(2023) 08 GAU CK 0015

In the Gauhati High Court

Case No : Writ Appeal No. 311, 314 Of 2023

Directorate Of Enforcement APPELLANT

Vs

Zoramthari RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(g)
Prevention of Money Laundering Act, 2002 — Section 17(1), 17(1A), 17(4), 20(1)

Citation : (2023) 08 GAU CK 0015

Hon'ble Judges : Sandeep Mehta, CJ;Susmita Phukan Khaund, J

Bench : Division Bench

Advocate : R.Dhar, P. Jain, D. Borah, V. Garg, S. Yasmin

Final Decision : Dismissed

Judgement

Sandeep Mehta, CJ

1. The instant two intra-Court writ appeals involve identical questions of facts and law and hence, the same are being decided together by this common order.

2. The respondent Nos.1/writ petitioners, Smt. Zoramthari, proprietor of M/s Thari Enterprise, and Shri Lalrinhlua, Proprietor of M/s LRH Enterprise filed criminal writ petitions in the Aizawl Bench of this Court being WP(Crl.) No. 2/2022 and WP(Crl.) No.3/2022 respectively in order to challenge freezing of 4(four) Bank Accounts belonging to Smt. Zoramthari [writ petitioner in WP(Crl.) No.2/2022] and one Bank Account belonging to Shri Lalrinhlua [writ petitioner WP(Crl.) No.3/2022].

These Bank Accounts were freezed by the Banks concerned under the direction of the appellant i.e. Directorate of Enforcement (ED).

Brief Facts :-

3. FIR No.216/2021 dated 14.12.2021 was registered by the Enforcement Directorate (ED) against one M/s Nayla Family Exports Private Limited and others

with the allegation of illegal smuggling of human hair. During the course of investigation, the Enforcement Directorate conducted search in offices and residences of various persons in Hyderabad and Mizoram including the respondent/writ petitioners and certain documents including property papers, mobile phones, laptop and Indian currency worth Rs.26 lakhs were seized. The ED issued orders dated 09.02.2022 and 10.02.2022 under Section 17(1) of the Prevention of Money Laundering Act, 2002 (in short, the Act of 2002) for freezing various Bank Accounts of numerous persons including those of the respondents/ writ petitioners. On 07.03.2022, the ED proceeded to file Original Application (O.A.) No.644/2022 under Section 17(4) of the Act of 2002 before the adjudicating authority requesting for retention of the property seized and for continuation of the freezing of the Bank Accounts concerned. In the O.A., the ED gave out details of 143 Bank Accounts which had been frozen by it in pursuance to the orders issued on 09.02.2022 and 10.02.2022. The respondents/writ petitioners were arrayed as defendants in the O.A. Few of their Bank Accounts also figured in the list of 143 Bank Accounts annexed with the O.A. However, 4(four) Bank Accounts of the writ petitioner in WP(Crl.) No.2/2022, Smt. Zoramthari [Writ Appeal No.311/ 2023] and one Bank Account of the writ petitioner in WP(Crl) No.3/2022, Lalrinhlua [Writ Appeal No.314/2023] were not included in the list filed along with the O.A. Nonetheless, the Banks concerned were not permitting operation of these Accounts.

4. The respondents/writ petitioners filed their written objection before the adjudicating authority, who proceeded to pass the Confirmation Order dated 22.08.2022 allowing the O.A. filed by the E.D.

5. Upon this, the writ petitions (Criminal) in question came to be instituted before the Aizawl Bench on numerous grounds. The pertinent one that 4(four) Bank Accounts of the writ petitioner Smt. Zoramthari [WP(Crl.) No.2/2023] and one Bank Account of writ petitioner Shri Lalrinhlua [WP(Crl.) No.3/2023] were not included in the list of Accounts sought to be confirmed under Section 17(4) of the Act of 2002 nor did the adjudicating authority permit continuation of freezing of these Bank Accounts and hence, the continued moratorium on operation of the Bank Accounts amounted to infringement to the fundamental and legal rights of the respondents/writ petitioners.

6. A plea was also taken by the writ petitioners that the Confirmation Order came to be passed by the adjudicating authority beyond the statutory period of 180 days prescribed under the Act of 2002 and hence, the action of freezing came to an end by efflux of time by virtue of the provision contained in Section 20(1) of the Act of 2002. The adjudicating authority became functus officio on 07.08.2022 and could not have passed the Confirmation Order.

7. Before the learned Single Judge, the ED presented a Freezing Order dated 10.02.2022 passed in relation to these 5(4+1) Bank Accounts of the two respondents/writ petitioners. However, it was not disputed in the affidavit-in-opposition that these Accounts were not enlisted in the list of 143 Bank Accounts

filed along with the O.A. before the adjudicating authority seeking confirmation.

8. Both the writ petitions came to be allowed by learned Single Judge vide composite order dated 27.04.2023 holding that there was no valid action on the part of the ED authorities in freezing the Bank Accounts, as the same were not included in the Original Application filed to the adjudicating authority. It was further held that the adjudicating authority had become functus officio on account of expiry of period of 180 days as provided under Section 20(1) of the Act of 2002.

9. This composite order passed by the learned Single Judge allowing the writ petitions of the respondents/writ petitioners is assailed in these two intra Court writ appeals.

10. Mr. R. Dhar, learned counsel representing Directorate of Enforcement appellant herein, vehemently and fervently contended that the existence of a validly issued freezing order dated 10.02.2022 was demonstrated before the writ court by filing the same with the affidavit-in-opposition. However, the numbers of the Bank Accounts (4+1) in question could not be incorporated in the list filed along with the original application seeking confirmation due to inadvertence.

11. As per Mr. Dhar, the omission was inadvertent and hence, the learned Single Judge should not have interfered in the writ jurisdiction so as to quash the otherwise valid freezing order. He further contended that the writ petitioners/ respondents had available to them the statutory remedy of challenging the order of the adjudicating authority by filing an appeal, but they failed to avail this remedy and thus, the writ court ought not to have interfered in the action of the Enforcement Directorate while exercising the extra-ordinary writ jurisdiction. His further contention was that the view taken by the learned Single Judge that the proceedings before the adjudicating authority expired by efflux of time is unjustified as the same is based on wrong interpretation of the Hon'ble the Supreme Court judgment extending limitation by virtue of order passed in the case of IN RE: Cognizance for Extension of Limitation [Suo Moto WP(C) No.3/2020]. On these grounds, Mr. Dhar implored the Court to admit the appeals and stay the impugned order.

12. Per contra, Mr. P. Jain, learned counsel representing the respondents/writ petitioners opposed the submissions advanced by the learned counsel for the appellant. He urged that the Directorate of Enforcement did not seek confirmation of freezing of the 5(4+1) Bank Accounts of the respondents/writ petitioners in the Original Application and thus, the continued moratorium on operation thereof is grossly arbitrary and violative of fundamental right of the respondents/writ petitioners as guaranteed by Article 19(1)(g) of the Constitution of India. He further urged that the view taken by the learned Single Judge in holding that the proceedings before the adjudicating authority had lapsed by efflux of time is also unassailable in the eyes of law. He thus implored the Court to dismiss the writ appeals.

13. We have considered the submissions advanced at Bar and carefully perused the impugned judgment and the material placed on record.

14. The initial order of freezing of the 5(4+1) Bank Accounts of the respondents/ writ petitioners which was purportedly undertaken by the authorities of ED under Sub-Section (1A) of Section 17 of the Act of 2002. The authorities seizing/ freezing of the record is required to file an application requesting for retention of the record of property or the order of freezing served under Sub- Section (1A) of Section 17 of the Act of 2002 to the adjudicating authority within a period of 30 days from the date of such seizure and freezing. The adjudicating authority, in turn, is empowered by virtue of Section 20(1) of the Act of 2002 to direct continuation of the freezing of the Bank Account or retention of the seized property within a period of 180 days from the date on which such property was seized or frozen, as the case may be.

15. There is no dispute amongst the parties that the list of Bank Accounts enclosed with the Original Application (O.A.) filed by the ED to the adjudicating authority, did not contain, the numbers of the 5 (4+1) disputed Bank Accounts of the writ petitioners. The ED, of course, tried to demonstrate before the learned Single Judge that an order of freezing these 5(4+1) Bank Accounts had also been passed on 10.02.2022, which fact was disputed by the writ petitioners.

16. Without commenting on the veracity on the order of freezing passed in reference to these 5(4+1) Bank Accounts, if any, there cannot be two views on the aspect that the initial order of freezing has to be submitted for confirmation by filing an appropriate application to the adjudicating authority within a period of 30 days from the date of such seizure and freezing.

Non-inclusion of the numbers of the 5(4+1) Bank Accounts of the writ petitioners in the application filed by the ED to the adjudicating authority would clearly mean that the ED never sought for continuance of the order of freezing. As a consequence, the initial order of freezing even if in existence, expired on completion of 30 days i.e. on 12.03.2022.

17. In this background, the learned Single Judge was perfectly justified in directing de-freezing of 5(4+1) Bank Accounts, because the continued embargo on the operation thereof by the Banks concerned on purported instruction of the ED clearly amounts to violation of the fundamental rights of the Account holders, i.e. respondents/writ petitioners as enshrined under Article 19(1)(g) of the Constitution of India. The availability of statutory remedy cannot act to the detriment of a litigant when the writ jurisdiction of the Court is invoked in the matter wherein there is clear transgression of the fundamental rights of a citizen.

18. To that extent, the impugned order dated 27.04.2023 passed by learned Single Judge in WP(Crl.) No.2/2022 and WP(Crl.) No.3/2022, does not require any interference.

19. The ED has also filed WA Nos.312/2023 and WA No.313/2022, wherein

challenge has been led to the view taken by the learned Single Judge that on account of non-confirmation of the freezing order within 180 days, the adjudicating authority became functus officio.

We feel that the challenge led by the Enforcement Directorate (ED) to the view of the learned Single Judge on this aspect deserves consideration. Thus, affirmation of the order passed by the learned Single Bench shall not be construed as giving imprimatur to the impugned judgment on the aspect of limitation as prescribed under Section 20(1) of the Act of 2002. This aspect would be open for consideration in the appeals referred to (supra) which have been admitted by separate order passed today.

20. With the above observations and directions, these two writ appeals, i.e. WA No.311/2023 and WA No.314/2023 are dismissed.

