
(2016) 07 JH CK 0120
In the Jharkhand High Court
Case No : L.P.A. No. 120 of 2016

Shri Dehati Stapanan Nyas

APPELLANT

Vs

The Directorate of Enforcement

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Prevention of Money-Laundering Act, 2002 — Section 26, 5, 6

Citation : (2017) 170 AIC 336 : (2016) 4 JBCJ 191 : (2016) 4 JCR 494 : (2016) 4 JLJR 313 : (2016) 137 SCL 292

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Mahesh Tewari, Advocate, for the Appellant; Mr. A.K. Das, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J.—Aggrieved by order dated 10.02.2016 passed in W.P.(C) No. 2896 of 2014, whereby and where under challenge by the appellant writ petitioner (hereinafter referred to as "appellant") to order dated 12.05.2014 passed under Section 6 of Prevention of Money Laundering Act, 2002 has failed, the appellant Nyas has preferred the present Letters Patent Appeal.

2. The appellant Dehati Sthapana Nyas (TLHPDL) has pleaded that it was registered on 13.03.2008 in the office of District Registrar, Ranchi. The objective of the Trust is to provide educational facilities in rural areas, which is charitable in nature. It has been issued PAN No. AAITS6216N and the Trust is an individual assessee under Income Tax laws. It has also been granted registration under Section 12A/12AA of Income Tax Act, 1961, which exempts the appellant to pay tax on incomes and donations received. To fulfil its objectives, the Trust has started Maa Nagini Shahi Mahila Mahavidyalaya, Nagar Untari which conducts courses of B.A., B.Com and B.Sc and the said institution is the only educational institution for higher education for women at Nagar Untari. It is claimed that the Trust purchased four landed properties over which the said Women's College has

been constructed. Order dated 19.12.2013 was passed under Section 5(1) of the Prevention of Money Laundering Act, 2002, whereby the properties of the Trust were provisionally attached and the said order has been confirmed by the Adjudicating authority vide order dated 12.05.2014 in O.C. No. 238 of 2013.

3. Mr. Mahesh Tewari, the learned counsel for the appellant contends that appellant Nyas is a body of individuals covered under Section 2(s)(v) which defines "person" and Section 6(15) of Prevention of Money Laundering Act, 2002 mandates that the Adjudicating Authority shall be guided by the principles of natural justice and while so, order dated 12.05.2014, whereby properties of Nyas have been attached, could not have been passed without hearing the appellant. The learned counsel for the appellant relied on decision in "Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors." (1998) 8 SCC 1, to contend that alternative remedy of appeal provided under Section 26 is not a bar to entertain the writ petition complaining breach of rules of natural justice.

4. Per contra, Mr. A.K. Das, learned counsel for the respondent Directorate of Enforcement, supporting the order passed by the Writ Court, submits that under Section 26 "any person aggrieved" by an order of Adjudicating Authority can prefer an appeal and the Appellate Tribunal is vested with powers as are vested in a civil Court as enumerated under Section 35(2), and not only that, the Appellate Tribunal has wide powers to confirm, modify or set aside the order passed by the Adjudicating Authority. It is, thus, contended that the Prevention of Money Laundering Act, 2002, being a complete code in itself, provides efficacious remedy to a person aggrieved by an order passed by the Adjudicating Authority and therefore, the Writ Court has rightly dismissed the writ petition as not maintainable on the ground of alternative remedy to the appellant.

5. Before examining the plea of breach of rules of natural justice, let us examine whether the Act provides an efficacious remedy to "a person aggrieved" or not.

6. "Statement of objects and reasons" to the Act recognises that money laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. The Prevention of Money Laundering Act, 2002 has been enacted to implement the resolution and the Declaration adopted by the General Assembly of the United Nations. Considering the consequence of attachment under Section 5, the power of attachment has been conferred upon Director or any other officer not below the rank of Deputy Director authorised by the Director. A further rider has been incorporated which requires the authorised officer to pass an order under Section 5, "on the basis of material in his possession". The Adjudicating Authority under Section 6 consists of Chairperson and two other members. Under Section 11 the Adjudicating Authority has been vested with powers of a civil Court in the matters enumerated under subsection (1)(a) to (f). The Act further provides for "access to information, power to impose fine, power of survey, search and seizure, power to arrest, retention of property, retention of records etc." Section 26 provides that the Director or any person aggrieved by an order made by the Adjudicating

Authority may prefer an appeal to the Appellate Tribunal. Section 26(4) confers wide powers on the Appellate Tribunal to confirm or modify or set aside the order appealed against. Subsection (6) provides that the appeal shall be dealt with as expeditious as possible and it shall be disposed of finally preferably within six months. Section 35 vests powers akin to a civil Court in the Appellate Tribunal in respect of matters enumerated under subsection 2(a) to (i) and under subsection (3) an order made by the Appellate Tribunal is executable as a decree of civil Court and for this purpose, the Appellate Tribunal has been vested with all the powers of the civil Court. Subsection (5) to Section 35 declares that all proceeding before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil Court for the purposes under Sections 345 and 346 of the Code of Criminal Procedure, 1973. Section 39 permits a person preferring an appeal to the Appellate Tribunal to take the assistance of an authorised representative to present his case before the Tribunal. And, Section 45 provides an appeal to the High Court from any decision on or of the Appellate Tribunal.

7. Another special feature of the Act appears under Chapter VII. An offence punishable under Section 4 or any scheduled offence connected to the offence under that section shall be triable by the Special Court and, the High Court may exercise powers conferred by Chapter XXIX or Chapter XXX of Code of Criminal Procedure on a High Court in dealing with appeal and revision under Section 47. Provision under Section 47 confers such powers on the High Court besides, provision for appeal under Section 42 under which an appeal can be preferred from any decision or order of the Appellate Tribunal. The jurisdiction of the civil Court to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Authority is empowered by or under the Act to determine is barred under Section 41 and it is further provided that no injunction shall be granted by any Court or any Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. The aforesaid provisions disclose a complete and precise scheme regulating attachment, confiscation, appeal, revision etc. under the Act and the remedy provided to a person aggrieved is efficacious.

8. The rule of alternative remedy, i.e., requiring a person to exhaust statutory remedy was adopted by the Courts centuries ago, and finds mention in "Wolverhampton New Waterworks Co." (1859) 6 CBNS 336, wherein Willes J., declared that the forum given by the statute must be adopted and adhered to. Rule of alternative remedy is, indeed, a rule of policy and discretion rather than a rule of law. Corpus Juris Secundum (Vol. 14, p. 67) lucidly explains this rule, thus;

"It has been broadly stated that an exception to the rule that the writ will not lie where there is another and adequate remedy exists where its allowance is necessary to prevent a failure of justice, in cases of unusual hardship or in

exceptional circumstances. It has also been held that the rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience, and discretion rather than a rule of law."

9. One of the exceptions carved out to the rule of alternative remedy can be found in the decision "King v. Postmaster General; Ex-parte Carmichael", 19281 KB 291 (E), wherein it was held that the superior Court will readily issue a certiorari in a case where there has been a denial of natural justice before a Court of summary jurisdiction. In "Rex v. Wandsworth Justices; Ex-parte Read", 19421 KB 281 (F), a man was convicted in a Court of summary jurisdiction without giving him an opportunity of hearing. It was held that in spite of remedy in appeal, a writ of certiorari would lie. Viscount Caldecote, C.J. puts the situation in the following words; "it would be ludicrous in such a case as the present for the convicted person to ask for a case to be stated. It would mean asking this Court to consider as a question of law whether justices were right in convicting a man without hearing his evidence. This is so extravagant an argument as not to merit a moment's consideration".

10. Then came the decision in "Raleigh Investment Co. Ltd. v. Governor General in Council" AIR 1947 PC 78, holding that in the Provenance of tax where the Act provided for a complete machinery which enables an assessee to effectively challenge the validity of an assessment, an alternative remedy to the High Court to interfere must be excluded. However, the view expressed by the Privy Council in "Raleigh Investment Co. Case" was not approved by the Supreme Court in "K.S. Venkataraman and Co. (P) Ltd. v. State of Madras" AIR 1966 SC 1089, to the extent that an assessment made on the basis of a provision which is ultravires is not an assessment made under the Act and hence, rule of alternative remedy cannot be adopted to oust the jurisdiction of the High Court to issue certiorari.

11. In "Mohammad Yasin v. Town Area Committee, Jalalabad & Anr." reported in AIR 1952 SC 115, it was held by the Supreme Court that if the imposition of a licence fee is without authority of law, it can be challenged by way of an application under Article 32, "a fortiori" also under Article 226. Another exception to the rule of alternative remedy was pointed out in "State of Bombay & Anr. v. The United Motors (India) Ltd. & Ors." AIR 1953 SC 252, wherein it was held that the principle that a Court will not issue a prerogative writ when an adequate alternative remedy is available would not apply where a party comes to the Court with an allegation that his Fundamental Right has been infringed and seeks relief under Article 226 of the Constitution of India.

12. Rule of alternative remedy was further diluted in "State of U.P. v. Mohammad Nooh" AIR 1958 SC 86, wherein Constitution Bench of the Supreme Court observed that, "there may be cases where the error, irregularity or illegality committed by an inferior Court or Tribunal of first instance, touching upon the jurisdiction or the procedure adopted, is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be

obliterated or cured on appeal or revision then, the superior Court may properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or Tribunal of first instance, even if an appeal to another inferior Court or Tribunal is available."

13. The decision in "Whirlpool Corporation" (supra) is reiteration of the aforesaid principles governing rule of alternative remedy, which has been recognised in paragraph no. 20 of the reported decision:

20. "Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

14. The plea taken by the appellant is not that the procedure for preferring appeal under the Act is onerous or not efficacious. The only plea, as noticed above, raised by the appellant is breach of rules of natural justice and more so, when the statute itself provides notice to a person before an order is passed under Section 6. The contention of the appellant is founded on the provisions under Sections 6(15) and 8(1) of the Prevention of Money Laundering Act, 2002, which are extracted below:

6(15) "The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure."

8(1) "On receipt of a complaint under subsection (5) of Section 5, or applications made under subsection (4) of section 17 or under subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an [offence under section 3 or is in possession of proceeds of crime], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under subsection (1) of section 5, or, seized [or frozen] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money laundering and confiscated by the Central Government:

Provided that where a notice under this subsection specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property."

15. The application of principles of natural justice cannot be confined in a straight jacket formula, can be discerned from the judgments of Supreme Court wherein, it has been observed that, "it is not only difficult but also not advisable to spell out any straight jacket formula which can be applied universally to all cases without variation." In "K.L. Tripathi v. State Bank of India & Ors." (1984) 1 SCC 43, the Hon"ble Supreme Court has held that, ".....The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth". In "Aligarh Muslim University & Ors. v. Mansoor Ali Khan" (2000) 7 SCC 529, the Hon"ble Supreme Court after taking note of "K.L. Tripathi" case observed that, "since then, this Court has consistently applied the principle of prejudice in several cases." It was further observed that, "there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary."

16. No doubt, if an order has been passed affecting a person or depriving him of his property, it would certainly cause prejudice to that person. The documents produced by the appellant discloses that Bhanu Pratap Shahi is the author of the Trust and he is the authorised signatory of Dehati Sthapana Nyas, the appellant Trust. Paragraph no. 1 of Trust deed dated 13.03.2008 recites that Bhanu Pratap Shahi is the Managing Trustee of the Nyas. The order passed in O.C. No. 238 of 2013 discloses the holder's name of four landed properties claimed by Dehati Sthapana Nyas as Bhanu Pratap Shahi and he was issued notice in O.C. No. 238 of 2013. Responding to a query of the Court, whether it is noncompliance of rules of natural justice, Mr. Mahesh Tewari, the learned counsel for the appellant reiterated that it is the appellant Trust which must be heard before any order under Section 6 is passed, however, the learned counsel conveniently forgot that he has referred to subsection 2(s)(v) to draw support to the plea that the Trust must have been noticed. Subsection (s)(v) to Section 2 refers to an association of persons or a body of individuals. In our considered view, once the Managing Trustee who is also the authorised signatory of the Trust and the lands allegedly purchased by the Trust are held by him has been heard, it must be construed in law that the appellant Trust has been heard before an order under Section 6 was passed. Not only that, the memorandum of instant appeal has been filed through its trustee-cum-authorised person namely, Lal Hemendra Pratap Dehati who is the father of Bhanu Pratap Shahi. The Trust deed discloses that he is just one of the trustees. The person claiming himself the authorised person through whom the appellant is represented before the Court has not produced resolution of the Nyas authorising him to file the writ petition or the instant Letters Patent Appeal. In view of the aforesaid facts, the prehension of the appellant that noncompliance of the rules of natural justice has caused grave prejudice to it, must be ignored.

17. Another aspect of the matter, which takes the case of the appellant out of the

writ jurisdiction, is the nature of claim of the appellant over the property. The appellant Nyas has claimed rightful ownership over the properties dealt under para 7(b) of the order passed by the Adjudicating Authority. The Act provides for confiscation of the property derived from or involved in money laundering. Offence of money laundering has been defined in Section 3 which covers acts such as, involvement, directly or indirectly or to assist knowingly or to become a party knowingly or involvement in any process or activities connected with the proceeds of crime including its concealment, possession, acquisition or use of projecting or claiming it as untainted property. In a writ proceeding the right claimed by the appellant over the aforesaid properties cannot be adjudicated, and considering the amplitude of the Prevention of Money Laundering Act, 2002 the writ petition under Article 226 involving a claim over the property was not maintainable.

18. As observed by the Hon''ble Supreme Court in the context of exercise of jurisdiction of the High Court under Article 226 of the Constitution: "it is not exercised merely because it is lawful to do so" ["Thansingh Nathmal & Ors. v. The Superintendent of Taxes, Dhubri & Ors." AIR 1964 SC 1419], the learned Writ Court has rightly dismissed the writ petition on the ground of alternative remedy in appeal under Section 26 of the Act to the appellant writ petitioner.

19. We find no merit in the instant Letters Patent Appeal and accordingly, it is dismissed.