

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

Before:

THE HON'BLE MR. JUSTICE JAY SENGUPTA

W.P.A. 17617 OF 2023

Suresh Kumar Maharwal

VS.

Union of India & Ors.

For the Petitioner :

Mr. Srijib Chakraborty
Mr. Aditya Mondal
Mr. Suryaneel Das
Mr. Chiranjit Pal

For the ED :

Mr. Arjit Chakraborty
Mr. Deepak Sharma

For the UOI :

Mr. Aryak Dutt

Heard on:

25.07.2023

Judgment on:

25.07.2023

JAY SENGUPTA, J:

This is an application under Article 226 of the Constitution of India praying for quashing of the impugned Summon dated 13.07.2023

issued by the respondent no.1 and also praying that no coercive steps be taken by the Enforcement Directorate.

Affidavit of service filed on behalf of the petitioner is taken on record.

Learned counsel for the petitioner submits as follows. The petitioner was served with a notice by the Enforcement Directorate to appear before them with certain documents. This was merely because the petitioner was an associate of an accused in the instant case. The respondent authorities had earlier carried out search and seizure at the petitioner's premises on 20.12.2022. On 06.02.2023 the recording of reasons under Section 8(1) of the Prevention of Money Laundering Act, 2002 was completed by the respondent authorities. On 08.02.2023 the petitioner received a show-cause notice from the office of the respondent authorities requiring him to submit a written statement. On 13.07.2023 the petitioner was again served with a Summon wherein the petitioner was directed to appear on 18.07.2023 before the office of the respondent no.1. As the petitioner was suffering from certain ailments he requested for adjourning the date for appearance to 24.07.2023 which was allowed. The documents that were required to be submitted before the Enforcement Directorate have already been submitted on 19.07.2023. All that the petitioner prays now is to pass direction on the respondent authorities not to take any coercive step against the petitioner so that the petitioner can appear before the Enforcement Directorate authorities and cooperate. The

petitioner also refers to certain possible illegalities in continuing the adjudication proceeding vis a vis the present petitioner.

Learned counsel appearing on behalf of the Enforcement Directorate submits as follows. The petitioner has already partly complied with the notice dated 13.07.2023, which is under challenge in the writ petition. He appeared with certain documents on 19th instead of on 18th of July, 2023 and in the midst of the examination, left the office of the Enforcement Directorate claiming that he was too tired after such lengthy examination and that he will come back on 24th July, 2023. Immediately thereafter, he filed the instant writ petition. In fact, in the writ petition he suppressed the fact that he had partly complied with the notice dated 13.07.2023 by attending the office of the Enforcement Directorate with some documents on 19th July, 2023. There is no case made out by the petitioner in the four corners of the writ petition as to why the issuance of Summon is liable to be challenged by the petitioner or, for that matter, an order can be passed not to take any coercive measure.

At this stage, learned counsel for the petitioner submits that on 19.07.2023 the petitioner indeed felt tired as the petitioner was examined from 11 a.m. to 8.30 p.m. by the respondent authorities.

I have heard the learned counsels appearing on behalf of the parties and have perused the writ petition.

The Enforcement Directorate had issued a Summon to the petitioner on 13.07.2023 to appear before them with some documents.

The date of appearance was fixed on 18.07.2023. However, the petitioner did appear on 19.07.2023 with some documents and in the midst of the examination left the office on the ground that he was feeling tired.

These facts that he partly complied with the impugned Summon issued by the Enforcement Directorate and that he did not fully cooperate and left the office of the Enforcement Directorate in the midst of the examination were not averred in the writ petition. This is indeed an important omission on the part of the petitioner.

The petitioner could not show any illegality committed by the Enforcement Directorate in summoning the petitioner. No case is made out either to seek the exceptional relief of 'not to take coercive action'. In fact, such relief could be granted only in very exceptional case. On this, reliance is placed on *Neeharika Infrastructure (P) Ltd.*, 2021 SCC Online 315.

It is necessary that the petitioner cooperates with the Enforcement Directorate and appropriately responds to any notice that may be issued in future by the said authorities.

I do not find any merit in the writ petition.

The writ petition is, accordingly, dismissed.

However there shall be no order as to costs.

Since no affidavit was called for, the allegations made in the writ petition are deemed not to have been admitted.

Urgent photostat certified copy of this order if applied for be given to the parties on usual undertakings.

(JAY SENGUPTA, J.)

SM