

GAHC030002932023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.P.(Crl.)/1/2023

Sh. HT Khupa
House no. 81, CH-Section, Near PCI Church, Bethel, Champhai, Mizoram
796321

VERSUS

Union of India and 3 Ors.
New Delhi 2: Directorate of Enforcement
Through Asst. Director
Govt. of India
Deptt of Revenue

3: Adjudicating Authority (Under Prevention of Laundering Act)
R/b its Chairman

4: State Bank of India through its Branch Manager
Champhai Branch

Advocate for the Petitioner : Mr J C Lalnunsanga

Advocate for the Respondent : Ms Zairemsangpuii, CGC for R1 and R2

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
ORDER

Date : 19-07-2023

Heard Mr. Varun Garg, learned counsel for the petitioner and Ms. Zairemsangpuii, learned CGC appearing for respondent Nos. 1, 2 & 3. None appears

for respondent No. 4.

2. By filing this writ petition, the petitioner has challenged the Freezing Order dated 10.02.2022 (Annexure-6), the Show Cause Notice dated 30.03.2022 (Annexure-7) and the Final Order dated 22.08.2022 passed in OA No. 644/2022. According to the petitioner, the impugned Freezing Order dated 10.02.2022 was passed by the respondent authority concerned freezing his Bank Account at the State Bank of India, Champhai Branch being No. 33832103405 due to an investigation under the provisions of Prevention of Money Laundering Act, 2002. Thereafter, a Show Cause Notice was issued to the petitioner on 30.03.2022 after registration of OA No. 644/2022. According to the petitioner, he was neither aware nor in receipt of the freezing order and the show cause notice, since he was not able to operate his Bank Account, the petitioner, through his counsel gave a legal notice to the Branch Manager, State Bank of India, Champhai Branch on 23.07.2022. It was only after the said notice that the petitioner on receiving a reply to the notice came to learn about the freezing order and the investigation being contemplated.

3. Mr. Varun Garg, learned counsel submits that pursuant to the passing of the freezing order and the show cause notice, the final order was belatedly passed in OA No. 644/2022 on 22.08.2022. In the impugned final order itself, the respondent authority concerned has acknowledged the delay in passing the final order but the delay was said to be safe in view of the order of the Apex Court passed in Suo Moto WP(C) No. 3/2020. The learned counsel submits that the issue raised in this writ petition does not require re-adjudication, inasmuch as, this Court in WP(Crl.) No. 2 & 3 of 2022 vide common Judgment & Order dated 27.04.2023 had considered the same by allowing the writ petitions. The issue raised in the present writ petition and the other two writ petitions being referred to are similar and identical, a similar direction may be passed in the instant case since it is a covered case. To substantiate his submission, the learned counsel has drawn the attention of this Court to the Final

Order dated 22.08.2022 passed in OA No. 644/2022 to show that the present petitioner and the petitioners in WP(Crl.) Nos. 2 & 3 of 2022 were all parties to the OA No. 644/2022.

4. The learned CGC, Ms. Zairemsangpuii, on the other hand submits that the respondent Nos. 2 & 3 have filed counter-affidavit on 13.07.2023, wherein at paragraph No. 28, it has been clearly stated that against the Judgment & Order dated 27.04.2023 passed in WP(Crl.) Nos. 2 & 3 of 2022 and WP(Crl.) Nos. 4 & 5 of 2022, the respondents have filed writ appeal on 26.05.2023 before the Principal Seat of this Court. Therefore, pending consideration and disposal of the writ appeals, the present writ petition may be deferred for the time being. The learned CGC also relies upon the Division Bench decision of the High Court of Calcutta rendered in *Directorate of Enforcement and Ors. Vs. Union of India & Ors., 2022 SCC Online Cal 3959* to contend that even if the High Court quashes the provisional attachment order passed under Section 5(1) of the Prevention of Money Laundering Act, 2002, the same cannot impact the adjudication process initiated before the adjudicating authority, which will proceed on its own merit in accordance with law.

5. In reply to the submission of the learned CGC, Mr. Varun Garg, learned counsel submits that the writ appeals claimed to be filed by the respondents cannot be writ appeals filed in the eye of law, inasmuch as, there are fundamental errors in filing of the writ appeals, which can be seen from the status of the case put up in the High Court website. The learned counsel submits that as per the case status shown, the writ appeals are yet to be registered and that the fundamental errors and inherent defects found have not been cured yet by the appellants and therefore, the writ appeals are to be considered *non est* and of no consequence. In this connection, the learned counsel relies upon the Division Bench judgment of the High Court of Delhi rendered on 07.11.2013 in FAO (OS) 485-86/2011 (Delhi Development Authority Vs. M/S Dulga Construction Co.).

6. The learned counsel further refers to and relies upon the Order dated 24.01.2023 passed by the Apex Court in SLP (C) No. 19038/2022, wherein the Apex Court observed that unless an appeal is listed and there is an interim order, mere filing of appeal will not operate as a stay. In the facts of that case, an appeal was yet to be scrutinized for posting before the Court. The learned counsel thus submits that the present case being a covered case, a similar direction may be passed.

7. Upon considering the submissions made by the learned counsels for the rival parties and upon perusal of the materials available on record including the authorities relied upon, this Court finds that the present writ petition is squarely covered by the Judgment & Order dated 27.04.2023 passed in WP(Crl.) No. 2 & 3 of 2022 and therefore, the instant case is disposed of as a covered case. This order will be read along with the Judgment & Order dated 27.04.2023 passed in WP(Crl.) Nos. 2 & 3 of 2022 barring the name of the petitioners and the Bank Account numbers.

8. In the result, the impugned Freezing Order dated 10.02.2022, Show Cause Notice dated 30.03.2022 and the Final Order dated 22.08.2022 passed in OA No. 644/2022 in so far as the petitioner is concerned are set aside. The State Bank of India, Champhai Branch (respondent No. 4) is directed to allow the petitioner operate his Bank Account No. 33832103405, without any hindrance unless there is/are issues which are not related to the instant case.

9. With the above observation and direction, the writ petitions stands disposed of as allowed.

JUDGE

Comparing Assistant