BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **14.12.2020**
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.10659 of 2020
and
W.M.P.(MD).No.9387 of 2020
(Through the Video Conferencing)

Leo Charitable Trust,
(Registration No.196/2020),
Represented by its Managing Director,
Antony Xavier ... Petitioner

Vs

1.The Principal Director of Income Tax(Investigation),
Income Tax Department (Investigation),
Mahathma Gandhi Road, Nungambakkam,
Chennai-600 034.

2.The Principal Commissioner of Income Tax,
No.2, V.P.Rathinasamynadar Road, Bibikulam,
Madurai-635 002.

3.The Assistant Director of Income Tax (Investigation),
Income Tax Office, Near Law College,
Palayamkottai-627 001,
Tirunelveli District.

4.The Static Surveillance Team / Flying Squad,
Represented by Executive Magistrate / Tahsildar,
Alangulam Taluk, Tenkasi District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to release forthwith the cash amount of Rs.68,14,000/- (Rupees Sixty Eight Lakhs and Fourteen Thousand only) seized from the petitioner on 12.03.2019, with reasonable interest within a time frame as fixed by this Court.

For Petitioner	:	Mr.Isaac Mohanlal Senior Counsel for Isaac Chambers
For Respondents	:	Mrs.S.Srimathy Senior Standing counsel

ORDER

This writ petition has been filed for a Mandamus seeking for a positive direction from this Court to the respondents to release forthwith the cash amount of a sum of Rs.68,14,000/- (Rupees Sixty Eight Lakhs and Fourteen Thousand only) which was seized from the petitioner on 12.03.2019 based on Standard Operating Procedure Order / Instructions of the Election Commission of India, dated 29.05.2014 which was subsequently handed over to the Income Tax Department on 12.03.2019.

2. Heard Mr.Isaac Mohanlal, learned Senior counsel for the petitioner and Mrs.S.Srimathy, learned Senior Standing Counsel for the respondents.

3. It is the case of the petitioner that they are a registered Public Charitable Trust, running educational institutions and they are exempted from payment of tax under Section 12AA of the Income Tax Act, 1961. It is their case that on 12.03.2019 when their Managing Trustee was proceeding to his Bank (Indian Bank) at Pavoorchatram, to deposit a sum of Rs.68,14,000/- belonging to their School, he was intercepted by the State Surveillance Team / Flying Squad. According to the petitioner, the Flying Squad took custody of the cash of Rs.68,14,000/- and issued Receipt No.2 / 2019 dated 12.03.2019.

4. It is the case of the petitioner that they were issued with summons under Section 131 of the Income Tax Act, 1961, dated 12.03.2019 by the Assistant Director of Income Tax (Investigation), Tirunelveli, instructing the petitioner to appear for an enquiry in his camp office on the same day. According to the Managing Trustee of the petitioner / Trust, he was directed to produce necessary proof for the seized cash. It is his case that he appeared before the Assistant Director and produced all the relevant documents / records including the monthly account statements, cash receipts, receipt abstract and the statement of the financial administrator to the satisfaction of the respondents.

5. According to the petitioner, no further enquiry was conducted, excepting the enquiry conducted by the Assistant Director of Income Tax (Investigation), Tirunelveli, on 12.03.2019. It is the case of the petitioner that they submitted a representation on 14.03.2019 to the District Election Officer / District Collector, Tirunelveli, requesting for return of the seized cash and informing them that there is an urgent need for the said cash to meet out the expenditure for their School. It is further stated by the petitioner in his affidavit that similar representation was also submitted by the petitioner to the Assistant Director of Income Tax Department (Investigation), Tirunelveli on 14.03.2019.

6. According to the petitioner, there was no response to the representation dated 14.03.2019 and therefore, the petitioner was constrained to send another representation to the first respondent on 18.03.2019, enclosing a copy of the registration certificate of the petitioner Trust registered under Section 12AA of the Income Tax Act, 1961, audit particulars and return of income tax filed for the assessment year 2018-19 and also a copy of the petitioner's representation dated 14.03.2019. A similar representation was also submitted to the second respondent on 18.03.2019. According to the petitioner, despite several representations having been given, the seized cash was not returned to the petitioner.

7. It is also the case of the petitioner that as per the Standard Operating Procedure Order of the Election Commission of India, within 24 hours, an F.I.R will have to register in respect of the seized cash. But, according to the petitioner, without registering an F.I.R., the respondents have retained the seized cash, which belongs to the School run by the petitioner / Trust. It is the case of the petitioner that the procedure contemplated under the Standard Operating Procedure Order of the Election Commission of India, has not been followed.

8. In the affidavit filed in support of the Writ Petition, the petitioner has referred to a Division Bench judgment of the Patna High Court dated 16.05.2019 in the case of ***Indian Traders Vs. State of Bihar and others*** and would submit that a Division Bench in similar set of facts has directed the Income Tax Department to release the cash back to the petitioner therein.

9. It is also stated by the petitioner that aggrieved by the order dated 16.05.2019 passed by the Division Bench of Patna High Court referred to supra, the Income Tax Department preferred an S.L.P and the same was also dismissed on 06.12.2019 by the Hon'ble Supreme Court in S.L.P. (Civil) Diary No.31538 of 2019. According to the petitioner, without authority under law, the Income Tax Department has retained the seized cash and they will have to necessarily release the same to the petitioner forthwith.

10. A counter affidavit has been filed by the respondents denying the allegations of the petitioner. As seen from the counter affidavit, it is their case that the claim of the petitioner will have to be investigated and only thereafter, it can be concluded whether the cash seized from the petitioner belongs to the School or it belongs to the Managing Trustee of the petitioner / Trust in his individual capacity. According to them, the Writ Petition has been prematurely filed even without waiting for the outcome of the investigation. Even though they have raised several contentions in the counter affidavit, the primary ground raised by the Income Tax Department in their counter affidavit is that without completion of investigation as to whether the seized cash belongs to the Managing Trustee of the petitioner / Trust in his individual capacity or whether it belongs to the School run by the petitioner, as claimed by the petitioner, the cash cannot be returned to the petitioner.

11. The learned Senior Counsel for the petitioner drew the attention of this Court to the Standard Operating Procedure Order / Instructions dated 29.05.2015, issued by the Election Commission of India and in particular, he referred to Paragraph Nos.7 and 8 of the said order and would submit that without registration of an F.IR., within a period of 24 hours from the time of seizure, the respondents cannot retain the seized cash.

12. According to him, without authority under law, the respondents are holding the seized cash, which was delivered to them by the officials of the Election Commission of India. It is also his case that though the petitioner has duly accounted for the seized cash with the respondents and despite several representations having been given by the petitioner seeking for return of the seized cash, till date, the respondents have not returned the seized cash to the petitioner.

13. The learned Senior counsel also drew the attention of this Court to paragraph No.16 of the Standard Operating Procedure Order issued by the Election Commission of India, relating to release of cash and after referring to the same, he would point out that within seven days, if no First Information Report has been registered, the respondents will have to necessarily hand over the cash back to the person from whom the cash was seized.

14. The learned Senior Counsel for the petitioner also drew the attention of this Court to the Division Bench Judgment of the Patna High Court in the case of ***Indian Traders Vs. State of Bihar and others*** passed in Civil Writ Jurisdiction Case No.9941 of 2019. According to him, in identical set of facts, the Division Bench of the Patna High Court, directed the Income Tax Department to release the cash, since no First Information Report was registered within 24 hours from the date of seizure, as per the Standard Operating Procedure Order of the Election Commission of India. He would also submit that the said case which was dealt with by the Patna High Court in the aforesaid Division Bench Judgment, also relates to the same election, when the cash was seized from the petitioner.

15. The learned Senior Counsel for the petitioner also drew the attention of this Court to the order dated 06.12.2019 passed by the Hon'ble Supreme Court, where, the Hon'ble Supreme Court dismissed the Special Leave Petition filed by the Income Tax Department aggrieved by the aforesaid Division Bench Judgment of the Patna High Court.

16. After referring to the said decisions, the learned Senior counsel would submit that since the cash has been seized from the petitioner without authority under law and without following the Standard Operating Procedure Order issued by the Election Commission of India, the respondents will have to forthwith release the cash back to the petitioner.

17. Per contra, the learned Standing Counsel for the respondents would submit that the seized cash which was delivered to the respondents by the Election Commission officials, is under investigation. According to her, the Income Tax Department is yet to give a finding based on the investigation as to whether the seized cash belongs to the Managing Trustee of the Public Trust in his individual capacity or it belongs to the School run by the petitioner / Trust. Therefore, according to her, the Writ Petition has been prematurely filed and hence, it is not maintainable.

18. It is settled law that only when there is admission of liability on the side of the respondents, a positive direction can be issued by this Court under Article 226 of the Constitution of India for refund / release of the money, which is allegedly seized from the petitioner. In the case on hand, as seen from the counter affidavit and also as seen from the submissions made by the learned Senior Standing counsel, the respondents have not admitted that they are liable to release the seized cash back to the petitioner. It is their case that the request of the petitioner for releasing of the cash is under investigation. In such view of the matter, this Court cannot issue a positive direction as sought for by the petitioner in this Writ Petition.

19. The learned Senior Counsel for the petitioner drew the attention of this Court to the Standard Operating Procedure Order issued by the Election Commission of India on 29.05.2015 and in particular, he referred to Paragraph Nos.7, 8 and 16 of the said order, which reads as follows.

> "7.*During Checking, if any cash exceeding Rs.50,000/- is found in a vehicle carrying a candidate, his agent, or party worker or carrying posters or election materials or any drugs, liquor, arms or gift items which are valued at more than Rs.10,000/- likelty to be use for inducement of electors or any other illicit articles are found in a vehicle, shall be subject to seizure. The whole event of checking and seizure is to be capture in a video /CCTV, which will be submitted to the Returning Officer, everyday.*
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> *8.If any star campaigner is carrying cash upto Rs.1 Lakh, exclusively for his / her personal use, or any party functionary is carrying cash with certificate from the treasurer of the party mentioning the amount and its end use, then the authorities in SST shall retain a copy of the certificate and will not seized the cash. If cash of more than 10 lakh is found in a vehicle and there is*

no suspicion of commission of any crime or linkage to any candidate or agent or party functionary, then the SST shall not seize the cash and pass on the information to the Income Tax Authority, for necessary action under Income Tax Laws.

16.Release of Cash

(i)In order to avoid inconvenience to the public and genuine persons and also for redressal of their grievances, if any, a Committee shall be formed comprising three officers of the District, namely, (i) CEO, Zila Parishad / CDO / P.D.DRDA (ii)Nodal Officer of Expenditure Monitoring in the District Election Office (Convenor) and (iii) District Treasury Officer. The Committee shall suo-motu examine each case of seizure made by the Police or SST or FS and where the Committee finds that no FIR / Complaint has been filed against the seizure or where the seizure is not linked with any candidate or political party or any election campaign etc., as per Standard Operating Procedure, it shall take immediate step to order release of such cash etc., to such persons from whom the cash was seized after passing a speaking order to that effect. The committee shall look into all cases and take decision on seizure.

(ii).The procedure of appeal against seizure should be mentioned in the seizure document and it should also be informed to such persons at the time of seizure of cash. The functioning of this committee should be given wide publicity, including telephone No. of the convenor of the Committee.

(iii).All the information pertaining to release of cash, shall be maintained by the Nodal Officer expenditure monitoring in a register, serially date wise with the details regarding amount of cash intercepted / seized and date of release to the person(s) concerned.

(iv).If the release of cash is more that Rs.10(Ten) Lakhs, the Nodal Officer of Income Tax Shall be kept informed before the release is effected.

(v).All cases of seizure of cash etc., effected by FS, SST or Police Authorities shall immediately be brought to the notice of the Committee formed in the District and the Committee shall take action as per para (i) mentioned above. In no case, the matter relating to seized cash / seized valuables shall be kept pending in Malkhana or treasure for more than 7 (Seven) days after the date of poll, unless any FIR / Complaint is filed.

It shall be the responsibility of the Returning Officer to bring all such cases before the appellate committee and to release the cash / valuables as per order of the appellate committee"

20. By referring to the above, the learned Senior Counsel has pointed out that without registration of an F.I.R within 24 hours, the respondents cannot retain the cash seized from the petitioner. According to him, the said procedure contemplated under the Standard Operating Procedure Order / Instructions issued by the Election Commission of India, dated 29.05.2015, has not been followed by the respondents.

21. But, however, as observed earlier, when there is no admission of liability, this Court cannot pass any positive direction. The representations of the petitioner seeking for release of the seized cash is under consideration by the respondents.

22. Similarly, the learned Senior Counsel drew the attention of this Court to the Division Bench judgment of the Patna High Court referred to supra and would submit that in similar set of facts, where no F.I.R. was registered, the Patna High Court had directed the release of the seized cash to the petitioner therein. The said judgment will have to be considered by the respondents while they consider the petitioner's representations seeking for return of the seized cash.

23. As seen from the documents filed along with this Writ Petition, several representations have been given by the petitioner for return of the seized cash. Further, it is contended by the learned Senior counsel for the petitioner that funds which were seized as early as on 12.03.2019 are urgently required for the smooth functioning of the School run by the Charitable Trust. Therefore, this Court is of the considered view that the representations of the petitioner seeking for release of the seized cash will have to be considered by the respondents expeditiously.

24. For the foregoing reasons, this Court directs the first and second respondents to consider the representation of the petitioner dated 18.03.2019 requesting for release of the seized cash amounting to a sum of Rs.68,14,000/- which was seized from the petitioner on 12.03.2019 and pass final orders on merits and in accordance with law, after giving due consideration to the Standard Operating Procedure Order / Instructions, issued by the Election Commission of India on 29.05.2015 as well as the Hon'ble Division Bench Judgment of the Patna High Court in the case of ***M/s.Indian Traders Vs. State of Bihar and others*** made in Civil Writ Jurisdiction Case No.9941 of 2019, by giving sufficient opportunity to the petitioner including granting him the right of personal hearing within a period of four weeks from the date of receipt of a copy of this order.

25. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

+1 CC to M/s Issac Chambers,Advocate,in SR.No.25632 of 2020.

+1 CC to M/s S.Srimathy,Advocate,in SR.No.25634 of 2020.

Order made in
W.P.(MD)No.10659 of 2020
Dated:
14.12.2020

(SSS)CO
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