

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.782/2019;
Date of institution 11.04.2019;
Date of hearing. 03.09.2024;
Date of decision 06.09.2024.

Muhammad Din D/o Sattar Muhammad caste Gujjar Bajran, R/o village Seri Dara Tehsil & District Muzaffarabad.

.....Petitioner

VERSUS

1. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, Muzaffarabad;
2. Board of Revenue through its Registrar, Muzaffarabad;
3. Senior Member Board of Revenue Government of Azad Jammu & Kashmir, Muzaffarabad;
4. Commissioner Revenue Muzaffarabad Department of Revenue Government of Azad Jammu & Kashmir, Muzaffarabad;
5. District Collector/Deputy Commissioner Muzaffarabad;
6. Additional Deputy Commissioner District Muzaffarabad;
7. Imtiaz;
8. Mumtaz;
9. Sarfaraz;
10. Sajjad, sons;
11. Mst. Gulzar W/o Abdul Kareem S/o Sofi S/o Jamal Din, R/o village Seri Dara Tehsil & District Muzaffarabad.

.... Respondents

WRIT PETITION

Before:- Justice Chaudhary Khalid Rasheed, J.

PRESENT:

M/s Ch. Amjad Ali and Kousar Parveen Awan, Advocates for the petitioner.

Mir Tanvir Hussain, Advocate for the respondents.

JUDGMENT:

The captioned writ petition has been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby, order dated 10.04.2019 passed by Board of Revenue has been assailed.

The learned counsel for the petitioner reiterated the facts and grounds already taken in the writ petition by submitted that petitioner herein filed an application before Deputy Commissioner/District Magistrate Muzaffarabad for cancellation of State Subject Certificates issued in favour of private respondents who after inquiry held that private respondents are not owners in the deh from which they obtained State Subject Certificates but refused to cancel the State Subject Certificates on the ground of being not empowered to rescind the same. The learned advocate further argued that Commissioner Muzaffarabad Division also endorsed the said report of the Deputy Commissioner that private respondents are not the owners moreover he also observed that for cancelling State Subject Certificates issued in favour of private respondents, petitioner should approach proper forum under Rule 4(3) of the State Subjects Rules, 1980. The learned advocate contended that petitioner filed further application before Senior Member Board of Revenue Azad Jammu & Kashmir Muzaffarabad against the order passed by

Commissioner Muzaffarabad Division dated 04.02.2019 and requested for annulment of State Subject Certificates issued in favour of private respondents but the Board of Revenue rejected the application through the impugned order dated 10.04.2019. The learned advocate claimed with vehemence that private respondents are not owners in the deh, hence the State Subject Certificates have erroneously been issued in their favour by means of fraud and misrepresentation, thus are liable to be taken away but the official respondents miserably failed to exercise the powers conferred on them. The learned advocate placed his reliance on 2014 SCR 327.

On the other hand the learned counsel for the respondents while controverted the augments advanced by the learned counsel for the petitioner submitted that official respondents have rightly held regarding their authority to annul the State Subject Certificates because the proper forum for that very purpose was Azad Jammu & Kashmir Council and after the 13th Amendment in the Interim Constitution, 1974, the authority is now vested with the Azad Government. He further held that State Subject Certificates were issued in favour of father and grandfather of private respondents before the enactment of the Azad Jammu & Kashmir State Subjects Act, 1980 and rule 3 of the Azad Jammu & Kashmir State Subjects Rules, 1980

postulates that any person possessing State Subject Certificate at the commencement of the Act shall be deemed to be a State Subject under this Act, hence now the State Subject Certificates issued in favour of private respondents on the basis of State Subject Certificates of their forefathers cannot be recalled on such flimsy grounds. He craved for the dismissal of the instant writ petition.

I have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

Under rule 4(1) of the Azad Jammu & Kashmir State Subjects Rules, 1980 any person claiming to be a State Subject may apply to the District Magistrate for grant of State Subject Certificate in the manner prescribed in the said rule, which reads as under:

“4. State Subject Certificate:- (1) Any person claiming to be a State Subject may be granted a State Subject Certificate by the District Magistrate concerned in the manner prescribed below:-

(a) He shall apply in Form ‘A’ (Appendix I) in duplicate to a Magistrate of the first class. The application shall be supported by:

(i) A certificate of birth of the applicant or any of his parents or grand-parents, as the case may be, issued by:-

1. A village officer or an officer in charge of a Police Station;
2. A Municipal or Town Committee or Corporation; or;
3. A Registrar of Births and Deaths;

- (ia) No Objection Certificate from the Council, in case the applicant is a refugee from Indian held Kashmir or came on any document issued by any other country for settlement permanently in Azad Jammu & Kashmir or any part of Pakistan; and
- (ii) Documents in support of the statements made in the application.
- (b) The Magistrate shall, in attestation of the truth of the statement in the application, administer an oath or affirmation to the applicant and shall examine the evidence, oral or documentary, adduced by the applicant in support of his claim. He may, if he thinks it necessary, summon and examine any other witness likely to know the facts of the application and may call for any record relevant to it.
- (c) The Magistrate shall forward the application with his recommendation to the District Magistrate concerned.”

Under Rule 4(2) of the Azad Jammu & Kashmir State Subject Rules, 1980 District Magistrate may reject the application or grant State Subject Certificate. Rule 4(2) is as follows:-

“The District Magistrate shall either reject the application or grant a State Subject Certificate in Form ‘A01’ (Appendix II).”

Under rule 4(3) of the Azad Jammu & Kashmir State Subjects Rules, 1980 if the District Magistrate rejects the application or grants a State Subject Certificate any person aggrieved by such order may prefer an appeal to the Azad Govt. and Azad Govt. may pass such order as it deems fit. For ready reference rule 4(3) is reproduced as under:

“3. Any person aggrieved by an order passed under sub-rule (2) may prefer an appeal to the Azad Government of the State

of Jammu & Kashmir within thirty days and the Government may pass such order as it deems fit.”

The powers to cancel a State Subject Certificate issued by District Magistrate are vested with the Council under Rule 6 of the Azad Jammu & Kashmir State Subjects Rules, 1980 which is reproduced as under:

“6. Deprivation of State Subject Certificate:-

(1) The Council may, on a report from Azad Government of the State of Jammu & Kashmir or on its own motion, issue a notice to any person who is alleged to have obtained a State Subject Certificate by means of fraud, false representation or the concealment of any material fact to show cause why an order depriving him of the said Certificate should not be passed against him.

(2) Such notice shall contain information concerning the grounds on which it is proposed to make the order depriving him of State Subject Certificate.

(3) Any person served with a notice in accordance with the sub-rule (1) and (2) may, within sixty days of the service of such notice. Apply to the Council for the appointment of a committee of enquiry.

(4) An application under sub-rule (3) shall among other things be accompanied by an affidavit that the allegations made against him are untrue, and by a bond in the sum of Rs.5,000 to be forfeited to the Council should the committee of enquiry find the applications false and frivolous or given with a view to causing delay.

(5) On receiving the application, the Council shall appoint a committee as provided for in sub-section (5) of section 4 of the Act,

(6) The Council shall pass such orders on the report of the committee or enquiry or, if a committee is appointed on the application itself as it deems fit.”

According to Rule 10 an appeal, review etc. may be presented before the Council and the Council at any time may entertain any application, appeal, review or revision application and pass any order as it may deem necessary/fit. Rule 10 reads as follows:-

“10. Appeal, Review etc. :- The Council may at any time entertain any application, appeal, review of revision application and may, subject to rule 5, cancel, suspend, invalidate, extend or revise and certificate issued under these rules or may grant a certificate refused by any other authority under these rules or pass any other order it may deem necessary or fit.

Penalty is also provided under Section 8 of the Act and Rule 11 of the rules made under the Act if a person obtains State Subject Certificate or Domicile Certificate by misrepresentation, which reads as under:-

“Penalties:- Any person who in order to obtain or prevent the doing of anything under this Act makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, shall be deemed to have committed an offence punishable under section 177 of the Pakistan Penal Code (Act XLV of 1960).”

“11. Penalty for obtaining State Subject Certificate or Certificate of Domicile by misrepresentation:- (1) The Council or the Azad Government of the State of Jammu & Kashmir on receiving information that a person has obtained his State Subject Certificate or certificate of domicile by fraud, may authorize or require a competent Magistrate to authorize a Police Officer under section 155 of the code of

Criminal Procedure, 1898 (Act V of 1898), to investigate the truth of the information.

(2) If on the result of the investigation it appears that the said person had made a statement or furnished information which comes within the mischief of section 8 of the act, the Council or the Azad Government of the State of Jammu & Kashmir may direct that the said person be prosecuted under section 177 of the Pakistan Penal Code (Act XLV of 1860), or under any other law for the time being in force.

(3) A conviction by the Court shall render null and void any certificate mentioned in sub-rule (1).”

A complete mechanism has been provided in the Azad Jammu & Kashmir State Subjects Act, 1980 and rules made thereunder, which is a special law and prevails over general law, to apply for grant of State Subject Certificate, deprivation of State Subject Certificate, to file application/appeal etc. against the order of grant or rejection of application for grant of State Subject Certificate and a penalty clause is also provided in the Statute if State subject Certificate is obtained by misrepresentation as reproduced hereinabove, thus, proper procedure for a person who feels aggrieved from grant of a State Subject Certificate by District Magistrate may apply to Council/Azad Govt. and the Council/Azad Govt. may entertain the same and pass an order which it may deem fit, thus, approach to District Magistrate for cancellation of State Subject Certificates granted to private respondents by the petitioner in presence of blatant provisions of law cannot be held correct.

In PLD 2012 High Court (AJK) 14 and PLD 2012 High Court (AJK) 28, the High Court of Azad Jammu & Kashmir observed that the Azad Jammu & Kashmir Council had ample powers to deprive any person of State Subject Certificate alleged to have been obtained by means of fraud, false representation or concealment of material facts.

The Supreme Court of Azad Jammu & Kashmir in 2014 SCR 327 referred to and relied upon by the learned counsel for the petitioner has held that the powers regarding deprivation of State Subject Certificate have been given to Council, however method of cancellation or deprivation of domicile certificate has not been mentioned. It is also held by the Supreme Court that if a fraud, misrepresentation or concealment of facts is discovered, the District Magistrate is also vested with the powers under section 21 of the General Clauses Act, to cancel State Subject Certificate.

Keeping in view the dictum of the Supreme Court rendered in 2014 SCR 327, supra and provisions of relevant law, it can be concluded that District Magistrate may cancel State Subject Certificate if fraud, misrepresentation or concealment of material facts is found, however, a person who feels aggrieved from grant of State Subject Certificate or rejection of application

for grant of State Subject Certificate may move the Council/Azad Govt. under Rule 10 of the Azad Jammu & Kashmir State Subjects Rules, 1980 but application before the District Magistrate for cancellation of State Subject Certificate already issued is not competent.

During inquiry, it is established that private respondents are living in Azad Jammu & Kashmir since their forefathers, thus even on merits of the case, State Subject Certificates issued in favour of private respondents cannot be held to have been obtained by means of fraud, misrepresentation or concealment of material facts, rather were rightly issued in their favour as they are living in Azad Jammu & Kashmir since long prior to enforcement of Azad Jammu & Kashmir State Subjects Act, 1980 and as per their statements they also intend to live in Azad Jammu & Kashmir permanently, hence, the impugned order is not in violation or disruption to the verdict of honourable Supreme Court because when it has been established that they are living in Azad Jammu & Kashmir since their forefathers as being only sine qua non then District Magistrate cannot rescind their State Subjects by holding that the same were obtained by means of fraud, misrepresentation or concealment of facts.

Moreso, the petitioner has only assailed the order of Board of Revenue dated 10.04.2019 while he has not challenged the basic orders passed by District Magistrate/Deputy Commissioner as well as Commissioner Muzaffarabad Division, thus on this ground too, the instant writ petition entails to show the doors.

It is also pertinent to mention that an improvement has been made by the Azad Government to give effect to the Azad Jammu & Kashmir State Subjects Act, 1980 and rules made thereunder by constituting an inquiry committee to inquire into the applications filed for cancellation of State Subject Certificates consisting of Senior Member Board of Revenue as Chairman, Secretary Law as Member and Commissioner concerned Division/Commissioner Rehabilitation as Member/Secretary vide notification dated 29.02.2024, hence in the light of such notification, the State Subject Certificates issued in favour of private respondents cannot be extinguished merely on the basis of an inquiry conducted by an unconcerned authority/ Additional Deputy Commissioner General Muzaffarabad, thus the impugned orders also deserve to be sustained on this score as well.

The sum and substance of the above discussion is,
finding no essence the instant writ petition is hereby dropped.

Muzaffarabad;

06.09.2024.

Approved for reporting.

JUSTICE

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