

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCONT No. 465 of 2019

1. Bharat Luniya S/o Late Pritam Lal Luniya Aged About 43 Years R/o Agrasen Square Bilaspur, Police Station Civil Lines Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. Shri Abhishek Meena Superintendent Of Police, District Bilaspur, Chhattisgarh.
2. Shri Kalim Khan Station House Officer, P.C. Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh.
3. Shri Nasar Siddhqui CSP, Azad Chowk, Raipur, District Raipur, Chhattisgarh.
4. Shri Anil Agrawal S.H.O., P.S. Darri, District Korba, Chhattisgarh.
5. Durgesh Madhav Awasthi Director General Of Police, PHQ, Nawa Raipur, Raipur Chhattisgarh.
6. Dipanshu Kabra Inspector General Of Police, Bilaspur Range, I.G. Office, Bilaspur Chhattisgarh.
7. Prashant Agarawal Superintendent Of Police, Bilaspur Chhattisgarh.
8. C.K.Yadav, C.S.P. Bilaspur Chhattisgarh.
9. Parivesh Tiwari S.H.O. P.S. Torwa, Bilaspur., District : Bilaspur, Chhattisgarh
10. Surendra Sawarankar S.H.O. P.S. Civil Lines, Bilaspur Chhattisgarh.

---- Respondent

For Petitioner	Shri U.N.S. Deo, Shri Satish Gupta & Shri Rajnish Singh Baghel, Advocate
For Respondent No.1	None
For Respondent No.2	Shri Saurabh Dangi, Advocate
For Respondent No.3	Shri Akshay Uppal, Advocate
For Respondent No.4	None
For Respondents No.5 & 6	Shri Amit Soni, Advocate on behalf of Shri Sunil Otwani, Advocate
For Respondents No.7 & 10	Shri Chandresh Shrivastava, Advocate
For Respondents No.8 & 9	Shri Rahul Jha, Advocate
For Intervener	Shri Awadh Tripathi, Advocate, in person

Contemnors/respondents namely; Shri D.M. Awasthi, Director General of Police, Chhattisgarh, Raipur, Shri Dipanshu Kaabra, Inspector General of Police, Bilaspur Range, Bilaspur, Shri Prashant Agrawal, Superintendent of Police, Bilaspur, Shri R.N. Yadav, City Superintendent of Police, Civil Lines, Bilaspur, Shri Parivesh Tiwari, SHO, Torwa, (the then SHO, Civil Lines), Bilaspur and Shri Surendra Swarnkar, SHO, Civil Lines, Bilaspur, are also present.

Hon'ble Mr. Justice Prashant Kumar Mishra

Order On Board

2/7/2020

1. At the outset, Shri Awadh Tripathi, Advocate, appearing in person, would inform that he has moved the intervention application. He would further submit that he has also moved a writ petition under Article 227 of the Constitution of India before this Court challenging the order passed by the Election Tribunal.
2. I have heard Shri Tripathi for some time, only to satisfy him, despite settled legal position that the issue of contempt is strictly between the Court and the contemnor and no other person has any locus to argue either for or against the contempt petition. If intervention is allowed in contempt matters there would be no end to the litigation and any third person can interfere with the Court proceeding either to impress or prejudice the Court at the time of hearing of contempt petition.
3. Accordingly, the intervention application (I.A.No.1 of 2019) filed on 12-12-2019 is rejected. However, Shri Awadh Tripathi (intervener) would be at liberty to take recourse to law, whichever is available to him.
4. Heard.
5. This contempt petition arises out of order dated 5-12-2014 passed by this Court in WPC No.1981 of 2014 (*Awadh Tripathi & Others v The Bar Council of Chhattisgarh & Others*) and other connected matter

affirmed by the Division Bench vide judgment dated 11-12-2015 rendered in WA No.25 of 2015 (***Sushil Chaturvedi v Bar Council of Chhattisgarh & Others***) and other connected matters and also from the order dated 23-11-2017 passed in WPCR No.145 of 2015 (***Bharat Luniya v. State of Chhattisgarh***).

6. The issue pertains to allegation of tampering of ballots in the election of State Bar Council, Chhattisgarh, held in the year 2014.
7. While dismissing WPC No.1981 of 2014 this Court passed the following order in para 44.6 :

In view of the findings in the preceding paras of the judgment/order that challenge to the election process or the validity of election is not maintainable, the petitioners would be at liberty to prefer a duly constituted election petition before the Election Tribunal constituted by the Bar Council of Chhattisgarh. In the event of filing of election petition, it is expected of the election Tribunal to make all endeavour to dispose of the same as early as possible

8. Thereafter, writ appeals were preferred, which were decided by common judgment dated 11-12-2015. While dismissing the writ appeals the Division Bench specifically observed thus in para 27 :

27) The writ petitions had substantially become infructuous after further counting was directed under supervision of the "Observers". Crime No.235 of 2015 has also been registered. The police investigation will

concern who may have physically done the tampering of preferences. Prosecution of the concerned may follow, including any elected candidate, but it cannot result in setting aside of the election which can be done in an Election Petition only. 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. The law stands well settled that secrecy of ballots and the ballot box, cannot be interfered with by any person or authority nor the ballot box can be opened by any person or authority whatsoever except under the authority of the orders of the competent Court of law hearing an Election Petition.

(Emphasis supplied)

9. The judgment rendered by the Division Bench was eventually affirmed by the Supreme Court by order dated 11-9-2019 passed in two separate SLPs bearing Special Leave to Appeal (C) Nos.37604-37605/2016. Before that a review petition was also filed bearing REVP No.42 of 2016 (*Awadh Tripathi & Others v The State Bar Council of Chhattisgarh & Others*), which too was dismissed by order dated 22-6-2016.
10. When the matter stood thus, the concerned Police proceeded to make arrest in the matter based on some

independent evidence over and above the finding by the Election Tribunal. It is pertinent to mention here that the Election Tribunal has not recorded any finding accepting the allegation of tampering.

11. By amending the contempt application the petitioner alleged that the concerned police is proceeding with the investigation in utter defiance of the order and observation made by this Court.
12. In course of hearing before this Court today contemnors/respondents namely; Shri D.M. Awasthi, Director General of Police, Chhattisgarh, Raipur, Shri Dipanshu Kaabra, Inspector General of Police, Bilaspur Range, Bilaspur, Shri Prashant Agrawal, Superintendent of Police, Bilaspur, Shri R.N. Yadav, City Superintendent of Police, Civil Lines, Bilaspur, Shri Parivesh Tiwari, SHO, Torwa, (the then SHO, Civil Lines), Bilaspur and Shri Surendra Swarnkar, SHO, Civil Lines, Bilaspur, appeared.
13. After tendering unconditional apology the above named respondents would state that the concerned Station House Officer proceeded with the investigation pursuant to legal opinion given by a Government Advocate of the office of the Advocate General. It is also stated that thereafter another opinion was sought from the Law Department, which too has been placed on record. In substance the officers would state that their action was based on legal opinion and was, thus, *bona fide*, without having any

intent to violate the order passed by this Court. They would further undertake that the order passed by this Court shall be followed sincerely and religiously and there shall be no contempt any further.

14. Although the contempt has not yet been purged and the respondents should have purged the contempt by now, but having heard them in person this Court is satisfied that while proceeding to make arrest they did not act maliciously and that they proceeded *bona fide* on the basis of legal opinion, however, this Court expects that the order passed by this Court particularly the observation made by the Division Bench shall be followed and no further action should be taken which may tantamount to violation of the order passed by this Court. The statement made by the officers to this effect are recorded.
15. While accepting the apology the contempt petition is disposed of with the observation that no further attempt be made by any of the contemnor or by any succeeding police officer to violate the order passed by this Court.
16. Rule issued against the contemnors stand discharged.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri