

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 2 of 2020**

(Arising out of order dated 17.12.2019 passed in WPC No.4631/2019
by learned Single Judge)

Judgment Reserved on 2.1.2020**Judgment Delivered on 15/1/2020**

- Dronacharya Sahu S/o Shri Sadharam Sahu Aged about 46 Years R/o Gram Belardona, Tahsil Magarlod, District Dhamtari (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Panchayat and Rural Development, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh).
2. Additional Commissioner Raipur Division, Raipur (CG)
3. Collector Dhamtari District Dhamtari (CG)
4. Sub Divisional Officer (Revenue) Kurud, District Dhamtari (Chhattisgarh).
5. Gram Panchayat Belardona, through the Secretary, Tahsil Magarlod, District Dhamtari (Chhattisgarh).

---- Respondents

For Appellant	:	Shri Prateek Sharma, Advocate
For Respondent No.1 to 4	:	Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV Order****Per Parth Prateem Sahu, J**

1. Challenge in this appeal is to the order dated 17.12.2019 passed by the learned Single Judge rejecting application filed by

petitioner/appellant herein for grant of interim relief.

2. Facts of the case, in nutshell, are that appellant was elected as 'Up-Sarpanch' of Gram Panchayat Belardona. One Santosh Kumar had filed a complaint alleging that the appellant had misused his official position as 'Up Sarpanch' and received an amount of Rs.40,000/- & Rs.70,000/- against the bills which contained signature of appellant. It was also alleged that appellant had encroached upon the government land bearing Khasra No.1/1 area 3.73 acre, dug bore-well thereon and obtained electric pump connection in his name. On receipt of the complaint, the Sub Divisional Officer (R), Kurud sought report from the Chief Executive Officer and on receipt of report, the proceedings under Section 40 of the CG Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993') were initiated against appellant. After considering the enquiry report and reply filed by appellant, the Sub-Divisional Officer (Kurud) vide order dated 30.1.2019 removed appellant from the post of Up-Sarpanch, Gram Panchayat Belardona and declared him disqualified to contest election for a period of six years under Section 40 of the Adhiniyam, 1993. Appellant assailed the order of removal dated 30.1.2019 before the Collector, Dhamtari by filing an appeal, which came to be dismissed vide order dated 20.5.2019 against which appellant approached the Additional Commissioner, Raipur Division, Raipur which was also dismissed vide order dated 5.12.2019. Against the order of the Additional Commissioner, appellant filed writ petition along with

an application for grant of interim relief.

3. Learned Single Judge though admitted writ petition for consideration, however, rejected application for grant of interim relief by recording that order of removal has given effect to in the month of January, 2019 itself i.e. 12 months back, and grant of interim relief at this stage would tantamount to grant of final relief itself, which cannot be granted as settled by the Supreme Court.
4. Mr. Prateek Sharma, learned counsel representing appellant would argue that mere admission of writ petition and denial of interim relief would render the petition infructuous for the reason that the Election Commission has published the election programme for the election of Sarpanch and members of gram panchayat of the villages in the State of Chhattisgarh and as per the election programme declared, last date for filing of nomination paper is 6.1.2020, therefore, if the interim relief, as prayed for, is not granted, the appellant could not be able to contest election. In these circumstances, even if the petition is decided in favour of appellant in future, he would not be able to reap fruits of the said order as by that time the election would be over.

Learned counsel representing appellant tried to make submission on the merits of case to make out a *prima face* case to grant interim relief in his favour. In order to buttress his submission, he placed reliance on the decision rendered by

Hon'ble Supreme Court in the matter of Deoraj v. State of Maharashtra & ors reported in (2004) 4 SCC 697.

5. Per contra, Mr. Sharma, learned counsel representing the State submits that Section 40 (2) of the Adhiniyam, 1993 in a very clear terms envisages that a person removed under sub-section (1) shall forthwith cease to be a member of any of the panchayats and in this case, the order of removal has been passed on 30.1.2019 and since then appellant is not holding the post of Up-Sarpanch, therefore no interim relief at this stage can be granted to him. He further pointed out that no interim order has been passed in favour of appellant by two authorities below. Granting of interim relief at this stage to appellant would amount to granting of final relief and hence, the learned Single Judge has rightly rejected interim application.
6. We have heard learned counsel for the parties and perused the record.
7. It is not the case of appellant that he succeeded in getting any order of stay in his favour after passing of order of removal by the Prescribed Authority on 30.1.2019. Sub-section (2) of Section 40 of the Adhiniyam, 1993 in categorical term envisages that a person who has been removed under sub-section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member. Section 40 of the Adhiniyam, 1993 is relevant and the same is reproduced below;-

“40. Removal of office-bearers of Panchayat. - (1) The

State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office-bearer,-

- (a) if he has been guilty of misconduct in the discharge of his duties; or
- (b) if his continuance in office is undesirable in the interest of the public :

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office. Explanation. - For the purpose of this sub-section "Misconduct" shall include,-

- (a) any action adversely affecting,-

- (i) the sovereignty, unity and integrity of India;

or

- (ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or

- (iii) the dignity of women; or

- (b) gross negligence in the discharge of the duties under this Act;

- [(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.

(2) A person who has been removed under sub- section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member, such person shall also be disqualified for a period of six years to be elected [x x x] under this Act."

8. Since a person who has been removed under sub-section (1), shall forthwith cease to be a member of any panchayat, he cannot be permitted to hold office on the strength of an interim order of stay, which can only be passed to protect a person approaching the appellate authority from the effect of consequence of order under challenge. But, so far as it relates to removal of an office bearer of Panchayat under Section 40, (1) as soon as order of removal is passed, a person ceased to

be member of any panchayat and since on the date of filing of application for grant of interim relief he is not holding any post, no interim order protecting his ouster from office can be passed. The effect of interim relief sought for in this petition is having the effect of granting final relief without deciding the issue involved in the case.

9. There is yet another reason for not interfering with the impugned order passed by the learned Single Judge. Granting of an order, as sought for by appellant in this appeal, would amount to granting of final relief because the effect of such interim order would be reoccupying the office of Up-Sarpanch by appellant. It is well settled position that the Court while dealing with the case at an interim stage cannot grant a relief which amounts to final relief. Learned Single Judge while rejecting interim application has taken note of the same that relief having effect of granting of final relief cannot be granted at an interim stage. Hon'ble Supreme Court in in the matter of **Union of India & ors v. Modiluft Ltd.** reported in **(2003) 6 SCC 65** has held thus;-

“16. Nextly, we notice that the High Court has granted a relief by way of an interim order which we think it could not have done at the interim stage for more than one reason. The writ petition in question was filed challenging an order made by the Government in revision. The subject matter of the said petition pertains to the liability of the respondent to pay the tax. In the said writ petition, the respondent has sought an additional prayer by way of a direction to the respondent to grant a NOC to re-launch its airline operations. We do not want to say at this state that such joinder of two separate causes of actions could be maintained in a writ petition like the one tat is filed before the High Court by the respondent. It should be noticed that the authorities empowered to permit re-launching of the airline's operations were not before the Court which we

are told is the Department of Civil Aviation. Be that as it may, since the relief as termed in the writ petition being a final relief, we think the same could not have been granted by the High Court at an interlocutory stage. But the learned counsel for the respondent contends that the said prayer is only an incidental prayer because the Civil Aviation authorities have refused to grant necessary permission to re-launch the airline's operations to the respondent only because the customs department which is a respondent before the High Court, has refused to give NOC therefore in effect what is sought for before the High Court is only a direction to the customs authorities to issue a NOC which in turn may be used by the respondent to obtain the required permission from the competent authorities to re-launch their airline operations. Be that as it may, even accepting the argument of respondent, it is to be noticed that even a NOC from the customs authorities can be directed to be issue by the High Court only after it comes to the conclusion that the amount as determined by it has been paid by the respondent and not by an interim order otherwise it would amount to the granting of a final relief in favour of the respondent who has suffered adverse orders from the authorities below, even before the writ petition is finally decided, and in the event of the ultimate dismissal of the writ petition the respondent would gain an undue advantage inspite of its default and might even give rise to other questions in equity including rights of the third party.

17. Seen from any angle, we think the High Court has erred in granting the impugned relief to the respondent which in our opinion is in the nature of a final relief which on facts and circumstances of this case, without deciding the issues involved in the writ petition, could not have been granted. Therefore, we allow the appeal and set aside the impugned order. The NOC which is said to have been issued provisionally stands revoked. Payment made, if any, by the respondent would be given credit or adjusted in a manner considered appropriate by the High Court in the pending writ petition.”

In the matter of **State of UP & ors v. Ram Sukhi Devi** reported in **AIR 2005 SC 284** Hon'ble Supreme Court observed thus:-

“8.To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any

relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage.....”

10. So far as the reliance placed by learned counsel for appellant on the judgement of Hon'ble Supreme Court in Deoraj's case (supra) is concerned, the facts of that case was that process for election of Chairman by the Board of Directors was commenced and in that process, the Returning Officer recorded that within time only four Directors, out of total 8, were present and only one nomination paper was submitted for election on the post of Chairman and in these circumstances, the meeting was stayed. Learned counsel for appellant relied upon Para-12 of the said judgment in which it has been held in categorical terms that there must be availability of a very strong *prima facie* case of a standard much higher than just *prima facie* case. The considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Hon'ble Supreme Court has further held that granting of interim relief, which amounts to granting final relief itself, would be rare and in exceptional cases only. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship.

11. There is no doubt in respect of proposition enunciated by Hon'ble Supreme Court in the aforementioned judgment, but

appellant herein failed to make out a strong prima facie case of a standard much higher than just prima facie case. In the case at hand, as we have discussed above, the appellant ceases to be a member of panchayat forthwith on passing of order of his removal under sub-section (1) of Section 40 of the Adhiniyam, 1993. Even term of the post on which the appellant was elected i.e. Up-sarpanch, has expired.

12. That apart, this appeal is also not maintainable as per Proviso to Section 2 (1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (for short 'the Act of 2006'). A Division Bench of this High Court in WA No.255/2016 referred the issue 'whether the proviso to Section 2 (1) of the Act of 2006 totally bars filing of appeals against all interim orders or not, to the Full Bench for adjudication. The Full Bench answered the question referred in the affirmative and it was held as under;-

"We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as interlocutory order and an appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders."

13. In case at hand also, the order impugned is only an interim order rejecting application for grant of interim relief and there is no finality attached to it.
14. In view of the above discussions, we do not find any good ground to interfere with the impugned order. Appeal being meritless is liable to be dismissed and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-