(2019) 05 PAT CK 0072

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9941 Of 2019

M/S Indian Traders APPELLANT

Vs

State Of Bihar Through The District And Ors RESPONDENT

Date of Decision : 16-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Income Tax Act, 1961 — Section 131, 132, 132A, 226(3)

Citation : (2019) 4 PLJR 190

Hon'ble Judges : Jyoti Saran, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, S.K. Mandal, Neelam Kumari, Siddhartha Prasad, Om Prakash Kumar, Archana Sinha, Alok Kumar

Final Decision : Allowed

Judgement

This writ petition filed under Article 226 of the Constitution of India raises question on the seizure of cash amounting to Rs.26,90,000/- carried out by the Flying Squad led by respondent no.8, Executive Magistrate, Muzaffarpur and alongside seeks a direction to the respondent authorities especially the Income Tax Officer, QRT (respondent no.6) to release the seized cash which was deposited in the District Treasury at Muzaffarpur but has since been transferred to the Income Tax Department.

The petitioner is a proprietorship firm engaged in wholesale trading of ready-made garments having its place of business in Zila Parishad market at Muzaffarpur. The petitioner is registered under the Goods and Service Tax Act, 2017 and is an assessee under the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

The complaint of the petitioner is that on 26.3.2019 a Flying Squad under the leadership of respondent no.8 entered his business premises claiming knowledge about huge cash lying with the petitioner which according to them was meant for use in Elections for influencing voters in violation of the Election Laws and

Guidelines. The proprietor of the petitioner was shocked because no notice had been received by him in this regard and thus, the authority of the Flying Squad was unknown. The proprietor of the petitioner handed over the cash which was a collection of payments received from different customers and meant for different purposes. The cash was not even counted by the Flying Squad, who simply collected the same, prepared a seizure list and left the business premises.

On 27.3.2019 a call was received by the proprietor of the petitioner from the District Treasury Office, Muzaffarpur requiring his presence and it is when that the money seized was counted which was quantified at Rs.26,90,000/-. The entire cash was kept at the District Treasury Office, Muzaffarpur, the signature of the proprietor of the petitioner was obtained on the seizure list, a copy of which is enclosed at Annexure 3 to the writ petition.

The proprietor of the petitioner was summoned by the Income Tax Officer cum QRT, Muzaffarpur on 29.3.2019 under section 131 of the Income Tax Act for recording his statement. A copy of the notice dated 29.3.2019 of the Income Tax Officer cum QRT, Muzaffarpur is enclosed at Annexure 4 to the writ petition. The statement of the proprietor of the petitioner was recorded on the said date however, copy of the same was not provided.

On 11.4.2019 the proprietor of the petitioner was summoned by a three-men Committee in the office of the Treasury Officer, Muzaffarpur and it is on the said date that the seized cash of Rs.26,90,000/- was handed over to the Income Tax Officer by the Treasury Officer, Nodal Officer and the Member of the Flying Squad vide Annexure 5 to the writ petition.

Since the entire exercise was lacking foundation, the petitioner filed a representation on 12.4.2019 before the Assistant Director, Income Tax for release of the cash vide Annexure 6 and not being responded to that, the petitioner approached the District Magistrate, Muzaffarpur on 16.4.2019 for needful action vide Annexure 7. The petitioner also represented before the Director General of Income Tax (Investigation) vide Annexures 8 series but all attempts have gone in vain and it is in these circumstances that the petitioner approached this Court questioning the entire exercise on its legality as well as lack of foundation for conducting seizure.

The writ petition also tries to explain the collection of the amount in question but in view of the developments which have taken place subsequently, we do not consider it necessary to discuss the same for the present.

This matter was taken up on a motion made on 1.5.2019 and this Court taking note of the grievance raised put the raiding team as well as the Income Tax department on notice seeking their response on the issue. The writ petition was next taken up on 8.5.2019 and when on noting that the exercise was carried out under the guidelines so issued by the Election Commission of India, the Court added the Election Commission of India as respondent no.9 and after serving notice on the retained counsel for the Commission, the matter was posted for

10th May, 2019.

When the matter was taken up on 10.5.2019 Mr. Gautam Kejriwal, learned counsel appearing for the petitioner complained that the seizure had been done dehors the guidelines issued by the Election Commission of India and the Income Tax department had taken over the money. Since Mr. Siddhartha Prasad registered appearance for the Election Commission of India, on the same day, the matter was adjourned enabling Mr. Prasad, appearing for the Election Commission of India to file their counter affidavit and in the meanwhile taking note of the stipulations present in Clause 16 the Committee constituted under the guidelines consisting of the Chief Executive Officer, Zila Parishad or the CDO/ P D DRDA; the Nodal Officer of Expenditure monitoring in the District Election Office, as its Convenor and the District Treasury Officer, Muzaffarpur, were directed to examine the seizure on its validity and pass appropriate orders.

This matter next came up for consideration on 15.5.2019, when Mr. Siddhartha Prasad, learned counsel appearing for the Election Commission of India while filing a counter affidavit invited our attention to the guidelines present at Annexure A/9 to submit that if at any stage of election, a suspicion arises regarding distribution of cash or liquor for the purpose of bribe or on the movement of antisocial elements or arms and ammunition, the Flying Squad constituted under the guidelines is expected to reach the spot, seize the cash or items of bribe, gather evidence and record the statement of the witnesses from whom the items have been seized and after issuance of Panchanama for the seizure in terms of the provisions of the Code of Criminal Procedure, 1973, the seizure is to be effected. He next refers to the provisions of Clause 16 to submit that although Clause 4 talks about submission of the case to the court of competent jurisdiction within 24 hours and Clause 6 provides for lodging of the complaint/ F.I.R. immediately, Clause 16 deals with release of cash including the cases where no F.I.R./ complaint is instituted against the seizure and in which case the Committee so constituted is required to examine the seizure and in case it is not found linked with any candidate or political party, to take steps for release of cash.

Learned counsel next refers to Clause 16(iv) to submit that in case release of cash is more than Rs.10 lacs, the Nodal Officer of the Income Tax Department is to be kept informed before the cash is released. He submits that pursuant to the order of this Court the matter was examined and the Committee consisting of the Deputy Development Commissioner, Muzaffapur, the Nodal Officer and the Treasury Officer have concluded that the seized cash had no connection with the election and thus, the Income Tax Department has been asked for release of the cash. Copy of the order bearing Memo No. 197 dated 13.5.2019 is at Annexure J/9 to the affidavit of the Election Commission of India.

On a pointed query as to how in absence of any stipulations present in the guidelines for deposit of the cash with the Income Tax Department, the money got transferred to the Income Tax Department, Mr. Siddhartha Prasad referred to a letter of the Income Tax Officer, IAP cum Officer QRT for Elections, 2019, Muzaffarpur, who vide letter dated 4.4.2019 addressed to the District Magistrate, Muzaffarpur requisitioned the cash amounting to Rs.26,90,000/- seized from the petitioner, from the custody of the Treasury Officer for its deposit in the "PD account of Principal Commissioner of Income Tax, Muzaffarpur" under warrant of Authorization issued under section 132A of the Income Tax Act, 1961 by the authority of the Income Tax Department (the Principal Director of Income Tax (Investigation), Bihar and Jharkhand. Copy of the said letter is enclosed at Annexure F/9 to the said counter affidavit.

According to Mr. Prasad, in view of the position reflecting from the decision of the Committee under the guidelines dated 13.5.2019 at Annexure J/9 and in view of the requisition made by the Income Tax Officer, IAP cum Officer QRT for Elections, 2019 at Annexure F/9 since the seized cash is not connected with election violations, appropriate direction could be issued to the Income Tax Department for release of the cash in question.

On a query made from Ms. Archana Sinha, learned Senior Standing Counsel for the Income Tax Department as to the jurisdiction in which requisition was placed before the District Magistrate by the Income Tax Officer, IAP cum Officer QRT for Elections, 2019 through his letter dated 4.4.2019 at Annexure F/9 of the counter affidavit of the Election Commission of India, Ms. Sinha relied upon the provisions of Section 132 of the Act for supporting the seizure.

A counter affidavit is filed on behalf of respondents no. 5 to 7 including the Income Tax Officer, IAP cum Officer QRT for Elections, 2019, Muzaffarpur who is the author of the letter dated 4.4.2019 through which the requisition was placed for transfer of the money in question.

A plain reading of the affidavit filed on behalf of the authorities of the Income Tax Department would confirm that the Income Tax Department assumed jurisdiction to adjudicate on the money seized and whether it had been accounted for by the petitioner while filing his returns. The affidavit demonstrates that the statement of the proprietor of the petitioner was recorded by the Income Tax Officer, IAP unit to opine that the proprietor did not produce any evidence in support of the seizure.

Ms. Sinha, learned Senior Standing Counsel appearing for the Department, has strenuously tried to justify the action of the Income Tax Department in requisitioning the money from the District Treasury and for initiating a proceeding against the proprietor of the petitioner under the provisions of 'the Act' completely failing to appreciate that the proceeding in question was an outcome of a raid conducted under the guidelines of the Election Commission of India and the seizure was not a consequence of a raid made by the Income Tax authorities under section 132 of the Income Tax Act, 1961 nor any order could be passed in purported exercise of jurisdiction under section 226(3) of 'the Act' to requisition the money in absence of a duly constituted proceeding.

In a last ditch effort Ms. Sinha appearing for the Income Tax Department by filing a supplementary counter affidavit which enclosed an extract of guidelines justified the requisition of seized cash as being an exercise under the said guidelines. Unfortunately the guidelines enclosed at Annexure 'A' to the said affidavit though referred as the guidelines issued by the Election Commission actually is an extract of manual on Election Expenditure Monitoring issued by the Director General of Income Tax (Investigation), Bengalore.

We have heard learned counsel for the parties and have perused the records and we are in no confusion to hold that in view of the conclusion drawn by the three-men Committee constituted under the guidelines of the Election Commission of India, a copy of which is enclosed at Annexure A/9 to the counter affidavit of the Election Commission of India, in accepting the error committed in the seizure of the cash in question and concluding that the seized money had no connection with the Elections which conclusion is accompanied with the recommendation for release of cash by the Income Tax Department, any attempt made by Ms. Sinha to justify either the requisitioning of the cash in question by respondent no.6 vide his letter dated 4.4.2019 at Annexure F/9 or in taking recourse to the provisions of Section 132 of the Income Tax Act or to hold on to the money is absolutely without jurisdiction and without sanction of law because the guidelines nowhere empowers either the Income Tax Department to requisition the cash seized in an exercise conducted under the guidelines of the Election Commission of India nor does guidelines provide that any cash seized in the process is to be deposited with the Income Tax Department. In fact save and except that Clause 16(iv) simply provides that the Nodal Officer of the Income Tax Department is to be kept informed if a release above 10 lacs is to be effected, there is no obligation on the Committee to transfer the cash to the Income Tax Department.

Even otherwise, in our opinion, the seizure itself was without sanction of law and which is apparent from the fact that no F.I.R. or complaint was instituted as provided under Clause 4 of the Guidelines nor the case was submitted to the court of competent jurisdiction within 24 hours nor the Committee so constituted under the Guidelines took any decision to order seizure of the cash, in absence of any F.I.R./ complaint instituted in terms of Clause 16(i). The illegality is perpetuated because the guidelines do not empower the authorities connected with conduct of the Elections to transfer money deposited in the Treasury to the Income Tax Department on their dictates.

Had it been a case where the three men Committee constituted under the guidelines would have opined in favour of the seizure then perhaps the money transfer to the Income Tax Department made sense but such is not the case and neither the Committee has found the seizure justified nor the proceedings in question has been initiated following a seizure under section 132 of 'the Act'.

In such view of the matter, the action of the District Treasury Officer, Muzaffarpur in succumbing to the dictates of the Income Tax Department to transfer the seized cash vide Annexure 5 to the writ petition on 11.4.2019 is dehors the guidelines and even the requisition made by respondent no.6 through his letter dated 4.4.2019 addressed to the District Magistrate, Muzaffarpur at Annexure F/9 vide order dated 11.4.2019 at Annexure 5 is wholly illegal and without sanction of law.

What we find surprising is that even when the Committee constituted has accepted vide Annexure J/9 that the seizure was wrong, the Income Tax Department has proceeded to exercise jurisdiction over the cash seized as if the seizure made by the Flying Squad under the guidelines of the Election Commission of India was in fact in furtherance of exercise under section 132 of the Income Tax Act and the Flying Squad was acting as their agency. We find it rather strange that Ms. Sinha while espousing the cause of the Income Tax Department has completely failed to appreciate that neither the seizure was under section 132 of the Act nor the pre-requisite to an exercise of search and seizure under section 132 of the Act were satisfied nor the requisition satisfies the provisions of Section 226(3) of 'the Act', which is the only provision enabling the Income Tax Department to take over the money apart from the search and seizure prescriptions under section 132.

That the Committee vide its order dated 13.5.2019 has ordered for release of cash with the recommendation to the Income Tax Department to take consequential action, we hereby direct respondents no. 6 to 8 or the authority found responsible more particularly respondent no.6 under whose requisitional order the money was transferred to the Income Tax Department to forthwith take steps for release of the cash in favour of the proprietor of the petitioner within a maximum period of eight weeks of receipt/ production of a copy of this judgment, failing which the petitioner would be entitled to interest @ 10% on the seized cash payable by the Income Tax Department from the date the seizure took place i.e. 27.3.2019 until the money is refunded by the Income Tax Department.

Be it noted that we have expressed no opinion on the exercise initiated by the Income Tax Department in purported exercise under section 131 and 132A of 'the Act' and they are at liberty to take it to its logical conclusion.

The writ petition is allowed with the directions/ observations above.