

D/L. 10 & 11.
December 19, 2023.
MNS.

WPA No. 27768 of 2023
M/s. Adinath Port & Logistics Pvt. Ltd.
Vs.
Directorate of Enforcement & another.
With
WPA No. 27904 of 2023

M/s. Goldensons Construction Pvt. Ltd.
Vs.
Directorate of Enforcement & another.

Mr. Jaydip Kar
Mr. Kishore Dutta
Mr. Ankur Chawla
Mr. Arshdeep Singh Khurana
Mr. Moyukh Mukherjee
Ms. Tannavi Sharma
Mr. Shivam Tandon
Ms. Manan Khanna
Mr. Koustav Lal Mukherjee

...for the petitioner
in WPA 27768 of 2023.

Mr. Kishore Dutta
Mr. Ankur Chawla
Mr. Arshdeep Singh Khurana
Mr. Moyukh Mukherjee
Ms. Tannavi Sharma
Mr. Shivam Tandon
Ms. Manan Khanna
Mr. Soewel Bhattacharjee

...for the petitioner
in WPA 27904 of 2023.

Mrs. Debjani Ray,
Ms. Sohini Dey

...for the Enforcement Directorate.

1. The present challenge has been preferred
against a show cause notice for provisional

order of attachment under Section 8 of the Prevention of Money Laundering Act, 2002 (PMLA).

2. The primary ground of challenge is that the Adjudicating Authority was *coram non judice*.
3. It is contended that a single member, who is the only functioning Member of the Adjudicating Authority, not being a Judicial Member, issued the show cause notice.
4. It is argued that in terms of Section 6 of the PMLA, for a single member to pass an order, the provisions of Sub-section (5) (b) of Section 6 has to be complied with. The said provision stipulates that a bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit.
5. In the present case, however, the single functioning Member of the Adjudicating Authority, who issued the show cause notice, was not designated to act as a Chairperson.
6. It is further argued by learned senior counsel appearing for the petitioner in both the matters that the Members of the Adjudicating Authority, particularly a single Member, is required to be a Judicial Member, since the

nature of function dispensed with by the said Member is in the nature of an adjudication.

7. In support of such contention, learned senior counsel cites a judgement of a learned Single Judge of the Telangana High Court in the matter of *M/s. Hygro Chemical Pharmtek Pvt. Ltd. Vs. Union of India and another*. In the said judgment, the Telangana High Court observed that as stated in R. K. Jain's case, it is essential that a person whose rights are in question and who may face penal consequences shall be heard and his/her case shall be decided and adjudicated by a body capable and eligible to decide such issues. It may not be wrong to say, it was held, that getting a dispute adjudicated by a qualified and a duly constituted quasi-judicial body is a facet of natural justice.
8. Learned senior counsel appearing for the petitioner in both the matters hands over a copy of an Office Order dated June 22, 2023 indicating that the member who issued the impugned show cause notice was appointed merely as a Member and not as Chairperson.
9. Learned counsel appearing for the Enforcement Directorate (ED) contends at the

outset that the writ petitions are bad for non-joinder of the Union of India as a necessary party.

10. Learned counsel places reliance on Section 48 of the PMLA where it has been stipulated that the classes of authorities for the purposes of the Act would be as enumerated therein.

11. It is argued that in case the *coram* is disputed, the Union of India was required to be impleaded as a party respondent. In any event, it is argued that the property which is attached under the PMLA, ultimately vests in the Government of India, thus, also necessitating that the Union of India is impleaded.

12. Insofar as the proposition advanced by the petitioners to the effect that the Members of the Adjudicating Authority are required to be Judicial Members is concerned, learned counsel for the ED places reliance on a Division Bench judgment of this Court in *R. P. Infosystems Limited and another Vs. The Adjudication Authority and another* reported at 2023 SCC Online Cal 2391. In the said judgment, the Division Bench relied on *Maqbool Hussain Versus State of Bombay*

reported at AIR 1953 SC 325 and observed that an adjudicatory authority functioning under the Sea Customs Act, 1878 was merely an administrative machinery for the purpose of adjudicating confiscation, determination of duty or the increased rate of duty and for imposition of penalty as prescribed under the Act and not a judicial tribunal.

13. In the light of the said decision, the Division Bench of this Court held that the proceeding before the Adjudicating Authority appointed under Section 6 of the PMLA and the declaration/adjudication and confiscation of properties involved in money laundering by the Adjudicating Authority does not constitute the prosecution nor the order of confiscation would constitute a punishment inflicted by the court or the judicial tribunal.

14. It was further observed that there can be single-member bench of the Adjudicating Authority and the Appellate Tribunal under the PMLA and such single-Member bench need not mandatorily have to be a Judicial Member and can be an Administrative Member as well.

15. The Division Bench went on to find that it is clear that the Adjudicating Authority which

comprises of a single Member bench is entitled to adjudicate the matter and any other interpretation would tantamount to distorting the language adopted in the statute which is impermissible.

16. Learned counsel for the ED also places reliance on Section 6 (13) of the PMLA, which provides that in the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most member shall act as the Chairperson of the Adjudicating Authority until the date on which the new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

17. The questions which fall for consideration thus are whether the single Member who is functioning as the Adjudicating Authority at present, in the absence of any specific designation to perform the function of the Chairperson in the absence of the Chairperson, could assume jurisdiction as contemplated in Section 6(13) of the PMLA and whether the said Member, not being a

judicial Member, could issue a show cause notice.

18. Insofar as the first question is concerned, Section 6(13) of the PMLA is unambiguous in its language. The said provision clearly provides that in the event of any occurrence of vacancy in the office of the Chairperson as contemplated therein, as in the present case, the senior-most Member “shall act as the Chairperson” of the Adjudicating Authority until the date on which the new Chairperson appointed in accordance with the provisions of the Act to fill such vacancy, enters upon his office.

19. Thus, there is no stipulation in the said provision that an ordinary Member has necessarily to be designated as an Acting Chairperson of the Adjudicating Authority for the purpose of assuming jurisdiction under Section 6(13) of the PMLA.

20. In the event there was necessity for such separate designation, the provisions of Section 6(13) would be rendered meaningless and academic, since, in such circumstance, the Member is actually designated as Chairperson or an Acting Chairperson, leaving

no scope of operation of Section 6(13) of the PMLA.

21. Only in cases where there is no specific designation of a Member as a Chairperson or an Acting Chairperson does the occasion of the ordinary member acting as a Chairperson arise. Thus, the contention of the petitioner that there had to be a specific designation of the Member as a Chairperson does not hold good ground.

22. In the present case, the person who issued the show cause notice was admittedly a Member of the Adjudicating Authority and was the sole functioning Member at the relevant point of time, since there was no other member or even any Chairperson acting at that juncture.

23. Hence, by operation of Section 6(13) of the PMLA, the said ordinary Member was well within his jurisdiction in issuing the show cause notice. Since he is acting as Chairperson under sub-section (13), it is automatically deemed that he authorised himself, in the absence of any other member, within the contemplation of Section 6 (5) (b) of the PMLA.

24. Insofar as the question of the Member being necessarily a Judicial Member is concerned, the ratio held by the Division Bench in *R. P. Infosystems Limited (supra)* is clear. No manner of doubt is left on even a cursory perusal of the said judgment that the Division Bench squarely observed that even a single Member, who is not a judicial Member, is equally entitled to pass an order under the PMLA.

25. Thus, faced with the dilemma of following the judgment of a learned Single Judge of the Telangana High Court and the Division Bench of this Court, judicial propriety and the norms of precedents demand that the Division Bench of this Court prevail insofar as this Bench is concerned.

26. Thus, going by the said ratio, the single Member of the Adjudicating Authority who issued the show cause notice was well authorised within the contemplation of the PMLA, even without being a judicial Member and without being designated specifically by the Central Government to act as a Chairperson, to issue the show cause notice

by assuming charge under Section 6(13) of the PMLA.

27. In such view of the matter, I do not find any scope of interference with the show cause notice on the ground of lack of jurisdiction of the Member of the Adjudicating Authority.

28. Insofar as the issue of non-joinder of necessary party is concerned, however, the petitioner stands on a better footing.

29. In the present case, what has been challenged is the authority/jurisdiction of the Adjudicating Authority to issue the show cause notice. The appointment itself has not been challenged by the petitioner in either of the writ petitions.

30. The argument that the property, upon being provisionally attached, vests in the Union of India is far-fetched and such logic has no close proximity with the cause of action of the present writ petitions.

31. Thus, the objection as to non-joinder of the Union of India as a necessary party is hereby turned down.

32. However, in view of the above observations, both the writ petitions fail.

33. Accordingly, WPA No. 27768 of 2023 and WPA No. 27904 of 2023 are dismissed on contest without any order as to costs.

34. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)