

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 307 of 2019**

*{Arising out of order dated 22.04.2019 passed by the learned Single Judge in
Review Petition No. 68 of 2019}*

- Ramdular Sahu S/o Shri Tulsiram Sahu Aged About 38 Years R/o Village Teka (Hardi) Gram Panchayat Kanhardabri, Tahsil Dongargaon, District Rajnandgaon Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary Panchayat And Social Welfare D. K. S. Bhavan, Raipur Chhattisgarh.
2. Sarpanch Gram Panchayat Kanhardabri, Tahsil Dongargaon, District Rajnandgaon Chhattisgarh.
3. Duleshwar Singh Rajput S/o Shri Kamlesh Singh Rajput Aged About 35 Years R/o Village Teka (Hardi) Gram Panchayat Kanhardabri, Tahsil Dongargaon, District Rajnandgaon Chhattisgarh.
4. The Director Panchayat, Chhattisgarh, Raipur Chhattisgarh.

---- Respondents

For Appellant	: Ms. Avit Lakra, Advocate.
For Respondent No.1/State	: Shri Ghanshyam Patel, Government Advocate.
For Respondent No.2	: Shri S.S. Painkara, Advocate.
For Respondent No.3	: Shri Abhishek Sharma, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Judge****19.02.2020**

1. Challenge in this appeal is to the order passed in Review Petition No. 68 of 2019 dated 22.04.2019 as well as order dated 14.01.2019 passed in WPS No. 4018 of 2007 by the learned Single Judge, whereby the writ

petition challenging the order passed by the Director (Panchayat), has been dismissed as well as the review petition also came to be dismissed.

2. The facts of the case, in nutshell, is that the village Panchayat Kanhardabri initiated the proceedings for appointment of Panchayat Karmi on 13.03.2005 and after conclusion of the proceedings, the Appellant was appointed on the post of Panchayat Karmi vide order dated 06.05.2005. The appointment of the Appellant was objected by the Respondent No. 3 before the Sub Divisional Officer and the Sub Divisional Officer turned down the objection raised by the Respondent No. 3. Against the rejection of the objection of the 3rd Respondent, the Respondent No.3 approached the Additional Collector by filing an appeal which also came to be dismissed. The order of the Additional Collector was subjected to challenge before the Director (Panchayat) and the Director (Panchayat), after hearing the respective parties passed an order on 26.06.2007, whereby the revision petition filed by the 3rd Respondent was allowed and it has been directed for holding of a fresh Gram Sabha meeting and passing a fresh resolution for appointment of the Panchayat Karmi (Secretary). The order of Director (Panchayat) dated 26.06.2007 was subjected to challenge in WPS No. 4018 of 2007. The learned Single Judge, after hearing the learned counsel for the parties and after taking note of the document placed on record, confirmed the order passed by the Director (Panchayat) and dismissed the writ petition. Against the order dated 14.01.2019, a review petition was also filed by the Appellant which also came to be dismissed mentioning that there is no error apparent on the face of record which made the Petitioner to file this appeal. Submission of the learned counsel for the Appellant is that at the time of filing of an application for appointment on the post of

Panchayat Karmi (Secretary), the Respondent No.3 had shown his residential address at village '18 Acres', District Rajnandgaon, whereas as per the scheme of appointment of the Panchayat Karmi the Applicant should be resident of the same village Panchayat. She also submits that the documents placed on record in the writ proceedings are the documents obtained subsequently from the date of the proceedings of the appointment which could not have been taken into consideration. She also submits that, after passing of the order by the Director (Panchayat), the resolution has been passed by the village Panchayat by which the Appellant has been continued to be appointed on the post of the Panchayat Karmi (Secretary) and therefore, there is no requirement for holding again a Gram Sabha. The proceeding of resolution could not be placed on record in the writ petition.

3. Per contra, the learned counsel appearing for the Respondent No. 2 (Sarpanch of village Panchayat) submits that the village Panchayat has already held meeting of the Gram Sabha on 28.08.2007 and they have resolved to continue with the appointment of the Appellant.
4. The learned counsel appearing for the Respondent No.3 submits that the Respondent No.3 is resident of village Teka itself, he has also filed document showing his address of village Teka which has rightly been taken into consideration by the learned Single Judge. He further points out that, the Annexure A/8 on which the Appellant is placing reliance is not the proceedings of the Gram Sabha, but it is only an application made by Sarpanch and the villagers of village Teka for not holding the Gram Sabha meeting and will continue with the service of the Panchayat Karmi already appointed by them.

5. Shri Ghanshyam Patel, the learned counsel appearing for the State submits that the order of the Director (Panchayat) has not been complied with as perusal of Annexure A/8, it only appears that the Sarpanch alongwith the villagers have forwarded an application to the Collector, Rajnandgaon mentioning therein that as they have already convened a meeting of Gram Sabha and have proposed to appoint the Appellant, therefore, the holding of the fresh Gram Sabha will not be in accordance with law. He also submits that the village Panchayat could not have acted beyond the orders passed by the Director (Panchayat) and if they do not want to comply with the order passed by the Director (Panchayat), they could have filed appropriate proceedings before the appropriate forum.
6. We have heard the learned counsel for the respective parties and also perused the records.
7. Perusal of the order of the Director (Panchayat) which is filed as Annexure A/7 would reveal that looking to the documents and submission made by respective parties, the Director (Panchayat) has only issued a direction to the village Panchayat for holding of a fresh meeting of Gram Sabha and a fresh resolution for the appointment of the Panchayat Karmi in accordance with Panchayat Karmi Appointment Rules and Directions (Secretary). The Director (Panchayat) has not issued any direction for appointment of any of the particular person on the post of Panchayat Karmi, either the Appellant or the Respondent No.3.
8. The learned Single Judge while passing the order in the writ petition has also taken note of several documents placed on record and has held that the parents/ancestors of the Respondent No.3 is also having the ancestral properties along with other documents *i.e.* the Domicile Certificate, Adhar Card and the Voter ID List etc. showing address of village Teka and has

confirmed the order passed by the Director (Panchayat). Looking to the scheme of the appointment of the Panchayat Karmi (Secretary) and also considering the direction issued by the Director (Panchayat) in the revisional order, we do not find any error in directing for holding the fresh Gram Sabha because the main dispute which arose between the Appellant as well as the Respondent No.3 is that, whether the Respondent No.3 is resident of the village Tekka or not, the candidature of the Respondent No.3 has been rejected only on the ground that the Respondent No.3 is not resident of village Tekka.

9. The submission made by learned counsel for the Appellant that Gram Sabha has already taken place on 20.08.2007 appears to be not correct. The document based on which it is stated that the Gram Sabha has already taken place is only an application forwarded by the Sarpanch and villagers to the Collector. It was not a proceedings of Gram Sabha. On contradicting with the document Annexure A/8 learned counsel for the Appellant accepted that it is a letter/application sent to Collector but submitted that it is signed by villagers alongwith Sarpanch and other office bearers of village Panchayat.
10. Document Annexure A/8 is a letter to Collector by Sarpanch and villagers for stopping the appointment of Panchayat Karmi. From reading of the contents of the document Annexure A/8 it is undoubtedly a letter only and not a resolution of Gram Sabha. The submission of the learned counsel to the effect that Gram Sabha already held on 28.08.2007 and Appellant is appointed is hereby repelled.
11. Looking to the nature of the dispute, in our opinion, the Director (Panchayat) has rightly issued the direction for holding a fresh Gram Sabha and further the learned Single Judge in the writ petition has also restricted from

considering any fresh and additional materials for determining the eligibility of the candidates, except for those materials which have already been produced before the three authorities below. The Gram Sabha can very well, on the basis of the materials placed before it can take decision in accordance with the scheme for appointment of the Panchayat Karmi.

12. The Gram Panchayat will hold the Gram Sabha meeting and appoint the Panchayat Karmi from the candidates after considering their documents, without trammelled with any of the other observations made by the learned Single Judge in its order dated 14.01.2019 passed in WPS No. 4018 of 2007.
13. The learned counsel for the Appellant points out that the Respondent No.3 has placed on the record two Domicile Certificates at different stage of proceeding and it will create difficulty for the Gram Sabha to chose the correct Domicile Certificates. It is made clear that as the appointment is to be made by the Gram Sabha and therefore, the Gram Sabha will be at liberty to appreciate the correctness of the documents available on record in accordance with law and arrive on an independent finding and pass resolution for appointment of eligible person as Panchayat Karmi as per scheme/guidelines of appointment of Panchayat Karmi.
14. For the foregoing reasons and in view of the above observations, the writ appeal stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge