

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

MAT 115 of 2024

With

IA NO: CAN 1 of 2024

With

IA NO: CAN 2 of 2024

M/s Greenzen Bio Private Limited & Ors.

Vs.

The State of West Bengal & Ors.

For the appellants : Mr. Mainak Bose,
Ms. Reshmi Ghosh,
Mr. Deborshi Dhar,
Ms. Parna Mukherjee,
Mr. Chayan Mani Bhowal

For the respondent : Mr. Kishor Datta, Ld. AG,
Mr. Anirban Ray, Ld. GP,
Mr. Piyush Agarwal,
Mr. Sourav Ganguly,
Ms. Shrivalli Kajaria,
Mr. Debojyoti Das,
Mr. Debdatta Mukhopadhyay

For the Respondent : Ms. Soumi Guha Thakurata
No.4/ Central Pollution
Control Board

Judgement on : 02.05.2025

MADHURESH PRASAD, J.:

1. The preliminary issue arising for consideration based on objection raised by the learned Advocate General appearing for the respondents State is whether the order passed by the learned Single Judge dismissing a contempt proceedings can be assailed by way of intra Court appeal before the Division Bench in view of the provisions contained under Section 19 of the Contempt of Courts Act, 1971.
2. The appellant was petitioner in writ proceedings arising out of WPA No. 1315 of 2023. The grievance of the petitioner was that he was discharging his contractual obligations of handling bio-medical waste by its proper management and treatment at the point of generation. As per the petitioner's agreement the authorities were required to pay cost of transportation, treatment and final disposal of bio-medical waste at Rs. 5.41/- (Rupees five and forty one paisa) per functional bed per day with an annual increment of 4% per year. It is the petitioner's case that the rate is subject to change upon finalization of fresh tender rates.
3. The State Authorities on the other hand, contended that in case the fresh tender rates were finalized the petitioner's contract was to become null and void. The rival submissions of the parties arise

out of their own interpretation of Clause 26 of the agreement. The learned Single Bench held as follows:

“A perusal of the materials annexed to the writ petition clearly indicates that the respondents, being public authorities, and the work-in-question being directly related with public interest, the respondents ought to have acted on a more transparent footing than an ordinary party to a contract inasmuch as Clause 26 of the agreement clearly provides that in the event of fresh tender rates being finalized, the same would be given effect to in respect of the petitioners. As such, W.P.A. No. 1315 of 2023 is disposed of by directing the respondent no. 2, that is, the Health Secretary, Department of Health & Family Welfare, Government of West Bengal, to consider the representation dated June 06, 2023, if necessary, upon giving hearing to the petitioners, and to dispose of the same as expeditiously as possible, positively within three weeks from the date of communication of this order to the said respondent. Upon such consideration, the current finalized tender rates shall be made applicable to the petitioners, if necessary, by modifying the contract with the petitioners and/or novation of the contract on such terms. Such effect, from the date of publication of the finalized tender rates, shall be given as expeditiously after the disposal as possible, preferably within a month from the date of such consideration by the respondent no. 2.”

4. Pursuant to the directions passed in the writ proceedings the authorities considered the writ petitioner's claim and passed an order thereupon on 30.06.2023 revising the rates at which payment was being made to the petitioner, with effect from 01.06.2023, as per the current tender rates.

5. The writ petitioner approached the writ Court for initiation of contempt proceedings against the authorities on the ground that since the fresh tender rates had come into effect in 2019, the authorities were obliged to extend the same to the petitioner with effect from 2019 in terms of the order passed in the writ proceedings. Since they have extended the benefit of the fresh tender rates with effect from 01.06.2023, they have committed a wilful and deliberate defiance of the directions passed in the writ proceedings exposing themselves to the consequence of contempt.
6. The learned Single Judge considering the contempt application has found that extending of the revised rates with effect from 01.06.2023 was substantial compliance of the writ Court order since he was of the view that ***“it was a plausible view since revised rates were applied generally across the board only by virtue of the order dated 30.06.2023 issued by the Health and Family Welfare Department of the Government of West Bengal.”***
7. The petitioner also claimed that similar rates were applied to other tenderers even prior to 2023, i.e. since the year 2019 and, therefore, as per the writ Court’s order such benefit was to be extended to the petitioners since 2019. The learned Single Judge found that such rates were made available to the others based on

the terms of their individual contract/s. Since the revised rates were applied generally by virtue of the order dated June 30, 2023, the learned Single Judge found that extending such benefits accordingly to the petitioners was a plausible view taken in compliance of the order passed by the writ Court, extracted above. Finding substantial compliance of the writ Court's order based on a plausible understanding of the Court's order, the learned Single Judge was of the view that there was no scope for passing any orders or direction for punishing the contemnors.

8. Having held so, the learned Single Judge has observed in the order dated 06.09.2024 passed in the contempt proceedings (CPAN 6 of 2024) as follows:

“23. It is made clear that nothing in this order shall be deemed to be an adjudication on the merits of the contentions raised in law and fact by the petitioners and it will be open to the petitioners, if aggrieved by the reasoned order passed by the alleged contemnor, to challenge the same before an appropriate forum/writ court as available to the petitioners in accordance with law where all questions will be kept open for the concerned court to decide.”

9. The writ petitioner was not satisfied with the order passed by the learned Single Judge in the contempt proceeding. According to the writ petitioner, a clear case of contempt was made out. The authorities had not complied with the order of the writ Court in

letter and spirit. Since the learned Single Judge in the writ proceedings had passed a direction to extend the revised rates to the writ petitioners, the same was required to be extended to the petitioners with effect from the year 2019. Instead of ensuring enforcement of such direction the learned Single Judge has recorded findings which are at variance with the directions and intent contained in the order passed in the writ proceedings. It is under such circumstances that the present intra Court appeal has been preferred by the writ petitioners.

10. At the very outset the learned Advocate General assisted by Mr. Anirban Ray raised an issue regarding maintainability of the appeal. Relying upon the provisions contained in Section 19 of the Contempt of Courts Act (hereinafter referred to as “the Act” for short) he submits that appeal would lie only if orders/ directions or decision of the Court considering the contempt were issued for punishing for contempt. In the present case there is no such direction. The learned Single Judge has refused to exercise jurisdiction under the Contempt of Courts Act and has dismissed the contempt petition. In such circumstances, an intra Court appeal before the Division Bench would not lie. In this connection, he has relied upon decision of the Apex Court in the case of ***State of Maharashtra vs. Mahboob S. Allibhoy and Another*** reported

in **(1996) 4 SCC 411**. The decision of the Apex Court relied upon is referring to earlier decision of the Apex Court in the case of **Baradakanta Mishra vs. Mr. Justice Gatikrushna Mishra, Chief Justice of the Orissa High Court** Reported in **(1975) 3 SCC 535**. The settled legal position arising from the judgment is that where the contempt Court rejects a motion and declines to initiate a proceedings for contempt, there is a refusal to exercise jurisdiction to punish for contempt which cannot be regarded as an order or decision in the exercise of its jurisdiction to punish for contempt, and no appeal would lie against such a decision under Section 19 of the Act.

11. Learned Senior Counsel representing the appellant on the other hand, has relied upon a Division Bench judgment of this Court in the case of **Ashoke Kumar Rai vs. Ashoke Arora and Another** reported in **1991 SCC online CAL 290**. It is submitted that decision in the case of **Baradakanta Mishra** (supra), relied upon by the learned Advocate General has been considered by the Division Bench of this Court. The Division Bench of this Court considering this decision of the Apex Court has observed that Section 19(1) does not contemplate an appeal to lie only against punishment for contempt. The Section uses a wider expression that appeal lies from any order or decision passed in exercise of

jurisdiction to punish for contempt. Therefore, the provision connotes a variety of orders or decisions that may be passed by this Court. The expression “order” or “decision” thus includes something other than punishment. Therefore, the restrictive interpretation of Section 19 advanced by the learned Advocate General is not sustainable in the present case. Referring to paragraph 16 of this report (**1991 SCC Online CAL 290**) he submits that the Division Bench considering Section 19 of the Act has held that when some point is decided or finding is given by a Court considering a contempt application, intra Court appeal would lie before a Division Bench. In the present case the learned Single Judge, considering the contempt application has proceeded to record findings in the order dismissing the contempt application and, therefore, having regard to the interpretation of Section 19 given by the Division Bench in **Ashoke Kumar Rai’s** case (supra) relying upon a decision of the Apex Court in the case of **Baradakanta Mishra** (supra) the present appeal is maintainable and is required to be considered on merits. In support of such submission he has laid great emphasis on paragraphs 13 to 17 of the order passed in the contempt proceedings to submit that findings have been recorded in the contempt proceedings regarding the petitioner’s entitlement to the revised rates and, therefore, the order passed in the contempt

proceedings is vulnerable to challenge by way of the present intra Court appeal.

12. In order to appreciate the submissions advanced on behalf of the learned Senior Counsel for the petitioner this Court would consider it apposite to reproduce relevant extract of Section 19 of the Act which reads as follows:

“19. Appeals.—(1) 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— ...”

13. The question whether intra Court appeal would lie before the Division Bench of the High Court against an order passed by the learned Single Judge in a contempt proceeding has been considered by the Apex Court earlier. Taking into consideration the earlier decision in the case of ***Baradakanta Mishra*** (supra) as also decision of the Apex Court in the case of ***D.N.Taneja vs. Bhajan Lal*** reported in ***(1988) 3 SCC 26***, the Apex Court in the case of ***Mahboob S. Allibhoy*** (supra) has held that an appeal is creature of a statute. In absence of any specific provision regarding appeal no appeal can be filed or entertained as a matter of right or course. Considering Section 19 of the Act it has been held that a contempt proceeding is not a dispute between two parties, the proceedings is primarily between the Court and the person who is alleged to have committed the contempt. It is for

the Court initiating the proceedings to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case. The Apex Court has held as follows:

“4. ...No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from sub-section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate court may order that—

(a) the execution of the punishment or the order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

Sub-section (2) of Section 19 indicates that the reliefs provided under clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of court.”

14. The Apex Court has further considered that even in such case where the Court has refused to exercise jurisdiction under the Act the person alleging contempt would not be without any remedy. The Apex Court has held that ***“...In appropriate cases he can invoke the jurisdiction of this Court under Article 136 of the Constitution and this Court on being satisfied that it was a fit case where proceeding for contempt should have***

been initiated, can set aside the order passed by the High Court. In suitable cases, this Court has to exercise its jurisdiction under Article 136 of the Constitution in the larger interest of the administration of justice.”

15. Insofar as the submissions of the learned Senior Counsel for the petitioner based on para 16 of decision of the Division Bench of this Court in the case of **Ashoke Kumar Rai** (supra) that an intra Court appeal would lie before the Division Bench when the Court exercising jurisdiction under the Contempt of Courts Act passes orders in which findings are given as in the present case, we find no force in such submission. In para 16 the Division Bench has held as follows:

“16. ...On the other hand, it formulates the proposition that only those orders or decisions in which some point is decided or finding is given in the exercise of jurisdiction by the High Court to punish for contempt are appealable. The distinction between the two Baradakanta cases, it may be noticed, is that in the former one, namely, the one reported in AIR 1974, the appeal was preferred against an order refusing to initiate contempt proceeding while in the later case, namely, the case reported in AIR 1976, the appeal was preferred against an order passed subsequent to the initiation of the contempt proceeding. In the former case the appeal was held not maintainable on the ground that the exercise of jurisdiction to punish for contempt commences with the initiation of the contempt proceeding and not earlier and in the later case an order which was passed after the initiation of the contempt proceeding but

in which no point was decided or finding was given in the exercise of such jurisdiction was found not appealable, the impugned order in that case being an interlocutory order pertaining purely to the procedure of the Court.”

16. From bare reading of the decision of the Division Bench it is more than obvious that recording of findings may in appropriate case make an order passed in contempt proceedings liable to challenge by way of intra Court appeal before the Division Bench. Such finding is required to be given in exercise of jurisdiction by the contempt Court to punish for contempt, for such findings in an order to become appealable. In the present case the contempt proceedings were dismissed. No issues were decided, nor any findings recorded. In fact, all issues were left open. No findings have been recorded, let alone to punish for contempt. Reliance placed by the learned Senior Counsel on the said decision, therefore, is found to be unsustainable.

17. In the present case the learned Single Judge considering the contempt application in fact, has not recorded any findings regarding the legitimacy of the decision dated 30.06.2023 passed by the authorities in purported compliance of the order passed in WPA No. 1315 of 2023. In paragraph 23 of the order dated 06.09.2024 extracted above the learned Single Judge in fact, has made it clear that he has made no adjudication on the merits of the contentions either in fact or in law. He has left all issues open

for the petitioner to assail the order dated 30.06.2023 passed by the alleged contemnor in an appropriate forum/ writ Court as available to the petitioners in accordance with law.

18. In view of the above consideration, the law being settled in view of the various decisions considered above, we find the present appeal being not maintainable. We, find no reason to interfere with the order dated 06.09.2024 passed in the contempt proceedings arising out of CPAN No. 6 of 2024 by the learned Single Judge, dismissing the contempt.

19. The appeal is dismissed.

20. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(MADHURESH PRASAD, J.)

I agree.

(SUPRATIM BHATTACHARYA, J.)