



HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2037 of 2014

Ku. Snehlata Kerketta D/o late Prabhudayal Kerketta, Aged About 28 Years, Caste Uraon, R/o Vishrampur, Tahsil Surajpur, District Surajpur, (C.G.) Civil District- Surguja (Ambikapur), Revenue District-Surajpur (C.G.), P.S. Surajpur.

---- **Petitioner**

Versus

1. The State Of Chhattisgarh, Through the Secretary, Women And Child Development Department, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Commissioner, Surguja Division, Surguja at Ambikapur, District : Surguja (C.G.)
3. The Collector, Surajpur at Surajpur, District Surajpur, Chhattisgarh
4. District Programme Officer, Women And Child Development, Surajpur, District : Surajpur, Chhattisgarh
5. Project Officer, Integrated Women And Child Development Project, Surajpur, District : Surajpur, Chhattisgarh
6. Chief Municipal Officer, Nagar Panchayat Vishrampur, District : Surajpur, Chhattisgarh
7. Smt. Rina Soni W/o Lalan Sah, R/o Village Vishrampur, Tahsil Surajpur, District Surajpur Chhattisgarh

--- **Respondents**

For petitioner – Shri A.N. Pandey, Advocate.
For State- Ms. Anuradha Jain, PL.
For respondent No.7- Shri Praveen Dhurandhar, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

12/06/2024

Heard.

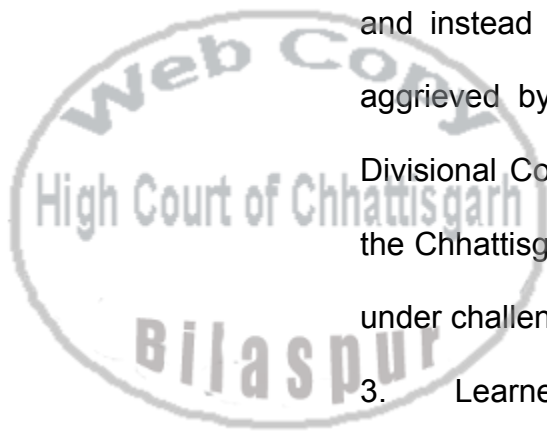
1. Challenge in this petition is to the order dated 7/04/2014 (Annexure P-1) passed by the Commissioner, Sarguja Division, Sarguja, Ambikapur, whereby cancellation of appointment of the petitioner was upheld.
2. The issue pertains to appointment of Anganbadi Worker. The



petitioner was appointed vide order dated 23/08/2011 as an Anganbadi Worker. Thereafter, she joined her post on 24/08/2011. Being aggrieved by such appointment, the respondent No.7 filed an appeal under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 before the Collector challenging the appointment on the ground that the petitioner is not the resident of ward for which she is appointed and the appointment is not in accordance with the law and sought for cancellation. After issuance of notice, primarily objection was raised that it was barred by time. However, subsequently it was held that since the petitioner was not the resident of ward for which she is appointed, as such, the appointment was cancelled and instead the appointment of respondent No.7 was ordered. Being aggrieved by the said order, the petitioner filed an appeal before the Divisional Commissioner under section 91 read with section 4 and 5 of the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995, which is under challenge here.

3. Learned counsel for the petitioner would submit that the instructions which have been issued by the State by Annexure P-6 dated 2/04/2008 the procedure has been laid down for appeal and since the appointment in the instant case was under the Municipalities Act, 1961 as per Annexure P-4, therefore, very filing of appeal before the Collector was without jurisdiction and order is *non est*. Consequently, the subsequent filing of appeal by the respondent No.7 would not confer any jurisdiction, therefore the entire procedure of cancellation orders are *non est* and without jurisdiction.

4. *Ex-adverso* learned counsel for respondent No.7 would submit that the instructions so issued by the State as per 2/04/2008 is not mandatory and he further submits that the Collector is higher authority than the SDO, therefore if Collector heard the appeal filed by respondent No.7 then it has





more fortified the facts. He further submits that this ground was not raised by the petitioner before the learned court below. Accordingly, the petition has no merit and the order of the learned Commissioner is well merited, which do not call for any interference.

5. I have heard learned counsel appearing for the parties and perused the documents.

6. Perusal of the record would show that the appointment of the petitioner as per Annexure P-4 dated 23/08/2011 was under Nagar Panchayat by the Chief Municipal Officer, Nagar Panchayat, Vishrampur. Section 5 of the C.G. Municipalities Act, 1961 prescribes constitution of Municipal Councils and Nagar Panchayats. Sub section (1) (b) of it reads as under:-

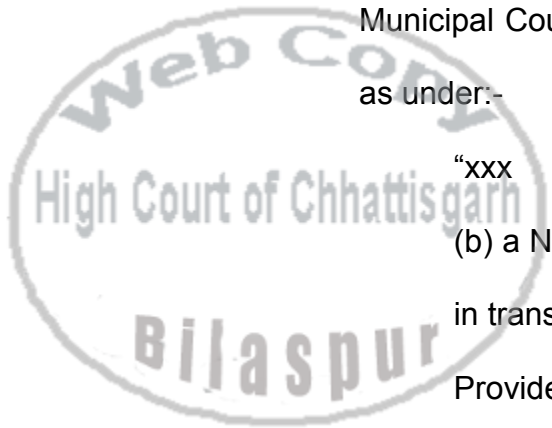
“xxx

(b) a Nagar Panchayat for a transitional area, that is to say, an area in transition from a rural area to an urban area:

Provided that a Municipal Council or a Nagar Panchayat, as the case may be, may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment or a group of such establishments in that area and such other factors as he may deem fit, by public notification specify to be an industrial township:

Provided further that when an area is notified to be a transitional area, the Gram Panchayat having jurisdiction over such area shall continue to function until a duly elected Nagar Panchayat is constituted under this Act.”

7. Accordingly, it appears that *prima facie* reading the document Annexure P-4 dated 23/08/2011 shows that the appointment was made





under the Chhattisgarh Municipalities Act, 1961 as no document in rebuttal is before this Court.

8. The instruction which has been issued by Annexure P-6 for appointment of Anganbadi Worker purports that if any appeal is to be preferred against the appointment, the following procedure has been laid down:-

अपील :-

आंगनबाड़ी कार्यकर्ता/सहायिकाओं की नियुक्ति की प्रक्रिया में की गई नियुक्ति से सहमत न होने पर अपील के प्रावधान इस प्रकार होंगे :-

क. जनपद पंचायत द्वारा चयन/नियुक्ति किये जाने पर चयन/नियुक्ति आदेश के विरुद्ध विहित प्रक्रिया के तहत अपील छत्तीसगढ़ पंचायत राज अधिनियम 1993 के प्रावधानों के तहत विहित अधिकारी के समक्ष की जा सकेगी।

ख. छत्तीसगढ़ नगर पालिका निगम अधिनियम 1956 के अंतर्गत गठित नगर पालिका निगमों में नियुक्त किये गये आंगनबाड़ी कार्यकर्ताओं/सहायिकाओं के मामलों में जिला कलेक्टर को अपील की जावेगी।

ग. जिला कलेक्टर के आदेश के विरुद्ध द्वितीय अपील आयुक्त/संचालक नगरीय प्रशासन एवं विकास को की जावेगी।

घ. छत्तीसगढ़ नगर पालिका अधिनियम 1961 के अंतर्गत गठित नगर पालिका परिषद्/नगर पंचायत में नियुक्त किये गये आंगनबाड़ी कार्यकर्ताओं/सहायिकाओं के मामले में अनुविभागीय अधिकारी (राजस्व) को अपील की जावेगी।

ड. अनुविभागीय अधिकारी (राजस्व) के आदेश के विरुद्ध जिला कलेक्टर को द्वितीय अपील की जावेगी।

च. यदि मूल्यांकन समिति द्वारा चयन किया जाता है तो अपील जिला कलेक्टर के समक्ष की जावेगी।

स्पष्टीकरण:- चूंकि इन निर्देशों के तहत कृत नियुक्तियों के विरुद्ध अपील का प्रावधान किया गया है अतः शिकायतें प्राप्त होने पर संबंधित शिकायतकर्ता को अपील की प्रक्रिया की विस्तृत जानकारी दी जाकर अपील करने का सुझाव दिया जाना चाहिये।

9. Perusal of the appointment order would show that it was made under the Chhattisgarh Nagar Palika Act, 1961. The instructions which are embodied as 'घ' purports that "appeal" against the appointment when are made under the Municipalities Act, 1961, it is to be made before the SDO and 'ड' further prescribes that against the order of the SDO, the "second



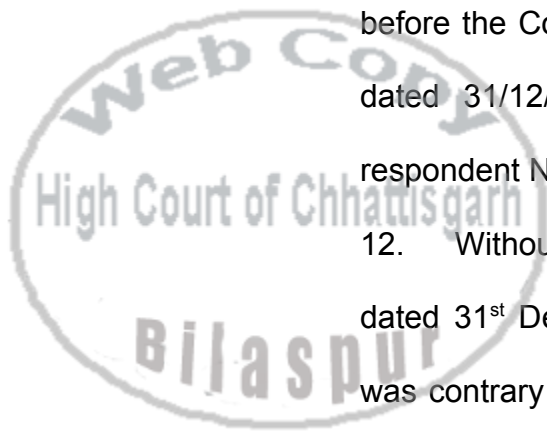
appeal” to be filed before the Collector.

10. There is nothing before this Court to appreciate that though the submission is made that the appointment of the petitioner was made by the evaluation committee but nothing is on record to appreciate the same instead Annexure P-4 the appointment order which is issued by the Chief Municipal Officer, Nagar Panchayat, Vishrampur shows that appointment of Anganbadi workers were made after the President-in-Council meeting dated 26/07/2011.

11. Respondent No.7 who was aggrieved to challenge that the petitioner is not the resident of the same ward directly filed the appeal before the Collector and the Collector exercised its jurisdiction vide order dated 31/12/2012 (Annexure P-7) and allowed the appeal filed by respondent No.7.

12. Without going into merit of this *prima facie* it appears that order dated 31st December, 2012 (Annexure P-7) was without jurisdiction and was contrary to the instructions which was issued for filing the appeal by the aggrieved party inasmuch as the appointment since was made under the Municipalities Act, 1961/Nagar Panchayat the appeal should have been preferred before the SDO and against the order of SDO, second appeal to be preferred by the aggrieved party before the Collector. The Collector who was the second appellate authority directly exercised the jurisdiction. The fact that being aggrieved by such order, when second appeal was filed by the petitioner before the Commissioner, it would not also confer the Commissioner with the jurisdiction.

13. The guidelines has been issued for appointment of Anganbadi Workers. Section 94 of the Chhattisgarh Municipalities Act, 1961 deals with appointment of staff. Sub section-2 of Section 94 confers power to Council to appoint a Sanitary Inspector, a Sub-Engineer, a Revenue





Inspector and an Accountant and may appoint such other officers and servants but the said appointment will be subject to the Rules framed by the State Government under Section 95 of the Act. For the sake of brevity Section 94(2) and Section 95 is reproduced as under:-

“94. Appointment of staff.-

(1) xxx

(2) Every Council not falling under sub-section (1) shall subject to rules framed under Section 95, appoints a Sanitary Inspector, a Sub-Engineer, a Revenue Inspector and an Accountant and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties:

Provided that such Council may appoint a part time Health Officer or an Engineer on such terms and conditions as the State Government may approve in this behalf.”

“95. State Government to make rules.-The State Government may make rules in respect of qualification recruitment, appointment leave, scale of pay, all allowances by whatever name called, loan, pension, gratuity, compassionate fund, provident fund, annuity, dismissal, removal, conduct and other departmental punishment and appeal and service conditions for Municipal employees other than a member of the State Municipal Service.”

14. The perusal of scheme of the Act would show that though the Council has powers to make appointment but those appointment is subject to Rules framed under Section 95 of the Act of 1961.

The guidelines in question is one such law binding upon the appointing authority.

15. It is a settled proposition that authority which has been conferred



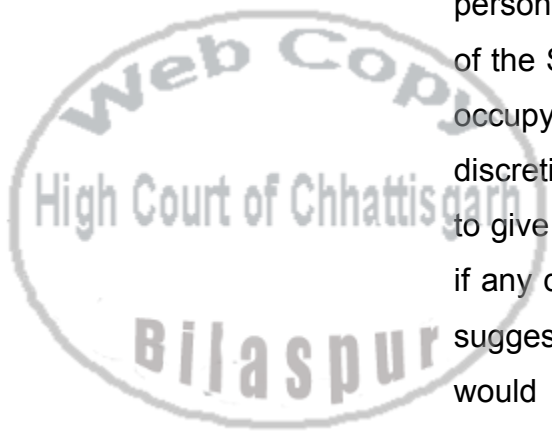


with the competence under the statute alone can pass orders no other person even a superior authority can interfere with functioning of statutory authority. The Supreme Court in the case of **Joint Action Committee of Air Line Pilots Association of India (ALPAI) and others Vs. Director General of Civil Aviation and others** reported in **(2011) 5 SCC 435** has held thus in para 26 & 27:-

“26. The contention was raised before the High Court that the Circular dated 29.5.2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the Statutory Authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide: *Purtabpur Co., Ltd. v. Cane Commissioner of Bihar* AIR 1970 SC 1896; [Chandrika Jha v. State of Bihar](#) AIR 1984 SC 322; [Tarlochan Dev Sharma v. State of Punjab](#) AIR 2001 SC 2524; and [Manohar Lal v. Ugrasen](#) AIR 2010 SC 2210).

27. Similar view has been re-iterated by this Court in [Commr. of Police v. Gordhandas Bhanji](#) AIR 1952 SC 16; [Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia](#) AIR 2004 SC 1159; and *Pancham Chand v. State of H.P.* AIR 2008 SC 1888, observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the Constitutional scheme.”

16. It is also settled law first held by English Court in *Taylor Vs. Taylor* reported in 1876 Ch.D 426 that if statute provides things to be done in





certain manner it should be done in that particular manner and no other manner. Later this proposition has been reiterated in the case of **Ramchandra Keshav Adke (Dead) by Lrs. And others Vs. Govind Joti Chavare and others** reported in **(1975) 1 SCC 559**. The Supreme Court in para 25 of the judgment has held thus:

“25. A century ago, in Taylor v. Taylor [(1876) 1 ChD 426] Jassel, M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor [AIR 1936 PC 253 : LR 63 IA 372] and later by this Court in several cases [Shiv Bahadur Singh v. State of U.P., AIR 1954 SC 322 : AIR 1954 SC 1098 : 1954 SCR 1098 : 1954 Cri LJ 910; Deep Chand v. State of Rajasthan, AIR 1961 SC 1527 : (1962) 1 SCR 662 : (1961) 2 Cri LJ 705] , to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies “where, indeed, the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other.” [Maxwell's Interpretation of Statutes, 11th Edn., pp. 362-63] The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b).”

17. That in such circumstances when the Court has not exercised the jurisdiction correctly or exercised jurisdiction which is not conferred to them the writ of certiorari may be issued. The writ of certiorari may be granted when Court has acted without jurisdiction or in excess of





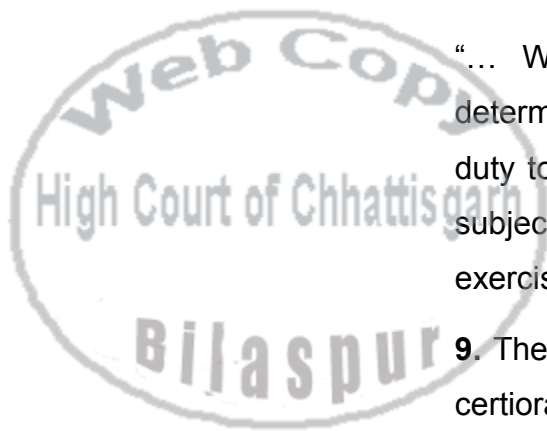
jurisdiction. The Supreme Court in the case of *T.C. Basappa v. T. Nagappa* reported in (1954) 1 SCC 905 has thus in paras 7, 9 & 10:

“7. One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression “judicial acts” includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. thus summed up the law on this point in *R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd.* [*R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd.*, (1924) 1 KB 171 at p. 205 (CA)] : (KB p. 205)

“... Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.”

9. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Summer in *R. v. Nat Bell Liquors Ltd.* [*R. v. Nat Bell Liquors Ltd.*, (1922) 2 AC 128 at p. 156 (PC)] One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.

10. Certiorari may and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances [*Halsbury*, 2nd Edn., Vol. IX, p. 880.] . When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a





wrong decision of the fact give it jurisdiction which it would not otherwise possess [*Bunbury v. Fuller*, (1853) 9 Ex 111 : 156 ER 47, *R. v. Income Tax Special Purposes Commissioners*, (1888) LR 21 QBD 313 (CA)] .”

18. In a ICDS (Integrated Child Development Scheme) mission to strengthen the human resource evolving a transparent appointment and selection process of Angan badi workers for their recruitment, the State can issue guidelines and Section 95 of the Chhattisgarh Municipalities Act, 1961 empowers the State Government to make any rules in respect of qualification, recruitment, appointment, leave, scale of pay, pension for municipal employees other than a member of the State Municipal Service.

19. Accordingly, the instruction so issued by the State by Annexure P-6 cannot be ignored and the Collector cannot be conferred with the power *de hors* the direction issued.

20. Consequently, in a result, the very substratum of the challenge and the finding by the Collector in appeal was without jurisdiction whereby the petitioner was removed from service. Thus, the Collector's order dated 31st December, 2012 (Annexure P-7) is without jurisdiction. Therefore, the subsequent appeal will not confer the authorities with any power.

21. Accordingly, the impugned order dated 7/04/2014 (Annexure P-1) passed by the Commissioner, Sarguja Division, Sarguja, Ambikapur, is set aside.

22. As a sequel, the present petition is allowed, leaving the parties to bear their own cost(s).

Sd/-

(Goutam Bhaduri)
Judge



Head Note

WPS No. 2037 of 2014

Petitioner - Ku. Snehlata Kerketta

Versus

Respondent - State of Chhattisgarh & ors.

- (1) Authority which has been conferred with power under statute alone can pass the order no other person even superior authority can interfere with functioning of statutory authorities.

प्राधिकारी जिसे कानून के तहत शक्ति प्रदान की गई है, मात्र वही आदेश पारित कर सकता है, कोई अन्य व्यक्ति, यहां तक कि उच्चतर प्राधिकारी भी, वैधानिक प्राधिकारियों के कामकाज में हस्तक्षेप नहीं कर सकता है।

- (2) Council under section 94 of the Municipalities Act have power to appoint Anganbadi Worker subject to rules framed by State Government under section 95 of said Act.

नगर पालिका अधिनियम की धारा 94 के तहत परिषद को उक्त अधिनियम की धारा 95 के तहत राज्य शासन द्वारा विरचित नियमों के अन्तर्गत आंगनबाड़ी कार्यकर्ताओं को नियुक्त करने की शक्ति है।

