

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Crl.A.No.1045 of 2014

% 03.03.2015

M/s. Garnet Finance Limited, Rep. by its Managing Director
Challa Sudhakar, situated at #12-13-1275/2,
Tarnaka, Hyderabad – 500 017 and others.

...Appellants/Respondents/
A1, A4 & A5

VERSUS

\$ The Commissioner of Police, Hyderabad City,
And the Competent Authority under
Andhra Pradesh Protection Depositors of
Financial Establishment Act, 1999.
Represented by its Public Prosecutor,
High Court at Hyderabad.

...Respondent/Petitioner/
Complainant

< GIST:

> HEAD NOTE:

! Counsel for Appellants/Respondents/
A.1, A.4 & A.5 : Sri Vedula Srinivas

^ Counsel for the Respondent/Petitioner/
Complainant : Public Prosecutor
(State of Telangana)

? Cases referred:

1. (2014) 3 SCC 430
2. (2014) 3 SCC 502
3. (2008) 1 SCC 728
4. AIR 1952 SC 16
5. (1978) 1 SCC 405
6. 2008 (3) ALT (Crl.) 269 (A.P.)
7. (2013) 10 SCC 677
8. (1970) 3 SCC 881

IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND STATE OF ANDHRA PRADESH

TUESDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT:

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

Crl.A.No.1045 of 2014

Between :

M/s. Garnet Finance Limited, Rep. by its Managing
Director
Challa Sudhakar, situated at #12-13-1275/2,
Tarnaka, Hyderabad – 500 017 and others.

...Appellants/Respondents/
A1, A4 & A5

Vs.

The Commissioner of Police, Hyderabad City,
And the Competent Authority under
Andhra Pradesh Protection Depositors of
Financial Establishment Act, 1999.
Represented by its Public Prosecutor,
High Court at Hyderabad.

...Respondent/Petitioner/
Complainant

Counsel for Appellants : Sri Vedula
Srinivas

Counsel for Respondent : Public

Prosecutor

(State of Telangana)

The Court made the following : [order follows]

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

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CrI.A.No.1045 of 2014

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JUDGMENT:

This Criminal Appeal is filed under Section 11 of the Andhra Pradesh Protection of Depositors of Financial Establishment Act, 1999 (for short 'the Act') challenging the order dt.28.08.2014 in Cr.M.P.No.693 of 2007 in Cr.No.42 of 2006 of CCS, DD, Team-III, Hyderabad in C.C.No.1 of 2011.

2. The appellants herein are accused Nos.1, 4 and 5 in C.C.No.1 of 2011.

3. Complaints were received by the Commissioner of Police, Hyderabad City that accused Nos.4 and 5, who were directors in A.1-Company, had collected deposits in the name of A.1, M/s.Garnet Marketing (P) Ltd., Hyderabad (A2) Companies and Sri G. Ramakrishna Rao and Company and had not refunded their deposits amounting to Rs.66.71 lakhs and interest thereon as agreed and they have committed an offence under the said Act and the IPC.

4. On 24.03.2006, a case in Cr.No.42/06 of Team III,

C C S , DD was registered and was taken up for investigation. A charge-sheet was filed and the same was taken on file by the Metropolitan Sessions Judge, Hyderabad in C.C.No.1/2011 on 14.02.2011.

5. In the meantime, on the basis of material collected during investigation, the Commissioner of Police, came to the conclusion that the accused had committed an offence under Section 3 of the Act, that they had also diverted the deposited amounts for purchasing certain moveable and immoveable properties in the names of the accused and in the names of the above mentioned companies. He therefore, requested the Government to pass an *ad interim* order for attachment of the properties of A.4 and 5, who were directors of A.1, and A.2 under Section 3 (ii) of the said Act.

6. Thereafter, G.O.Ms.No.98 Home (General.B) Department dt.14.05.2007 was issued by the Government under Section 3 of the Act for attachment of the properties shown in Annexures 1 and 2 of the said G.O.

7. Under Section 4 (3) of the Act, upon receipt of orders of the Government under Section 3, the competent authority shall apply within (15) days to the Special Court constituted under the Act for making the *ad interim* order of attachment absolute.

8. On 29.05.2007, Crl.M.P.No.693 of 2007 was filed by the Commissioner of Police, Hyderabad city, who was

the competent authority designated under the Act, before the Court of the Metropolitan Sessions Judge, Nampally, Hyderabad to make the *ad interim* order of attachment made in G.O.Ms.No.98 Home (General.B) Department dt.14.05.2007 by the Government, as absolute.

9. Counter-affidavit was filed by the appellants herein in the said application opposing the said request of the Commissioner of Police. They denied the allegations made against them by the *de facto* complainants that they had committed any offence under Section 5 of the Act besides offences under IPC. Their specific plea was that:

(i) A1 company was accepting deposits from 1986 onwards till 2001; thereafter it had stopped collecting the deposits; from 1986 onwards till 2001 there were no complaints either for payment of principal or payment of interest; thereafter, it had stopped taking deposits; and it had offered the depositors to take back the deposited amounts as per term deposit certificates. According to the appellants, some of the depositors requested for the return/refund of the deposited amounts and accordingly the same was refunded to them. However, some of the depositors intended to invest their amounts in the share capital of the Company to share its profits/dividends and on the request of the investors, shares were allotted to individual investors. So, according to the appellants,

though originally the Company collected the amount towards fixed deposits, subsequently at the request of the shareholders, the amounts deposited by the individuals were converted into shares; that the individuals had given applications requesting the appellants to convert their amounts toward shares of the Company; on such application made by individuals, the accused No.1 had allotted shares to them by issuing share certificates after informing the Registrar of Companies, Income Tax Dept. and Reserve Bank of India;

(ii) A.1-Company accounts were audited and the records were verified by statutory auditors from time to time; that Reserve Bank of India Officers inspected the files and after verifying the same issued certificate of "NON DEPOSIT ACCEPTING COMPANY";

(iii) in addition, the Income Tax Dept., during 2004, issued notices to all the shareholders of A.1-Company seeking confirmation from them about their shareholdings and nature of their investment in the A1 Company, and all of them including the *de facto* complainant had confirmed in writing to the said Department that they had invested in the said Company's shares and they do not have any other investments in it;

(iv) that A.2-Company was not involved in the collection of amounts towards FDRs and was engaged only in trading of electrical goods;

(v) that the *de facto* complainant had deliberately filed the case in conspiracy with one of the directors of A.1-Company by name Sri K. Bhavanarayana, since they are close relatives, friends and well-wishers of the said individual only to harass the appellant Nos.3 and 4, as they had demanded for more percentage of share amount in the Company;

(vi) that the State Government, without enquiring into the matter and making independent enquiry, passed the *ad interim* order of attachment in a mechanical manner to cause loss to the appellants, and therefore, it is required to be set aside.

10. They also denied that the properties attached were purchased from the amounts taken from the *de facto* complainant as deposits. They contended that item No.2 of the Annexure 1 of the said G.O. is property belonging to one Mr. A. Vijaypal and that the 3rd appellant had only acted as his General Power of Attorney holder and the money of the depositors was not utilised for purchasing this land. They contended that the attachment of the Bank accounts mentioned in Annexure 2 of the said G.O. is also untenable as there were no circumstances to establish that those bank accounts were utilized for mis-utilization of the money of the depositors; and that there was no occasion for invoking the provision of the Act and to proceed with attachment and sale of the properties of

appellants.

11. Before the Court below, the respondent/Commissioner of Police examined PWs.1 to 3 and marked Exs.P.1 to P.217. The appellants examined RWs.1 and 2 and marked Exs.R.1 to R.8.

12. By order dt.28.08.2014, the court below partly allowed the said application raising the attachment to the immoveable properties pertaining to M/s.Garnet Marketing Private Ltd., Tarnaka Hyderabad (A.2), but it made absolute the attachment pertaining to the other properties in Annexure Nos. 1 and 2.

13. Challenging the same, this appeal is filed.

THE CONTENTIONS OF COUNSEL FOR APPELLANTS:

14. The counsel for appellants, *inter alia*, contended that:

- (i) the order of the court below is erroneous;
- (ii) the court below ought to have seen that the *ad interim* orders of attachment passed by the State Government were contrary to the established principles of law and that the State Government, without enquiring into the matter and making independent enquiry, passed the said order in a

mechanical manner to cause loss to appellants.

- (iii) in G.O.Ms.No.98 Home (General.B) Department dt.14.05.2007, the recording of satisfaction of the Government that “*accused No.1-Company is not likely to return the deposits in cash or kind after maturity or in any manner agreed upon*”, is not mentioned and recording of such satisfaction in the said G.O. is a condition precedent for exercise of power under Section 3(ii) of the Act for passing an order of *ad interim* attachment of the immoveable properties.
- (iv) the application made under Section 4(3) of the Act by the respondent to make the *ad interim* order of attachment absolute has to be accompanied by one or more affidavits stating the grounds on which the belief that “*the financial establishment has committed any defraud or is likely to defraud*” is founded, and the said affidavit must also mention the “*amount of money or value of other property believed to have been procured by means of the deposits and the details, if any, of the persons in whose names such property is believed to have been invested or purchased out of the deposits or any other property attached under Section 3*”, such an affidavit must be of the competent authority; and in the absence of filing

of such an affidavit, the court below could not have entertained the application under Section 4(3) of the Act at all. He further contended that the Court below erroneously held that non-filing of such affidavit is only a procedural irregularity and would not affect the entire case of the prosecution, if no prejudice is reported to have occurred due to the said lapse.

(v) the legislation, i.e., the Andhra Pradesh Protection of Depositors of Financial Establishment Act, 1999 is in the nature of expropriatory legislation and its provisions must be strictly followed. He cited **Godrej and Boyce Manufacturing Company Limited and another v. State of Maharashtra and others**^[1] in support of this plea.

(vi) when a statute directs a thing to be done in a particular way, it shall be done in that way only and in no other way and relied on the judgment in **Dipak Babaria and another v. State of Gujarat and others**^[2].

(vii) formation of opinion must precede application of mind; and such application of mind must be on the materials brought on record; and the material should be such which are required to be collected by the authorities (see **Devinder Singh and**

others v. State of Punjab and others^[3]).

- (viii) in para.11(c) of the counter filed in this Court by respondent, it is stated for the first time that G.O.Ms.No.98 dt.14.08.2005 was issued “*after due satisfaction* by the Government that there is a default as contained in Section 3 of the Act”; that since the said words were not mentioned in the said G.O., the same cannot be taken into account, since it is settled law that “an order must be sustained on the basis of what it contains and not on the basis of counter-affidavits filed subsequently”. He relied upon the judgments in **Commissioner of Police v. Gordhandas Bhanji^[4]** and **Mohinder Singh Gill v. Chief Election Commissioner^[5]**.

CONTENTIONS OF THE PUBLIC PROSECUTOR

15. *Per contra*, the learned Public Prosecutor, appearing for the respondent, contended that:

- (i) the order of court below is correct and did not warrant any interference by this Court in appeal;
- (ii) although G.O.Ms.No.98 dt.14.05.2007 whereunder *ad interim* attachment of properties was affected did not mention specifically that “the Government was satisfied about the satisfaction that accused No.1-Company was not likely to

return the deposits in cash as required by Section 3 of the Act”, since the said G.O. states that the Government after “careful examination of the matter” had issued the orders of *ad interim* attachment after referring to the investigation done by the competent authority, it has to be taken that in fact, there was such a satisfaction in the mind of the Government as required by Section 3(ii) of the Act;

- (iii) filing of affidavits as required by Section 4(3) of the Act, along with the application under Section 4(3) to make the *ad interim* order of attachment absolute, is not mandatory and only directory;
- (iv) since the statute mentions in Sub-Section (4) of Section 4 about filing of more than one such affidavits and in the present case, affidavits of some of the *de facto* complaints were filed, there is substantial compliance with Section 4(4) of the Act.
- (v) He relied upon decisions in **Vommi Rama Murty Chits and Investments (Pvt) Ltd. v. State of Andhra Pradesh**^[6] and **Soma Suresh Kumar v. Government of Andhra Pradesh and others**^[7] and an un-reported judgment of the High Court of Madras in **Maria Cruz v. The State**

of Tamil Nadu and others, delivered on
17.11.2008.

16. I have noted the submissions of both sides.

THE ANALYSES BY THE COURT

17. The above Act was enacted by the State Legislature since it was noticed that there was large scale diversion of money by many financial institutions in the State by cheating the depositors of their hard-earned savings, misappropriating the same and then later vanishing from the scene. The statement of objects and reasons of the Act are :

“9. The Statement of Objects and Reasons of the Act read as under:

“Instances have come to the notice of the State Government, wherein a number of unscrupulous financial establishments in the State are cheating innocent, gullible depositors by offering very attractive rates of interest, collecting huge deposits and then vanishing suddenly. The depositors are being cheated and are put to grave hardship by losing their hard-earned savings. To curb these malpractices, the State Government has decided to bring a law to protect the interests of depositors of the financial establishment in the State and for matters connected therewith or incidental thereto. The above issue was also discussed in a conference of the State Chief Ministers and Finance Ministers presided by the Union Finance Minister on 14-9-1998 at Vigyan Bhavan, New Delhi. The Union Finance Minister also desired that States should take expeditious steps for enacting legislation on the lines of ‘Tamil Nadu Protection of Depositors (in Financial Establishments) Act, 1997,’ to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits.

To achieve the above object, the Government has

decided to make separate law by undertaking legislation.”

18. Sections 3 and 4 of the Act state :

“3. Attachment of properties on default in respect of deposits :- Notwithstanding anything contained in any other law for the time being in force, _

(i) where, upon complaints received from a depositor or depositors, that any financial establishment defaulted or is likely to default in the return of deposits in cash or kind after maturity, or in any manner agreed upon; or

(ii) where the Government have reason to believe that any financial establishment is acting in a manner prejudicial to the interests of the depositors with an intention to defraud the depositors;

and if the Government are satisfied that such financial establishment is not likely to return the deposits in cash or kind after maturity, or in any manner agreed upon, the Government may, in order to protect the interests of the depositors of such financial establishment, pass an ad interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person from and out of the deposits collected by the financial establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said financial establishment, or the promoter, manager or member of the said financial establishment, as the Government may think fit, and transfer the control over the said money or property to the competent authority.

4. Competent Authority :-(1) The Government may, by notification appoint an authority hereinafter called "the competent authority" to exercise control over the properties attached by the Government under Section 3.

(2) The Competent Authority shall have such other powers and discharge such other functions as may be prescribed, in addition to the powers and functions specified under this Act.

(3) Upon receipt of the orders of the Government under Section 3, the Competent Authority shall apply within fifteen days to the Special Court constituted under this Act for making the ad interim order of attachment absolute.

(4) An application under sub-section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the financial establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposits, and the details, if any, of persons in whose names such property is believed to have been invested or purchased out of the deposits or any other property attached under Section 3.”

19. In G.O.Ms.No.98 dt.14.05.2007 orders of *ad interim* attachment of the properties mentioned therein were passed on the request of the respondent/Commissioner of Police.

20. The said G.O. states :

“ORDER :

In the G.O. first read above, the Commissioner of Police, Hyderabad has been appointed as “Competent Authority” among others under sub section (1) of section 4 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Act No.17 of 1999).

2. In the reference second read above, the Commissioner of Police, Hyderabad/Competent Authority has reported that on receipt of a complaint from Sri Popuri Venkateshwara Rao S/o.P.R.K. Murthy, Hyderabad, a case in Crime No.42/2006 under section 406 Indian Penal Code, 1860 and Sections 3 and 5 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 was registered against the accused Sri Challa Sudhakar, Managing Director, Garnet Finance Limited, H.No.12-3-1275/2, Moulali Road, Taranaka, Hyderabad and his wife Smt. Challa Venkata Lakshmi Sesharatnam, Director, Garnet Finance Ltd., Hyderabad.

3. The accused started business of M/s. Garnet Finance Pvt. Ltd. and M/s. Garnet Marketing Pvt. Ltd, during the year 1985 with registered office situated at H.No.12-3-1275/2, Moulali Road, Taranaka, Hyderabad and the accused accepted deposits in the companies

names 1) Garnet Finance Pvt. Ltd. (later renamed as Garnet Finance Ltd) and 2) Garnet Marketing Pvt. Ltd., by issuing Fixed Deposit Receipts since 1995. The accused Sri Challa Sudhakar and his wife Smt. Challa Venkata Lakshmi Sesharatnam are functioning as Managing Director and Director respectively, in the two companies. The accused persons acquired movable and immovable properties out of the deposits of the complainant and other victims.

4. During the course of investigation as many as 18 witnesses were examined and concerned original documents were collected to establish the guilt of the accused. The accused with false promise of making payment at higher rate of interest on their investment by running M/s.Garnet Finance Ltd and Garnet Marketing Pvt. Ltd, by inducing the complainant and (50) other victims to invest their savings in term deposits. The accused dishonestly obtained deposits to a tune of Rs.66.71 lakhs by issuing fixed deposit receipts etc. Thereafter the accused failed to repay the deposit amounts and interest on maturity date, which is offence under section 5 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999. The deposited amounts were diverted for purchasing certain movable and immovable properties in the names of the accused and in the names of the above mentioned companies.

5. In the circumstances stated above, the Commissioner of Police, Hyderabad/Competent Authority has requested the Government to pass an ad-interim orders for attachment of the properties of Sri Challa Sudhakar and his wife Smt. Challa Venkata Lakshmi Sesharatnam of M/s. Garnet Finance Ltd and Garnet Marketing (P) Ltd., Hyderabad, as shown in the Annexure I and II to this order.

6. **After careful examination of the matter**, the Government hereby pass an ad interim order, under section 3 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Act No.17 of 1999), for attachment of the properties standing in the name of Sri Challa Sudhakar and his wife Smt. Challa Venkata Lakshmi Sesharatnam of M/s.Garnet Finance Ltd. and Garnet Marketing (P) Ltd, Hyderabad, as shown in the

Annexure I and II to this order.

7. *The Commissioner of Police, Hyderabad/Competent Authority is hereby directed to take necessary further action as per the said Act and Rules, in the matter.”*

21. Firstly, I will consider whether the Government was satisfied as required by Section 3 of the Act that Accused No.1-Company “is not likely to return deposits in cash or kind after maturity or in any manner agreed upon” and that it was necessary in order to protect the interests of depositors of accused No.1 to pass *ad interim* order of attachment.

22. The impugned G.O. makes a reference on page 1 thereof to only two documents, viz.,

(a) G.O.Ms.No.349, Home (Genl.B) Department dt.29.10.1999, under which the respondent has been appointed as (competent authority) under sub-Section (1) of Section 4 of the Act; and (b) a communication from the respondent dt.16.04.2007, containing the matter mentioned in paras.2 to 5 of the G.O.

23. It is not the case of the respondent that any material other than what was mentioned in the references to the G.O. was taken into account by the Government at the time when it issued the G.O.

24. In para.8 of the counter-affidavit filed in this appeal by the respondent it is stated :

“8. In view of the above, the Competent Authority, having satisfied himself, in the month of April, 2007, has requested the State Government to pass ad interim orders u/s 3 of APPFDE Act, attaching immovable properties of A1 and A2 and the movable properties of Garnet Finance Ltd., Garnet Marketing (P) Ltd, Garnet Enterprises (P) Ltd – as the deposits collected in Garnet Finance Ltd were diverted to these companies and that of G. Ramakrishnarao and Co. (a CA firm in which A1 is a partner). The government has issued at interim attachment orders vide G.O.Ms.No.98 dated 14.05.2007 transferring the control over the said properties to the Competent Authority u/s 3 of the said Act, the details of which were given in Annexure I and II thereto.”

25. In para 11 (b) of the counter affidavit filed , it is stated by the respondent :

“(b)... ..during the course of investigation as many as 18 witnesses were examined and concerned original documents were collected to establish the guilt of the accused and only after satisfying that the accused defaulted to repay the deposits, the Government have issued the said order and thereby transferred the control over the said properties to the Competent authority/Commissioner of Police/Complainant. Hence the G.O. is in compliance with the Act and particularly with Sec.3 thereof.”

26. The above statements in the counter-affidavit filed by the competent authority only indicate that the material collected during investigation was considered by the respondent, who was the Competent authority, to come to the conclusion that a case is made out for requesting the Government to pass an *ad interim* order of attachment of properties of the respondents. *But the said material was not placed before the Government for it to come to an independent conclusion regarding the existence of*

satisfaction as required by Section 3. Only the opinion of the competent authority contained in the letter L&O/M2/1556/07, dt.16.04.2007 was placed for consideration by the Government, before it issued the said G.O.Ms.No.98 dt.14.05.2007, and nothing else.

27. So, except the opinion of the Commissioner of Police, Hyderabad city, about the commission of offence under the Act by accused, the material on the basis of which such conclusion was arrived at by him, was not placed before the Government, and was not considered by it, before issuing G.O.Ms.No.98 Home (General.B) dt.14.05.2007.

28. In **Devinder Singh** (3 supra), the Supreme Court held that formation of opinion must precede application of mind and such application of mind must be on the materials brought on record. It held that material should be such which are required to be collected by the authorities entitled therefor and the authorities must act within the four corners of the statute. It declared that an opinion formed even on the basis of an advice by an authority which is not contemplated under the statute renders the decision bad in law, and that a statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof.

29. Sec.3 of the Act, in the present case, requires the Government to be satisfied that the accused is not likely to

return the deposits in cash or kind after maturity or in any manner agreed upon, and that it was necessary to protect the interests of the depositors of the accused that an *ad interim* order of attachment of the property of the accused be made.

30. The satisfaction, therefore, as required by Section 3 must be of the Government and not that of the competent authority. Therefore, if the material on the basis of which the competent authority had formed an opinion that an offence under the Act had been committed by the accused was not placed before the Government, *it would not be a case where the Government can be said to have independently come to a satisfaction that an offence under the Act has been committed by the accused, but it would be a case of the Government acting in a mechanical way under dictation of the respondent.* This is impermissible. As the Government has simply gone by the advice rendered by the competent authority on the issue, the requirements of Section 3 are not fulfilled.

31. In **Shauqin Singh v. Desa Singh**^[8], the Chief Settlement Commissioner was empowered under Section 24(2) of the Displaced Persons (Compensation and Rehabilitation) Act 44 of 1954 to cancel an allotment of land under the said Act if he was satisfied that such allotment was granted by means of fraud, false

representation or concealment of any material fact. The Court held that the power is judicial and by the use of expression "*is satisfied*", the Chief Settlement Commissioner is not made the final arbiter on the facts on which the conclusion is reached. His jurisdiction arises only if an allotment is obtained by means of fraud, false representation or concealment of material facts. It observed that the relevant satisfaction is a jurisdiction fact on the existence of which alone the power may be exercised, and a superior authority or a High Court in a writ petition, would therefore, be entitled to consider whether there was due satisfaction by the Chief Settlement Commissioner, on materials placed before him, and that the order was made not arbitrarily, capriciously or perversely. The Court held in that case that although the Chief Settlement Commissioner had cancelled the allotment made in favour of the party, in his order there was no reference to any evidence which may support his conclusion and that the High Court was justified in holding that his conclusion, that respondent nos.1 to 3 were guilty of fraud, was based on no evidence and was competent to set it aside.

32. The principle in the said decision squarely applies to the present case. The existence of satisfaction as required by Section 3 is a jurisdictional fact and such satisfaction can be shown to have been in existence on the basis of material placed before the Government.

Since the only material before the Government was the opinion of the competent authority, i.e., the respondent and nothing else, it is clear that the Government had acted mechanically on his dictation without independently satisfying itself about the accused being unlikely to return the deposits in cash or kind after maturity, or in any other manner agreed upon, and that it was necessary in order to protect the investors that an order of *ad interim* attachment of the properties of the accused, is warranted.

33. In **Gordhandas Bhanji** (4 supra), the Supreme Court held that where under a statute a specific authority is bound to exercise his own independent discretion without harping on the directions or instructions of others, the acting under other's directions may make the order improper and subject to correction by a *Writ of Mandamus*.

34. Therefore, it has to be held that there was no independent application of mind by the Government as required by Sec.3 of the Act this point is answered in favour of appellants and against respondent.

35. I also do not accept the contention of the learned Public Prosecutor that in the counter in para 11 (b), the satisfaction of the Government was specifically pleaded and so this Court has to accept the existence of satisfaction of Government .

36. In **Mohinder Singh Gill** (5 supra) it was held :

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji²:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

37. I will next deal with the contention of the counsel for appellants about the non-filing of affidavits by the competent authority along with application under Section 4(3) of the Act before the Court below for making the *ad interim* order of attachment absolute, being fatal to the attachment.

38. A reading of Section 4(4) of the Act indicates that such application “shall be” accompanied by one or more affidavits stating the grounds on which the belief, that the financial establishment has committed any default or is

likely to defraud, is founded and also containing details of the amount of money or value of other property believed to have been procured by means of deposits, and the details, if any, of persons in whose names such property is believed to have been invested or purchased out of the deposits or any of the property attached under Section 3.

39. In the present case, there is no dispute that the affidavit of respondent/competent authority has not been filed mentioning the grounds on which the belief that the financial establishment has committed any default or is likely to defraud, is founded. There is no mention of filing of such affidavit in the evidence of PW.1 produced before me. There is no reference to filing of such an affidavit in the impugned judgment either. The learned Public Prosecutor also did not dispute this fact. In fact, the court below in the impugned judgment accepted that such affidavit was not filed and that non-filing of such affidavit is only a procedural irregularity which would not affect the case of the prosecution, since it was of the view that no prejudice had occurred.

40. However, before this Court the learned Public Prosecutor pointed out that along with the application under Section 4(3), affidavits of some of the depositors/de-facto complainants were filed on 28.05.2007 containing the allegations that the accused had failed to make repayment of deposits on maturity and

diverted the amount of deposits for purchasing moveable and immoveable properties. The learned Public Prosecutor sought to contend that this is sufficient compliance with Section 4(4), particularly when the said provision uses the words “one or more affidavits”. He contended that these affidavits of the depositors can also be taken into account by this Court.

41. I do not agree with the said submission. A conjoint reading of sub-Sections (3) and (4) of Section 4, in my opinion, would require that the affidavit to be filed accompanying the application under sub-Section (3) of Section 4, (as required in sub-Section (4) of Section 4), should be of the competent authority primarily, since there is a reference in sub-Section (4) of Section 4 to “the grounds on which the belief that the financial establishment has committed any default or is likely to defraud is founded”. This presupposes that the competent authority’s satisfaction is the basis for initiating proceedings under the Act. So filing of his affidavit is mandatory. In addition, it is open to the prosecution to also file affidavits of the investigating officer. The filing of affidavits of the depositors, who make allegations against the accused-Company, would, in my opinion, not be sufficient compliance with sub-Section (4) of Section 4.

42. In my opinion, the legislation in question, i.e., the Andhra Pradesh Protection of Depositors of Financial

Establishment Act, 1999 being an expropriatory legislation, it must be strictly construed and the statutory requirements must be strictly applied since they are imperative in character.

43. In **Devinder Singh** (3 supra), while dealing with the Land Acquisition Act, 1894, the Supreme Court held that it is an expropriatory legislation and it must be strictly construed and while exercising the power to compulsorily acquire the property of a citizen, the State must establish the existence of a public purpose and also make payment of compensation.

44. Similar view has been expressed in **Godrej and Boyce Manufacturing Company Limited** (1 supra) wherein the Supreme Court was dealing with the provisions of Maharashtra Private Forests (Acquisition) Act, 1975. The use of the word “shall be accompanied” in sub-Section (4) of Section 4 indicates the imperative character of the requirement of the statute and the mandate of the legislature that it shall be strictly complied. It is settled law that where a statute provides for a thing to be done in a particular manner, it has to be done in that manner and in no other manner.

45. Recently, in **Dipak Babaria** (2 supra), the Supreme Court reiterated the same principle in the following words :

“61. It is well settled that where the 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. This proposition of law laid down in Taylor v. Taylor was first adopted by the Judicial Committee in Nazir Ahmad v. King Emperor and then followed by a Bench of three Judges of this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh. This proposition was further explained in para 8 of State of U.P. v. Singhara Singh by a Bench of three Judges in the following words: (AIR p. 361)

“8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

This proposition has been later on reiterated in Chandra Kishore Jha v. Mahavir Prasad, Dhanajaya Reddy v. State of Karnataka and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.”.

46. When the statute makes compliance with the requirement of filing affidavit of a competent authority mandatory, the question of prejudice to the accused by such non-filing has to be presumed and it was not necessary for the accused to prove that they were prejudiced in any manner by such non-compliance. The view of the court below that the accused did not suffer any prejudice, and therefore, even if sub-Section (4) of Section 4 is not complied with, it would only be a procedural irregularity and would not affect the entire case of the prosecution, cannot therefore be accepted. Therefore, I

am of the opinion, that the non-filing of the affidavit of the competent authority along with the application under sub-Section (4) of Section 4 before the court below renders the said application a defective application and therefore, in such an application, the court below could not have made an order of attachment of the properties of the accused absolute.

47. In **Soma Suresh Kumar (7 supra)**, cited by the learned Public Prosecutor, the constitutionality of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 was upheld.

48. In **Vommi Rama Murthy Chits and Investments (Pvt.) Ltd. (6 supra)**, cited by the learned Public Prosecutor, the question arose as to whether the application under Section 6 (4) of the Act seeking sale of the properties attached under Section 3 and 4 of the Act can be filed by the depositors also apart from the competent authority although only the competent authority is mentioned in the said provision as the person who can file such application. This Court held that enabling only the competent authority to file such application would be a very narrow interpretation and would defeat the very purpose for which the Act had been promulgated; that depositors may also come forward and file an application requesting the Special Court to pass appropriate orders so that the properties under attachment are sold and the

depositors are paid. In fact, in that case the accused themselves came forward and filed an application seeking sale of the attached properties so that the amount realized may be paid to the creditors. The Court held that the Special Court ought not to have rejected it as not maintainable. It set aside the order of the Special Court and directed that the properties attached to be sold and the amounts realized be paid to the depositors. In my opinion, the issue which arose for consideration in that case is totally different and the ratio therein cannot be applied to the present case.

49. In **Maria Cruz**, cited by the learned Public Prosecutor, the Madras High Court upheld the Government Order making the ad-interim order of attachment of the competent authority under the Tamilnadu Protection of Interests of Depositors in Financial Establishments Act, 1997 absolute. After perusing the material placed before it, the Court came to the conclusion that the State of Tamilnadu had passed the order basing on the complaints received from the depositors of the financial institutions and after having satisfied itself that the financial institution was not likely to return the deposits received from the depositors. Therefore that case was decided on its facts and no principle of law was laid down therein.

50. Thus, none of the cases cited by the learned

Public Prosecutor helps the respondent.

51. Therefore, for all the above reasons, the Criminal Appeal is allowed and the order dt.28.08.2014 in Cr.M.P.No.693 of 2007 in Cr.No.42 of 2006 of CCS, DD, Team-III, Hyderabad in C.C.No.1 of 2011 of the Court below as well as G.O.Ms.No.98 Home (General.B) Department dt.14.05.2007 are set aside.

52. Miscellaneous applications, pending if any in this Appeal, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 03-03-2015

Note:

LR copy to be marked : **YES**

B/o.
Ndr/*

[\[1\]](#) (2014) 3 SCC 430

[\[2\]](#) (2014) 3 SCC 502

[\[3\]](#) (2008) 1 SCC 728

[\[4\]](#) AIR 1952 SC 16

[\[5\]](#) (1978) 1 SCC 405

[\[6\]](#) 2008 (3) ALT (CrI.) 269 (A.P.)

[\[7\]](#) (2013) 10 SCC 677

[\[8\]](#) (1970) 3 SCC 881