

HIGH COURT OF ORISSA**Bench: Justice R.K. Pattanaik****Date of Decision: 21st May 2024**

Case No.:

WRIT PETITION (CIVIL) No. 9874 OF 2014

PETITIONER: PRATIMA MOHAPATRAPetitioner**VERSUS****RESPONDENT: SUB-COLLECTOR, BALASORE & OTHERS
.....Respondents****Legislation:**

Miscellaneous Certificate Rules, 1984

Section 8-A of the Odisha Land Reforms Act, 1960 (OLR Act)

Subject: Writ petition challenging the cancellation of a Resident Certificate issued to the petitioner by the Sub-Collector, Balasore. The petitioner claimed residency in village-Paikasta for applying for the post of Anganwadi Worker, which was contested by the respondent citing her native place as village-Bhimpur.

Headnotes:

Certificate of Residence – Issuance and Cancellation – Petitioner challenged the cancellation of her Resident Certificate by the Sub-Collector, Balasore, which was initially issued by the Tahasildar after proper inquiry – Sub-Collector’s order was based on the claim that the petitioner’s family is native to village-Bhimpur – High Court found the cancellation unjustified, emphasizing that residency can be established by continuous residence and other supporting documents [Paras 1-13].

Procedure under Miscellaneous Certificate Rules – Inquiry and Evidence – High Court reviewed the inquiry report by the Revenue Supervisor, confirming petitioner’s residency in Paikasta – Documentary evidence such as RoR, Voter ID, and other records were considered sufficient –

Court highlighted the need for procedural fairness and the proper assessment of evidence by authorities [Paras 11-13].

Decision – Writ Petition Allowed – Held – Sub-Collector’s order cancelling the Resident Certificate set aside – Resident Certificate issued by Tahasildar restored – Emphasized the validity of residency claims based on continuous residence and documentary evidence as per the Miscellaneous Certificate Rules [Para 17].

Referred Cases:

- Sarojini Sahoo v. State of Orissa and others 2014(II) ILR-CUT 226
- Anuradha Das v. Sub-Collector, Puri in Writ Appeal No. 374 of 2013 decided on 3rd December 2014

Representing Advocates:

Mr. Banshidhar Satapathy for the petitioner

Mr. Ishwar Mohanty, ASC, and Mr. P.K. Rath, Senior Advocate for the respondents

JUDGEMENT

1. Instant writ petition is filed by the petitioner challenging the impugned order dated 6th March, 2014 (Annexure-1) passed in Misc. Certificate Appeal No.46 of 2013 by the learned SubCollector, Balasore (opposite party No.1) for cancelling the Resident Certificate issued in her favour by opposite party No.2 in Misc. Certificate Case No.311 of 2013 on the grounds inter alia that the same is not tenable in law and hence, liable to be interfered with and set aside.

2. The facts of the case are as follows. The petitioner applied for a post of Anganwadi Worker in respect of Paikasta-I Anganwadi Centre under the administrative control of the CDPO, Bahanaga and opposite party No.4 was also an applicant for the said post and in course of

selection, the former secured more marks than the latter and was placed at Serial No.1 in the final list. It is further pleaded that opposite party No.4 since failed to qualify in the selection process, with an ulterior motive to get the candidature of the petitioner cancelled, filed the appeal before opposite party No.1, who, thereafter, set aside the order of opposite party No.4 in Misc. Certificate Case No.311 of 2013 with a conclusion that the issuance of Resident Certificate is illegal.

3. According to the petitioner, she is a resident of village-Paikasta under Tahasil-Bahanaga and in so far as their residential house is concerned, it stands over Plot No. 1170, Khata No.80 and the same has been recorded in the name of her mother-in-law. The petitioner claimed that she is a voter of Paikasta and possesses Voter Identity Card being its resident and has also been issued the Aadhar Card in the said address at Paikasta. In fact, the contention is that the petitioner's mother-in-law purchased the said land in the year 1992 and converted it to Gharabari and thereafter, was issued with the RoR and after construction of a residential building over the same, she has been residing there since then though her father-in-law is a resident of Bhimpur. It is stated that the residential house over the plot in village-Paikasta was constructed and being a resident, the petitioner applied for the Resident Certificate and after inquiry in connection with Misc. Certificate Case No.311 of 2013, considering the report of the Revenue Supervisor and other documents produced by her, such certificate was issued, the fact which was entirely lost sight of by opposite party No.1, who set aside the order dated 6th March, 2013 passed therein and allowed the appeal declaring the issuance of the certificate in her favour to be illegal. So, the contention is that the impugned order under Annexure-1 deserves to be set aside restoring the decision of opposite party No.4, as such decision is clearly against the weight of evidence on record.
4. Opposite party No.1 with a counter affidavit filed justifies the order under Annexure-1 since it is based on appreciation of the entire evidence and on reaching at a conclusion that the in-laws' family of the petitioner to be permanent native of Bhimpur. Opposite party No.1 referring to the counter and Annexure-A/4, such as, Voter List of the year 2013 in respect of Bhimpur and RTI information collected and received under Annexures-B/4 and C/4 claimed that no any error or illegality is committed in denying the Resident Certificate earlier issued in favour of

the petitioner by opposite party No.4 as she is a permanent resident of Bhimpur.

5. Heard Mr. Satapathy, learned counsel for the petitioner, Mr. Mohanty, learned Additional Standing Counsel for the State and Mr. Rath, learned Senior Advocate appearing for opposite party No.4.
6. Mr. Satapathy, learned counsel for the petitioner would submit that the petitioner as a resident of village-Paikasta applied for the certificate, which has been issued as per and in accordance with the provisions of the Miscellaneous Certificate Rules, 1984 (hereinafter referred to 'the Rules') and the same has been after an inquiry held with a report received. Mr. Satapathy further submits that though the in-laws' family of the petitioner originally belongs to Bhimpur as a permanent native but her mother-in-law purchased the plot in village-Paikasta, where she has been residing since 2008 and hence, the Resident Certificate was rightly issued vide Misc. Certificate Case No.4734 of 2011. According to Mr. Satapathy, the Resident Certificate was issued by opposite party No.4 but the same was set aside by opposite party No.1 without properly appreciating the evidence on record and being alive to the settled legal position. It is contended by Mr. Satapathy that all such evidence, like Electricity Bills, Aadhar Card, Voter Identity Card and Voter List though validated the claim of the petitioner for issuance of the certificate but ignoring everything and merely for the reason that her father-in-law is a permanent native of village-Bhimpur having a residential house there, set aside the order dated 6th March, 2013 passed in Misc. Certificate Case No.311 of 2013.
7. Mr. Mohanty, learned ASC submits that opposite party No.1 examined the material documents and since he found the petitioner to be a villager of Bhimpur and the family is a native of the said village concluded that opposite party No.4 could not have issued the Resident Certificate in her favour and as such, he did not commit any serious wrong or illegality and hence, therefore, the impugned order under Annexure-1 calls for no interference.
8. Mr. Rath, learned Senior Advocate for opposite party No.4 contends that for the purpose of applying for the post of Anganwadi Worker, the petitioner managed to obtain the certificate as a resident of village-Paikasta and since, it was factually incorrect and duly ascertained after

scrutiny of the documents, opposite party No.1 duly intervened with such issuance of certificate and rightly so.

9. By filing a rejoinder, the petitioner claimed that she is a resident of village-Paikasta, where the Anganwadi Centre is situated and to prove and establish it, produced the sale deed executed in favour of her mother-in-law in 1992 and also the RoR after conversion of land to Gharabari in 2001 along with all such other documents which ultimately persuaded opposite party No.4 to issue the Resident Certificate vide Misc. Certificate Case No.311 of 2013. As further claimed, the issuance of Resident Certificate is according to the Rules which has in the meantime been amended in 2017 allowing certificates to be issued, if the applicants are resident of a particular place for at least one year. An additional affidavit is also filed by the petitioner claiming that her son was born on 10th June, 2005 at Paikasta with a copy of the Birth Certificate issued on 12th March, 2007 as at Annexure-9 series and as a token of evidence regarding residence, she has also produced an electricity Bill of the year 2002.
10. Mr. Satapathy, learned counsel for the petitioner cited a decision of this Court in Sarojini Sahoo Vrs. State of Orissa and others 2014(II) ILR-CUT 226: MANU/OR/0128/2014 and submits that an inquiry was held before issuance of the Resident Certificate which could not have been easily brushed aside when there is evidence on record though the petitioner is also shown to have a Voter Card and her name finds place in Voter List in respect of village-Bhimpur. It is also claimed that the petitioner applied for cancellation of the Voter Card in 2013 and in such view of the matter, Mr. Satapathy would submit that opposite party No.1 committed gross error in denying the residency certificate. One more decision in the case of Anuradha Das Vrs. Sub-Collector, Puri in Writ Appeal No.374 of 2013 decided on 3rd December, 2014 of a Division Bench of this Court is referred to by Mr. Satapathy to contend that this Court on similar set of facts, declined to cancel the Resident Certificate issued in favour of the respondent.
11. Perused the inquiry report of the Revenue Supervisor and also the case file of the office of the learned AG, Odisha spared for perusal of the Court. The petitioner was issued with the Resident Certificate in 2013 and it was apparently after an inquiry considering the RoR and other documents including the report received from the Revenue Supervisor,

Bahanaga. As per the said report, on a direction received from the Tahasildar, Bahanaga, Balasore for inquiry vis- -vis the residency of the petitioner, it was conducted and the same revealed the petitioner to be a resident of village-Paikasta. The said report further revealed that the Gharabari plot under Khata No.80 of village-Paikasta stands recorded in the name of the mother-in-law of the petitioner and she is also a voter being an inhabitant of the said village since 2008. The record also revealed that the petitioner had been issued with such a Resident Certificate by the Tahasildar, Bahanaga, Balasore once before in connection with a proceeding in Misc. Certificate Case No.4734 of 2011.

12. Of course, the petitioner has been issued with Voter Cards for village-Bhimpur besides as a resident of village-Paikasta. It has been brought on record that the petitioner applied for cancellation of Voter Identity Card for village-Bhimpur. Some amount of delay is attributed to the petitioner in applying for cancellation of Voter Identity Card. Nonetheless, such cancellation applied for by the petitioner has not been contradicted. The question is, whether, after an inquiry held at the ground level with a report of the Revenue Supervisor, Bahanaga, it would be just and proper to discard the same and to conclude otherwise that the petitioner is not a resident of village-Paikasta?
13. As per the Rules, an application is to be received for issuance of Resident Certificate. As per the Rules now in place, a Resident Certificate for a locality in the State shall be granted to a person if he has been residing in the village and town of the concerned Tahasil for a period of at least one year continuously or he produced a copy of the RoR of the residential plot where he has been residing or owned by him or his parents or the ancestors. A proviso to Rule 3(a) of the Rules, 2017 allows production of any other documentary evidence in support of residential address proof, where one fails to produce copy of RoR for consideration of the Authority concerned.
14. In Sarojini Sahoo (supra), this Court, while considering the evidence on record and report of the Revenue Inspector on an inquiry held and having Voter Identity Card issued by the Election Commission of India, declined to intervene with the issuance of Resident Certificate concluding that such certificate should not be denied even to a landless person merely because he does not have documentary evidence of ownership of land. The Court further held that there is no reason as to

why the Resident Certificate should not be granted to a person, who resides in a particular locality for a period of at least one year continuously, if he is otherwise eligible. In Anuradha Das (supra) case, the concerned Tahasildar after due scrutiny of all the documents issued the Resident Certificate and was also demonstrated that the land in occupation has been converted to homestead under Section 8-A of the OLR Act with the residence of the respondent to whom the certificate had been issued. In the said case, such residency was for just seventeen months and considering the fact that the learned Sub-Collector was of the view that a person ordinarily residing in a place for more than six months is entitled to get the Resident Certificate and hence, was not in favour of disturbing the findings arrived at and dismissed the appeal.

15. In the instant case, the mother-in-law of the petitioner purchased the land in village-Paikasta, constructed a residential house and stayed thereafter. The residency of the petitioner is on the basis of the claim that she started residing with her husband at Paikasta after the construction of the said house and it was since 2008. Though opposite party No.1 took cognizance of the fact that such a house was constructed and the purchased land was converted to Gharabari vide OLR Case No.785 of 2001 under Section 8-A of the OLR Act from Kissam Sarad Jala-I and the petitioner's mother-in-law resided in the village and her family members have been issued with Voter Identity Cards, but for the reason that their native place to be Bhimpur, declined to accept the petitioner as a resident of Paikasta and accordingly, set aside the order of opposite party No.4, which, in the considered view of the Court, is totally unjustified. A person may be a permanent native of a place but may not be staying there and may have become a resident of another place and if such residency is for more than six months or a year, the Court is of the view that there should not be any difficulty for the Authority to treat him or her as a native of the said place while considering issuance of Resident Certificate. If anyone is a resident of a particular locality or place for a period, even if, it is for few months but not a temporary stay, for such residency, the Authority may well be justified to issue a Resident Certificate in his or her favour as per the Rules. To deny the issuance of Resident Certificate suspecting the claim on the premise that the family is from village-Bhimpur, in so far as the present case is concerned, despite having documents in support of residency of the petitioner at

Paikasta, which is again supported by other contemporaneous documents and above all with a report of the Revenue Supervisor, Bahanaga, there was no just reason for opposite party No.1 to take a different view unsettling the decision opposite party No.4. If there is an inquiry held, the same should not be easily tampered with since on that basis, the Resident Certificate was issued. Such view of the Court receives support from the decisions in Sarojini Sahoo and Anuradha Das (supra), hence, the conclusion is that the impugned order under Annexure-1 cannot be sustained in law.

16. Hence, it is ordered.

17. In the result, the writ petition stands allowed. As a necessary corollary, the impugned order dated 6th March, 2014 (Annexure-1) passed in Misc. Certificate Appeal No.46 of 2013 by the learned Sub-Collector, Balasore (opposite party No.1) is set aside thereby restoring the decision of opposite party No.4 in Misc. Certificate Case No.311 of 2013. In the circumstances, however, the parties are to bear their respective costs.

18. The case file received by this Court in course of hearing is hereby directed to be returned to the office of learned AG, Odisha with due acknowledgement on record.

© All Rights

Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.