

(2011) 10 DEL CK 0056

Delhi High Court

Case No: Writ Petition (C) 1089 of 2011

Kanaklata Sharma and Others

APPELLANT

Vs

Registrar General of Census
India, New Delhi and Others

RESPONDENT

Date of Decision: Oct. 12, 2011

Acts Referred:

- Census Act, 1948 - Section 4(1), 4(2)
- Census Rules, 1990 - Rule 5(1)

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Shailendra Bhardwaj with Mrs. Aruna Bhardwaj and Mr. Sanjay Mishra, for the Appellant; Jatan Singh and Mr. Prashant Ghai, for R-1 and Mr. Sudhir Kulshreshtha, for R-3, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The six Petitioners claiming to be teachers employed with St. Thomas School, an unaided minority institution, situated at Lajpat Nagar, Sahibabad, Ghaziabad, U.P. have filed this petition seeking mandamus to the Respondent No. 1 and all its subordinate officers to refrain from entrusting census related work to the Petitioners and from taking any coercive action against the Petitioners for not performing the said work. It is the claim of the Petitioners that teachers of an unaided minority institution cannot be entrusted with the census duties.

2. Notice of the petition was issued and vide interim order dated 21.02.2011, which continues to be in force, coercive steps against the Petitioners were restrained.
3. The Respondent No. 1 as well as the Respondent No. 3 Charge Census Officer, Mohan Nagar Zone, Ghaziabad, UP have in their respective counter affidavits raised an objection as to the territorial jurisdiction of this Court to entertain the petition.

4. In this regard, it may be noticed that the orders appointing the Petitioners as Census Officer, are of the Respondent No. 2 Additional District Magistrate-cum-Census Officer, Ghaziabad and the Respondent No. 3 aforesaid.

5. As such, it has been enquired from the counsel for the Petitioners as to how the grievance against the orders of Respondents No. 2&3, being authorities situated outside the territorial jurisdiction of this Court, can be made before this Court.

6. The counsel for the Petitioners contends that the Petitioners have made a representation to the Respondent No. 1 situated at Delhi and since no decision has been taken by the Respondent No. 1 on the said representation, the Petitioners are entitled to invoke the territorial jurisdiction of this Court.

7. A failure to take a decision on a representation would constitute a cause of action only when there is a duty to deal with the representation. It has been enquired from the counsel for the Petitioners as to under which provision does the Respondent No. 1 exercise jurisdiction over the Respondents No. 2&3 and under which provision the Respondent No. 1 can issue any direction to the Respondents No. 2&3 to refrain from appointing the Petitioners as Census Officers.

8. The counsel for the Petitioners in this regard invites attention to the Census Act, 1948 and the Census Rules 1990 annexed to the counter affidavit of the Respondent No. 1. However, as stated in the counter affidavit of the Respondent No. 1, the Respondent No. 1 is not found to be authorized to issue any directions to the Respondents No. 2&3. The Petitioners also have not been able to show any order or direction of the Respondent No. 1 to the Respondents No. 2&3 in pursuance to which the Respondents No. 2&3 can be said to have appointed the Petitioners as Census Officers. Rather what emerges from a perusal of the Act and Rules is that it is the duty of the State Government to appoint the Census Officers. Thus the appointments of the Respondents No. 2&3 as Census Officer being by the Government of the State of Uttar Pradesh, it cannot be said that they have been appointed by the Respondent No. 1. The counsel for the Petitioners in this regard invites attention to Rule 5(1)(b) whereunder the Census Commissioner appointed by the Central Government u/s 4(1) of the Act, as the Respondent No. 1 is, is required to cause the Directors of Census Operations to be appointed for each State or Union Territory. However, all that the said provision indicates is that it is the Respondent No. 1 who writes to the State Governments to appoint the Census Officers, as the Respondents No. 2&3 are. Moreover, Section 4(2) clearly provides for the State Government to appoint the Census Officers.

9. Even if the Respondent No. 1 causes the appointments of the Respondents No. 2 &3, that would still not vest any territorial jurisdiction in this Court. The Respondent No. 1 in its counter affidavit has further pleaded that the representation of the Petitioner was forwarded to the Respondent No. 2 for appropriate action since the Respondent No. 1 had no role in the matter.

10. The counsel for the Petitioners at this stage states that the writ petition be permitted to be withdrawn for filing in Court of appropriate jurisdiction and the interim protection be extended for two weeks, to enable to the Petitioners to approach the Allahabad High Court.

11. The counsel for the Respondent No. 3 contends that the work of census has already suffered owing to the non participation of the Petitioners. The counsel for the Respondent No. 1 also states that under the law the Petitioners are liable to be prosecuted.

12. Be that as it may, since notice of the writ petition was issued and interim protection granted, it is deemed expedient to while dismissing the writ petition as withdrawn for the reason of lack of territorial jurisdiction and granting liberty to the Petitioners to approach the Court of appropriate jurisdiction, extend the interim protection for a period of two weeks with a clarification that merely because the interim protection was granted or extended, would not tantamount to an expression of opinion of this Court on merits of the claim of the Petitioner.

No order as to costs.