
(1992) 07 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 1547 of 1992

Hitesh Shantilal Mehta

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 24-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226

Citation : (1992) 3 BomCR 716 : (1993) CriLJ 1729

Hon'ble Judges : M.L. Pendse, J; M.G. Chaudhari, J

Bench : Division Bench

Advocate : K.S. Cooper, Aspi Chinoy, Amit Desai and Milind Sathe, instructed by M/s. Kanga and Co, for the Appellant; K. Parasaran, T.R. Andhyarujina, K.J. Presswala and M.M. Varma, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—Leave to amend in terms of the draft. Amendment to be carried out within one week.

This petition has been filed by one Hitesh S. Mehta to challenge the constitutional validity of the Special Court (Trial of Offences relating to Transactions in Securities) Ordinance, 1992 and the Notification dated 8th June, 1992 issued by the 2nd Respondent u/s 3(2) of the Ordinance notifying the name of the petitioner under that section.

2. The petitioner is a qualified surgeon. He has an M. S. Degree in General Surgery which he acquired in January, 1988, and presently he is employed as a lecturer in the Department of Surgery and Surgical Gastroenterology at the Nair Hospital. He is also the brothers of Harshad Mehta, Ashwin Mehta and Sudhir Mehta against whom proceedings are taken before the Special Court. The petitioner has challenged the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992 (hereinafter referred to as "the Special Court Ordinance").

3. According to the petitioner the classification of offences which are required to

be dealt with under the Ordinance is wholly arbitrary and without any rational basis. u/s 3(2) of the Notification the offences which are referred to are these relating to transactions in securities after the 1st day of April, 1991 and on or before the promulgation of this Ordinance, that is to say 6th June, 1992.

4. Securities are defined u/s 2(c) as including shares, scrips, stocks, bonds, debentures, debenture stock etc. as set out therein as also Government securities and right or interests in securities.

5. It is submitted that such transactions may include a large number of transactions which have no connection with the object of the Ordinance and hence such a classification is irrational. In this connection the respondent in their affidavit have pointed out that a judicial notice can be taken of the fact that in or about March, 1992, a large scale manipulation of transactions in securities through the media of brokers came to light. A Committee headed by R. Janakiraman, the Deputy Governor of the Reserve Bank of India was appointed to look into such transactions. The report of the Committee made on 31st May, 1992 unearthed illegal use of public funds belonging to Banks and Financial Institutions by certain brokers to the tune of over Rs. 3,000 crores. The affidavit further states that prominent amongst such brokers were Harshad Mehta and his firms. The affidavit also further points out that fraudulent transactions in securities involving larger sums have come to light after the initial report of the Janakiraman Committee. As a result of such transactions coming to light public confidence in the banking and financial institutions was being seriously eroded. It was, therefore, absolutely imperative to take immediate action not only to punish the guilty persons who were involved in such transactions involving public funds but also to take urgent action to freeze and recover public funds which were siphoned off and were in the hands of such manipulators in securities. It is submitted by the respondents that it is in these circumstances that the classification of offence relating to transactions in Securities after 1st of April, 1991 and before 6th June, 1992 has been arrived at. This has a direct nexus with the object which is sought to be achieved by the Ordinance, namely, not merely to bring the offenders to book speedily but also to take immediate steps to freeze and recover public funds which may be in the hands of such manipulators, their family members or other persons connected with such offences. We find considerable force in this submission. Hence the first contention that there is not proper classification of offences or that such classification has no nexus with the object of the Ordinance does not appear to be correct. It is undoubtedly true that there may be a few offences relating to transactions in securities which are not connected with such illegal use of public funds belonging to banks and financial institutions. But looking to the nature and magnitude of the problem and the need to take immediate remedial measures, the datewise all embracing classification which has been arrived at must be considered as reasonable. The extraordinary circumstances which necessitated the Ordinance justify such a classification.

6. The main thrust of the argument advanced on behalf of the petitioner is relating to the provisions of Section 3 under which the custodian, may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before the promulgation of this Ordinance, notify the name of such person in the Official Gazette. u/s 3 sub-section (3), on and from the date of notification under sub-section (2), any property, movable or immovable or both belonging to any person notified under sub-section (2), shall stand attached simultaneously with the issuance of the notification.

7. The petitioners contend that these provisions give very wide powers to the Custodian to notify the name of any person on the basis merely of information received by him, and on such notification, the entire property of such a person stands attached. It is contended that this power is a very wide power which can be exercised arbitrarily. There is no provision for any hearing being given to the person who may be affected. There is no provision for giving any reasoned order either. Hence these provisions are contrary to the principles of natural justice and negate the Rule of Law. They must therefore be struck down.

8. Had the provision been confined to Section 3, sub-sections (2) and (3), the argument which is advanced before us would have had considerable force. It is undoubtedly true that neither in sub-section (2) nor in (3) is there any provision for any hearing being given to the person who may be notified, nor is there any provision for any reasoned order being passed by the Custodian at the time when he notifies such a person. There is, however, a further sub-section, namely, sub-section (4) of Section 3 which provides as follows :

Section 3 : (4) The property attached under sub-section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct."

This sub-section clearly contemplates that the powers of the Custodian to deal with the property of a person who has been notified is subject to the orders and directions of the Special Court. Now, in the first place, the Special Court under the Ordinance is a Court presided over by a sitting judge of a High Court. This itself is a check on any arbitrary exercise of powers by the Custodian. Secondly, the power of the Special Court to give directions to the Custodian in respect of any attached property must necessarily bring within its ambit, the power to order the release of such property or any part of it from attachment. If the person who is aggrieved by his name being notified under sub-section (2) approaches the Special Court and makes out, for example, a case that the property which is attached or a portion of it has no nexus of any sort with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and or that there are no claims or liabilities which have to be satisfied by attachment and sale of such property, in our view, the Special Court would have the power to direct the Custodian to release such property from attachment. In the same way, if ultimately, the Special Court, after looking at all the relevant circumstances, comes to the conclusion that the entire property should be

released from attachment, we do not see any reason why such a direction also cannot be given by the Special Court u/s 3 sub-section (4). In such a situation, if the entire property is required to be released from attachment, the Special Court, in our view, can also direct the Custodian that the name of the notified person should be de-notified. This would be a necessary consequence of the power of the Special Court to give proper directions in connection with the property which the Custodian seeks to attach. If sub-section (4) is read in this light, the grievance of the petitioner relating to the validity of powers granted to the Custodian u/s 3 would not survive.

9. It is undoubtedly true that a hearing has not been given under the Ordinance to the person whose name is being notified prior to notification. But the circumstances which are set out in the affidavit require speedy action in order to ensure, that the property in question is not siphoned off. In such a situation a pre-decisional hearing may not be possible. But sub-section (4) provides a post decisional hearing before the Special Court. The Custodian can be asked by the Special Court to give reasons for the action which he has taken, and in the light of the submissions made by the Custodian or otherwise, the person aggrieved can also make submissions before the Special Court. The Special Court, before passing an order has to hear both the sides. This kind of a post-decisional hearing, when the situation which is required to be dealt with cannot wait a pre-decisional hearing, is not violative of the audi alteram partem rule. As observed by Supreme Court in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, while dealing with the principles of natural justice, "what opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal; it may be a hearing prior to the decision or it may even be post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise." In the present case the audi alteram partem rule is not violated by reason of the fact that the powers of the Custodian u/s 3(2) and (3) are circumscribed by Section 3(4).

10. The submission of the petitioner that there is not provision for raising the attachment or for de-notifying a person who is notified, cannot be accepted in view of the above. In this connection our attention was also drawn to the provisions of Section 11 of the Ordinance. Section 11 of the Ordinance deals with an independent power of the Special Court in connection with the disposal of the property under attachment. This power is separate and distinct from the powers u/s 3(4). Section 11 deals with the disposal of the property under attachment at a stage where various liabilities can be crystalised. It ensures that the attached property is disposed of as per the directions of the Special Court. It is a separate power and must be read independently of Section 3(4) which deals with an earlier stage where the properties, are initially attached.

11. It was urged that Section 3 is widely worded. Under it, if the custodian is satisfied that a person is "involved" in an offence as specified there, he may notify such a person - with the accompanying consequence. Hence a person who has not committed any offence can also be notified. It is submitted that such a provision is unjust and unreasonable. The purpose, however, of the Ordinance is not merely to bring the guilty to book, but to track the property acquired by the offenders whenever it may be found, and in whosoever's hands it may be found. Because the property is, in a broad sense, public money invested with banks or financial institutions. The power to attach such property is therefore conferred on the custodian, even when the property is in the hands of a third party, if there is a nexus between such third party, an offender and the property. The submission of the petitioner must therefore be rejected.

12. It was also submitted before us that there is no co-relation between the property attached and the liability which the person concerned, may be ultimately required to discharge. To that extent also the provisions of Section 3 are arbitrary and unreasonable. This submission also, in our view, has no substance. He pointed out earlier, the provisions of Section 9 sub-sections (2) and (3) have been enacted in order to meet the special circumstances relating to the offences concerned. They are designed to prevent the property in question being misappropriated or in any other manner made unavailable for the discharge of liabilities which may ultimately be fastened on to the persons concerned. The exercise of this power is regulated by Section 3 sub-section (4). Hence it is open to an aggrieved person to approach the Special Court in order to satisfy it that the attachment levied is far in excess of the ultimate liability which that person may be required to discharge. If the Special Court is so satisfied, it is open for the Special Court to pass appropriate orders releasing the property or a portion of it from attachment or imposing conditions for such release, looking to the circumstances of the case. Since a specific remedy is available to the aggrieved person under the Ordinance itself, it cannot be said that the Ordinance is arbitrary or unreasonable or is violative of Article 14 or 19 of the Constitution.

13. We may also point out in this connection the submission made by learned counsel for the respondents that the Special Court is required to follow the procedure prescribed under the Criminal Procedure Code in respect of trial offence. But while dealing with other questions which may arise before the Special Court, the court is entitled to proceed in accordance with all relevant procedural or substantive laws which may be applicable.

14. Undoubtedly, it would have been better had these powers of the Special Court been spelt out more clearly and explicitly in the Ordinance itself, or in the rules which have been framed under the Ordinance. Nevertheless the provisions of Section 3 sub-section (4) are wide enough to provide an aggrieved person with the right to a hearing and a right to have his grievance redressed before the Special Court.

In the premises we do not see any reason to exercise our powers under Art. 226.

The petition is therefore dismissed.

15. Petition dismissed.