has not disclosed the fact that she has already got a resident/nativity certificate from the competent authority. While receiving the second resident/nativity certificate she has not disclosed the fact of having a resident/nativity certificate issued by the very same authority earlier. This amounts to misrepresentation or complete fraud on the authority for receiving the second resident/nativity certificate.

8. In *S.P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 SC 853 : (1994) 1 SCC 1, the Apex Court held that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal."

9. While considering the jurisdiction of this Court, the apex Court in *Andhra Pradesh State Financial Corporation v. GAR Re-Rolling Mills*, AIR 1994 SC 2151 : 1994 AIR SCW 1953 and *State of Maharashtra v. Prabhu*, (1994) 2 SCC 481 has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent preparation of a legal fraud as the Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subletties invented to evade law".

10. In *United India Insurance Co. Ltd. v. Rajendra Singh*, AIR 2000 SC 1165 : (2000) 3 SCC 581, the Apex Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

11. The ratio laid down by the Supreme Court in various cases is, that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud, concealed material information or made misrepresentation, and in such circumstances, the Court should not perpetuate the fraud by entertaining the petitions on their behalf. This view has been re-affirmed time and again by the apex Court in various subsequent judgments.

12. We are clear in our view that once a person obtains a resident/nativity certificate, he can apply for a fresh certificate from different places only after getting the earlier certificate cancelled, which has not been done in the present case. The report of the Addl. District Magistrate in this regard is that subsequent certificate has been obtained after submitting false/fabricated documents, which cannot be faulted with.

13. Considering the factual matrix of the case in hand and the law laid down by the apex Court as mentioned supra, we are of the view, that the order of the Addl. District Magistrate is justified in law which has rightly been upheld by the

learned Single Judge and, hence, the same does not call for any interference by this Court.

14. The writ appeal is dismissed accordingly.