

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Letters Patent Appeal No. 1152 of 2019 (O&M)
DATE OF DECISION: 31.05.2019

Prof. B.S.ChavanAppellant
versus
Shweta Sandhu and anotherRespondents

CORAM:- HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Pankaj Jain, Senior Standing Counsel with
Mr. Anil Mehta, Addl. Govt. Pleader, for Union
Territory, Chandigarh-for the appellant.

Mr. R.S.Bains, Advocate for the respondents.

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KRISHNA MURARI, CHIEF JUSTICE: (Oral)

Notice of motion.

Mr. R.S.Bains, Advocate, present in Court, accepts
notice on behalf of the respondents.

With the consent of the parties, the contempt
petition No. 1996 of 2019 is also taken on board.

We have heard learned counsel for both the parties
and perused the record.

Aggrieved by the directions contained in the order
dated 30.05.2019 passed by the learned Single Judge exercising
contempt jurisdiction to grant provisional admission under the
orders of the Writ Court dated 30.05.2019, the appellants have
approached this Court.

The question of maintainability of the Letters
Patent Appeal was raised. It is submitted by learned counsel
for the appellant that since the learned Single Judge while

exercising contempt jurisdiction exceeded the jurisdiction by making a direction to grant provisional admission which would necessarily fall within the realm of exercising powers under Article 226 of the Constitution of India and as such the Letters Patent Appeal would be maintainable. Reference is made to the judgment of the Hon'ble Apex Court in **Midnapore Peoples Co-op. Bank Ltd. and others v. Chunilal Nanda and others 2006 AIR (SC) 2190** wherein it has been held in paragraph 11 as under:-

“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)."

Thus, in view of the aforesaid, the preliminary objection is overruled.

It is next contended that the Division Bench while passing the order dated 30.05.2019 directed that two respondents-petitioners be given provisional admission which shall be subject to the final outcome of the writ petition.

Admittedly, the respondents-petitioners were claiming admission in the post graduate course in the disciplines of 'Radiology' and 'Gynecology'. The claim was that as per their merit they were entitled for admission to be given in the said discipline which was their first choice. A Division Bench of this Court initially disposed of the writ petition but subsequently a review filed by the respondents-petitioners was entertained and while adjourning the proceedings for final adjudication for 03.07.2019 as an interim measure directed that they be given provisional admission. This issue is still to be adjudicated in the proceedings pending before the Division Bench. For alleged non-compliance of the said order, a contempt petition No. 1996

of 2019 was filed by the respondents-petitioners, in which again a direction was issued by the learned Single Judge to grant provisional admission to the respondents-petitioners.

Learned counsel for the appellant submits that in so far as the admission in the disciplines of 'Radiology' and 'Gynecology' is concerned, the seats available were filled up in the first counseling which was offered on 05.04.2019 before the order passed by the Division Bench and the provisional admission offered to the two respondents-petitioners in the disciplines of 'Ophthalmology' and 'Pathology' was refused by them and insistence is to grant them provisional admission as per their first choice in the disciplines of 'Radiology' and 'Gynecology'. Learned counsel for the appellant further submits that on account of the seats having filled, it was not possible. Learned Single Judge without appreciating the fact directed they be given provisional admission as per their choice failing which the alleged contemnors to appear before the Contempt Court to show cause as to why the order of punishment should not be passed.

Considering the entire facts and circumstances of the case, we hereby direct that instead of granting provisional admission to the two respondents-petitioners, if they are permitted to attend the classes of the disciplines of their first choice, till such time their rights for admission are finally adjudicated in the pending proceedings before the Division Bench the equity on both sides stand adjusted.

With the consent of learned counsel for the parties, we accordingly dispose of this appeal by providing that the appellant shall permit the two respondents-petitioners to attend the classes in the disciplines of their first choice

till their rights are finally adjudicated by the Division Bench in the pending proceedings. However, this permission will not create any vested right or equity in favour of the respondents-petitioners in any manner and the same shall abide by the final outcome of the pending proceedings before the Division Bench.

With the aforesaid observations and directions, the Letters Patent Appeal as well as the Contempt Petition No. 1996 of 2019 stand finally disposed of.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.05.2019
ravinder

Whether speaking/non-speaking: Speaking yes Whether reportable: YES
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