In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No.3832 of 2020

With

CAN 1 of 2021

MPS Greenery Developers Ltd. and another

Vs.

The State of West Bengal and others

For the petitioners	:	Mr. Ashok Banerjee, Mr. Ashok Gupta, Mr. Dipankar More, Mr. Ajoy Lal Acharya
For the SEBI	:	Mr. Surajit Nath Mitra, Mr. Prasanta Kumar Dutt, Mr. Susanta Kumar Dutt, Mr. Syamantak Banerjee
For the CBI	:	Mr. Amajit De
For the State	:	Mr. Amitesh Banerjee, Mr. Tarak Karan
For the depositors	:	Mr. Bikash Ranjan Bhattacharyya, Mr. Subhasis Chakraborty, Ms. Sushmita Kumar Singh, Mr. Amit Chowdhury
For the added parties	:	Mr. Amal Baran Chatterjee, Mrs. Arundhati Banerjee, Mr. Kaustav Banerjee
Hearing concluded on	:	16.08.2022
Judgment on	:	01.09.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner no.2 is the Chairman and Managing Director of petitioner no.1, a company incorporated under the Companies Act, 1956 (hereinafter referred to as 'the 1956 Act") on or about May 18, 1995. The present writ petition has been filed by the petitioners, challenging the investigation of the petitioners by the Central Bureau of Investigation (CBI) on the ground of lack of jurisdiction. The petitioners have also sought cancellation of CBI Case RC/53/S/2014 dated September 27, 2014, which gave rise to GR 479 of 2014 pending before the Chief Judicial Magistrate at Barasat, District – North 24-Parganas. The petitioners have also sought for quashing of the charge-sheet dated June 12, 2015 and supplementary charge-sheet dated January 25, 2016 filed in connection with the said case.

2. The learned Senior Advocate appearing for the petitioners submits that the petitioner is not a Chit Fund company engaged in chit business but is a company governed by the SEBI Act, 1992 and SEBI (CIS) Regulations, 1999. The petitioners rely on a Professional/Provisional Registration Certificate issued by the SEBI in favour of the petitioner no.1. It is submitted that the controlling and regulatory authority of the petitioner is the SEBI whereas, in the case of a chit fund company, such authority is the Registrar of Chit Funds, to be appointed by the State Government. Section 11AA(3)(vii) of the SEBI Act, 1992 provides that any scheme or arrangement falling within the meaning of 'chit business' as defined in Section 2(d) of the Chit Fund Act, 1932 shall not be a Collective Investment Scheme (CIS).

3. It is contended that vide judgment and order dated June 25, 2009, Sanjib Banerjee, J., in WP No.19716(W) of 2009, directed the SEBI to reconsider the matter of grant of registration to the petitioner no.1 under the SEBI (CIS) Regulations, 1999 by giving an opportunity of hearing to the petitioner no.1 and to pass a reasoned order. Such direction, it is argued, shows clearly that MPS Greenery (petitioner no.1) is a SEBI Company and not a chit fund.

4. The learned Senior Advocate appearing for the petitioners next contends that the judgment of the Supreme Court in the case of *Subrata Chattoraj Vs. Union of India and others*, reported at *(2014) 8 SCC 768*, where the present petitioners were not parties, deals with the financial scam commonly known as the 'chit fund scam'. Since MPS is not a chit fund company or carrying on chit business, the said judgment is not applicable to the petitioner no.1, it is argued.

5. Hence, it is submitted, the investigation by the CBI and all action taken on the basis thereof, including the framing of charges on September 27, 2018 and initiation of the criminal case bearing CRL 879 of 2014 are bad in law and liable to be quashed. Since the CBI is relying on the said judgment to validate its investigation in respect of the petitioner, it is submitted that the said contention of the CBI is not tenable in law, since the petitioners were not parties to the said matter and the same deals with a chit fund scam, in respect of which the petitioner is not concerned at all.

6. It is submitted by the petitioners that the charges were framed *de hors* the law against the directors of the petitioner no.1, including the petitioner no.2. It is submitted that the circumstances attending such framing of charges vitiate the same.

7. The mandatory provisions of Section 207 of the Code of Criminal Procedure, 1973 (Cr.P.C.) have not been complied with in passing the order framing charges, it is argued. The learned Senior Advocate places reliance on the case of *V.K. Sasikala Vs State*, reported at *AIR 2013 SC 613*, relied on in *Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another*, reported at *AIR 2019 SC 5233*, to show that the Supreme Court held that at the time of framing of charges, the court is required to satisfy itself that all papers, documents and statements under Section 207 of the Cr.P.C. have been furnished to the accused. The order framing charges dated September 27, 2018, it is submitted, is vitiated in the teeth of the said proposition.

8. Learned Senior Advocate further submits that the One-Man Committee appointed by this Court has the custody and control of all assets, properties and documents of the petitioner no.1-company lying in its various administration and corporate offices and its registered office. The petitioner no.2, for the past few years, is languishing in the Dum Dum Correctional Home and does not have any scrap of paper in his possession. Unless all documents, papers, books of accounts, correspondence etc. are returned to the petitioners, the petitioners would be rendered defenceless in GR Case No. 879 of 2014, unless quashed by this Court. As such, the basic fundamental right of the petitioners to defend themselves in such case would be rendered nugatory, causing manifest injustice to the petitioners. Hence, it is submitted that the One-Man Committee should be directed to forthwith return the said documents to the petitioners along with all litigation papers.

9. Learned counsel appearing for the SEBI places reliance on the affidavits filed by the SEBI and submits that the SEBI has granted the Provisional Registration Certificate to the petitioner no.1 under certain conditions, including that the petitioners would be restrained from operating in terms of such certificate during the two-year period of the tenure of such certificate. Moreover, it is submitted that the petitioners have flagrantly violated SEBI provisions for which the petitioner is still in custody. It is contended that the CBI investigation is independent of the SEBI measures and, as such, cannot be a ground in the present writ petition.

10. Upon hearing learned counsel for the parties at length, it appears from the communication by the SEBI dated August 21, 2009, to the petitioner no.1-Company that the grant of Provisional Registration Certificate under Regulation 71(1) of the SEBI (CIS) Regulations, 1999 was fettered with the rider that the petitioner no.1 shall not launch any new scheme or raise money from the investors even under the existing scheme, unless a certificate of registration is granted to it by the Board under Regulation 10. Several mandates which were imposed upon the petitioner no.1-company as conditions of grant of the provisional registration virtually restricted the petitioner no.1 from carrying on its operations in terms of the said provisional registration certificate.

11. It is further seen that the petitioners had taken out an application for recall of the order framing charges. Not only was such recall application rejected by a competent court of law, the revision preferred against the same was rejected by the criminal revisional court as well. Against such rejection, a challenge under Section 482 of the Cr. P.C. is pending in this Court, but there is no order passed in the said proceeding which may be directly relevant to the present case. Hence, the CBI case is continuing against the petitioners from September 27, 2017 and the GR Case No. 474 of 2014 is at the stage of trial. The charge-sheet was framed on June 12, 2015 and the supplementary charge-sheet on January 25, 2016. The petitioners having challenged such framing of charges before the competent forum and having failed till date to have it rescinded, the present challenge before the writ court against the self-same charges is not maintainable in law.

12. That apart, the application for bail made by the petitioner no.2 was rejected by a Division Bench of this Court and the trial of the CBI case was directed to be expedited both by this Court and the Supreme Court at various stages. A challenge against the criminal proceeding so late in the day, that too after having failed before the criminal forums, ought not to be entertained by the writ court.

13. After taking chance before the competent criminal forums, the petitioner have preferred the instant writ petition, thereby, in a sense, forum shopping, which ought not to be given a premium by court.

14. Inasmuch as the question of the petitioner no.1-company being a chit fund company or carrying on chit fund business is concerned, it is relevant to note that the Provisional Registration Certificate issued by the SEBI is restricted and conditional and not conclusive of the petitioners' status as CIS (Collective Investment Schemes) fall outside the purview of the expression 'chit fund'.

15. The perception of the CBI regarding the petitioners' involvement in the chit fund scam, the charges framed against the petitioners and the refusal of bail by a Division Bench of this Court, all point *prima facie* to the petitioner being involved in a financial scam, whether technically the petitioner no.1 is a chit fund or not.

16. A consideration of the *Subrata Chattoraj* case (supra) has certain salient features. In the said judgment, inasmuch as the State of West Bengal was concerned, the Supreme Court held specifically that investigation should be undertaken in "similar cases" and "other companies", with reference to the Sarada Investment Company and its subsidiaries.

17. In fact, the Supreme Court repeatedly observed in *Subrata Chattoraj* (supra) that the role of the SEBI and other regulating authorities is itself suspect. Such observations clearly negate any advantage being lent by the SEBI grant of provisional registration to the petitioner, at least *prima facie*, which is sufficient to justify the CBI investigation to continue against the petitioner.

18. Inasmuch as the cited decision of Sanjib Banerjee, J. is concerned, the same did not decide the merits of the issue as to whether the petitioner no.1-company carries on 'chit fund' business or not.

19. Moreover, the scale and magnitude of the scam commonly termed as the 'Chit Fund Scam' deserves investigation by an agency operating at a national level such as the CBI, since the tentacles of such financial scam, which has adversely affected numerous common citizens, have apparently spread over several states of India.

20. Only the investigation and the trial of the CBI case, on its completion, shall reveal whether the source of money involved in the chit fund scam and re-routing of the huge sums involved can be traced to the petitioner no.1-Company, even if the petitioner, it is assumed is not a chit fund company in the strict sense of the term.

21. That apart, mere investigation by the CBI, that too, when the criminal proceedings are at the stage of trial and after such a long time subsequent to the unsuccessful challenge to the charges framed, cannot be a violation of any legal or fundamental right of the petitioners. Hence, it cannot be observed that the CBI investigation of the petitioners and the framing of charges are vitiated in any manner, sufficient for the writ court to quash the same.

22. Even if it is assumed for the sake of argument that the list furnished by the SEBI in connection with this writ, containing the name of the petitioner no. 1 company, has not been proved to have been furnished before the Supreme Court in *Subrata Chattaraj (supra)*, due to the reasons as discussed above, even without relying on such list, and irrespective of the fact that the petitioners were not parties to the said litigation, the petitioners clearly come within the broad sweep of the Supreme Court's directions for investigation relating to the chit fund scam, since charges have been framed against the petitioners long back and after due investigation, the trial of the case is going on at present.

23. Inasmuch as the formation of the One-Man Committee consisting of a retired Hon'ble Judge of this Court is concerned, there cannot be any rhyme or reason for this Court, sitting in writ jurisdiction, to direct the said committee, out of the blue, to return all documents in its custody to the petitioners, particularly, since such efforts of the petitioners have failed before every competent forum. The petitioner no.2 is in custody for a considerable span of time and since the trial of the CBI case, upon investigation is going on in full swing, there is no substance in the present writ petition.

24. Accordingly, WPA No.3832 along with CAN 1 of 2021 are dismissed on contest, without any order as to costs.

25. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

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(Sabyasachi Bhattacharyya, J.)