



2024:CGHC:45171-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on 13.11.2024

Judgment Delivered on 20.11.2024

MA No. 124 of 2024

{Arising out of order dated 18-9-2024 passed by the learned Single Judge (Contempt Court) in CONT No.828 of 2024}

1. Smt. Laxmi Vaishnav W/o Shri Maheshwar Das Vaishnav Aged About 52 Years R/o Village - Khapridih, Tahsil - Tundra, Janpad Panchayat - Kasdol, District - Balodabazar - Bhatapara (C.G.)

... Appellant

versus

1. Smt. Amrika Bai Ajagalay W/o Shri Amrit Ajagalay Aged About 31 Years By Post - Panch, Ward No. 14, Gram Panchayat Khapridih, Post - Kumhari, Police Station - Gidhour, Janpand Panchayat - Kasdol And District - Balodabazar - Bhatapara, Chhattisgarh.
2. Ram Ratan Dubey S/o Shri S.K. Dubey Aged About 56 Years At Present Working in the post of S.D.O. (R) - Prescribed Authority At Giroudh, District Balodabazar - Bhatapara, Chhattisgarh.
3. Himanshu Verma S/o Shri C. Verma aged about 35 years at present working in the post of Chief Executive Officer, Janpad Panchayat Kasdol, District Balodabazar - Bhatapara, Chhattisgarh.

... Respondents

For Appellant : Shri Sunil Sahu, Advocate

For Respondent : Shri Jameel Akhtar Lohani, Advocate

Hon'ble Smt. Justice Rajani Dubey
Hon'ble Shri Justice Bibhu Datta Guru

CAV Judgment

Per Bibhu Datta Guru, J.

1. By the present appeal under Section 19(1) of the Contempt of Courts, Act, 1971 (for short 'the Act, 1971') the applicant herein questioning the order

dated 18.09.2024 passed by the learned Contempt Court in Cont. No. 828/2024, by which the learned Contempt Court has directed for appointment of respondent No.1 herein on the post of Substitute Sarpanch.

2. The applicant, though was not a party in the contempt petition, but the direction for her removal from the post of Sarpanch and appointment of the respondent No.1 herein (contempt petitioner) as a Substitute Sarpanch has been ordered, being aggrieved to the said order of the learned Contempt Court preferred the present appeal.
3. (i) The facts of the case, in brief, for decision of the present appeal, are that in a proceeding under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Act, 1993') the regular Sarpanch of Gram Panchayat Khapridih namely; Smt. Bindu Chauhan was suspended and the post of Sarpanch was lying vacant. After the said vacancy the authorities proceeded to appoint the officiating Sarpanch by exercising the power under Section 39(3) of the Act, 1993, and the applicant herein namely; Smt. Laxmi Vaishnav was appointed as substituted Sarpanch. The respondent No.1 (contempt petitioner) namely; Smt. Amrika Bai Ajagalay, who belongs to Scheduled Caste (woman category) was not served with a notice as prescribed under Section 39(3) and the appointment order in favour of the applicant herein appointing her as substituted Sarpanch has been passed on 16.01.2024.

(ii) Being aggrieved by such order of appointment, the respondent No.1 approached this Court by filing a petition bearing WPC No. 1699/2024. The said writ petition was disposed of by this Court by order dated 23.04.2024

and the matter was forwarded to the Sub-Divisional Officer (Revenue), Giroadh, District Balodabazar to examine the matter in light of the facts and the provisions discussed above and after taking into consideration the provisions of Section 39 of the Act, 1993, take appropriate decision with regard to the appointment of substituted Sarpanch. The entire exercise was directed to be carried out by the authority concerned within a period of sixty days from the date of receipt of a copy of this order. After the order of learned Single Judge in WPC No. 1699/2024, the respondent No.1 filed a contempt case bearing CONT No.828/2024 alleging non-compliance of the order dated 23.04.2024 passed in the writ petition. The said contempt petition was disposed of by the learned Contempt Court vide order dated 18.09.2024 observing that the appointment of the substitute Sarpanch, *prima facie, de hors* the provisions of the Act 1993. Thus, this appeal.

4. Learned counsel appearing for the applicant by questioning the direction issued by the learned Contempt Court would submit that the contempt proceedings are drawn under Section 12 of the Act, 1971 and the contempt petitions are generally filed for non-compliance of the order of the concerned Court and in the same manner when the order dated 23.04.2024 passed in WPC No. 1699/2024 has not been complied with by bringing the said fact the respondent No.1 filed the contempt petition, but while entertaining the said contempt petition, the learned Contempt Court exceeded its jurisdiction and passed an order which amounts to fresh order/direction, which is beyond its scope and without examining whether the order has been complied with in its true perspective or not passed an

order directing that the Sub-Divisional Officer shall issue instruction to the Chief Executive Officer to initiate proceeding for removal of the substitute Sarpanch i.e. the present applicant after following due process of law. Even the Contempt Court has also directed the CEO to issue notice to all the Panchs within 15 days from the date of receipt of copy of the order and directed to proceed for appointment of respondent No.1 herein on the post of substitute Sarpanch. Therefore, the order passed by the learned Contempt Court is bad in law. To Buttress his contention learned counsel would place reliance upon the decision of this Court rendered in *Anil Kumar Dubey v Pradeep Kumar Shukla*¹ and also upon the decision rendered by the Supreme Court in the matter of *Ajay Kumar Bhalla & Ors. v Prakash Kumar Dixit*².

5. Learned counsel appearing for the respondent, *ex adverso*, would submit that as per Section 19 of the Act, 1971 an appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt. In the present case the order passed by the learned Contempt Court is not a punishment order and the applicant is not an aggrieved party to any punishment order. He would also place reliance upon the decision of the Supreme Court in *Ajay Kumar Bhalla* (supra) and *Midnapore Peoples' Coop. Bank Ltd. and Others v Chunilal Nanda and Others*³ to submit that the appeal under Section 19 against the direction issued by the Contempt court in a contempt proceeding is not maintainable and, as such, the present appeal deserves to be dismissed.

1 ILR 2017 Chhattisgarh 324 (FB)

2 Civil Appeal Nos.8129-8130 of 2024 (decided on 29-7-2024)

3 (2006) 5 SCC 399

6. We have heard learned counsel appearing for the parties and perused the documents.
7. For the sake of convenience, relevant paras of the orders passed by the Writ Court in WPC No.1699 of 2024 and the Contempt Court in CONT No.828 of 2024 are quoted below :

Paras 7 to 11 of the order passed in WPC No.1699/2024 :

7. Admittedly, the Office of Sarpanch, Gram Panchayat-Khapridhih is reserved for member of the Scheduled Caste (Woman). The Sarpanch who was elected earlier, has been placed under suspension as an enquiry under Section 40 of the Adhinyam, 1993 is contemplated against her. For the smooth functioning of the Gram-Panchayat, a resolution was passed for the appointment of a substituted Sarpanch of the aforesaid Gram-Panchayat according to the provisions of Section 39 of the Adhinyam, 1993, notices were issued to all the Panchas and from Annexure R7/2, it is apparent that notice could not be served on the petitioner as she was not available in the village. It is stated in the report that she had gone to some distant place for her livelihood.

8. Considering the note made by the Peon of the Gram-Panchayat in service report, the petitioner cannot be deprived of her right to be appointed as substituted Sarpanch. The petitioner is a member of the Scheduled Caste category and her candidature should have been taken into consideration by the Panchas as well as by the authorities while passing a resolution for the appointment of substituted Sarpanch according to the provisions of Section 39(3) of the Adhinyam, 1993, but she was not available, therefore, respondent No. 7, though she does not belong to Scheduled Caste category, was appointed as a substituted Sarpanch.

9. Section 39 of the C.G. Panchayat Raj Adhinyam, 1993 is reproduced herein below for reference:-

39. Suspension of office-bearer of Panchayat-(1) The prescribed authority may suspend from office any-office bearer,-

(a) against whom charges have been framed in any criminal proceedings under Chapter V A, Vi,

IX, IX-A, X, XII, Sections 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Sections 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, suppression of immoral traffic in women and children, Protection of Civil Rights and Prevention of Corruption; or

[(b) on whom, show cause notice along with charge-sheet under this Act, has been served for removal from office.]

(2) The order of suspension under sub-section (1) shall be reported to the State Government within a period of ten days and shall be subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government within 90 days from the date of receipt of such report it shall be deemed to have vacated.

(3) In the event that the Sarpanch of Gram Panchayat, President of Janpad Panchayat or Zila Panchayat, as the case may be, is suspended under sub-section (1), the Secretary or the Chief Executive Officer of the concerned Panchayat shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of information from prescribed authority and the members shall elect from amongst themselves, a person to hold the office of Sarpanch or President temporarily, as the case may be, and such officiating Sarpanch or President shall perform all the duties and exercise all the powers of Sarpanch or President, as the case may be, during the period for which such suspension continues :

Provided that if the office of the Sarpanch or President is reserved for the member of Scheduled Castes or Scheduled Tribes or Other Backward Classes or for a woman, the officiating Sarpanch or President shall be elected from amongst the members belonging to the same category :

Provided further that where the office of Sarpanch or President is reserved for a woman belonging to

Scheduled Castes or Scheduled Tribes or Other Backward Classes and there is no other woman member of the Panchayat belonging, to that category who can be elected to officiate as Sarpanch or President, as the case may be, any other woman member belonging to the other reserved categories, may be elected to officiate as Sarpanch or President as the case may be.

(4) A person who has been suspended under subsection (1) shall also forthwith stand suspended from the office of member or office-bearer of any other Panchayat of which he is a member or office-bearer. Such person shall also be disqualified for being elected under the Act during his suspension.

10. From a bare reading of the provisions of Section 39 of the Adhiniyam, 1993, it is quite vivid that in the eventuality of the vacancy to the Office of Gram-Panchayat, a member belonging to the same category may be appointed as substituted Sarpanch. In the present case, though the petitioner belongs to the same category, her name has not been considered. It may be on account of her absence from the village or for any other reasons.

11. Taking into consideration the above-stated facts, the matter is forwarded to the Sub-Divisional Officer (Revenue), Giroadh, District – Balodabazar to examine the matter in light of the facts and the provisions discussed above and after taking into consideration the provisions of Section 39 of the Adhiniyam, 1993, take appropriate decision with regard to the appointment of substituted Sarpanch. The entire exercise shall be carried out by the authority concerned within a period of sixty days from the date of receipt of a copy of this order.

Paras 2 to 5 of the order passed in CONT No.828/2024 :

2. This court issued notice to the contemnors and they have filed affidavit but the affidavit does not answer whether the notices were served upon the petitioner, prima facie non-compliance of the order passed by this Court is reflected. This Court may proceed in present contempt case, but keeping in view the object of the Contempt of Courts Act is to see that the order passed by the court is complied with in its letter and spirit. The object of this Act is not to punish the contemnors but to give them opportunities to reform themselves.

3. The contemnors at this juncture stated that now the substitute Sarpanch is already functioning and to remove him/her provisions of Section 39 of the Chhattisgarh Panchayat Raj Adhinimum, 1993 is to be followed.

4. Be that as it may, the appointment of the substitute Sarpanch prima facie de hors the provisions of the Panchayat Raj Adhiniyam, therefore, it is directed that the Sub-Divisional Officer shall issue instruction to the Chief Executive Officer to initiate proceedings for removal of the substitute Sarpanch after following due procedure of law. The C.E.O. shall issue notice to all the Panchs within 15 days from the date of receipt of copy of this order and service of notice to them shall be videographed and signatures be obtained thereafter same shall be kept in sealed envelope. Thereafter the proceeding for removal of the substitute Sarpanch shall be completed and proceeding for appointment of petitioner on the post of substitute Sarpanch be initiated.

5. Let the entire exercise be completed within 45 days from the date of receipt of copy of this order.

8. From perusal of the order passed in the contempt petition, it is manifest that the learned Contempt Court has not decided anything about non-compliance of the order dated 23.04.2024 passed in WPC No. 1699/2024 and no punishment order has been passed. Even the applicant herein may be an affected party to the direction issued by the Contempt Court in its order, she is not entitled to avail the remedy as enumerated under Section 19 of the Act, 1971 and no appeal under this provision is maintainable, as no punishment order has been passed against the applicant.

9. The Supreme Court in the matter of *Midnapore Peoples' Coop. Bank Ltd.*

(supra) held thus at para 11 :

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

I. An appeal under [section 19](#) is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under [Section 19](#) of the CC Act. In special circumstances, they may be open to challenge under [Article 136](#) of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under [section 19](#) of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under [section 19](#) of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under [Article 136](#) of the Constitution of India (in other cases).

The first point is answered accordingly.

10. The judgment rendered in the matter of *Midnapore Peoples' Coop. Bank Ltd.* (supra) has been relied in *Ajay Kumar Bhalla* (supra) and observed at para 14 that in view of the decision rendered in *Midnapore Peoples' Coop.*

Bank Ltd. (supra), it is a settled principle that an appeal under Section 19 lies only against an order imposing punishment for contempt.

11. In view of the judgments rendered by the Supreme Court in **Midnapore Peoples' Coop. Bank Ltd.** (supra) & **Ajay Kumar Bhalla** (supra), it is held that the appeal under Section 19 of the Act, 1971, is not maintainable, however, as observed by the Supreme Court, if the aggrieved person is not without remedy such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), the applicant herein is at liberty to challenge the order passed by the learned Contempt Court questioning the same in an intra-court appeal, if so advised.
12. With the aforesaid observations and liberty, the present Misc. Appeal is disposed of. Consequently, the interim order passed earlier stands vacated.

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Bibhu Datta Guru)
Judge

Gowri

Head Note

An appeal under Section 19 of the Contempt Courts Act, 1971 lies only against an order imposing punishment for contempt.

न्यायालय अवमान अधिनियम, 1971 की धारा 19 के अधीन अपील केवल अवमानना के लिए दण्ड अधिरोपित किये जाने वाले आदेश के विरुद्ध की जा सकती है ।