

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1254 of 2018

Order reserved on: 14-5-2018

Order delivered on: 18-5-2018

Rakesh Choubey, S/o Late Shri G.P. Choubey, aged about 50 years, R/o Recreation Marg, Choubey Colony, Raipur (C.G.)

---- Petitioner

Versus

1. Election Commission of India, Through the Chief Election Commissioner, Nirvachan Sadan, Ashok Road, New Delhi
2. Chief Election Officer, Chhattisgarh State, Purana Mantralaya Parisar, Shastri Chowk, Raipur

---- Respondents

For Petitioner:	Mr. Sanjay R. Hegde, Senior Advocate with Mr. Sunny Agrawal, Advocate.
For Union of India:	Mr. B. Gopa Kumar, Assistant Solicitor General of India, on advance copy.
For Respondent No.2 / State of Chhattisgarh: -	Mr. J.K. Gilda, Advocate General with Mr. Arun Sao, Deputy Advocate General, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. By-election of Constituency No.79 Antagarh of the Chhattisgarh Legislative Assembly was held on 13-9-2014 in which Mr. Bhojraj Nag was elected unopposed. Mr. Rupdhar Pudo filed Election Petition No.16/2014 under Sections 80 and 80-A read with Section 81 of the Representation of the People Act, 1951 questioning the said election stating that corrupt practice has been adopted in the election, therefore the election of Mr. Bhojraj Nag deserves to be set aside. The designated election tribunal of this Court after full-

dressed trial by its judgment dated 8-12-2017 dismissed the election petition. In the meanwhile, the Indian National Congress (INC) filed W.P.(Cr.)No.53/2017 under Article 226/227 of the Constitution of India seeking a writ to register FIR and investigate the conspiracy hatched by the private respondents arrayed therein regarding withdrawal of nomination paper by one private respondent Mantu Ram Pawar in the said by-election and further sought relief that investigation be done by some independent agency. This Court by its order dated 28-4-2017 dismissed the writ petition on the ground that the material brought on record is not sufficient to constitute the offence and to direct the registration of FIR and investigation therein. That matter was questioned in W.A. No.200/2017 in which a Division Bench of this Court disposed of the same with certain directions and granted liberty to the INC, the appellant therein. The INC thereafter, further questioned that order in Special Leave to Appeal (Crl.) No.8552/2017 (Indian National Congress v. Union of India and others) in which the Supreme Court on 10-11-2017 requested the Chief Justice of this Court to take steps for disposal of election petition, as the election petition was pending at that time and accordingly, the election petition has now been disposed of.

2. Now, the petitioner herein has filed this writ petition seeking investigation into the alleged manipulation in the by-election held for Antagarh Assembly Constituency in September, 2014, stating that right to free and fair elections form the bedrock of democracy – a part of the basic structure of the Constitution and they are

guaranteed to the public at large relying upon the decisions of the Supreme Court in the matters of Indira Nehru Gandhi v. Raj Narain¹ and Mohinder Singh Gill v. Chief Election Commissioner².

3. Mr. Sanjay R. Hegde, learned Senior Counsel appearing for the petitioner, would submit that the reliefs sought by the petitioner in the writ petition do not fall within the ambit of election petition filed and decided by this Court and the prayer is only to direct respondent No.1 Election Commission of India to immediately institute and complete investigation in the matter of illegal / criminal activities during the by-election to Antagarh Constituency, Bastar District Bastar, within a time frame in a time bound manner that too by an independent investigating authority and no relief with regard to election dispute is sought in this writ petition, as the Election Commission of India is competent to carryout such enquiry under Article 324 of the Constitution of India whereby the Commission is charged with superintendence, direction and control of elections. Article 324 of the Constitution of India is a reservoir of power to act for the purpose of holding a free and fair election. This petition at the instance of public spirited person / petitioner herein is filed seeking enquiry into an illegally tainted election.
4. Mr. J.K. Gilda, learned Advocate General appearing on behalf of the State / respondent No.2, would submit that the petition as framed and filed is not maintainable, as the election petition with regard to Antagarh Constituency has already been filed by one of the

1 (1975) Supp SCC 1

2 (1978) 1 SCC 405

persons concerned and after due enquiry and appreciation, the constituted election tribunal has dismissed the said election petition. He would further submit that the INC has also raised the issue which the petitioner has raised in this writ petition and as such that has been dismissed in writ appeal and a Division Bench of this Court has clarified the order passed by the learned writ court as such, no ground is available to issue a writ of mandamus for directing enquiry into the election so held. He relied upon a decision of the Supreme Court in the matter of A.C. Jose v. Sivan Pillai and others³.

5. I have heard learned counsel for the parties, considered the rival submissions made herein-above and went through the record with utmost circumspection.
6. It is not in dispute that the election petition questioning the election of returned candidate has already been adjudicated by this Court by order dated 8-12-2017, that was brought under the provisions of Sections 80 and 80-A read with Section 81 of the Representation of the People Act, 1951 in which the question whether the returned candidate exercised undue influence, threat and pressure amounting to corrupt practice, has been answered in negative. The writ petition filed by the INC claiming similar relief has been dismissed by this Court on 28-4-2017 by holding as under: -

“17. Further following the principles laid down in **AIR 1992 SCC 604, State of Haryana vs. Bhajan Lal** when the prepositions are applied in the set of given facts and material, the conversation of CD and paper clippings on the face value do not prima facie constitute any offence and the complaint which is made by

3 (1984) 2 SCC 656

Kiranmai Naik and one Vikas Upadhyay on 08.01.2016 and 6.01.2016 only levels the allegations, the same is also not made by the petitioner and reading of such complaints would show that it is so absurd and inherently vague and on the basis of that, no cognizance could have been taken for proceeding against the respondents.

18. Therefore, taking into totality of the facts and circumstances, the materials in question are not good enough to constitute the offence and to direct the registration of FIR and investigation therein. The material should qualify to the test of admissibility which is completely hearsay in this case and vague allegations have been levelled by a self-created evidence. In the given facts of this case, the Court is of the opinion that it is not proper and legally justified to direct investigation in view of the principles laid down in *AIR 2017 S.C. 540 – Common Cause (A registered Society) Vs. Union of India.*”

7. The Division Bench of this Court in the writ appeal filed by the INC partly modified that order of the writ court by observing as under: -

“14. In the result :-

(i) The parties to this litigation including the Appellant/Petitioner and the private respondents will not be bound by any of the inferences and observations on facts, made in the impugned judgment. All such observations and inferences in the impugned judgment are vacated.

(ii) Any authority with the jurisdiction under the criminal laws or any other law for the time being in force will deal with any complaint of the Appellant in relation to the matter in hand untrammelled by anything stated in the impugned judgment. This judgment as well as judgment of the learned Single Judge will not stand in the way of any jurisdictional police taking cognizance, in accordance with law, of any complaint which is lawfully pending before any such authority.

(iii) This judgment does not preclude the Appellant from moving any authority including Election Commission by seeking appropriate relief, if any, that could be sought for within the power of superintendence by the Election Commission in conformity with Article 324 of the Constitution.

(iv) Subject to the aforegranted reliefs, this writ appeal is dismissed.”

8. In the considered opinion of this Court, the issue raised by the writ petitioner with regard to illegal / criminal activity during by-election that too by an independent investigating agency has also been considered by this Court by the writ court and that has been modified by the Division Bench of this Court in writ appeal and furthermore, the INC has taken-up the matter up to the Supreme Court in SLP in which Their Lordships on 10-11-2017 issued following directions: -

“Heard Mr. Vivek Tankha, learned senior counsel for the petitioner.

Keeping in view the anxiety expressed by the petitioner, we think it appropriate that Election Petition no. 16 of 2014, pending before the High Court of Chhattisgarh at Bilaspur, should be disposed of within the time frame provided by the statute i.e. six months. We request the learned Chief Justice of the High Court of Chhattisgarh at Bilaspur, to allot the case, if not yet assigned, to a learned Judge, who shall take steps to dispose of the aforementioned election petition within the time frame provided.

Let the matter be listed after twelve weeks.”

9. In view of the above, the election petition has also been disposed of by the designated election tribunal.
10. Learned counsel for the petitioner has relied upon Article 324 of the Constitution of India with great vehemence and relied upon **Mohinder Singh Gill** (supra) in which the Supreme Court while dealing with Article 324 of the Constitution of India held as under: -

“Article 324, in or view, operates in areas left unoccupied by legislation and the words “superintendence, direction and control’ as well as ‘conduct of all elections’ are the broadest terms. Myriad may be, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election.”

11. Undoubtedly, Article 324 of the Constitution of India empowers the

Election Commission to act in contingencies not provided for by the law and to pass orders for conduct of election.

12. Since the dispute brought before this Court by the petitioner herein has already been taken cognizance of by this Court in a matter instituted by the INC and partly modified by the writ appeal court and now, pending before the Supreme Court, and particularly, in view of the fact that election petition filed by the affected person has already been adjudicated by this Court, I am not inclined to entertain the writ petition. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s). However, the petitioner is at liberty to proceed in accordance with law.

Sd/-
(Sanjay K. Agrawal)
Judge