

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 16.03.2017

Judgment delivered on: 06.04.2017

Writ Appeal No.87 of 2017

Uma Chelse W/o Pawan Chelse, aged about 32 years, R/o Village Domanpur, Tehsil-Pandariya, District Kabirdham (CG)

----Appellant

Versus

1. Anita Devi W/o Rohit Bhaskar, Caste-Satnami, R/o Village Bharewapara, Block and Tehsil-Pandariya, District Kabirdham (CG)
2. Kanti Sendre W/o Nand Kishore Sendre, Caste-Satnami, R/o Village Damapur, Block and Tehsil Pandariya, District Kabirdham (CG)
3. Kirti Devi Kathle W/o Sonram Kathle, Caste-Satnami, R/o Village Domanpur, Block and Tehsil Pandariya, District Kabirdham (CG)
4. Kaushilya Banjare W/o Govind Banjare, Caste-Satnami, R/o Village Domanpur, Block and Tehsil Pandariya, District Kabirdham (CG)
5. Navita Vibhagar W/o Panchram, Caste-Satnami, R/o Village Buchipara, Block and Tehsil Pandariya, District Kabirdham (CG)
6. Mongra Bhaskar W/o Prem Bhaskar, Caste-Satnami, R/o Village Karpikala, Block and Tehsil Pandariya, District Kabirdham (CG)
7. Lalita Barmate W/o Shir Prasad, Caste-Satnami, R/o Village Jhiriya Khurd, Block and Tehsil Pandariya, District Kabirdham (CG)
8. Vijay Laxmi Chelse W/o Mohan Singh Chelse, Caste-Satnami, R/o Village Damapur, Block and Tehsil Pandariya, District Kabirdham (CG)

9. Shri Rituraj Bisen, Nayab Tehsildar Kunda and Returning Officer (Panchayat) Pandariya, District Kabirdham (CG)
10. Shri Tekuram Chandravanshi (Presiding Officer Polling Booth No.101) Head Master, Govt. Middle School Neurgaon Khurd, Block Bodla, District Kabirdham (CG)
11. Shri Subhan Ali Aasmi, (Presiding Officer Polling Booth No.102) Head Master, Govt. Middle School Nayapara (Raja), Block Bodla, District Kabirdham (CG)
12. Dr.A.K. Nema, Veterinary Medical Assistant (Presiding Officer Polling Booth No.103) Veterinary Hospital Bodla, District Kabirdham (CG)
13. Shri Bhondu Ram Tisar, (Presiding Officer Polling Booth No.104) Head Master, Govt. Middle School Lenja Khar, Block Bodla, District Kabirdham (CG)
14. Shri Rajendra Prasad Tiwari, (Presiding Officer Polling Booth No.105) Head Master, Govt. Middle School Lalpur Kala, Block Bodla, District Kabirdham (CG)
15. Shri R.S. Chandravanshi, (Presiding Officer Polling Booth No.106), Block Bodla, District Kabirdham (CG)
16. Shri V.K. Nandi, (Presiding Officer Polling Booth No.107) Assistant Veterinary Medical Area Officer, Veterinary Hospital Bodla, District Kabirdham (CG)
17. Shri Jitendra Kumar Jakhand, (Presiding Officer Polling Booth No.108) Assistant Professor, Govt. Fisheries College, Kawardha, District Kabirdham (CG)
18. Shri Nilesh Chandravanshi, (Presiding Officer Polling Booth No.109) Rural Agriculture Development Officer, Agriculture Department, Tehsil Bodla, District Kabirdham (CG)
19. Shri Hemkumar Sahu, (Presiding Officer Polling Booth No.110) Head Master, Middle School Boys, Tehsil Bodla, District Kabirdham (CG)

- 20. Shri Lal Singh Markam, (Presiding Officer Polling Booth No.111) Forest Guard, Forest Range, Kawardha, District Kabirdham (CG)
 - 21. Shri Dilip Singh Thakur, (Presiding Officer Polling Booth No.112) Head Master, Middle School Chimra, Block Bodla, District Kabirdham (CG)
 - 22. Shri Kumar Haldkar, (Presiding Officer Polling Booth No.118) Lecturer (Panchayat), Higher Secondary School, Singhari, Block-Bodla, District Kabirdham (CG)
 - 23. Shri Makhan Singh Markam, (Presiding Officer Polling Booth No.119) Lecturer (Panchayat), Higher Secondary School, Singhari, Block-Bodla, District Kabirdham (CG)
 - 24. Shri Bharat Lal Chandravanshi, (Presiding Officer Polling Booth No.120) Teacher (Panchayat), Middle School, Achanakpur, Block-Bodla, District Kabirdham (CG)
 - 25. The Specified Officer cum Additional Collector, Kabirdham, Dist. Kabirdham (CG)
- (No.1 to 25 were respondents in Writ Petition)

---- Respondents

For Appellant	:	Dr.Rajesh Pandey, Advocate
For Respondent No.1	:	Mr.Vaibhav Goverdhan, Advocate, on advance copy
For Respondent No.25	:	Mr.A.S.Kachhawaha, Advocate

Hon’ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V.Order

Sanjay K. Agrawal, J.

- 1. Invoking sub-section (1) of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act 2006 (hereinafter referred to as “Act of 2006”), the writ appellant having lost before the writ court

has filed this writ appeal calling in question the impugned order by which learned Single Judge has dismissed the writ petition finding no merit and holding that the order passed by the Specified Officer dismissing the election petition filed by the appellant questioning the election of respondent/returned candidate is in accordance with law.

2. Mr. Rajesh Pandey, learned counsel appearing for the writ appellant (writ petitioner before the writ Court), would submit that Rule 11 of the C.G.Panchayat (Election Petitions, Corrupt Practices and Disqualification of Membership) Rules, 1995 (hereinafter referred to as "Rules of 1995") and Rule 1 to 3 of Order 14 of the Code of Civil Procedure apply to the election dispute and the Tribunal cannot deviate from the procedure. He would further submit that the primary and mandatory duty of the Tribunal was to frame issues before coming to stage of evidence. In absence of issues, it was not possible for the appellant to adduce evidence as there were disputed questions of fact and law in the election petition. He would also submit that election dispute is not a common law dispute and strict compliance of statutory rules is necessary and as such, the impugned order as well as the order of Specified Officer deserves to be set aside.
3. On the other hand, Mr. A.S.Kachhawaha, learned Additional Advocate General for respondent No.25/State and Mr. Vaibhav

Goverdhan, learned counsel for respondent No.1, would support the impugned order.

4. We have heard learned counsel appearing for the parties, also considered their rival submissions made herein and gone through the record with utmost circumspection.
5. The Specified Officer while dismissing the election petition filed by the writ appellant has clearly recorded a finding that appellant/election petitioner neither filed any material document to support his election petition nor examined any witness in support of his case so as to direct re-counting of the votes. Order-sheet dated 03.10.2015 recorded by learned Specified Officer states as under:-

"03.10.2015

प्रकरण पेश
याचिकाकर्ता की ओर से अधिवक्ता क्रांति
शर्मा उपस्थित।
गैर याचिकाकर्ता की ओर से अधिवक्ता
पी0एस0परिहार उप0।
याचिकाकर्ता की ओर से सूची अनुसार
दस्तावेज पेश।
गैर याचिकाकर्ता क01 को प्रति दी गई।
याचिकाकर्ता मौखिक साक्ष्य पेश करना
नहीं चाहता।
गैर याचिकाकर्ता क01 के साक्ष्य हेतु
नियत।

सही / -"

6. Learned Single Judge while dismissing the writ petition has taken cognizance of the aforesaid facts that the election petitioner/appellant has declined to adduce any evidence in support of his case. Order dated 03.10.2015 has already attained finality. On the aforesaid premises, learned Single Judge has held

that no prejudice has been caused to the appellant on account of non-framing of the issues as the appellant has not led any evidence to prove his case. The election petitioner/appellant having made a statement that he does not want to lead evidence in support of his case, cannot be allowed to turn around and claim that he has suffered prejudice on account of non-framing of the issues finding the decision of the Specified Officer un-palatable. We do not find any merit in this appeal.

7. There is an additional reason for upholding the order impugned passed by the learned Single Judge. Rule 25 of the Rules of 1995 provides as under:-

“25. Finality of decision:-The decision of the specified officer shall be final.”

Rule 25 of the Rules of 1995 is a finality clause. An ouster clause confines judicial review in respect of action outside the jurisdiction of the authority which has taken such action but excludes challenge to such an action on the ground of an error committed in exercise of jurisdiction conferred in the authority, since such an action cannot be said to be an action without jurisdiction. An ouster clause in a statute giving finality to a determination, therefore, ousts certiorari to some extent.

8. In the matter of Kihoto Hollohan Vs. Zachillhu and others¹ the Supreme Court while considering Paragraph 7 of Schedule X of

¹ 1992 Supp (2) SCC 651

the Constitution of India which excludes jurisdiction of all courts held as under:-

“101. In the operative conclusions we pronounced on November 12, 1991 we indicated in clauses (G) and (H) therein that Judicial review in the area is limited in the manner indicated. If the adjudicatory authority is a tribunal, as indeed we have held it to be, why, then, should its scope be so limited? The finality clause in Paragraph 6 does not completely exclude the jurisdiction of the courts under Articles 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the courts is that in spite of a finality clause it is open to the court to examine whether the action of the authority under challenge is ultra vires the powers conferred on the said authority. Such an action can be ultra vires for the reason that it is in contravention of a mandatory provision of the law conferring on the authority the power to take such an action. It will also be ultra vires the powers conferred on the authority if it is vitiated by mala fides or is colourable exercise of power based on extraneous and irrelevant considerations. While exercising their certiorari jurisdiction, the courts have applied the test whether the impugned action falls within the jurisdiction of the authority taking the action or it falls outside such jurisdiction. An ouster clause confines judicial review in respect of actions falling outside the jurisdiction of the authority taking such action but precludes challenge to such action on the ground of an error committed in the exercise of jurisdiction vested in the authority because such an action cannot be said to be an action without jurisdiction. An ouster clause attaching finality to a determination, therefore, does oust certiorari to some extent and it will be effective in ousting the power of the court to review the decision of an inferior tribunal by certiorari if the inferior tribunal has not acted without jurisdiction and has merely made an error of law which does not affect its jurisdiction and if its decision is not a nullity for some reason such as breach of rule of natural justice. [See : Administrative Law by H.W.R. Wade, (6th edn.,)

pp. 724-726; *Anisminic Ltd. v. Foreign Compensation Commission*, [1969] 2 AC 147; *S.E. Asia Fire Bricks v. Non-Metallic Products Manufacturing Employees Union*, 1981 AC 363].

109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

145. The finality clause in sub-paragraph (1) of Paragraph 6 which says that the decision of the Chairman or, as the case may be, the Speaker of such House shall be final is not decisive. It is settled that such a finality clause in a statute by itself is not sufficient to exclude the jurisdiction of the High Courts under Articles 226 and 227 and the Supreme Court under Article 136 of the Constitution, the finality being for the statute alone. This is apart from the decision being vulnerable on the ground of nullity. Accordingly, sub-paragraph (1) alone is insufficient to exclude the extraordinary jurisdiction of the High Courts and the plenary jurisdiction of this Court. The legal fiction in sub-paragraph (2) of Paragraph 6 can only bring the proceedings under sub-paragraph (1) thereof within the ambit of clause (1) of Article 122 or clause (1) of Article 212, as the case may be since the expressions used in sub-paragraph (2) of Paragraph 6 of the Tenth Schedule are 'shall be deemed to be proceedings in Parliament' or 'proceedings in the Legislature of a State' and such expressions find place both in Articles 122 and 212 only in clause (1) and not clause (2) thereof. The ambit of the legal function must be confined to the limitation implicit in the words used for creating the fiction and it cannot be given an extended meaning to include therein something in addition. It is also settled that a matter falling within the ambit of clause (1) of either of these two Article is justiciable on the ground of illegality or perversity in spite of the immunity it enjoys to a

challenge on the ground of 'irregularity of procedure'."

9. The High Court of Madhya Pradesh in the matter of **Hukumchand Vs. Dheer Ji and others**² while dealing with the provisions contained in Rule 25 of the Rules of 1995 held that the rule excludes remedy of appeal or revision, but aggrieved person has a remedy to file writ petition under Article 226/227 of the Constitution against the final order. It was observed as under:-

"11. I do not agree. The interpretation suggested would be contrary to legislative intent which is manifest by mere reading of aforequoted provision. As observed *supra*, the legislature has in its wisdom enacted two different types of Rules providing for different procedure, then in that event, they exclude each other. In other words, section 91 and the Rules framed thereunder i.e. appeal/revision Rules 95 will have no application to cases falling in section 122 and so *vice-versa*. In order to find out whether any right of appeal or revision is given to those who have suffered any adverse order whether inter-locutory or final while prosecuting election petition, one has only to see section 122 and the Rules framed thereunder namely, Election Petition Rules. Since neither section 122 nor the Election Petition Rules framed for prosecution of election petition provide for any statutory remedy of appeal/revision to an aggrieved against any order (Whether interim or final), it has to be held that in the absence of any remedy, much less alternative statutory remedy available under the Act/Rules, an aggrieved has a right to file a petition under Articles 226 and 227 of the Constitution to challenge the legality and validity of any orders."

10. Likewise, similar proposition has been laid down by the Supreme Court in the matter of **Bar Council of India Vs. Union of India**³, wherein Their Lordships observed as under:-

² 2001 (1) JLJ 229

³ (2012) 8 SCC 243

“38. There is no inherent right of appeal. Appeal is always a creature of statute and if no appeal is provided to an aggrieved party in a particular statute, that by itself may not render that statute unconstitutional. Section 22-E(1) makes every award of the Permanent Lok Adalat under the 1987 Act either on merit or in terms of a settlement final and binding on all the parties thereto and on persons claiming under them. No appeal is provided from the award passed by the Permanent Lok Adalat but that in our opinion does not render the impugned provisions unconstitutional. In the first place, having regard to the nature of dispute up to a specific pecuniary limit relating to public utility service and resolution of such dispute by the procedure provided in Sections 22-C(1) to 22-C(8), it is important that such dispute is brought to an end at the earliest and is not prolonged unnecessarily. Secondly, and more importantly, if at all a party to the dispute has a grievance against the award of Permanent Lok Adalat it can always approach the High Court under its supervisory and extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. There is no merit in the submission of the learned counsel for the petitioner that in that situation the burden of litigation would be brought back to the High Courts after the award is passed by the Permanent Lok Adalat on merits.”

11. The order of the Specified Officer under the Rules of 1995 is the final order by virtue of Rule 25 of the Rules of 1995 and therefore, the order of the Specified Officer can be challenged only under Article 227 of the Constitution of India. Proviso to sub-section (1) of Section 2 of the Act of 2006 bars writ appeal against the order of learned Single Judge passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. In fact, in the instant case, learned Single Judge has exercised the

jurisdiction under Article 227 of the Constitution of India and as such, the writ appeal would not be maintainable.

12. The writ appeal being without substance is liable to be and is hereby dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay K.Agrawal)
Judge

Bablu