(2021) 02 DEL CK 0151

In the Delhi High Court

Case No : Civil Writ Petition No. 1448 Of 2021, Civil Miscellaneous Application No. 4155-4156 Of 2021

Rama Luthra APPELLANT

Vs

Directorate Of Enforcement Through: Its Director & Anr RESPONDENT

Date of Decision : 12-02-2021

Acts Referred:
Prevention Of Money Laundering Act, 2002 — Section 5, 5(1), 17, 17(1), 17(2)

Citation : (2021) 02 DEL CK 0151

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Jayant Mehta, Kumar Vaibhav, Gautam Khazanchi, S. Uday Bhanu, Mohd. Ashaab, Amit Mahajan, Asheesh Jain

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through video conferencing.

2. The present petition has been filed by the Petitioner who is a 72 yearsâ?? old widow. She was working as a public relations professional in

Lexicon Public Relations and Corporate Consultants (P) Ltd., Lexicon PR Management Services (P) Ltd., as also in an advertising company called FS

Advertising Ltd.

3. The Petitioner raises a challenge in the present petition to the Provisional Attachment Order (hereinafter â??PAOâ??) dated 22nd January, 2021

by which her bank accounts, immovable property and shares etc. have been provisionally attached by the Enforcement Directorate (hereinafter,

â??EDâ??) on the suspicion that these amounts are proceeds of crime and were used to make unauthorised payments for obtaining the coal blocks allocation.

4. A perusal of the PAO dated 22nd January, 2021 shows that the allegation in the PAO is that the Petitioner and her earlier employees have all made

contradictory statements and there is no explanation for various expenses which were incurred. A total amount of Rs.5.60 crores is stated to have

been received from a company called M/s. AES Chhattisgarh Energy Private Ltd and the Indian subsidiary of a U.S. company which was allocated

the coal block in Chhattisgarh. The Petitioner is alleged to have been involved in providing consultancy services to the said company. Vide the PAO,

the total immovable and movable assets of Rs.3,23,51,787.86/- have been attached and further, vide letter dated 1st February, 2021, a further amount

of Rs.2.38 crores is sought to be attached out of the deposits of the Petitioner with M/s Centrum Wealth Management Ltd. (hereinafter, â??M/s

Centrumâ??) totalling to Rs.6,19,59,931.51/-.

5. Mr. Jayant Mehta, ld. counsel appearing for the Petitioner submits that there is no basis for the PAO as there is no allegation against the Petitioner.

The Petitioner is not an accused, neither has she been named in the FIR. For the first time, a PAO has been issued against her, attaching her assets.

6. Mr. Asheesh Jain, ld. counsel appearing for the ED however submits that there is sufficient material to suspect that the Petitioner was in some way

involved in making unauthorised payments for ensuring allocation of the coal block.

7. Initially, on 4th February, 2021, the matter was heard and an oral order was passed disposing of the petition. However, owing to the fact that the

judgment of the Supreme Court in Opto Circuit India Limited v. Axis Bank & Ors., [Criminal Appeal No. 102/2021, decided on 3rd February, 2021]

was later on brought to the notice of the Court in an unconnected matter, in order to consider the impact of the said judgment on the present case, this

Court deemed it appropriate to hear submissions of ld. Counsels in light of the said judgment. The order passed was kept on hold and the matter was

adjourned to enable counsels to make submissions.

8. Thereafter, today, counsels for the parties have been heard once again. Mr. Amit Mahajan, ld. CGSC and Mr. Asheesh Jain, ld. Counsel have

pointed out that there is a subsequent PAO which has now been passed by the ED on 8th February, 2021. Vide this PAO, the ED has again modified the attachment to the following effect:

â??10. Now, therefore, having perused and taken into consideration the material on record placed before me, it appears that the following

mentioned persons i.e., M/s Lexicon Public Relations and Corporate Consultants Pvt. Ltd., through Smt. Rama Luthra, Director, as detailed

in chart incorporated in para 6.1.7 above valued at Rs.2.37 crores as value thereof, are in possession of aforesaid proceeds of crime with

themselves or with the mentioned entities/ authorities. Further, I have reasons to believe that aforementioned movable/ immovable properties

mentioned in Para 6, if not provisionally attached at the stage, the non-attachment may frustrate the proceedings under this act and

therefore, I hereby order provisional attachment of the aforesaid properties valued at Rs.2.37 crores (Rs. In words two crores and thirty

seven lakhs rupees only) in terms of Section 5(1) of PMLA, 2002, for a period of 180 days (One hundred and eighty days) and further

order that the same shall not be transferred, disposed, removed, parted with or otherwise dealt with, until or unless specially permitted to do

so by the undersigned.â??

9. The cumulative effect of the two PAOs is that the bank accounts, the Petitionerâ??s shares in the Demat account, the immovable property, as

also a sum of Rs.2.37 crores out of the Fixed Deposit in M/s Centrum have been attached by the ED.

10. The Supreme Court in Opto Circuit (supra), has clearly held that there have to be proper and cogent reasons for PAOs to be issued under Section

5 of the Prevention of Money Laundering Act, 2002 (hereinafter, â??PMLA, 2002â??). The relevant portions of the judgment are set out herein

below:

â??11. The scheme of the PMLA is well intended. While it seeks to achieve the object of preventing money laundering and bring to book the

offenders, it also safeguards the rights of the persons who would be proceeded against under the Act by ensuring fairness in procedure.

Hence a procedure, including timeline is provided so as to ensure that power is exercised for the purpose to which the officer is vested with

such power and the Adjudicating Authority is also kept in the loop. In the instant case, the procedure contemplated Â under Section 17 of

PMLA to which reference is made above has not been followed by the Officer Authorised. Except issuing the impugned communication

dated 15.05.2020 to AML Officer to seek freezing, no other procedure contemplated in law is followed. In fact, the impugned

communication does not even refer to the belief of the Authorised Officer even if the same was recorded separately. It only states that the

Officer is investigating the case and seeks for relevant documents, but in the tabular column abruptly states that the accounts have to be

â??debit freezed/stop operationsâ??. It certainly is not the requirement that the communication addressed to the Bank itself should contain

all the details. But what is necessary is an order in the file recording the belief as provided under Section 17(1) of PMLA before the

communication is issued and thereafter the requirement of Section 17(2) of PMLA after the freezing is made is complied. There is no other

material placed before the Court to indicate compliance of Section 17 of PMLA, more particularly recording the belief of commission of the

act of money laundering and placing it before the Adjudicating Authority or for filing application after securing the freezing of the account

to be made. In that view, the freezing or the continuation thereof is without due compliance of the legal requirement and, therefore, not

sustainable.â??

11. The Petitioner is a senior citizen who is stated to have recently lost her daughter to cancer. Her plea in the petition is almost on humanitarian

grounds i.e., that her entire life savings have in effect been frozen and she is even unable to pay her medical bills and undertake her day-to-day

expenses. The allegations against her in the PAOs date back to the time when she was a PR professional i.e., sometime between 2007-08 to 2015

when the FIR was lodged.

12. The allegation in the FIR is that the company M/s. AES Chhattisgarh Energy Private Ltd had received FDI from its Principal in the USA of Rs.

49.24 crores out of which Rs. 5.60 crores was disbursed to Lexicon Public Relations and Corporate Consultants (P) Ltd., for allegedly obtaining

assistance in approvals/authorisations. The PAO concludes:

â??Accordingly, the interpretational connotations regarding existence of ulterior motives of siphoning out of an amount for unspecified purposes cannot be ruled out as such disbursed amounts were appeared to have been integrated at some financial platform and might have

been used as bribe to get the coal block allocatedâ?¦.â??.

This PAO is followed up with a letter dated 22nd January 2021, to M/s. Centrum to the effect that any funds lying with it which belong to the

Petitioner are not to be dispensed with/transferred/transacted in any manner without prior intimation to the ED, as the same are being considered for

Provisional Attachment under Section 5 of the PMLA, 2002. Thus, as on the date when letter dated 22nd January 2021 was issued, no attachment

order existed in respect of the funds lying in M/s. Centrum.

13. After the first hearing on 4th February 2021, when the first PAO was considered, along with the letter to M/s Centrum, a second PAO was

passed on 8th February 2021, in effect, justifying the letter to M/s Centrum but reducing the attachment to 2.37 crores. The cumulative effect of both

the PAOs is that the immoveable property of the Petitioner, all her bank accounts, her Demat account consisting of her shares in various companies

as also her Fixed deposits to the tune of Rs. 2.54 crores stand attached. The submission of ld. Counsels for the ED is that the remaining amounts in

the fixed deposits are now at the disposal of the Petitioner.

14. In the opinion of this Court, the manner in which all the liquid savings of the Petitioner have been completely frozen appears completely unjustified,

especially when the allegations against the Petitioner are merely in the realm of speculation, at this stage. The letter dated 22nd January 2021 issued to

M/s. Centrum attached the Petitionerâ??s entire deposits to the tune of Rs. 6 crores. Coupled with the assets attached in the PAO, the total assets

attached are cumulatively worth 9,23,51,787/- crores, when admittedly, even as per the EDâ??s own case, the total amount received by M/s.

Centrum from M/s. AES Chhattisgarh Energy Private Ltd is only Rs. 5.60 crores. Some opportunity ought to have been granted to the Petitioner

before passing orders attaching all her accounts and deposits. Attaching all her assets was totally unwarranted.

15. Keeping in mind the status of the Petitioner and the above facts, it is directed that in place of the attachment of the assets of the Petitioner, as per

the PAOs dated 22nd January, 2021 and 8th February, 2021, the Petitioner shall voluntarily keep a fixed deposit of Rs.3 crores and not dispose of the immovable property, being Commercial Shed bearing No. Gat No.-126, Sawardari, Tal-Khed, Chakan, Pune-410501, Maharashtra, India, valued at

Rs.2,24,43,670/-. Details of the Fixed deposit of Rs. 3 crores, shall be provided to the ED within one week. Subject to the above terms being complied

with within a week by filing of an affidavit of undertaking before this Court, the Petitioner would be free to deal with all other assets. The PAOs dated

22nd January, 2021 and 8th February, 2021 are modified in the above terms.

16. The Petitioner is now free to approach the Adjudicating Authority in accordance with law, at the appropriate stage.

17. PAO dated 8th February, 2021 was e-mailed to the Court Master today. The same is taken on record. Let a copy of the same be filed by Mr.

Asheesh Jain, ld. Counsel, in the Registry.

18. The de-freezing of the bank accounts shall be effected by the banks concerned upon service of a digitally signed copy of this order, downloaded

from the High Courtâ??s website. No further communication from the ED would be insisted upon by the Banks.

19. With these observations, the present petition, along with all pending applications, is disposed of.