

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4846/2017 and CM APPL. 20911/2017**

MAHESH BHATI

..... Petitioner

Through: Mr Abhishek Kumar, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mrs Suparna Srivastava, CGSC
with Mr Tushar Mathur, Advocate
for R-1.

Mr Harpreet Singh, Senior
Standing Counsel for R-2 with Ms
Suhani Mathur, Advocate.

Mr Rajeev K. Virmani, Sr.
Advocate with Mr Rohan Sharma,
Advocate for R-4 and R-5.

Mr S. Nanda Kumar, Ms Deepika
Nanda Kumar and mr M.S. Saran
Kumar, Advocates for BIS.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

25.03.2019

1. At the outset, the learned counsel appearing for the petitioner sought an adjournment on the ground that the main counsel is busy and unavailable. The matter was passed over for the main counsel to appear and to enable the counsel to prepare the matter.

2. The petitioner has filed the present petition, *inter alia*, praying that criminal investigation be conducted with regard to the sale of mobile handsets/data cards/Wi-Fi dongles without a valid International Mobile

Equipment Identification (IMEI)/Mobile Equipment Identification (MEID) number, which are not updated in the Equipment Identity Register (EIR).

3. The petitioner also prays that a writ of *mandamus* be issued to respondent nos. 1, 2 (Central Board of Excise & Customs) and 3 (Bureau of International Standards), to recall all mobile handsets/data cards/Wi-Fi dongles without a valid IMEI/MEID number.

4. It is contended on behalf of the petitioner that IMEI/MEID numbers are necessary for mobile sets in the interest of national security.

5. The learned counsel appearing for respondents have pointed out that the said issue had been considered by the Division Bench of this Court in *Micromax Informatics Ltd. v. Union of India and Ors.: W.P.(C) 5772/2014*, decided on 17.02.2016. In the said case, an affidavit had been filed on behalf of the Assistant Commissioner, Commissionerate of Customs, Jaipur, indicating that Directorate General of Foreign Trade (DGFT) had issued a notification dated 16.01.2015, prohibiting import of mobile phone with fake/duplicate IMEI numbers.

6. The Court was also informed that the draft Standard Operating Procedure (SOP) prepared had been circulated to the concerned Ministry. The aforesaid submissions were noted and it was directed that the import of handsets with fake/duplicate IMEI numbers would be governed by the said SOP. The relevant extract of the said decision is set out below:-

“9. An affidavit was thereafter filed by the Assistant Commissioner, at Commissionerate of Customs, Jaipur inter alia stating that the Director General of Foreign Trade (‘DGFT’) had issued Notification No. 107 dated 16th January

2015 prohibiting import of mobile phones with duplicate IMEI or fake IMEI numbers. The Court was informed that a draft Standard Operating Procedure ('SOP') had been prepared and was being circulated to the concerned Ministries for their response.

10. At the hearing today, the Court is informed that the Principal Commissioner of Customs (Import), Mumbai has issued a Public Notice No. 23 of 2015 dated 22nd December 2015 setting out the procedure to be followed in terms of the SOP (Ver 1.0) that had been issued by the Department of Telecommunication ('DoT') for implementation of the central government notification prohibiting import of mobile phones with duplicate, fake and non-genuine IMEI. It is further stated that the public notice would be effective from 1st January 2016.

11. Mr. Satish Kumar, learned Senior standing counsel for Respondent Nos. 2 and 3 (the Customs Department) states that the above public notice issued by the Principal Commissioner of Customs (Import), Mumbai was not to the knowledge of the Respondents and therefore, he will seek instructions in that regard.

12. The Court finds that in para 2 of the Public Notice dated 22nd December 2015 a reference has been made to the present writ petition filed before this Court and the prayers made therein. It is obvious that the above Public Notice was issued only pursuant to the orders in the present petition. The Court has no reason to doubt that the procedure set out in the above Public Notice is meant to be followed not only by the Customs Department in Mumbai but elsewhere as well.

13. As pointed out by learned counsel for the Petitioner, with the issuance of the SOP and the above Public Notice, the main prayer in the present writ petition stands fulfilled. As far as the other prayer concerning the notices dated 5th and 13th March 2014 issued by the Deputy Commissioner of Customs, Jaipur, it is plain that the consignments in question that

allegedly contain imported mobile phones with fake/duplicate IMEI numbers will be governed by the SOP and should be processed by following the procedure outlined in the Public Notice dated 22nd December 2015.”

7. The learned counsel appearing for respondent no. 2 has also referred to the public notice no. 23/2015 dated 22.12.2015 issued by the Principal Commissioner of Custom (Import), which indicates that the said notification is not only concerned with phones without IMEI numbers, but also MEID numbers.

8. It is apparent from the above that the respondents are addressing the issue of import of phones with fake IMEI/MEID and no further orders are required to be passed.

9. Insofar as this petition is concerned, it is relevant to note that the petitioner has not articulated any private interest to support the present petition. In response to a pointed query by this Court as regards the petitioner’s interest, it was contended that since respondent no. 4 (Systema Shyam Tele Services Ltd.) has been using the brand name “MTS”, which was also the brand name of the petitioner, the petitioner was interested in the conduct of affairs of respondent no.4.

10. It does appear to this Court that the present petition has been filed on account of the *inter se* disputes between petitioner and respondent nos. 4 and 5 (Shyam Telecom Ltd.) regarding use of the brand name “MTS”. It is material to note that a suit in this regard is pending before this Court – CS(OS) 3029 of 2014 which has been renumbered as CS(COMM) 118/2015.

11. Thus, although the petitioner has been professing to advance the

present petition in the interest of national security, it is apparent that the petitioner's agenda is, somewhat, different. Although, the petitioner seeks to espouse public interest, this does not follow the procedure as required by filing a PIL.

12. In view of the above, the petition is dismissed with cost quantified at ₹25,000/-. The cost shall be deposited with the Delhi High Court Legal Services Committee, within a period of two weeks from today. The pending application also stands disposed of.

VIBHU BAKHRU, J

MARCH 25, 2019
RK