



Sashikanta Mishra,J. The order dated 23.7.2024 passed by the Collector, Rayagada in the capacity of appellate authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “Act”) is under challenge in this Writ Petition whereby the order dated 16.2.2024 passed by the Sub-Collector-cum-Maintenance Tribunal directing the Petitioner to hand over the key of the gate of the building to the present Opp.Party No.3 and pay Rs.5,000/- to him every month for maintenance was confirmed.

2. The facts of the case, briefly stated, are that the Petitioner is the son of Opp. Party No.3. Certain disputes cropped up between father and son resulting in the father making an allegation that the son has ousted him from the house and that despite being aged about 69 years, his son is not maintaining him. The Opp.Party No.3-father therefore, filed an application under Section (5) of the Act claiming maintenance of Rs.5,000/- against his son. Said case was registered as Misc.Case No.1/2024 in the court of Sub-Collector, S.D.M., Rayagada-cum-Maintenance Tribunal. After hearing the parties, the Maintenance Tribunal, by order dated 16.2.2024 directed the son (Petitioner) to handover the key of the gate of the building to his father and pay Rs.5,000/- towards monthly maintenance. The son



carried the matter in appeal to the Collector-cum- appellate authority. By the order impugned, the Collector after taking note of the stand of the parties did not find any reason to interfere with the impugned order. As such the appeal was rejected and the order passed by the Tribunal was confirmed.

3. Heard Mr. Gopinath Mishra, learned counsel for the petitioner, Mr. B.P.Das, learned counsel for the Opp.Party No.3 and learned Addl. Government Advocate for the State.

4. Mr. Mishra, learned counsel for the Petitioner submits that neither the Maintenance Tribunal nor the appellate authority rendered any finding as to whether the Opp.Party No.3 (father) is unable to maintain himself from his own earning or out of the property owned by him as required under Section 4 of the Act. He further submits that without this foundational fact, the application for maintenance should not have been considered. That apart, referring to Section 9 of the Act, Mr. Mishra would argue that the statute has provided for grant of monthly maintenance only if the children or relatives as the case may be neglect or refuse to maintain a senior citizen. Both the courts below have not rendered any finding in this regard. Mr. Mishra also refers to Rule 14 of



Odisha Maintenance of Parents and Senior Citizens Rules, 2009 (for short 'Rules'), which provides for the mode of calculation of the maximum maintenance allowance. This aspect has also not been considered at all by the courts below.

5. Per contra, Mr. B.P.Das, learned counsel appearing for Opp.Party No.3 (father) would submit that the plea taken by the Petitioner before this Court was never taken before the Court below. Moreover, the Opp. party No.3 is a person aged about 69 years and has no source of income. He was thrown out of his house by his son and therefore, finding no other way he had approached the Maintenance Tribunal.

6. Having considered the rival submissions and after going through the impugned judgments, this Court deems it proper to refer to the relevant statutory provisions at the outset. As per Section 2(h) of the Act, 'senior citizen' means any person being a citizen of India, who has attained the age of 60 years or above. It is not disputed that the Opp. Party No.3 (father) is aged about 69 years. Therefore, being aged more than 60 years he is a senior citizen within the meaning of the Act. Reference to Section 4 of the Act, being relevant, is quoted herein below;



“4. Maintenance of parents and senior citizens.-(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of-

(1) parent or grand-parent, against one or more of his children not being a minor,

(ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen



or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property."

7. Thus, simply being a senior citizen does not automatically entitle a person to receive maintenance from his children. The necessary ingredients appear to be as follows;

(1) He must be a senior citizen.

(2) He must be unable to maintain herself from his own earnings or out of property owned by him.

There is no finding in this regard whatsoever by either the Maintenance Tribunal or the appellate authority.

8. Section 9 of the Act, which is also relevant is quoted herein below;

"9. Order for maintenance.-(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain



himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.”

9. Thus, an order of maintenance can be passed on the finding that the children or the relatives, as the case may be, have neglected or refused to maintain a senior citizen being unable to maintain himself. The language used is ‘the Tribunal may, on being satisfied of such neglect.’ Therefore, it is imperative that the Tribunal has to be subjectively satisfied about the above aspect before passing any order of maintenance. In the instant case, this Court finds that neither the Tribunal nor the appellate authority has rendered any specific finding in this regard.

10. In course of his arguments, Rule 14 was referred to by Mr. Mishra, which is quoted herein below;



“14. Maximum maintenance allowance- The maximum maintenance allowance which a Tribunal may order the opposite party to pay shall, subject to a maximum of rupees ten thousand per month/be fixed in such a manner that it does not exceed the monthly income from all sources of the opposite party, divided by the number of persons in his family, counting the applicant or applicants also among the opposite party's family members.”

11. Thus, the Rules specifically provides a methodology for quantifying the maximum maintenance allowance that may be directed to paid under the Act. This aspect has also not been touched at all by either the Maintenance Tribunal or the appellate authority. For all the aforesaid reasons therefore, the impugned orders cannot be sustained.

11. In the result, the Writ Petition is allowed. The impugned orders are hereby set aside. The matter is remitted to the Maintenance Tribunal to rehear the matter after granting opportunity of hearing to both the parties and by rendering specific findings on the aspects referred to in this order. The amount deposited by the Petitioner as per the interim order passed by this Court shall be continued to be



kept in fixed deposit till disposal of the case before the Tribunal.

This Court further directs the Tribunal to dispose of the matter as early as possibly, preferably within a period of one month from the date of production of certified copy of this order by the Petitioner.

For convenience, this Court directs both the parties to appear before the Tribunal on 24.2.2025 for receiving further instructions.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera

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