IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.06.2015
PRONOUNCED ON : 10.6.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION Nos.12464 and 12664 of 2015
and
M.P.Nos.1 and 1 of 2015

Kal Comm Pvt. Ltd.,
Rep. By its Authorised Signatory/
Managing Director
No.73, MRC Nagar Main Road
MRC Nagar, Chennai 28 ...Petitioner in WP 12464/2015

SUN TV Network Ltd.,
Rep. By its Authorised Signatory
M.Jothibasu
Murasoli Maran Towers
No.73, MRC Nagar Main Road
MRC Nagar, Chennai 28 ...Petitioner in WP 12664/2015

vs

Directorate of Enforcement
Ministry of Finance
Government of India
Through its Joint Director
Prevention of Money Laundering Act
10-A, Jam Nagar House
Akbar Road, New Delhi 110 011 ... Respondents in both writ petitions

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondent viz. The Provisional Attachment Order No.01/2005 dated 31.03.2015, in ECIR/05/DZO/2012 and quashing the same.

For Petitioners : Mr.P.S.Raman
Senior Counsel
Assisted by
Mrs.M.Sneha

For Respondent : Mr.G.Rajagopalan
Additional Solicitor General
Assisted by
Mr.Su.Srinivasan
Assistant Solicitor General

COMMON ORDER

By consent, both the writ petitions are taken up for final disposal since the pleadings are complete and that the learned Senior Counsel appearing for the petitioners, as well as the learned Additional Solicitor General appearing for the respondent, made a submission that the writ petitions can be taken up for final disposal.

2.W.P.No.12464/2015:- The petitioner is a private limited company and was incorporated in the year 1989. It claims that it is the largest distributor of Television Channels and enters into agreements with the broadcasters to distribute the channels of the broadcasters in various platforms like Analog Digital Cable and Direct To Home (DTH). It is stated by the petitioner that on 9.10.2011, the Central Bureau of Investigation (in short, "CBI"), has registered a First Information Report in RC-DAI-2011(A)-0022 against individuals and companies and also against other unknown officials/persons. The respondent viz. Enforcement Directorate, New Delhi, has also registered a case in ECIR/05/DZ/2012 dated 7.2.2012, for the purpose of investigating the offences of money-laundering under the provisions of the Prevention of Money-Laundering Act, 2002 - Central Act 15 of 2003 (in short, "PMLA") against the persons mentioned in the FIR registered by the CBI. The petitioner would further state that the case registered by the CBI, culminated in a charge sheet in RC-DAI-2011(a)-0022 dated 29.8.2014, before the Designated Court of Special Judge for CBI Cases, Patiala House Courts, New Delhi. It is the specific case of the petitioner that it has neither been arraigned as an accused, nor is there any allegation about it's involvement in the aforesaid cases registered by the CBI and the Directorate of Enforcement and unmindful of the same, the respondent in complete derogation of the provisions of Section 5(1) of PMLA, has arbitrarily passed a Provisional Attachment Order No.01/2015 dated 31.3.2015, under Section 5(1) of PMLA, and challenging the legality of the said order, this writ petition has been filed.

3.W.P.No.12664/2015:- The petitioner is a public limited company incorporated in the year 1985 and it claims that it is the largest television broadcaster in South Indian States of Tamil Nadu, Kerala, Andhra Pradesh, Telengana and Karnataka and is also one of the largest television broadcasters in India, in terms of audience share. The petitioner would state that the Board of Directors of the said company comprises eight Directors, out of which, four are independent Directors and the petitioner-Company offers 33 television channels in four languages including the flagship channel viz. Sun TV, and was one of the first regional satellite television channels and it also launched Tamil FM Radio Stations in the cities of Chennai, Coimbatore and Tirunelveli under the name of "Suryan FM" and it is carrying on it's business in accordance with law, strictly complying with all the statutory requirements and on account of business activities, it is running on profit and also contributing to the exchequer in the form of taxes. The petitioner would further state that the CBI has registered a FIR on 9.10.2011, against individuals, companies and other unknown officials/persons and subsequently, the respondent viz. the Directorate of Enforcement, has also registered a case on 7.2.2012, (the details of which have been stated in the earlier writ petition), and the CBI, after investigation, has filed a charge sheet before the Special Court for trial of CBI Cases, Patiala House Courts, New Delhi. Thereafter, the respondent has passed the Provisional Order of Attachment under Section 5(1) of PMLA, and challenging the same, this writ petition is filed.

4.Since the grounds of attack challenging the Provisional Orders of Attachment, passed by the respondent, are one and the same, these writ petitions are disposed of by this common order.

5.This Court has admitted both the writ petitions and permitted the petitioners to serve papers on the learned Assistant Solicitor General of India so as to enable him to get instructions. On 27.4.2015, the cases were called in the Court, and on that date, the learned Standing Counsel appearing for the Directorate of Enforcement, made a submission that since the Hon'ble Supreme Court of India in Civil Appeal No.10660 of 2010 (CENTER FOR PIL AND OTHERS V. UNION OF INDIA AND OTHERS), is monitoring the investigation pertaining to 2G Spectrum Case and Aircel Maxis Case (the present subject matter) and also passed an order that "no Court shall pass any order which may, in any manner, impede the investigation being carried out by the CBI and the Directorate of Enforcement", and this Court cannot decide these writ petitions.

6.In response to the said submission, the learned Senior Counsel appearing for the petitioners, has invited the attention of this Court to the affidavits filed by Mr.Vittal Sampathkumaran, the Managing Director of the petitioner in W.P.No.12464/2015, and Mr.M.Jyothibasu, the Authorised Signatory of the petitioner in W.P.No.12664/2015, and would submit that since an undertaking has been given that the respective petitioner will not alienate, encumber in any manner or create any charge with respect to the properties mentioned therein, there cannot be any impediment in vacating the impugned Provisional Orders of Attachment insofar as the said properties are concerned.

7.However, the learned Additional Solicitor General reiterated the submission made by the learned Standing Counsel appearing for the respondent, and would submit that in the light of the fact that the Hon'ble Supreme Court of India is monitoring the Aircel Maxis Case also, this Court cannot pass any orders in these writ petitions.

8.Mr.P.S.Raman, learned Senior Counsel, assisted by M/s.M.Sneha, P.Suresh Babu and M.A.Vimal Mohan, made the following submissions:

(i) The details of the properties mentioned in the above said affidavits filed by Mr.Vittal Sampathkumaran and Mr.M.Jyothibasu, even on admitted facts, cannot said to be the properties purchased out of the proceeds of crime as they were purchased much prior to the alleged period of crime and the respondent had also admitted that the alleged proceeds of crime were only infused and utilised in a different company by way of shares, assets, etc., which is unconnected with the petitioners, and the shares and properties of those companies are not even provisionally attached for the reasons best known to the respondent.

(ii) The petitioners have not been charged for having committed a scheduled offence in terms of Section 5(1)(b) of the original enactment of PMLA, for the reason that the total funds allegedly received by Sun Direct TV Private Limited (SDTPL) and South Asia FM Limited (SAFL), which approximately works out to Rs.530 crores, were received prior to 2009 i.e., prior to the amendment to Section 5 of PMLA, and a sum of Rs.146 crores was received after the said amendment and hence, there cannot be any order of provisional attachment with regard to Rs.742.58 crores.

(iii) The valuation mentioned in the impugned orders, is very low and taking into consideration the present market value of the properties mentioned in the above said affidavits, the attachment of shares and other properties would be sufficient to protect the interest of the respondent.

(iv) The writ petitioners had no nexus with the companies alleged to have received and utilised the proceeds of crime, and the statutory requirements mandated under Section 5(1) of PMLA, have been complied with fully.

9.In sum and substance, it is the submission of the learned Senior Counsel appearing for the petitioners in these writ petitions, that in the light of the two affidavits filed in these writ petitions, wherein an undertaking has been given not to alienate, create encumbrance or do other things, which may affect the interest of the respondent, the Provisional Orders of Attachment insofar as the said properties, may be vacated and appropriate orders be passed.

10.Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General of India, assisted by Mr.Su.Srinivasan, learned Assistant Solicitor General of India, appearing for the respondent, made the following submissions:-

(i) The Hon'ble Supreme Court of India in Civil

Appeal No.10660 of 2010, is monitoring the investigation pertaining to 2G Spectrum Case, Aircel Maxis Case (subject matter of these writ petitions) and Additional Spectrum Case and since it is monitoring the investigation of 2G Spectrum Case, passed an order of direction that no Court shall pass any order which may, in any manner, impede the investigation being carried out by the Central Bureau of Investigation and the Directorate of Enforcement and hence, this Court cannot pass orders on the merits of the case.

(ii) Once the property is provisionally attached, an adjudication has to be done under Section 8 of PMLA and once the Provisional Order of Attachment is confirmed, the Director or any other Officer authorised by him in this behalf, shall forthwith take possession of the property attached under Section 5 or frozen under sub-section (1A) of Section 17, in such manner as may be prescribed. As against the orders passed under Section 8, appeal lies to Appellate Tribunal under Section 26 (1) and any person aggrieved by the order of decision of the Appellate Tribunal, may appeal to the High Court under Section 42 of PMLA and in view of the availability of effective alternate remedy, the writ petitions are not maintainable at this stage.

11.The learned Additional Solicitor General appearing for the respondent, has invited the attention of this Court to the counter affidavits filed in both these writ petitions, wherein, it has been stated that there is a blanket order dated 10.2.2011 and 11.4.2011, passed by the Hon'ble Supreme Court of India, which restricts this Court from entertaining such writ petitions, and appropriate remedy is to approach the Hon'ble Supreme Court of India, which will be the judicial forum for deciding such matters, and would submit that the writ petitions are premature and prayed for dismissal of the same.

12.This Court has carefully considered the submissions made by the learned Senior Counsel appearing for the petitioners, and the learned Additional Solicitor General of India, appearing for the respondent, and also perused the materials placed before it.

13.The preliminary issues/points to be considered by this Court, are:

(i) Whether this Court can entertain these writ petitions in the light of the submission made by the learned Additional Solicitor General of India that the Hon'ble Supreme Court of India is also monitoring Aircel Maxis Case in Civil Appeal No.10660/2010?

(ii) Whether these writ petitions are maintainable in the light of the alternate remedies available in terms of the provisions of PMLA?

14.It is relevant to extract the following gist of the proceedings of Hon'ble Supreme Court of India:-

(i) Civil Appeal No.10660/2010 has been entertained arising out of the judgment and order dated 25.5.2010, made in W.P.(Civil) No.3522/2010, on the file of the High Court of Delhi, and it is between Center for PIL and Others Vs. Union of India and Others. The Hon'ble Supreme Court of India in the said interim order dated 16.12.2010, has taken note of the report of the Central Vigilance Commission and the report of the Comptroller and Audit General of India, prima facie found serious irregularities in the grant of licences to 122 applicants, majority of whom are said to be ineligible, the blatant violation of the terms and conditions of licences, which resulted in huge loss to the public exchequer running into several thousand crores and directions were given to the CBI to probe how licences were granted to large number of ineligible persons and why the Telecom Regulatory Authority of India and the Department of Telecommunication did not take action against those licensees who sold their stakes and equities for many thousand crores and also against those who failed to fulfill roll out obligations and comply with other conditions of licence. The Hon'ble Supreme Court of India, among other things, has also granted liberty to the Directorate of Enforcement and Income Tax Department to continue with their investigation without any hindrance or interference by any one.
(ii) The said Civil Appeal was listed on 10.2.2011, and the Hon'ble Supreme Court has observed that it is monitoring the investigation of 2G Spectrum Case and issued a direction that no Court shall pass any order which may, in any manner, impede the investigation being carried out by the CBI and the Directorate of Enforcement.
(iii) When the Civil Appeal No.10660/2010 was once again listed on 7.11.2012, the Hon'ble Supreme Court of India has passed the following order:-

"Civil Appeal No.10660 of 2010

Learned Additional Solicitor General produced sealed envelopes containing Progress Report dated 29.10.2012 in relation to the following cases:

1. CBI Case No.RC DAI 2009 A 0045 (2G Spectrum Case)
2. CBI Case No.RC DAI 2011 A 0022 (Aircel Maxis Case)
3. CBI Case No.RC DAI 2011 A 0024 (Addl. Spectrum Case)

The Registry of the Court has also submitted a sealed envelope received from the Central Vigilance Commission.

Both the envelopes were opened in the Court. Shri K.K.Venugopal, learned senior counsel appearing for the Central Bureau of Investigation and the Enforcement Directorate took us through two parts of the report and gave reply to certain queries.

For further consideration of the report and other issues, the case will be taken up on 08.11.2012 at 2.00 P.M.

The Court Masters are directed to put both the Reports in separate sealed envelopes. The needful has been done."

(iv) I.A.Nos.36, 38-57 and 58 in Civil Appeal No.10660/2010 were listed for hearing on 17.4.2013, and in I.A.No.36, the Hon'ble Supreme Court of India has passed the following order:-

"At the commencement of the hearing, Dr. Subramanian Swamy, the applicant informed the Court that after filing of the application the CBI has taken up investigation in relation to the issues raised in this application.

Shri Venugopal, learned senior counsel representing the CBI handed over three sealed envelopes containing Progress Report dated 20.02.2013, Note regarding investigation taken up by CBI regarding allegations about FIPB approval in AIRCEL MAXIS deal in Case No.RC DAI 2011 A 0022 vis-a-vis issues raised by Dr. Swamy in I.A. No.36 as also the response of the CBI to the Central Vigilance Commission's observations vide letter dated 11.03.2013. The sealed envelopes were opened in the Court. We have perused the same.

For further consideration of the issues raised in I.A. No.36, the case is adjourned to the second week of July, 2013.

In the meanwhile, the CBI shall make an endeavour to complete the investigation, as far as possible in RC DAI 2011 A 0022.

The Court Masters are directed to re-seal the envelopes. The needful has been done.

Shri Venugopal, learned senior counsel for the CBI made an oral request for modification of the direction contained in order dated 2.2.2012 to facilitate submission of the progress report directly by the CBI to the Court with copies to the Central Vigilance Commission and Enforcement Directorate so that the latter may directly send comments to this Court and the reports along with the comments of the Central Vigilance Commission and Enforcement Directorate can be considered by the Court at the same time.

The request made by Shri Venugopal is accepted and in modification of order dated 2.2.2012 it is directed that henceforth CBI shall directly file reports in this Court with copies to the Central Vigilance Commission and Enforcement Directorate. The Central Vigilance Commission and Enforcement Directorate shall send their comments/observations to the Court within two weeks of the receipt of the copies of the report from the CBI.

Shri Venugopal, learned senior counsel appearing for the Enforcement Directorate handed over another sealed envelope containing the Status Report on the investigation in FEMA and PMLA in 2G Spectrum Case for the period 24.10.2012 to 15.02.2013. The sealed envelopes were opened in the Court. We have perused the same. The Court Masters are directed to re-seal the envelope. We hope and trust that the Enforcement Directorate will make serious endeavour to finalise the investigation as early as possible.”

15.It is not in serious dispute that the present writ petitions relate to “AIRCEL MAXIS CASE” and the above said interim orders would disclose that the Hon'ble Supreme Court of India is monitoring the investigation in the said case also and getting periodical reports.

16.The CBI, after the registration of the case in RC-DAI-2011-A-0022, has completed the investigation and filed a charge sheet on 29.8.2014, before the Special Judge for CBI Cases (2G Spectrum Case), Patiala House Courts, New Delhi. The respondent/Directorate of Enforcement has also registered a separate case in ECIR/05/DZO/2012 on 7.2.2012, against certain individuals, companies and other unknown officials/persons and the investigation is pending and pendency of the investigation, has passed the impugned orders of Provisional Attachment, which are the subject matter of challenge in these writ petitions.

17.This Court has pointed out in the earlier paragraph, that the Hon'ble Supreme Court of India vide interim order dated 10.2.2011, made in Civil Appeal No.10660/2010, stated among other things, that no Court shall pass any order which may, in any manner, impede the investigation being carried out by the CBI and the Directorate of Enforcement.

18.It is relevant to extract Section 2(na) of PMLA as under:-

> ""Investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence."

19.In terms of the above said definition, "investigation" includes all the proceedings under this Act and the impugned Provisional Orders of Attachment have been passed in exercise of powers under Section 5(1) of PMLA. Therefore, the proceeding under Section 5(1) of PMLA also comes under the definition of "investigation". As per the above said interim order of the Hon'ble Supreme Court of India, this Court shall not pass any order, which may, in any manner, impede the investigation being carried out by the Directorate of Enforcement.

20.Therefore, this Court accepts the first preliminary objection raised by the learned Additional Solicitor General of India.

21.So far as the second preliminary issue is concerned, this Court is not inclined to go into the same for the reason that the writ petitions cannot be entertained by this Court and hence, it cannot give any findings whether the impugned orders are sustainable in law or petitioners have to avail the alternate remedy available under the PMLA.

22.Therefore, this Court holds that the writ petitions are not maintainable before this Court and they are dismissed. The petitioners, if so advised, are at liberty to approach the Hon'ble Supreme Court of India for redressal of their grievance. In the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

The Joint Director
The Director
Directorate of Enforcement
Ministry of Finance
Government of India
Prevention of Money Laundering Act
10-A, Jam Nagar House
Akbar Road, New Delhi 110 011

+1cc to Mr.M.Sneha, Advocate, S.R.No.27873

W.P.Nos.12464 and 12664 of 2015

NM(CO)
CA(18/06/2015)