

10/12/2020
Item No. 21
S. DE
Ct. 8

Through Video Conference

W.P.A. 10125 of 2020

**M/s. Poddar Business Private Limited & Anr.
-Vs-
The Union of India & Ors.**

Mr. Mr. Probal Kr. Mukherjee
Mr. Bhaskar Mukherjee
Ms. Debjani Ghosh
Ms. Nafisa Yasmin... for the petitioners

Mrs. S. Duttafor the respondent no.21

Mr. Debasish Roy
Mr. Ganesh N. Jajodia
...for the respondent no.20

Mr. Dilip Singh
Mr. Rahit Banerjee
...for the respondent no.19.

Mr. Phiroze Edulji
Mr. S. Dutta
Mr. Koushik Kundu ...for the respondent
nos.11 to 14

Mr. A. Agarwalla
Mr. B. Sharma ...for the respondent no.29
Mr. Y.J. Dastoor

Mr. Siddhartha Lahiri
Mr. Arijit Mazumdar
...for the respondent nos. 1 to 4
Mr. N.C. Bihani
...for the respondent nos. 5 to 8

The writ petition complains of inaction on the part of the respondent authorities in so far as no investigation, as contemplated in Section 210 of the Companies Act 2013, is being initiated against the private respondents, despite the private respondents having been black-listed pursuant to a report of the

Ministry of Commerce and Industry annexed at page 54 of the writ petition.

Learned senior counsel appearing for the petitioners argues that, in view of the private respondents having already been black-listed, the government ought to initiate an investigation under Section 210 of the 2013 Act. Moreover, it is argued that the petitioners have lodged complaints against the private respondents with regard to alleged financial irregularities committed by the respondents, which are also affecting public interest adversely. However, no steps are being taken by the police authorities to register First Information Reports on the basis of such complaints or to investigate into the matter.

It is submitted on behalf of learned counsel for the respondent nos. 1 to 4 that there is no cause of action for the instant writ petition and the petitioners are merely trying to ventilate their personal grievances against the private respondents in the garb of the writ petition. It is further submitted that the black-listing, although it might have been a consequence of the report of the Ministry of Commerce and Industry, is not a part of the said report at all.

Learned counsel appearing for the respondent nos. 11 to 14 submits that there has already been a CBI enquiry into the matter, after which the CBI has

given a clean chit to the respondents in the matter of the alleged financial irregularities.

Learned counsel appearing for respondent no.20 submits that the said respondent has been dragged into this litigation without having any connection or nexus with the grievances ventilated by the petitioners.

Learned counsel appearing for the respondent nos. 19 to 29 adopt the submission made on behalf of the respondent no.20.

The writ petition is also opposed by learned counsel appearing for the respondent nos. 5 to 8.

A cursory perusal of the report at page 54 of the writ petition, relied on by the petitioners, reveals that the same is of a general nature, although certain entities were mentioned, including shell companies of the private respondents. Even if such contention was correct, the black-listing, as apparent from page 63 of the writ petition, could at best be a consequence thereof. The said list of companies, black-listed by the PEC, was not a part of the report.

Section 210 can only be initiated under the specific circumstances as indicated in Sub-section (1) of Section 210 and its sub-clauses. The present case, however, does not fall within any of the sub-clauses. Even if the petitioners' argument was to be taken at face value, as regard the private respondents' actions

being contrary to public interest (although the same is not established by the writ petition itself), the writ Court ought not to direct the central government to initiate investigation at the behest of a private operator having interest in the matter.

Although sub-section (2) of Section 210 contemplates an order being passed by a Court or Tribunal in any proceedings before it regarding investigation of the affairs of the company, to initiate an order of investigation under the said section, there arises no occasion in the present case for the writ court to direct such an investigation, at least on the materials placed before this Court initiating the writ petition.

As regards registering of First Information Report, the petitioners have an alternative remedy in Section 156(3) of the Criminal Procedure Code. Even though such provision is not an absolute power of the writ court to direct the registration of an FIR in certain cases, the present writ petition does not *ex facie* make out any such exceptional case to direct the registration of an FIR on the basis of the complaint of the petitioners.

It is, however, made it clear that the grievances levelled by the petitioners against the private respondents in the writ petition have not been dealt with on merits.

Needless to say, it will be open to the petitioners to approach an appropriate criminal court under Section 156(3) of the Criminal Procedure Code irrespective of the dismissal of the present writ petition. If such an approach is made, the concerned magistrate will consider the merits of such application on its own footing, without being prejudiced by the observations made herein.

Since affidavits have not been called for, it is deemed that the respondents do not admit any of the applications made in the writ petition.

Accordingly, WPA 10125 of 2020 is dismissed without any order as to costs.

No order as to costs.

Urgent certified Website copy of this order, if applied, be supplied to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya,
J.)