

Court No. - 39

Case :- WRIT - C No. - 43435 of 2023

Petitioner :- Kapil Dev Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ram Pravesh Yadav, Shashank Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Manjive Shukla, J.

1. Heard Sri Shashank Kumar learned counsel for petitioner and Sri Nimai Das learned Additional Chief Standing Counsel for the State respondents.

2. Challenge has been raised to the order dated 12.5.2023 passed by the District Magistrate, Jaunpur whereby petitioner's Character Certificate granted on 01.12.2020 has been cancelled, *ex parte*.

3. Undeniably the petitioner had been issued that Certificate by the District Magistrate, Jaunpur, on 01.12.2020. Again, admittedly no show cause notice came to be issued to the petitioner before that certificate was cancelled *ex parte*, by the impugned communication dated 12.5.2023.

4. On query made, learned Additional Chief Standing Counsel has relied on the Government Order dated 10.4.2023. Paragraph 4, 5(A) and 5(B) of that Government Order read as below:-

"4. यह प्रमाण-पत्र सामान्यतः दो वर्ष के लिए मान्य होगा। इस अवधि में यदि आवेदक किसी आपराधिक घटना में संलिप्त होता है अथवा प्रार्थी के विरुद्ध कोई अपराधिक मुकदमा दर्ज होगा या वह किसी संगठित अपराध में या माफिया गतिविधियों में या असामाजिक गतिविधियों में पकड़ा जाता है तो पुलिस विभाग का यह उत्तरदायित्व होगा कि इसकी सूचना वह जिला मजिस्ट्रेट/कलेक्टर तथा संबंधित विभाग के अधिकारियों को देगा और प्रमाण-पत्र तत्काल निरस्त किया जायेगा।

5. 5A-"इस प्रमाण-पत्र को निर्गत करने अथवा निरस्त करने के संबंध में अन्तिम निर्णय सम्बन्धित जिला मजिस्ट्रेट/कलेक्टर का होगा। मजिस्ट्रेट/कलेक्टर द्वारा नवीन चरित्र प्रमाण-पत्र आवेदन पत्र के सम्बन्ध में आवेदन को अस्वीकार किये जाने की स्थिति में कारण सहित

अस्वीकरण सूचना आवेदक को तामील करायी जायेगी। आवेदक द्वारा सूचना तामील के 01 माह के अन्दर अपना प्रत्यावेदन सम्बन्धित मण्डलायुक्त के समक्ष प्रस्तुत किया जा सकेगा, जिस पर उभय पक्षों को सुनकर सम्बन्धित मण्डलायुक्त चरित्र प्रमाण पत्र निर्गत किये जाने अथवा न किये जाने के सम्बन्ध में अपना सुस्पष्ट अभिमत/निर्णय सम्बन्धित जिला मजिस्ट्रेट/कलेक्टर को प्रेषित करेगा। सम्बन्धित मण्डलायुक्त द्वारा चरित्र प्रमाण पत्र निर्गत किये जाने का निर्णय दिये जाने की स्थिति में जिला मजिस्ट्रेट/कलेक्टर उक्त निर्णय के क्रम में चरित्र प्रमाण पत्र निर्गत करेगा।”

5B. पूर्व निर्गत चरित्र प्रमाण-पत्र को जिला मजिस्ट्रेट/कलेक्टर द्वारा निरस्त किये जाने की दशा में आवेदक को निरस्तीकरण के कारण सहित सूचना तामील करायी जायेगी। आवेदक द्वारा सूचना तामील के 01 माह के अन्दर अपना प्रत्यावेदन सम्बन्धित मण्डलायुक्त के समक्ष प्रस्तुत किया जा सकेगा, जिस पर उभय पक्षों को सुनकर सम्बन्धित मण्डलायुक्त चरित्र प्रमाण पत्र बहाल किये जाने अथवा न किये जाने के सम्बन्ध में अपना सुस्पष्ट अभिमत/निर्णय सम्बन्धित जिला मजिस्ट्रेट/कलेक्टर को प्रेषित करेगा। सम्बन्धित मण्डलायुक्त द्वारा चरित्र प्रमाण पत्र बहाल किये जाने का निर्णय दिये जाने की स्थिति में जिला मजिस्ट्रेट/कलेक्टर उक्त निर्णय के क्रम में चरित्र प्रमाण पत्र बहाल करेगा। ”

5. Thus, it has been submitted, petitioner has efficacious alternative remedy to file representation before the Divisional Commissioner.

6. Relying on paragraph-4 of the Government Order, it has been further submitted, upon it coming to the knowledge of the District Magistrate that a person who may have been issued a Character Certificate (in the past) has acquired criminal antecedents upon any criminal case being lodged against him, his Character Certificate may be cancelled, immediately. Therefore, it has been submitted, no opportunity of hearing was required before cancellation of the Character Certificate issued.

7. Having heard learned counsel for parties and having perused the record, though no vested right may exist in a citizen for grant of Character Certificate irrespective of his criminal antecedents or moral conduct and character, at the same time, knee-jerk reactions are to be avoided as may result in unintended harsh civil consequences being visited on a citizen who may have been issued such Certificate, in the past.

8. Thus, the District Magistrate, Jaunpur was duty bound to act on

the information gained by him as to allegation of involvement of the petitioner in criminal case being Case Crime No. 226 of 2022 under Section 34/323/504/307 IPC and Case Crime No. 690 of 2017 under Sections 147/307/336/352/427/435 and 506 IPC. At the same time, we find no good reason exists to prevent or to not allow limited opportunity of hearing to the petitioner to object to the proposed action of cancellation of his Character Certificate (issued on 01.12.2020).

9. Rules of natural justice are far too deeply embedded in our jurisprudence to allow for any exception to be made in the present facts. Character Certificate once issued allows a citizen to avail other civil rights including as to employment, award of contracts etc. Once a Character Certificate is cancelled, it may have a direct bearing and cascading effect on other civil valuable rights of such citizen.

10. On the other hand, at times petty and/or false allegations arise against citizens and at times wrong information is furnished to the statutory authorities including the District Magistrate. Unless the citizen is given one opportunity to bring out his case/objection to the proposed cancellation of his Character Certificate, he may be unnecessarily pushed into long drawn legal battle. That may be avoided if one limited opportunity of hearing is given to such a person.

11. Even otherwise an order having civil consequences passed after hearing the affected party may always lead to better reasoned and balanced conclusions being drawn by the quasi judicial authorities. That reasoning may also help the appeal/higher authorities in considering or evaluating the merits of the order passed.

12. Whichever way we look at the matter, we find no reason to accept as absolute, the stipulation in the Government Order contained in paragraph-4 extracted above. In absence of any fact dispute involved, no useful purpose may be served in keeping the petition pending or calling for counter affidavit at this stage.

13. Remedy of representation provided under Clause-5B of the Government Order dated 10.4.2023 is not substitute to the opportunity of show cause which we feel is necessary to be provided before cancellation of the Character Certificate. Once a Character Certificate is cancelled, its consequences arise immediately. Therefore, the presence of the remedy under Clause-5B cannot be a substitute to adherence of rules of natural justice at the first stage of the proceedings.

14. Accordingly, we provide that the order dated 12.5.2023 be treated as a show cause notice by the petitioner. He may furnish his detailed objection thereto supported by his personal affidavit annexing thereto any document on which he may seek to rely within a period of three weeks from today. Subject to such compliance shown, the District Magistrate may fix a short date for hearing on which the petitioner undertakes to appear before the said authority. The District Magistrate may then proceed to pass appropriate reasoned order dealing with the objections filed by the petitioner within a further period of three months from today. The impugned order shall abide by the final decision to be made by the District Magistrate, Jaunpur.

15. Since such litigation is arising on a daily basis, we consider it desirable to read Clause-4 of the Government Order dated 10.4.2023 to include therein (on implied basis) that the action proposed under Clause-4 may be taken after issuance of show

cause notice to the concerned citizen within a period of one week from the date of receipt of information as to registration/pendency of criminal case. Notice may be served on the citizen within two weeks thereafter. The noticee citizen may be granted two weeks time therefrom to furnish his reply. A short date for hearing may be fixed within a further period of two weeks therefrom and appropriate order may be passed in terms of Clause-4 of the Government Order dated 10.4.2023, thereafter.

16. Let a copy of this order be supplied to the learned Additional Chief Standing Counsel for onward communication to respondent No. 1 who may ensure due compliance of this order by all field authorities as may prevent such needless litigation to arise before this Court.

17. Writ petition stands **disposed of**.

Order Date :- 3.1.2024

Faraz

(Manjive Shukla, J.) (S. D. Singh, J.)