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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5308/2019**

MR. ANURAG RASTOGI PRINCIPAL SECRETARY,
IRRIGATION, GOVERNMENT OF HARYANA
AND ORS.

..... Petitioners

Through: Mr Vaibhav Gaggar, Mr Nitish
Sharma and Ms Aayushi Sharma,
Advocates.

versus

COMPETITION COMMISSION OF INDIA
AND ANR.

..... Respondents

Through: Ms Rajdipa Behura, Mr Philp
Monkani, Ms Hansika Sahu, Ms Kriti
Handa and Ms Damini K., Advocates
for CCI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.05.2019

CM No.23465/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 5308/2019 & CM No.23464/2019

2. The petitioners have filed the present petition, *inter alia*, praying as
under:-

“i. Issue a writ of certiorari or any other appropriate writ,
order or direction in the nature thereof, striking down
and quashing the impugned orders dated 13 February
2019 and 02.02.2019 issued by the Respondent No. 1,
to the extent the said orders direct the Petitioners to
furnish income details including their income tax
returns respectively for the financial years 2015-16,
2016-17 and 2017-18;

ii. Issue a writ of Certiorari and Prohibition or any other
appropriate writ, order or direction in the nature

thereof, restraining Respondent No. 1 from investigating the conduct of or role of or proceeding against the Petitioners under the provisions of the Competition Act, pending a finding under section 27 of the Competition Act.

iii. Issue any other appropriate writ, order or directions as the nature and circumstances of the present case may require.”

3. The petitioners are erstwhile officers of Department of Town and Country Planning, Government of Haryana. The impugned order dated 13.02.2019 was passed by respondent no. 1 in proceedings commenced on information provided by Confederation of Real Estate Developers Association of India – NCR, alleging abuse of dominance on the part of the Department of Town and Country Planning, Government of Haryana and Haryana Urban Development Authority. It is the petitioner’s case that since a final order under Section 27 of the Competition Act, 2002 has not been passed, no proceedings against the officials under Section 48 of the said Act, can be instituted.

4. Concededly, the said issue is covered by the decision of the Division Bench of this Court in ***Cadila Healthcare Limited and Anr vs Competition Commission Of India and Ors.: LPA 160/2018 decided on 12.09.2018***. Mr Gaggar, learned counsel appearing for the petitioner states that a Special Leave Petition has been filed against the said decision – ***S.L.P. (C) 30641/2018*** captioned ‘***Cadila Healthcare Limited and Anr. v. Competition Commission of India and Ors.***’ – and the Supreme Court has passed an interim order directing that no coercive steps be taken against the concerned officers. He further states that other petitions are also pending before the

Supreme Court involving the said issue.

5. Admittedly, no stay has been granted against the decision of the Division Bench of this Court. Furthermore, this Court does not consider it apposite to stay the investigation regarding the role of the petitioners as all remedies against the final order – should the same be passed against the petitioner – would be available to the petitioners.

6. This Court is also of the view that no serious prejudice is caused to the petitioners by the order directing them to submit their income tax returns. The petitioner being a public servant, in any event, is required to maintain transparency regarding their financial affairs.

7. Mr Gaggar, learned counsel appearing for the petitioner states that the CCI, in other matters, has taken a view that proceedings under Section 48 of the Competition Act, 2002 are not required to be taken against public servants. This Court has certain reservations regarding the said proposition. However, it is not necessary to examine the same in this petition as it is open for the petitioners to advance the said contention before the CCI.

8. In view of the above, the present petition is disposed of. However, it is clarified that all the rights and contentions of the petitioners are reserved. In the event a final order adverse to the petitioners is passed by the CCI, the petitioners are at liberty to avail of appropriate remedies (including under Article 226 of the Constitution of India, if otherwise maintainable), as available in law.

9. The pending application also stands disposed of.

VIBHU BAKHRU, J

MAY 15, 2019/MK