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3rd July 2021

To,

The Attorney General of India

Supreme Court Complex
Tilak Marg, Mandi House,
Delhi-110001

Subject: Seeking Consent to initiate contempt proceedings against Mr. Ashok Kumar Deb, Chairman, Bar Council of West Bengal over his derogatory and disparaging remarks relating to Hon'ble Mr. Justice Rajesh Bindal, Acting Chief Justice of the High Court at Calcutta in a letter addressed to the Hon'ble Chief Justice of India dated 25th June 2021.

Respected Sir,

It is with deep pain and anguish that I write to your esteemed office, bringing to your attention the distressing actions of an office bearer of one of the oldest bar councils of India. Amidst the high decibel political discourse in our country coupled with the extreme divergent views on either sides of the spectrum, our judiciary continues to stand as the bedrock of harmony and stability; being the great unifier of warring sentiments and the singular answer to irresolvable disputes for the common Indian. History is replete with instances whenever political functionaries have attempted to deride judicial sanctity to further their own political gains, the people of India have pulled them down from their high horses. Another attempt seems to be in the making in the correspondence that is the subject matter of this letter.

On 25th June 2021, a letter in the name of the Bar Council of West Bengal titled "*Removal of Hon'ble Justice Rajesh Bindal, the Acting Chief Justice of the Hon'ble High Court at Calcutta with immediate effect*" and signed by Mr. Ashok Kumar Deb, Advocate (Chairman) was addressed to the Hon'ble Chief Justice of India stating that "*We the members of the West Bengal Bar Association are compelled to write this instant*

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letter under urgent and dire consequences" Throughout the contents of the said letter, several derogatory and jarring words have been used with the aim to denounce the reputation of the Hon'ble Acting Chief Justice. Hon'ble Justice Bindal has been said to have a "*chequered past*", "*unfair*", "*partial*" and "*biased*". The letter further states that one judge in particular is his favourite to whom he regularly assigns matters out of turn; Justice Bindal has been referred as "*BJP's man through and through*" and that he is doing bidding of the Hon'ble Governor at Calcutta High Court. The letter was thereafter purposely circulated widely on social media platforms to publicly humiliate and malign the Hon'ble Acting Chief Justice as well as deride the wisdom and decision of the Supreme Court collegium which recommended his transfer to the High Court at Calcutta on 14th December 2020.

It is to be noted that the Ld. Chairman who is the sole signatory of the letter is a six-time MLA belonging to the All India Trinamool Congress (AITC) which is the ruling political party in West Bengal.

On 27th June 2021 four members of the very same Bar Council of West Bengal namely Mr. Kailash Tamoli, Mr. Samir Paul, Mr. Rabindranath Bhattacharya and Mr. Mihir Das clarified in a separate correspondence addressed to the Hon'ble Chief Justice of India stated that the Ld. Chairman Mr. Deb acted on his own without consulting the elected members of the Bar Council of West Bengal and further stated that the ruling dispensation has been using the office of the Bar Council of West Bengal, its letter pad, and its seal as a party office and to hype political thoughts. It clarified that the contents of the letter were never discussed as an agenda in any meeting of the Council nor were the members aware about until they came to know about it through various social media posts.

Section 2(c) of the Contempt of Courts Act, 1971, defines "criminal contempt" as the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

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(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

...

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

The Supreme Court of India being a Court of Record has substantive powers under Articles 129 and 142 of the Constitution of India to punish for contempt of itself as well as preserve and protect the courts inferior to it. The expression used in Article 129 is not restrictive but extensive in nature. If the framers of the Constitution intended that the Supreme Court shall have power to punish for contempt only of itself, there would be no necessity of inserting the expression "including the power to punish for contempt of itself". The plain language of Article 129 indicates that the Supreme Court as a court of record has power to punish for contempt of itself and also something else also which could fall within the inherent jurisdiction of a court of record. [All India Judicial Service Association v State of Gujarat and Ors. AIR 1991 SC 2150]. The powers of the Supreme Court are sui generis. The contention that Supreme Court has powers to punish only for contempt of itself and not of the High Courts was refuted and dismissed in *Re: Vinay Chandra Mishra* (1995) 2 SCC 584 wherein it was held that:

"7. We may first deal with the preliminary objection raised by the Contemner and the State Bar Council, viz., that the Court cannot take cognisance of the contempt of the High Courts. The contention is based on two grounds. The first is that Article 129 vests this Court with the power to punish only for the contempt of itself and not of the High Courts. Secondly, the High Court is also another court of record vested with identical and independent power of punishing for contempt of itself....."

....The contention ignores that the Supreme Court is not only the highest Court of record, but under various provision of the Constitution, is also charged with the duties and responsibilities of correcting the lower courts and tribunals and of protecting them from those whose misconduct tends to prevent the due performance of their duties. The latter functions and powers of this Court are independent of Article 129 of the Constitution. When, therefore, Article 129 vest this Court with the powers of the court of record including the power to punish for contempt of itself, it vests such powers in this Court in its capacity as the highest

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court of record and also as a court charged with the appellate and superintending powers over the lower courts and tribunals as detailed in the Constitution. To discharge its obligations as the custodian of the administrations of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, it is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour and for that purpose all the courts and tribunals are protected while discharging their legitimate duties. To discharge this obligation, this Court has to take cognisance of the deviation from the path of justice in the tribunals of the land, and also of attempts to cause such deviations and obstruct the course of justice. To hold otherwise would mean that although this Court is charged with the duties and responsibilities enumerated in the Constitution, it is not equipped with the power to discharge them"

Faith of the citizens of the country in the institution of justice is the foundation for rule of law which is an essential factor in our democratic set up. It has been observed by the Supreme Court of India very recently, that an Advocate cannot forget his ethical duty and responsibility and cannot denigrate the very system of which he/she is an integral part. Fair criticism is not to be silenced, but an advocate has to remind himself where he crosses the zone of propriety, and the Court cannot continuously ignore it, and the system cannot be made to suffer. When the criticism turns into malicious and scandalous allegations thereby tending to undermine the confidence of the public and the institution as a whole, such criticism cannot be ignored [*Suo Motu Contempt Petition (Crl.) No. 1 of 2020 In Re: Prashant Bhushan and Ors. (2021) 3 SCC 160*] The law of contempt whether civil or criminal contempt, is meant to protect the judiciary itself and the very system thereby. Contempt committed is always of the court and not the judges individually [*Gujarat High Court in Suo Motu vs. Yatin Narendra Oza R/CR.MA/8120/2020 dt. of judgment 06.10.2020*]

Maligning a judge, that to an Acting Chief Justice attuning political colour to his actions without any basis is an attempt to silence the discharge of an independent judiciary that is showing a mirror to the State Government on its inactions failing to rein in breakdown of law and order especially in the aftermath of the recently concluded Assembly elections. It is imperative to note that Hon'ble Justice Bindal is

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heading the Constitutional Bench perused of hearing the batch of PILs filed to protect the life and liberty of victims of post poll violence and seeking a fair investigation by an independent agency by way of a SIT. On 04.6.2021 the Constitution Bench had ordered for rehabilitation of displaced opposition political workers and chastised the local law enforcement agencies for failing to ensure their peaceful return. As recent as yesterday, the said Constitution Bench vide its order dated 02.07.2021 has passed stinging observations against the State Government for failing to prevent post poll murders and sexual assaults on minor girls. It has directed the State Police to register FIRs in all cases and not turn the victims away or intimidate / humiliate them.

In the landmark case of *LM Das v Advocate General Orissa [1957] 1 SCR 167*, the Hon'ble Supreme Court of India had observed that the contemnor being not only a Senior member of the Bar but holding the highest office in the Bar Council of the State (as in the present case) had special and additional duties cast upon him to strengthen people's confidence in judicial institutions. The Court recorded "*to our dismay, we find that he has acted exactly contrary to his obligations and has in reality set a bad example to others while at the same time contributing to weakening of the confidence of the people in the courts*"

The impugned letter dated 25.06.2021 must be read as part of a coordinated and orchestrated attack on every Constitutional functionary involved as of present with affairs relating to the State of West Bengal by the All India Trinamool Congress. On 16.06.2021 questions were raised on the competency of Justice Kaushik Chanda who is the judge hearing the election petition filed by the Chief Minister Ms. Mamata Banerjee; thereafter on 28.06.2021 a smear campaign was started against the Hon'ble Governor raising a 30-year old allegation calling for his resignation and yesterday, there were letters written by the Trinamool Congress Party functionaries calling for the resignation of Hon'ble Solicitor General of India. Thus, the Mr. Deb being a MLA of the ruling party all the more makes obvious the sinister intent.

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In light of the aforesaid facts and reasons, it is apparently clear that the indiscriminate utterances made by the Chairman of the Bar Council of West Bengal against Hon'ble Justice Bindal misusing and depreciating the office and prestige of the Bar Council were made with the intention to cause serious prejudice to the un-withered, courageous functioning of the Hon'ble High Court in an environment of fear caused by large scale human rights and fundamental rights violation in the State, in a clear attempt to subvert the majesty of law by attacking both the administrative and judicial wings. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, I humbly seek your consent to initiate criminal contempt proceedings before the Hon'ble Supreme Court of India against Mr. Ashok Kumar Deb, Chairman Bar Council of West Bengal in terms of Section 15(1)(b) of the Contempt of Courts Act, 1971

Yours Sincerely



Shoumendu Mukherji

Advocate

D/841/2014

Enclosed:

Letter(s) dated 25.06.2021 and 27.06.2021;

Order(s) dated 04.06.2021 and 02.07.2021

Social Media Posts and News Articles