

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:20207-DB

RESERVED

Court No. - 2

Case :- WRIT - C No. - 11080 of 2023

Petitioner :- Ajmat Ullah Ansari And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Civil
Secrt. Lko. And Others

Counsel for Petitioner :- Dadu Ram Shukla (D.R. Shukla),Krishna
Kumar Tiwari,Manoj Kumar Singh

Counsel for Respondent :- C.S.C.,Rohit Tripathi

Hon'ble Vivek Chaudhary,J.

Hon'ble Om Prakash Shukla,J.

(Per Om Prakash Shukla, J.)

(1) The challenge in the present writ petition under Article 226 of the Constitution of India is the order dated 11th July, 2023 passed by the Assistant District Election Officer, District Office (Panchayat and Nagariya Nikay), Gonda (respondent no.3), whereby representation dated 06.06.2023 preferred by the petitioners for release of sum of Rs.6,60,200/-, which was seized during the Three-tier Panchayat General Election, 2021 from Vehicle No. UP-32-FP-4674 (Eco Sport Ford) belonging to the petitioners on 01.04.2021, has been rejected.

(2) In nutshell, the facts of the case are that petitioners are the real brothers. Petitioner No.1-Ajmat Ullah Ansari, who is the sub-agent of Instant Global Money Transfer Private Limited, bearing license No. F.E.C.G.F.M.C.088/2005 dated 30.09.2005 M.T.S.S. License No. E.C.C.O. E.P.D./995/22624/9899 dated 30.03.1999, deals with the transfer of money. The said license

was issued on 30.04.2005 and continued till 31.05.2018 and the same was renewed from time to time under the condition stipulated by the Reserve bank of India. On 10.10.2018, the name of the company was changed and renewed upto 31.06.2021 and thereafter it has again been renewed till 31.06.2024.

- (3) It is the case of the petitioners that during the last phase of March, 2021 for five days, bank was closed. The petitioners had to deliver a sum of Rs.7,57,340/- to 36 account holders, details of such persons have been enclosed as Annexure No.4 to the writ petition. For this purpose, the petitioner no.1 had transferred a sum of Rs.6,00,000/- from HDFC Bank Account No. 50200006369820 (IFSC Code No. HDFC003765) through his colleague, namely, Shahid, who runs National Mobile Travels Agency Jamunia Bagh, Gonda and the said money was transferred to Account No.051505500857 to Branch Gonda. According to the petitioners, on 01.04.2021, after withdrawing the said amount, they were going to deliver the same to 36 persons from their Vehicle No. UP-32-FP-4674 (Eco Sport Ford). In the way, local police of Police Station Dhanepur, District Gonda had intercepted them and found a bag containing said amount of Rs.6,60,200/-. Immediately thereafter, the petitioners had produced the documentary evidence before the police, but the local police was not satisfied with the documentary evidence and as such, the bag containing the

aforesaid amount was seized. Thereafter, as per report of Station Officer of Police Station Dhanepur, Gonda, the aforesaid amount was deposited in Government Treasury with sealed pack at serial No.730 dated 03.04.2021. Thereafter, on 06.06.2023, they preferred a representation to the District Election Officer (Panchayat and Nagariya), Gonda, which was rejected vide order dated 11.07.2023. It is this order dated 11.07.2023, which has been challenged in the instant writ petition.

- (4) Heard Shri Dadu Ram Shukla, learned Counsel representing the petitioners, learned Standing Counsel representing the State/respondents no.1, 2, 5, 6 and 7 and Shri Rohit Shukla, learned Counsel representing the respondents no.3 and 4.
- (5) Learned Counsel representing the petitioners has submitted that vide Master Circular No. 14/2011-12 (updated as on March 22, 2012) dated 01.07.2011, the Reserve Bank of India has issued Master Circular on Money Transfer Service Scheme (hereinafter referred to as 'MTSS'). As per clause 3 of the aforesaid Circular, this Circular would stand withdrawn on July 1, 2012 and will be replaced by an updated Master Circular on the subject. The guidelines was issued in two parts i.e. Part-A and Part-B. Under Part-A, Section-I deals with Guidelines for Permitting Indian Agents and MTSS, whereas Section II deals with guidelines for overseas Principals and Section III deals

with Guidelines for appointment of Sub-Agents by Indian Agents, which is relevant and reads as under :-

“Section III

Guidelines for appointment of Sub-Agents by Indian Agents

The Indian Agent may appoint Sub-Agents who have place of business and a minimum net worth of Rs.5 lakh. The Sub-Agents should operate through the Indian Agents and should not deal directly with the Overseas Principal. The Sub-Agents should act on the payment instructions issued by the Indian Agents. The Indian Agents are fully responsible for the activities of their Sub-agents. While the Indian Agents will be encouraged to act as self-regulated entities, the onus of ensuring the proper conduct of activities of the Sub-agents in the prescribed manner will lie solely on the Indian Agents. Every Indian Agent would be required to conduct due diligence before appointing a Sub-agent and any irregularity observed could render the Indian Agent's permission liable for cancellation.”

- (6) Learned Counsel for the petitioners has further submitted that by means a Circular No. RBI/FED/2016-17/52 dated 22.02.2017, Chief General Manager-in-Charge of the Reserve Bank of India has notified Master direction-Money Transfer Service Scheme (MTSS), giving therein a vivid description as regards the manner in which relates transaction are to be conducted by the authorized persons with their customers/constituents. According to the learned Counsel, the aforesaid Master Direction-Money Transfer Service Scheme has also been issued describing statutory basis and authroized dealer has also been defined including as to who would be

treated full fledged money changer at point no. 2.3, whereas at point no. 2.4, there is a definition clause of overseas principal and thereafter guidelines for Indian Agents and Guidelines for appointment of Sub-Agents by Indian Agents has also been issued comprehensively. In this backdrop, learned Counsel has submitted that the petitioners were well within their rights and they were fully authorized as per guidelines of Reserve Bank of India. The authorized Indian Agent entered into an agreement as permitted by the Reserve Bank of India with the petitioners and the petitioners at the strength of the said agreement were carrying out their business.

- (7) Elaborating his submission, learned Counsel for the petitioners has submitted that after due inquiry, the police report has been submitted by the S.H.O., Police Station Dhanepur, Gonda dated 20.05.2021 to the District Magistrate Gonda (Annexure no.3), recommending that the seized amount of Rs.6,60,200/- is liable to be refunded to the petitioners. Even thereafter, the said amount has not been released to the petitioners nor the provisions of Section 102 of the Code of Criminal Procedure, which deals with the power of the police officer to seize certain property has been followed nor any F.I.R. in this regard was lodged. Thus, he prays that impugned order is liable to be quashed and the petitioners are entitled for refund of the said seized amount.

- (8) Per contra, learned Counsel representing the respondents no. 3 and 4 has submitted that the State Election Commission had notified the Three-Tier Panchayat General Election, 2021 vide notification no. 709 dated 26.03.2021 and this notification remained in operation till 02/03.05.2021. In order to enforce the model code of conduct, a general search operation was carried on 01.04.2021 and during the said general search operation, a vehicle bearing registration no. UP-32-FP-4674 was intercepted, whereupon it was found that vehicle was driven by petitioner no.2 and cash amounting to Rs.6,60,2000/- was also in the said vehicle and on query, as no satisfactory explanation was given by the petitioner no.2 regarding possession of substantial amount of cash nor any document was presented by the petitioner no.2, the said cash amount was seized and deposited in the district treasury vide application dated 03.04.2021. Thereafter, the petitioner no.1 submitted an application for release of money, to which a report was called from the three member Committee constituted by the District Election Officer/District Magistrate, Gonda vide letter dated 28.05.2021. On receipt of the said letter, the Chairman of the three member Committee i.e. Sub-Divisional Officer issue a letter/notice dated 29.05.2021, requiring the petitioners to submit relevant documents on six points mentioned in the letter. In response thereof, the petitioners had submitted his reply, stating that petitioner no.2 was carrying out a business of Net

Banking and that from 29.03.2021 to 01.04.2021, he had to pay an amount of Rs.07,57,340/- to 36 persons, however, as the bank was closed for five days, he had transferred Rs.6,00,000/- to one of his friend carrying out net-banking business and that the cash seized from him was meant for disbursing the money to those 36 persons. According to the learned Counsel, the Officer-in-Charge, P.S. Dhanepur had also reported vide letter dated 14.10.2022 that the petitioners had not cooperated in the enquiry and that he had not submitted any evidence in support of his application. Based on this report, the three Member Committee formed an opinion that it could not be said that the seized cash was not meant to be used for any illegitimate purpose in connection with the Panchayat Elections, therefore, it was recommended that it would not be proper to refund or return the seized cash to the petitioners. This recommendation was placed before the District Magistrate/District Panchayat Officer, Gonda for final disposal of the matter, upon which the District Panchayat Officer, Gonda had accepted the report of the three Member Committee on 10.07.2023 and consequently, vide letter dated 11.07.2023, informed the petitioners about rejection of his representation/application. Thus, the instant writ petition is liable to be dismissed.

- (9) Having regard to the submissions advanced by the learned Counsel for the parties and going through the record available before us in the instant writ petition, it is required to be noted

that license for carrying out business of Net Banking by name and style of Instant Global Mani Transfer Pvt. Limited by the petitioners is not in dispute.

- (10) The controversy involved in the instant writ petition has arisen due to the rejection of the application preferred by the petitioners for refund/release the seized amount i.e. Rs.6,60,200/- by means of the impugned order dated 11.07.2023.
- (11) The petitioners claimed that they are carrying out business of Net Banking as Sub-Agent under the legally granted license by the Reserve Bank of India. The seized cash amount i.e. Rs.6,60,200/- was meant for disbursing the money to those 36 persons details of which have been mentioned as Annexure No. 4 to the writ petition and the Station Officer of Police Station Dhanepur, Gonda clarified that the petitioner deals with money banking transfer known as Instant Global Money Transfer Limited and is an agent and the recovery of specified amount of Rs.6,60,200/- does not contravene any provision of law and therefore recommendation was made to the District Magistrate, Gonda to release the said amount, however, no offence is reported by the police authorities in regard to seize of the said amount and in a casual and arbitrary manner, the representation of the petitioners has been deal with and has been rejected

without spelling out any valid rhyme or reason reluctantly into forfeiture of the aforesaid amount.

- (12) On the other hand, the stand of the respondents no.3 and 4 before this Court is that the impugned order dated 06.08.2023 has been passed on considering the report of the Three Member Committee duly constituted by the District Magistrate for smooth functioning of the Panchayat Election and the petitioners have failed to show that the seized cash amount was not meant to be used for any illegitimate purpose in connection with the Panchayat Election, hence the application of the petitioners have rightly been rejected by means of the impugned order.
- (13) Before analyzing the contentions of the learned Counsel for the parties, we deem it apt to mention herein that in the case of **Chandra Kishor Jha vs. Mahavir Prasad and Ors.** : (1999) 8 SCC 266, the Apex Court has emphasized that it is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.
- (14) Therefore, if the salutary principle is kept in perspective, in the instant case, though the police authorities are vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be

exercised in that manner alone, failing which it would fall foul of the requirement of complying due process under law.

(15) Section 102 Cr.P.C reads as follows :-

“102. Power of police officer to seize certain property.-

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

[(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, 2[or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation,] he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:]

[Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458

shall, as nearly as may be practicable,
apply to the net proceeds of such sale.]

(16) The reading of sub-section (1) of Section 102 makes it clear that the police officer may seize any property alleged or suspected to have been stolen or or which may be found under circumstances, which create suspicion of commission of any offence.

(17) In the instant case, what we find is that the police officers though seized the cash amount from the vehicle of the petitioners on the allegation that the said cash amount has to be used for Panchayat Election but surprisingly in that regard no F.I.R. has been registered nor following the statutory provisions of Section 102 of Criminal Procedure Code, hence we find that there is fault with the Police Officer and declare the action bad only in so far as not following the legal requirement before and after seizure of the cash amount of Rs. 6,60,200/- from the possession of the petitioners, however, this shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the petitioners, which is a matter to be taken note in appropriate proceedings if at all any issue is raised by the aggrieved party.

(18) It is also apparent from Annexure No.3, which is a report of the Station Officer, Police Station Dhanepur, Gonda, that the

Station Officer, Police Station Dhanepur, Gonda, vide its report dated 20.05.2021 addressed to District Magistrate, Gonda, after investigating the matter, recommended to release the seized cash. However, from perusal of the impugned order and the counter affidavit, there is not a whisper of word regarding the aforesaid recommendation of the Station Officer, Police Station Dhanepur, Gonda. In the counter affidavit, the respondents have admitted the fact that the petitioners are doing money transfer service through net banking as a sub-agent under the authority given by the Reserve Bank of India. There is also not denial in the counter affidavit about the fact that the petitioners were not carrying Net Banking business. The petitioners' case right from the beginning is that the cash amounting to Rs.6,60,000/- , which was seized, was to be disbursed to 36 persons and list of such persons has been enclosed in Annexure No.4 to the writ petition. This has also not been denied by the respondents in the counter affidavit.

- (19) Apart from the above consideration, what has also engaged the attention of this Court is with regard to the plea put forth on behalf of the petitioners regarding the need to release the seized amount to enable the petitioners to pay the due amount as per the statutory rules. The petitioners in that regard has relied Annexure No.4 also, which is a list of 36 persons and it indicates that the amount payable towards to such persons, in all amounting to Rs.7,57,340.07. Furthermore, the respondents

have not placed any document(s) or evidence, which suggest that the seized cash was to be used in the process of panchayat election illegally.

- (20) Since we have indicated that the seizure of the cash amounting to Rs.6,60,200/- has been done without due compliance of law, interest of justice would be suffice, if respondents No.3- Assistant District Election Officer, District Election Office (Panchayat and Nagriya Nikay), Gonda is directed to release the seized cash to the petitioners.
- (21) In terms of the above, the order dated 11.07.2023 passed by the respondent no.3 is hereby quashed. We direct that the respondents shall release the seized amount for a sum of Rs.6,60,200/- to the petitioners. However, liberty is reserved to respondent No.3 thereafter to initiate action afresh in accordance with law, if they so desire.
- (22) The instant writ petition is **allowed** to the above extent with no order as to costs.

(Om Prakash Shukla, J.) (Vivek Chaudhary, J.)

Order Date :- 6th March, 2024

Ajit

Writ-C No. 11080 of 2023