

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVIEW PETITION NO. 42 OF 2016

1. Awadh Tripathi S/o Shri Rampyare Tripathi, aged about 53 years, R/o Green Park Colony, P.S. Civil Lines, Bilaspur, Tahsil and District Bilaspur (C.G.)(Respondent No.5)
2. Badshah Prasad Singh S/o Shri J.N. Singh, aged about 50 years, Near Dhamdha Naka, Mohan Nagar, Durg, P.S.- Mohan Nagar, Tahsil and District Durg (C.G.)(Respondent No.7)
3. Sanjay Agrawal S/o Late L.N. Agrawal, aged about 52 years, R/o Ajit Sadan, Polsai Para, Durg, P.S.- Durg, Tahsil and District Durg (C.G.)(Respondent No.8)

... Petitioners

Versus

1. The State Bar Council of Chhattisgarh, through the Officiating Chairman Shri Jugal Kishor Gilda, presently working as Advocate General of Chhattisgarh, Bilaspur, High Court Premises, Bilaspur, Tahsil & District Bilaspur (C.G.)
2. The State Bar Council of Chhattisgarh, through Officiating OSD, Smt. Mallika Bal, Now terminated from the Services, hence through In-Charge O.S.D. Shri Deepak Thakur, State Bar Council of Chhattisgarh, Bilaspur High Court Premises, Bilaspur, Tahsil & Distt. Bilaspur (C.G.)
3. The Superintendent of Police, Bilaspur, P.S.- Civil Lines, Tahsil and Distt. Bilaspur (C.G.)
4. The Station House Officer, Police Station- Civil Lines, Bilaspur, Tahsil & Distt. Bilaspur (C.G.)
5. Chandra Prakash Jangde S/o Shri F.R. Jangde, aged about 47 years, R/o Nehru Nagar, P.S.- Civil Lines, Bilaspur, Tahsil and Distt. Bilaspur (C.G.)
6. Abhishek Pandey S/o Shri Ramvilas Pandey, aged about 34 years, R/o New Sarkanda, Bangalipara, Street No.03, P.S. Sarkanda, Tahsil & Distt. Bilaspur (C.G.)
7. Dr. Shailesh Ahuja S/o Late Shri D.D. Ahuja, aged about 50 years, Tikrapara, P.S.- City Kotwali, Tahsil & Distt. Bilaspur (C.G.)(Petitioner No.1)
8. Arun Kochar S/o Dr. S.C. Kochar, aged about 48 years, R/o Imlipara, P.S.- Civil Lines, Bilaspur, Distt. Bilaspur (C.G.)(Petitioner No.2)

... Respondents

For Petitioners	:	Mr. Saurabh Dangi, Advocate.
For Respondent-State	:	Mr. A.S. Kachhawaha, Additional Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Deepak Gupta, C.J.

22/06/2016

1. The main grievance ventilated by the Review Petitioners is against the observations made by the Division Bench in paragraph 27 of its judgment dated 11.12.2015, passed in Writ Appeal No. 25 of 2015 and two other analogous writ appeals, that “The factual finding of tampering or defacement of ballots after examination of the votes and taking of evidence to vitiate the elections can only be done in an Election Petition by a Election Tribunal after the ballot box is opened pursuant to orders of the Election Tribunal and not as an outcome of investigation in an FIR. Appropriately, the FIR will have to await the outcome of the election petition and based on its findings, the police investigation may proceed and not vice versa.”

2. Learned Counsel for the Review Petitioners submits that as far as these findings are concerned these are contrary to the judgment of the Apex Court delivered in **M.S. Sheriff and another Vs. State of Madras and others** [AIR 1954 SC 397] wherein it has been mentioned that criminal proceedings should be given precedence over civil proceedings.

3. This judgment was not cited when the said judgment dated 11.12.2015 was delivered by the Division Bench. Furthermore, election proceedings before an Election Tribunal cannot be equated with civil proceedings. The Apex Court has also held that once the election process has started then the Court should not interfere during the election process. We in this Review Petition are not deciding whether the view taken by the Division Bench is right or wrong. But it cannot be

said that the view taken is so erroneous so as to amount to an error apparent on the face of the record. It is a view which can be taken and the remedy available to the Review Petitioners is to approach the Apex Court.

4. The Review Petition is dismissed.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge