

23rd September,
2020
(SKB)

W.P.A. 1267 of 2020
With
CAN 1 of 2020 (Old CAN 4664 of 2020)
CAN 2 of 2020 (Old CAN 4666 of 2020)
CAN 3 of 2020
CAN 4 of 2020
(Via Video Conference)

Subhash Chandra Sharma
Versus
Union of India & Ors.

Mr. Sudip Deb,
Mr. Riju Ghosh
... for the petitioner.

Mr. Barnamoy Basak,
Mr. Sumitava Chakraborty
... for Proforma respondent.

Mr. Jatinder Singh Bhatt
... for the respondent.

Mr. Sailendra Kumar Tiwari
... for the respondent.

The petitioner seeks an injunction restraining the respondent authorities from proceeding and taking action in respect of a case initiated by the Enforcement Directorate (in short 'E.D.') under the provisions of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to "the Act"). The action complained of is a seizure memo dated 24th April, 2017 issued by the Assistant Director, Directorate of Enforcement as authorised by an Additional Director.

The petitioner is a citizen of Singapur and submits that none of the conditions precedent under the Act were

complied with by the concerned respondents before issuing the impugned seizure memo.

Learned Counsel appearing for the petitioner has placed Section 17 of the Act and contends that there are two pre requisites to be satisfied before a Notice for Seizure can be issued. Counsel placed Section 48 of the Act which gives the classes of authorities who can take action in similar matters.

Counsel appearing for the respondents/E.D. submits that the petitioner has already availed of the alternative remedy providing in the Act by approaching the Adjudicating Authority and the petitioner is now before the Appellate Authority. It is submitted that the petitioner's case has been before the appellate authority for a substantial length of time but no progress has been made in the case. Counsel further submits that the authorities can take action under Sections 5 and 17 of the Act, if there are reasons to believe for the same. Counsel also places Section 68 of the Act which provides, *inter alia*, that no notice etc. should be invalidated on the grounds of mistake, defect or omission etc. It is submitted that the signatures in the writ petition are not those of the petitioner.

On hearing counsel for the parties, the commencement of the proceedings by way of the impugned seizure memo, appears to be *prima facie* contrary to the requirements under Section 17 of the Act. Section 17 clearly says that a Director or any other officer

not below the rank of Deputy Director authorised by him on the basis of information in his possession can take certain steps if that person has reasons to believe that the person concerned committed any of the acts mentioned under Section 17 of the Act. Section 17 makes it evident that there are two important requisites before the Enforcement Directorate can take any action. First, the concerned person who initiates the action must not be below the rank of Deputy Director. In this case, the impugned memo has been issued by an Assistant Director as authorised by an Additional Director. Both these persons are below the rank of the officers mentioned in Section 17 and Section 48 of the Act. Second, the expression “reasons to believe” naturally includes not only an indication of the working of minds of the concerned officer by way of such reasons being recorded in writing but also application of the principles of natural justice by which such reasons are made known to the noticee against whom notice is issued. The respondents have not shown any document which would indicate the respondents indicating such reasons in writing communication and communicating the same to the petitioner.

The contention that the petitioner has availed of an alternative remedy under the Act does not assist the respondents. Admittedly, the matter has been pending before the Appellate Authority since 2017. There is no explanation as to why the appellate authority has not

made any progress in the matter. The objection under Section 68 is irrelevant as this is not a case of mistake, defect etc.

In view of the above, the respondents are directed not to proceed with the impugned seizure memo until the matter is taken up by the Appellate Authority or any effective order passed therein, whichever is earlier. The Appellate Authority is requested to expedite the hearing of the matter and come to a decision therein subject to the constraints of the present pandemic situation. Since the respondents have contended that there are multiple cases are pending against the petitioner, it is desirable that the matter is disposed of as expeditiously as possible.

W.P.A. 1267 of 2020 is disposed of in terms of the above together with all connected applications being CAN 1 of 2020, CAN 2 of 2020, CAN 3 of 2020 and CAN 4 of 2020 are also disposed of.

(Moushumi Bhattacharya, J.)