

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
Cr1.M.P. NO. _____ OF 2019
IN
CONTEMPT PETITION (CRL.) NO. 1 OF 2019

IN THE MATTER OF:

1. Aruna Roy
R/o Mazdoor Kisan Shakti Sanghatan
Village Devdungri,
Post Barar, District Rajsamand-313341
Rajasthan

2. Wajahat Habibullah
R/o 529 Mt. Kailash Tower III
East of Kailash
New Delhi

3. Arundhati Roy
R/o 233, Jorbagh
Second Floor
New Delhi – 110003

4. Harsh Mander
R/o C 6 6233
Vasant Kunj

New Delhi - 110070

5. Jayati Ghosh

R/o 52 Dakshinapuram

Jawaharlal Nehru University

New Delhi - 110067

6. Prabhat Patnaik

R/o 124 National Media Centre Campus

Shankar Chowk

NH8

Gurgaon – 122002

Haryana

7. Indu Prakash Singh

R/o 18 A, MIG Flats

Sheikh Sarai, Phase 1

New Delhi - 110017

8. Shailesh Gandhi

R/o B 2 Gokul Apartment

Podar Road

Santacruz (west)

Mumbai 400054

9. Bezwada Wilson

R/o 36/13, Ground Floor

East Patel Nagar
Delhi - 110008

10. Nikhil Dey
R/o Mazdoor Kisan Shakti Sanghatan
Village Devdungri,
Post Barar, District Rajsamand-313341
Rajasthan

...Applicants/Respondents

IN THE MATTER OF:

Attorney General of India

... Petitioner

VERSUS

Shri Prashant Bhushan

... Respondent

AN APPLICATION FOR IMPLEADMENT AS RESPONDENTS
WITH SUPPORTING AFFIDAVIT

To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF

THE SUPREME COURT OF INDIA

The humble application of the applicants abovementioned

MOST RESPECTFULLY SHOWETH:

1. The Applicants are citizens of India. The people of India declared in the Preamble of the Constitution, which they gave unto themselves, their resolve to secure to all the citizens liberty of thought and expression. This resolve is reflected as a fundamental right of a citizen in Article 19(1)(a) found in part III of the Constitution. 'Freedom of Speech' is the freedom to speak freely, without fear, without censorship or limitation. The synonymous term freedom of expression is sometimes used to indicate not only freedom of verbal speech but any act of seeking, receiving and imparting information or ideas, regardless of the medium used.
2. A brief description of each applicant is given below:

i) Aruna Roy is a social & democratic activist. She was a part of the Indian Administrative Services from 1968 to 1975. She resigned to work directly with people not merely for their rights to access services, but to claim the constitutional rights of equality and justice. Led by Aruna Roy in 1987, after two intense local struggles for land and minimum wages, the workers and peasants formed the Mazdoor Kisan Shakti Sangathan in 1990. The MKSS and its collective campaigning helped ensure the passage of the Right to Information (RTI) Law and National Rural Employment Guarantee Act (NREGA, now MGNREGA) by the Indian Parliament in 2005. From 2004 – 2006, she was a member of the National Advisory Council (NAC), set up by the UPA Government, chaired by Sonia Gandhi. She joined the second NAC set up in 2010, as a member from 2010-2013. Apart from her involvement with campaigns for

the rights to information and work she has spoken out against attacks on religious minorities and the right to free speech and expression. She was a member of the 'Concerned Citizens Tribunal', which investigated the organized violence and killing of innocent people in the state of Gujarat, India in 2002. She has published extensively on the rights to information, right to work, civil liberties, minority rights, free speech and the right to dissent.

ii) Wajahat Habibullah was the chairperson of the National Commission for Minorities. He held the position of the first Chief Information Commissioner of India. He was an officer of the Indian Administrative Service (IAS) from 1968 until his retirement in September 2005. He was also Secretary to the Government of India in the Ministry of Panchayati Raj and Textiles and Consumer Affairs. He was appointed as a member of the World Bank's Info Appeals Board in July 2010. He was a Member of Advisory Council, Brookings Doha Center, International Advisory Council, Doha, Qatar, Member, Advisory Council, USIP Education and Training Center, Washington DC. Chairman, Board of Governors, National Institute of Technology, Srinagar(J&K). He is the recipient of Rajiv Gandhi Award for Excellence in Secularism-1994, Gold Medal for Distinguished Service; Governor of Jammu & Kashmir-1996 and Lala Ram Mohan History Award; Delhi University-1967.

iii) Arundhati Roy is the author of two novels - The Ministry of Utmost Happiness and The God of Small Things which won The Booker Prize in 1997. She has written several books of collected

non-fiction.

iv) Dr. Harsh Mander is human rights and peace worker, author, columnist, researcher and teacher. He works with survivors of mass violence, hunger, homeless persons and street children. He is the Director, Centre for Equity Studies, and founder of the campaigns Aman Biradari, for secularism, peace and justice; Nyayagrah, for legal justice and reconciliation for the survivors of communal violence; Dil Se, for street children, and 'Hausla' for urban homeless people, for homeless shelters, recovery shelters and street medicine. He was Special Commissioner to the Supreme Court of India in the Right to Food case for twelve years from 2005-17. He is Special Monitor of the statutory National Human Rights Commission for Minority Rights. He convenes and edits the annual India Exclusion Report. He worked formerly in the Indian Administrative Service in Madhya Pradesh and Chhatisgarh for almost two decades. Among his awards are the Rajiv Gandhi National Sadbhavana Award for peace work, the M.A. Thomas National Human Rights Award 2002, the South Asian Minority Lawyers Harmony Award 2012 and the Chisthi Harmony Award 2012.

v) Jayati Ghosh is Professor of Economics at Jawaharlal Nehru University, New Delhi. Her research interests include globalisation, international trade and finance, employment patterns, macroeconomic policy, gender issues, poverty and inequality. She has authored and/or edited a dozen books and more than 180 scholarly articles, most recently *Demonetisation Decoded: A critique*

of India's monetary experiment (with CP Chandrasekhar and Prabhat Patnaik, Routledge 2017), the *Elgar Handbook of Alternative Theories of Economic Development* (co-edited with Erik Reinert and Rainer Kattel, Edward Elgar 2016) and *India and the International Economy*, (Oxford University Press 2015). Her research output has been recognised through several national and international prizes, including the M. Adisheshaiah Award for distinguished contributions to the social sciences in India in 2015; the International Labour Organisation's Decent Work Research Prize for 2010; the NordSud Prize for Social Sciences 2010 of the Fondazione Pescarabruzzo, Italy; and the Ava Maiti Award and the Satyendranath Sen Prize from the Asiatic Society, Kolkata. She has advised governments in India and other countries at different levels. She was the Chairperson of the Andhra Pradesh Commission on Farmers' Welfare in 2004, and Member of the National Knowledge Commission reporting to the Prime Minister of India (2005-09). She has consulted for several international organisations including ILO, UNDP, UNCTAD, UN-DESA, UNRISD and UN Women. She writes regularly for popular media like newspapers, journals and blogs.

vi) Prabhat Patnaik is currently Professor Emeritus at the Jawaharlal Nehru University where he held the Sukhamoy Chakravarty Chair at the Centre for Economic Studies and Planning at the time of his retirement. Earlier he was a member of the Faculty of Economics and Politics of the University of Cambridge and a Fellow of Clare College, He holds a D.Phil in Economics from the University of Oxford, having joined Balliol

College and later Nuffield College as a Rhodes Scholar. He has an Honorary Doctorate from the University of London (School of Oriental and African Studies). He was the Vice-Chairman of the Kerala State Planning Board between 2006 and 2011 and a member of the interactive panel of experts set up by the President of the UN General Assembly after the economic crisis of 2008. He is the author of several books and articles in Economics.

vii) Indu Prakash Singh is a human rights defender, poet, author, a feminist and a PRA/ PLA practitioner / facilitator and is currently Consultant with large number of development organisations. He was recently made a member of the Monitoring Committee for Progress of Shelter for Urban Homeless in Delhi. In 2010 he and his team in IGSSS had a National CityMakers Caravan (nCMc) that travelled most of India demanding more shelters for the homeless (that time W P (C) 196 of 2001 was active in the Supreme Court of India, and had orders for shelters across the country) and also preparing everyone to ensure that Census enumerates the homeless to their exact numbers. Indu has been a leading voice in the country on issues of urban homelessness. Indu is also one of the Petitioners in the W P (C) 572 / 2003 in the Supreme Court of India, on the issue of homelessness. Indu also assisted the Hon'ble High Court of Delhi in its suo moto matter, W P (C) 29 / 2010 (which came about due to the advocacy done by the network, Shahri Adhikar Manch: Begharon Ke Saath (SAM:BKS) of which he too was one of the Executive Committee Members) by filing relevant affidavits and redressing the situation for the homeless. He is also the Facilitator, CityMakers Mission International. He has worked in

the social sector, on range of issues: Children, Youth, Women, Destitute, Chemical Dependents, Elderly, health: leprosy/ TB/ HIV-AIDS/ Mental Health/ Community Health, rural and urban deprivations/ human rights violations, environment & biodiversity, food security for over 30 years.

viii) Shailesh Gandhi is a first generation entrepreneur and a Distinguished Alumnus awardee of IIT Bombay. Shailesh was part of the National RTI movement which was involved in drafting the National Act. He was convener of the National Campaign for People's Right To Information (NCPRI). The only RTI activist to have been chosen as a Central Information Commissioner, he disposed a record of over 20000 cases in 3 years and 9 months, ensuring most cases were decided in less than 90 days. He gave many landmark decisions on RTI, apart from organizing the first digital paper-less office in the Commission. He is passionately pursuing the cause of evolving ways for a time bound justice delivery system, and improving governance systems apart from conducting RTI workshops and advocating active citizenship. He has published a book: RTI Act- authentic interpretation of the Statute and a paper critiquing Supreme Court judgments on RTI.

ix) Bezwada Wilson is an Indian activist and one of the founders and National Convenor of the Safai Karmachari Andolan (SKA), an Indian human rights organization that has been campaigning for the eradication of manual scavenging, the construction, operation and employment of manual scavengers which has been illegal in

India since 1993. His work at SKA, a community-driven movement, has been recognized by the Ashoka Foundation which has nominated him a Senior Fellow. On 27 July 2016, he was honoured with the Ramon Magsaysay Award. In 1994, Bezwada helped found Safai Karmachari Andolan (SKA) along with S. R. Sankaran and Paul Diwakar. SKA's goal is to end the practice of manual scavenging and help those engaged in it find dignified work. In 2003 Bezwada and four other team members moved to Delhi to launch the Safai Karmachari Andolan nationwide. In 2003, Bezwada and the SKA initiated the filing of a PIL in the Supreme Court of India. SKA and 18 other civil society organizations, manual scavengers and individuals signed the affidavit as litigants naming all states and government departments of Railways, Defence, Judiciary and Education as violators of the Manual Scavenging Prohibition Act. The PIL was a major step in the efforts to abolish manual scavenging. All the states and central ministries were forced to address the issue of manual scavenging. The Planning Commission of India constituted a sub-group on safai karmacharis with Bezwada as its convenor.

x) Nikhil Dey is a social activist. He, along with many others helped found the Mazdoor Kisan Shakti Sangathan (MKSS). Since 1990, he has been a full time worker of the MKSS, and has been involved in struggles of the poor for justice, including grass root struggles for land and the payment of minimum wages. He has been a founding member of peoples platforms like National Campaign for People's Right to Information (NCPRI), and the Soochana Evam Rozgaar

Adhikar Abhiyan (SR Abhiyan) who put together “peoples drafts” of the Right to Information and Employment Guarantee Bills, and have consistently worked for their effective implementation. Nikhil Dey is also part of the effort by peoples movements to build institutions of participatory democracy. He has been integrally involved in large state wide campaigns for peoples monitoring of education (Shiksha Ka Sawaal) in Rajasthan in 2016, and the SR Abhiyan is currently planning a Swasthya Ka Sawaal Campaign in Rajasthan. To make progress in the journey from transparency to accountability, the MKSS and SR Abhiyan are currently in the midst of a campaign for the enactment of a “social accountability” legislation at the State and National level. He has been a member of the Central Employment Guarantee Council (CEGC) and of the State Employment Guarantee Council of Rajasthan. He is a Co-convener of the NCPRI, and is currently a member of the Rajasthan State Audit Advisory Board. He was a member of the Steering Committee of the Multilateral Open Government Partnership (OGP) from 2011 to 2014. He is currently an OGP Envoy.

3. That the applicants are concerned about the initiation of the present contempt proceeding against the Respondent for exercising his ‘freedom of speech’, without fear, without censorship in raising issues pertaining to the case of challenging the appointment of CBI Interim Director, Nageshwar Rao, in which the Respondent was appearing as advocate for the petitioners. It appears that the initiation of present contempt proceedings are an assault on the

freedom of speech and expression of the citizen of this country and an attempt to stifle this right by using the power of contempt.

The order of this Hon'ble Court dated 6.02.2019, issuing notice on the Contempt Petitions by the Attorney General for India and the Union of India is annexed as **Annexure _____ at Page _____ to _____**

Factual Context to the tweet by Mr. Prashant Bhushan

4. On January 15, 2019 a petition was filed in the Supreme Court challenging the appointment of Nageshwar Rao as interim Director as it appeared that the appointment had not been approved by the High Powered Selection Committee and also seeking directions to ensure transparency in the appointment process of CBI Director.
5. On January 15, 2019 a letter by Mr. Mallikarjun Kharge addressed to the Prime Minister was reported by the media and put in the public domain by journalists through twitter, in which in point 9 & 10 it was clearly stated that the appointment was not even discussed, much less approved by the selection committee, of which he was a member and attended the meetings. Point 9 and 10 are pasted below:

“9. Finally, we come to the vexing issue of the appointment of an Interim Director unilaterally by the Government. The appointment of an Interim Director (a post that does not legally

exist as per the DSPE Act) has once again been made without consulting the Selection Committee.

10. The Government seemed to have made up its mind on appointing an Interim Director and hence this was never placed before the selection committee in the 10th Jan 2019 meeting. This appointment of an Interim Director is illegal and against Sections 4A(1) and 4A(3) of the DSPE Act.”

A copy of the letter by Mr. Mallikarjun Kharge, dated, 14th January 2019 as published by the Indian Express, is annexed as **Annexure _____ at Page _____ to _____**

6. It is pertinent to note that the government did not refute allegations made by Mr. Kharge. It is only during the hearing on the 1st of February before this Hon'ble Court, the learned Attorney General for India appearing for the government, claimed that the appointment of Mr. Nageshwar Rao had been approved by the High Powered Committee and handed over minutes of the meeting in a sealed cover. These statements of the learned Attorney General have been reported widely in the media and are quoted below.

“The Centre on Friday informed the Supreme Court that the high-power committee’s consent had been obtained prior to the governments appointment of M. Nageswar Rao as interim CBI Director.

‘The high power committee had indeed given permission for the appointment of the interim CBI Director.’

Attorney General K.K. Venugopal submitted.”

(A copy of the media report in The Hindu dated 1.02.2019 is annexed as **Annexure _____ at page _____ to _____**)

“Meanwhile, the Centre informed the apex court that it had taken the permission of a high-powered committee headed by Prime Minister Narendra Modi to appoint Rao as the CBI interim director – the petition by Common Cause had contended that the consent of the committee was apparently not taken for the posting.”

(A copy of the media report in The Indian Express dated 1.02.2019 is annexed as **Annexure _____ at page _____ to _____**)

7. Pertinently, those minutes were not shared with the Respondent. It was natural therefore that he would make his own enquiries from the Leader of the single largest party in the Lok Sabha, Mr. Mallikarjun Kharge, who was a member of the three member High Powered Selection Committee and particularly given the fact that he had written to the Prime Minister on 14th January 2019 as stated above, wherein he had categorically stated that the appointment of the Interim Director was made “without consulting the Selection Committee”.

8. After this hearing, in a telephonic conversation with Mr. Kharge, he confirmed with Prashant Bhushan that the appointment of CBI Interim Director was not discussed at the High Powered Committee meeting. It was in these circumstances, being denied the minutes of the High Powered Committee by the learned Attorney General for India and relying on the information given by Mr. Kharge over the phone, Prashant Bhushan tweeted as follows:

1st February 3:18p.m.

Today in CBI Dir appt case, the govt made a startling new claim that Nageswara Rao was selected as the interim director in the HPC meeting on 11th January when they decided to transfer out Alok Verma! This seems to be at variance from LOP Kharge's version

1st February 3:44p.m.

I have just confirmed personally from the Leader of Opposition Mr Kharge that no discussion or decision in HPC meet was taken re appt of Nageswara Rao as interim Director CBI. The govt appears to have misled the court and perhaps submitted fabricated minutes of the HPC meeting!

9. The tweets merely pointed to the discrepancy between the publicly available letter of a member of the High Powered Committee and the claim of government, made through sealed cover which were

denied to Prashant Bhushan. The tweets in no way made any disparaging remarks against the AG or his conduct. The statements on twitter were based on the information available in the public domain. When one member under his own signature has stated explicitly that a particular matter was not discussed, which has not been denied by the government to our knowledge and on the other hand the government refuses to divulge the minutes and claims are made on basis of information in sealed covers, it would be reasonable to raise questions over material handed over in sealed cover. This is especially so as in the recent Rafale matter, the government itself moved a correction petition stating that the Supreme Court had misinterpreted material presented to it in a sealed cover.

10. The whole issue of lack of transparency in the appointment process raises suspicion in the minds of the public, especially in the context when the government had just 3 months prior unilaterally appointed a CBI Director, which was later struck down by the court. The government has been systematically denying all information about deliberative process around appointments especially to oversight bodies. In the case of CIC and also CBI Director, information is being denied even under the RTI Act. In fact it is pertinent to note that until 4th February 2019, the only information in the public domain about the proceedings of the High Powered Committee, were the note by Kharge.

11. Therefore, the Applicants are of the considered view that what Prashant Bhushan said in his tweets were not unreasonable in the circumstances and the applicants would probably have said the same thing in similar circumstances. In any case the subject of those tweets cannot under any circumstances be treated as an issue of contempt of court.

12. The notice issued in this case by the court to Prashant Bhushan indicates that the court wants to deal with the larger issue of lawyers and litigants commenting publicly about pending court proceedings and whether any restraint should be put on lawyers and litigants comments on pending court proceedings. The applicants feel that any restraint on lawyers and litigants on commenting on pending court proceedings in matters of public interest would have a seriously deleterious impact on not merely the freedom of speech of lawyers and litigants but also on the right of the people and civil society to be informed about pending court proceedings which are of public interest. The applicants feel that lawyers and litigants involved in the cases are usually the best informed about the proceedings and therefore they are most likely to provide accurate information about the proceedings. As this court has held in many judgements the public interest involved in people getting information about pending court proceedings of public interest outweighs any prejudice to judicial proceedings. That would apply equally and perhaps with greater force to statements made by lawyers and litigants since they are likely to be better informed. This would only have the effect of depriving the

people of accurate information about the cases without any benefit whatsoever since others including the media are already permitted to talk about those cases.

13. Many of the applicants have filed public interest petitions before this Court and feel that it is important that accurate information is disseminated and have also therefore spoken and written about those proceedings in the public. The applicants therefore have a vital interest in the decision of the court in this matter and would therefore like to intervene to make written and oral submissions to this court. The applicants would also like to be intervene in the present contempt petition and face the consequence of this contempt if any, along with Respondent.

PRAYER

In view of the above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Allow the present application and implead the Applicants as respondents in the CRL. CONTEMPT PETITION NO. 1 OF 2019
- b) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Applicants

Through