

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 352 of 2020**

1. Awadh Tripathi S/o Shri Rampyare Tripathi, aged about 58 years, R/o Green Park Colony, Bilaspur, P.S. Civil Lines, Bilaspur, Tahsil & District Bilaspur (C.G.)

Applicant**Vs.**

1. The Bar Council of Chhattisgarh, Through Secretary State Bar Council of Chhattisgarh, High Court Premises, Bilaspur Tahsil & District Bilaspur (C.G.)
2. The State of Chhattisgarh Through : The Secretary, Home Department, Mahanadi Bhawan, Naya Raipur, P. S. Rakhi, Tahsil & District Raipur, (C.G.)
3. The Superintendent of Police, Bilaspur, P.S. Civil Lines, Tahsil & District Bilaspur, (C.G.)
4. The Station House Officer, Police Station – Civil Lines, Bilaspur, Tahsil & District 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 & District Bilaspur (C.G.)
6. Badshah Prasad Singh S/o Shri J. N. Singh, aged about 50 years, Near Dhamdha Naka, Mohan Nagar, Tahsil & District Durg (C. G.)
7. Sanjay Agrawal S/o Late L.N. Agrawal, aged about 52 years, R/o 'Ajit Sadan' Polsai Para, Durg, P.S. Durg, Tahsil & District Durg (C. G.)
8. Dr. Shailesh Ahuja S/o Late Shri D. D. Ahuja, aged about 50 years, Tikarapara, P.S. City Kotwali, Tahsil & District Bilaspur (C. G.)
9. Arun Kochar S/o Shri S. C. Kochar, aged about 48 years, R/o Imlipara, P.S. Civil Lines, Bilaspur, Tahsil & District Bilaspur (C. G.)
10. Abhishek Pandey, S/o Shri Ramvilas Pandey, R/o New Sarkanda, Bangalipara, Street No.03, P.S. Sarkanda, Tahsil & District Bilaspur

(C. G.)

11. Sushil Chaturvedi, S/o Lt. Akshay Vhat Chaturvedi Aged about 56 years, R/o Brahmin Road, P.S. City Kotwali, Ambikapur, Civil & Revenue Distt. Sarguja (C. G.)

Respondents

For Applicant	: Mr. Soumitra Kesharwani, Advocate with Mr. Awadh Tripathi, Petitioner-in-person
For State	: Mr. Chandresh Shrivastava, Dy. Advocate General
For Resp No. 1	: Mr. Saurabh Pande, Advocate
For Intervenor/s	: Mr. U.N.S. Deo, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge

Order on Board

Per P. Sam Koshy, Judge

01.07.2020

1. The present MCC has been filed seeking clarification of the order dated 11.12.2015 passed in Writ Appeal No.459/2014. The clarification sought for is to paragraph 27 of the aforesaid judgment passed by the Division Bench.
2. For ready reference it would be relevant to quote the contents of Paragraph 27 of the aforesaid judgment, which reads as under :-

“The writ petition substantially become infructuous after further counting was directed under supervision of the “Observers.” Prime 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 mainly. 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 ballots 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 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/competent Court of law hearing an Election Petition.”

3. It would be pertinent at this juncture to point out that against the aforesaid order dated 11.12.2015, the present applicant himself along with others had filed Review Petition No.42/2016. The applicants themselves have enclosed copy of the order passed in Review Petition marked as Annexure P-13. The Review petition was also dismissed against which the applicant had also preferred a S.L.P. before the Supreme Court which too stood dismissed on 11.09.2019 marked as Annexure P-14 with the present MCC. The order of this Court dated 11.12.2015 which stands affirmed with the Review petition as well as in the SLP having been dismissed, this Court *Prima Facie* is of the opinion that a subsequent MCC Petition seeking clarification of the judgment is not maintainable.

4. Even otherwise, during the course of argument, counsel for the applicant himself very candidly accepted the fact that on plain reading of the contents of Paragraph 27 there does not seem to be any ambiguity. If according to the applicants themselves there is no ambiguity to the contents of the Paragraph 27 the question of clarification of the same does not arise.

5. Another aspect which needs consideration is that the contents of the paragraph 27 is not to be read in isolation it has to be read as a whole with the contents of the judgment including the paragraph preceding paragraph 27 and the paragraphs subsequent. Dealing with the said subject on reading the contents of the paragraph 16 along with the paragraph subsequent to paragraph 27 i.e. paragraph 30 & 33, we are of

the firm view that there is no strong case made out for any clarification to the contents of paragraph 27.

6. Needless to mention that if at all, if the applicant is aggrieved of any subsequent development the applicant would be at liberty to avail appropriate remedies available to him under law either challenging it and if an adverse order is passed then moving forward with the said order for further remedies available. The present MCC thus being totally devoid of merits stands rejected.

7. Since the MCC stands rejected at motion stage, all other application filed including the application for intervention also stands disposed of.

8. With the aforesaid observations, the present MCC stands rejected.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge