
(2008) 09 SC CK 0001

In the Supreme Court Of India

Case No : Writ Petition No. 634 of 2007

Pareena Swarup

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Adjudicating Authority Rules, 2007 — Rule 3(3)
Appellate Tribunal Rules, 2007 — Rule 4, 6(1), 6(2)
Constitution of India, 1950 — Article 14, 19(1), 21, 217(2), 226
Prevention of Money-Laundering Act, 2002 &mda

Citation : (2009) 1 CALLT 14 : (2008) 231 ELT 210 : (2008) 11 JT 343 : (2008) 13 SCALE 84 : (2008) 14 SCC 107 : (2008) 88 SCL 1 : (2009) 1 SLJ 315 : (2010) 18 STR 230

Hon'ble Judges : K. G. Balakrishnan, C.J.;P. Sathasivam, J;Lokeshwar Singh Pant, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

P. Sathasivam, J.—Ms. Pareena Swarup, member of the Bar, has filed this writ petition under Article 32 of the Constitution of India by way of Public Interest Litigation seeking to declare various sections of the Prevention of Money Laundering Act, 2002 such as Section 6 which deals with adjudicating authorities, composition, powers etc., Section 25 which deals with the establishment of Appellate Tribunal, Section 27 which deals with composition etc. of the Appellate Tribunal, Section 28 which deals with qualifications for appointment of Chairperson and Members of the Appellate Tribunal, Section 32 which deals with resignation and removal, Section 40 which deals with members etc. as ultra vires of Articles 14, 19(1)(g), 21, 50, 323B of the Constitution of India. It is also pleaded that these provisions are in breach of scheme of the Constitutional provisions and power of judiciary.

2. Brief facts in a nutshell are: The Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the Act") was introduced for providing punishment for

offence of Money Laundering. The Act also provides measures of prevention of money laundering. The object sought to be achieved is by provisional attachment of the proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds under the Act. The Act also casts obligations on banking companies, financial institutions and intermediaries to maintain record of the transactions and to furnish information of such transactions within the prescribed time. In exercise of powers conferred by Clause (s) of Sub-section (2) of Section 73 read with Section 30 of the Prevention of Money- Laundering Act, 2002 (15 of 2003), the Central Government framed rules regulating the appointment and conditions of service of persons appointed as Chairperson and Members of the Appellate Tribunal. These rules are the Prevention of Money-Laundering (Appointment and Conditions of Service of Chairperson and Members of Appellate Tribunal) Rules, 2007. The Central Government has also framed rules called the Prevention of Money Laundering (Appointment and Conditions of Service of Chairperson and Members of Adjudicating Authorities) Rules, 2007.

3. It is highlighted that the provisions of the Act are so provided that there may not be independent judiciary to decide the cases under the Act but the Members and the Chairperson are to be selected by the Selection Committee headed by the Revenue Secretary. It is further pointed out that the Constitutional guarantee of a free and independent judiciary, and the constitutional scheme of separation of powers can be easily and seriously undermined, if the legislatures were to divest the regular Courts of their jurisdiction in all matters, entrust the same to the newly created Tribunals. According to the petitioner, the statutory provisions of the Act and the Rules, more particularly, relating to constitution of Adjudicating Authority and Appellate Tribunal are violative of basic constitutional guarantee of free and independent judiciary, therefore, beyond the legislative competence of the Parliament. The freedom from control and potential domination of the executive are necessary pre- conditions for the independence. With these and various other grounds, the petitioner has filed this public interest litigation seeking to issue a writ of certiorari for quashing the abovesaid provisions which are inconsistent with the separation of power and interference with the judicial functioning of the Tribunal as ultra vires of the Constitution of India.

4. The respondent-Union of India has filed counter affidavit repudiating the claim of the petitioner. The Department highlighted that the impugned Act has not ousted the jurisdiction of any courts and sufficient safeguards are provided in the appointment of officers of the Adjudicating Authorities, Members and Chairperson of the Appellate Tribunal.

5. We have carefully verified the provisions of the Act and the Rules, particularly, relating to constitution and selection of Adjudicating Authorities, Members and Chairperson of the Appellate Tribunal. Considering the stand taken by the petitioner with reference to those provisions, we requested Mr. K.K. Venugopal,

learned senior counsel, to assist the Court. Pursuant to the suggestion made by the Court, Mr. K.K. Venugopal and Mr. Gopal Subramaniam, learned Additional Solicitor General, discussed the above issues and by consensus submitted certain proposals.

6. The petitioner has highlighted the following defects in the Adjudicating Authority Rules, 2007 and the Appellate Tribunal Rules, 2007:

1. Rule 3(3) of Adjudicating Authority Rules, 2007 does not explicitly specify the qualifications of member from the field of finance or accountancy.

2. Rule 4 of Appellate Tribunal Rules, 2007 which provided for Method of Appointment of Chairperson do not give adequate control to Judiciary.

3. Rule 6(1) of Appellate Tribunal Rules, 2007 which defines the Selection Committee for recommending appointment of Members of the Tribunal, would undermine the constitutional scheme of separation of powers between judiciary and executives.

4. Rule 32(2) of PMLA which provides for removal of Chairperson/Members of Tribunal under PMLA does not provide adequate safety to the tenure of the Chairperson/Members of the Tribunal.

5. Rule 6(2) of Appellate Tribunal Rules is vague to the extent that it provides for recommending names after "inviting applications thereof by advertisement or on the recommendations of the appropriate authorities."

6. Section 28(1) of PMLA, which allows a person who "is qualified to be a judge of the High Court" to be the Chairperson of the Tribunal, should be either deleted or the Rules may be amended to provide that the Chief Justice of India shall nominate a person for appointment as Chairperson of Appellate Tribunal under PMLA "who is or has been a Judge of the Supreme Court or a High Court" failing which a person who "is qualified to be a judge of the High Court."

7. The qualifications for Legal Member of the Adjudicating Authority should exclude "those who are qualified to be a District Judge" and only serving or retired District Judges should be appointed. The Chairperson of the Adjudicating Authority should be the Legal member.

7. As regards the above defects in the rules, as observed earlier, on the request of this Court, Mr. K.K. Venugopal, learned senior counsel, Mr. Gopal Subramaniam, learned ASG as well as Ms. Pareena Swarup who has filed this PIL suggested certain amendments in the line of the constitutional provisions as interpreted by this Court in various decisions.

8. It is necessary that the Court may draw a line which the executive may not cross in their misguided desire to take over bit by bit and judicial functions and powers of the State exercised by the duly constituted Courts. While creating new avenue of judicial forums, it is the duty of the Government to see that they are not in breach of basic constitutional scheme of separation of powers and

independence of the judicial function. We agree with the apprehension of the petitioner that the provisions of Prevention of the Money Laundering Act are so provided that there may not be independent judiciary to decide the cases under the Act but the Members and the Chairperson to be selected by the Selection Committee headed by Revenue Secretary. It is to be noted that this Court in the case of L. Chandra Kumar Vs. Union of India and others, has laid down that power of judicial review over legislative action vested in the High Courts under Article 226 as well as in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution constituting part of the its structure. The Constitution guarantees free and independent judiciary and the constitutional scheme of separation of powers can be easily and seriously undermined, if the legislatures were to divest the regular courts of their jurisdiction in all matters, entrust the same to the newly created Tribunals which are not entitled to protection similar to the constitutional protection afforded to the regular Courts. The independence and impartiality which are to be secured not only for the Court but also for Tribunals and their members, though they do not belong to the 'Judicial Service' are entrusted with judicial powers. The safeguards which ensure independence and impartiality are not for promoting personal prestige of the functionary but for preserving and protecting the rights of the citizens and other persons who are subject to the jurisdiction of the Tribunal and for ensuring that such Tribunal will be able to command the confidence of the public. Freedom from control and potential domination of the executive are necessary pre-conditions for the independence and impartiality of judges. To make it clear that a judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by Judges who are free from potential domination by other branches of Government. With this background, let us consider the defects pointed out by the petitioner and amended/proposed provisions of the Act and the Rules.

9. Mr. Gopal Subramaniam has informed this Court that the suggested actions have been completed by amending the Rules. Even other wise, according to him, the proposed suggestions formulated by Mr. K.K. Venugopal would be incorporated on disposal of the above writ petition. For convenience, let us refer the doubts raised by the petitioner and amended/proposed provisions as well as the remarks of the department in complying with the same.

S. Issues Amended/Proposed provision Remarks No. 1. Rule 3(3) of Rule 3(3) of Adjudicating Action Adjudicating Authority Authority Rules, 2007 have been completed. Rules, 2007 does not amended to specify the 'academic Amended explicitly specify the qualification' for the Member Rule as per qualifications of from the field of finance and annexure A member from the field accounting by inserting a Sub- of finance or clause (b) as follows: accountancy. "(b) From among such persons, the Selection Committee shall have due regard to the academic qualifications of chartered accountancy or a degree in finance, economics or accountancy or having special experience in finance or accounts by virtue of having worked for at least two years in the finance or revenue

department of either the Central Government or a State Government or being incharge of the finance or accounting wing of a corporation for a like period."

2. Rule 4 of Appellate Tribunal Rules, 2007 has been amended. which provided for to unambiguously provide that Amended Method of the appointment of Chairperson Rule as per Appointment of shall be made on the annexure B Chairperson do not recommendation of the Chief give adequate control Justice of India. to Judiciary.

3. Rule 6(1) of Appellate Tribunal Rules, 2007 has been amended. which defines the to provide that the Chairperson Amended Selection Committee of Appellate Tribunal is Rule as per for recommending appointed on the annexure C appointment of recommendation of the CJI and Members of the the composition of the Selection Tribunal, would Committee to select Members of undermine the the Tribunal has been amended constitutional scheme to provide for a Judge of the of separation of Supreme Court, nominated by powers between the Chief Justice of India, to be judiciary and the Chairperson of the Selection executives. Committee.

4. Section 32(2) of PMLA Appropriate amendment to the Draft Bill is which provides for Statute is being proposed to under removal of unambiguously provide that preparation. Chairperson/Members Chairperson/Members appointed of Tribunal under in consultation with Chief PMLA does not Justice of India, shall not be provide adequate removed without mandatory safety to the tenure of consultation with Chief Justice the Chairperson/ of India. members of the Tribunal.

5. Rule 6(2) of Appellate Tribunal Rules is Tribunal Rules, 2007 may be deleted. vague to the extent amended to delete the words "or that it provides for on recommendation of the recommending names appropriate authorities", a after "inviting proposal endorsed by ASG, Shri applications thereof Gopal Subramaniam. by advertisement or on the recommendations of the appropriate authorities."

6. Section 28(1) of PMLA, There are several Acts under There is no which allows a person which Judges and those requirement who "is qualified to be `qualified to be a judge' are to amend a judge of the High equally eligible for selection like either the Court" to be the for Chairman under NDPS Act Statute or Chairperson of the and SAFEMA; Judicial member the Rules. Tribunal, should be under Administrative Tribunal either deleted or the Act; Chairperson under FEMA Rules may be etc. The eligibility criteria, for amended to provide appointment as a judge of a High that the Chief Justice Court, provided in the of India shall Constitution of India under nominate a person for Article 217(2)(b), is that the appointment as person should have been "for at Chairperson or least 10 years as an advocate of Appellate Tribunal a High Court...." Furthermore, under PMLA "who is since appointment of or has been a Judge of Chairperson of the Tribunal

the Supreme Court or under PMLA is to be made on the a High Court" failing recommendation of CJI, it is which a person who expected that an independent "is qualified to be a person would be appointed to judge of the High head the Appellate Tribunal. Court."

7. The qualifications for 1. Persons `qualified to be a There is no Legal Member of the district Judge' are treated at par requirement Adjudicating Authority with District Judges for the to amend should exclude "those purposes of qualification for either the who are qualified to be appointment as member in ATFE Statute or a District Judge" and under FEMA; as President of the Rules. only serving or retired District Forum under Consumer District Judges should Protection Act, 1986 etc. The be appointed. The eligibility criterion, for Chairperson of the appointment as a District Judge, Adjudicating Authority provided in the Constitution of should be the Legal India under Article 233(2), is that member. the person should have been an advocate "for not less than seven years".

2. PMLA is a specialized and new Act and District Judges may not be available with experience in related issues whereas Advocates or officers of Indian Legal Service, who are eligible to be District Judges, may often have greater knowledge of its provisions and working.

3. The Adjudicating Authority is a body of experts from different fields to adjudicate on the issue of confirmation of provisional attachment of property involved in money laundering. The functions of Adjudicating Authority are civil in nature to the extent that it does not decide on the criminality of the offence nor does it have power to levy penalties or impose punishment.

4. Adjudication is a function which is performed by Executives under many statutes. The Competent Authority under NDPS/SAFEMA have been conducting Adjudication proceedings routinely since 1978

10. Inasmuch as the amended/proposed provisions, as mentioned in para 9, are in tune with the scheme of the Constitution as well as the principles laid down by this Court, we approve the same and direct the respondent-Union of India to implement the above provisions, if not so far amended as suggested, as expeditiously as possible but not later than six months from the date of receipt of copy of this judgment. The writ petition is disposed of accordingly. No costs. This Court records its appreciation for the valuable assistance rendered by Mr. K.K. Venugopal, learned senior counsel and Mr. Gopal Subramaniam, learned Addl. Solicitor General.