

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment Reserved on: 16/03/2018**

**Judgment Delivered on : 13/04/2018**

**Contempt Case (C) No. 575 of 2017**

Mohammad Akbar, son of Shri Mohammad Rashid, aged about 60 years, Resident of House No. 949, KK Road, Maudhapara, Raipur, District Raipur, Chhattisgarh.

**---- Applicant**

**Versus**

1. Shri D.D.Singh, Secretary, General Administrative Department, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. Shri Ambesh Jangde, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
3. Shri Labhchand Bafna, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
4. Shri Lakhan Dewangan, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
5. Shri Motiram Chandrawanshi, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
6. Shrimati Rupkumari Choudhary, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
7. Shri Shiv Shankar Paikara, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
8. Shrimati Suniti Satyanand Rathiya, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
9. Shri Tokhan Sahu, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
10. Smt. Champa Devi Pawle, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
11. Shri Govardhan Singh Manjhi, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
12. Shri Raju Singh Kshatri, Parliamentary Secretary, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.

**---- Respondents**

---

|                         |   |                                                                                                                                                                                                                                                                |
|-------------------------|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For Applicant           | : | Shri Amrito Das, Advocate.                                                                                                                                                                                                                                     |
| For Respondent/State    | : | Shri J.K.Gilda, Advocate General with Shri Prasoon Bhaduri, Government Advocate.                                                                                                                                                                               |
| For Private Respondents | : | Shri H.C.Shukla, Shri Raja Sharma, Shri Adil Minhaj, Shri Ankur Agrawal, Shri Chandresh Shrivastava, Ms. Noushina Ali, Shri Manish Sharma, Ms. Shriya Mishra, Shri Sumit Jhanwar, Shri Vaibhav Goverdhan, Shri Rahul Tamaskar and Shri Sameer Behar, Advocates |

---

**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**

**Hon'ble Shri Sharad Kumar Gupta, Judge**

**C.A.V. Judgment**

**Per Thottathil B. Radhakrishnan, Chief Justice**

1. This application seeking initiation of proceedings under the Contempt of Courts Act, 1971 is filed alleging disobedience of the order dated 01.08.2017 issued in Writ Petition (PIL) No. 119 of 2016, Writ Petition (C) No. 3057 of 2016 and Writ Petition (C) No. 3 of 2017. The said order reads as follows:

"xxx

xxx

xxx

These writ petitions raised questions regarding the office of Parliamentary Secretaries in the State of Chhattisgarh.

These matters are listed today for consideration of the applications for interim relief.

Learned Advocate General points out that these matters are fixed for final hearing on 23.08.2017.

For the purpose of considering whether interlocutory order has to be issued, we treat Writ Petition (C) No. 3057 of 2016 as the leading case in which all the persons who are Parliamentary Secretaries in the State of Chattisgarh are impleaded as Respondents and in which certain notifications are sought to be quashed, apart from seeking a declaration that the appointment of Respondents No. 5 to 15 therein as Parliamentary Secretaries is *void ab initio*.

Different submissions have been made by the learned counsel for the Petitioners, learned counsel for the contesting Respondents and the learned Advocate General touching the applicability or otherwise of the ratio of the judgment of the Hon'ble Supreme Court of India in **Bimolangshu Roy (Dead) Through LRs v. State of Assam; 2017 SCC Online SC 813**. The question whether that judgment clinches the issues in relation to Parliamentary Secretaries of different States is indicated, to point out that some of the matters from a couple of other

States are still pending before Their Lordships of the Supreme Court.

Be that as it may, apart from the law laid by the Hon'ble Supreme Court in **Bimolangshu Roy** (supra), Article 163(1) of the Constitution provides for a Council of Ministers with the Chief Minister as the head for the purposes stated therein. Article 164(1) of the Constitution provides inter alia that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advise of the Chief Minister. Clause (1A) of Article 164 of the Constitution, introduced as per 91st Amendment to the Constitution, enjoins that the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State. The proviso to that clause is not relevant here. One seminal principle that arises on a conjoint reading of Articles 163(1) and 164(1) of the Constitution is that only a person who is appointed as Minister by the Governor on the advise of the Chief Minister can be part of the Council of Ministers . This means that no person who is not so appointed can carry out any function referable to Article 163(1) of the Constitution or discharge any executive function as a Minister in the Council of Ministers.

The participation of any person, other than as a Member of Legislative Assembly in the proceedings of the Legislative Assembly is a matter which will stand regulated by the Rules of Business of that House, the master of which is the Speaker. This order is issued in no manner intending to impair the powers, responsibilities and duties of the Speaker of the Chhattisgarh Legislative Assembly or to interfere with the proceedings of that House.

For the reasons aforesaid, it is ordered that none among Respondents No. 5 to 15 in Writ Petition (C) No. 3057 of 2016 shall discharge any function as Member of Council of Ministers unless such person has been appointed as a Minister by the Governor in terms of Article 164(1) of the Constitution.

xxx

xxx

xxx"

2. We have read the allegations in this application. There is nothing to show that any among the Respondents No. 1 to 15 in Writ Petition (C) No. 3057 of 2016 had discharged any function as member of the Council of Ministers. We therefore find no ground to further proceed with this contempt petition. The same is closed dropping any proposal for such proceeding.

Sd/-

Sd/-

(Thottathil B. Radhakrishnan)  
**CHIEF JUSTICE**

(Sharad Kumar Gupta)  
**JUDGE**