

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5403 OF 2022

Akshay Chhabra

... Petitioner

V/s.

Union of India and ors.

... Respondents

AND

WRIT PETITION (ST.) NO.5484 OF 2021

Sunil Kumar Jha

... Petitioner

V/s.

Union of India and ors.

... Respondents

Mr.Abad Ponda, Senior Counsel with Ms.Madhu Gadodiya,
Mr.Deepak Deshmukh, Mr.Vivek Dwivedi i/by M/s Naik Naik & Co.,
Advocates for the Petitioners.

Mr.Jitendra B. Mishra, Advocate for Respondents No. 1 to 3.

Ms. Shruti D.Vyas, "B" Panel Counsel for Respondent No.4.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 2 MARCH 2023.

P.C.:-

1. In these petitions, the Petitioners have made the following prayers:

“a. This Hon’ble Court be pleased to declare section 132(1)(b) and (c) of the CGST Act unconstitutional

and in violation of Articles 14 and 21 of the Constitution of India, 1950;

b. This Hon'ble Court be pleased to issue a writ declaring that the power under section 69 of the Central Goods and Services Tax Act, 2017 can be only exercised upon determination of liability and a failure on part of the assessee to pay make payments towards such liability;

c. This Hon'ble Court be pleased to issue a writ of mandamus or any other writ/direction in the nature of mandamus restraining Respondents from filing any criminal complaint against the Petitioner and taking any coercive actions against the Petitioner."

2. The first two prayers are regarding challenge to the constitutional validity of the Act regarding liability arising from the provisions of Central Goods and Services Tax Act ("CGST Act" for short). In these petitions a writ of mandamus is sought to restrain the Respondents from filing a criminal complaint, and not to take any coercive action against the Petitioners.

3. By order dated 11 March 2021, the Division Bench passed the following order:

"For the reasons separately recorded today, the following order is passed:

(i) Let formal notice be issued to the respondents;

(ii) Petitioners i.e. Mr.Sunil Kumar Jha and Mr. Akshay Chhabra shall execute a personal bond each for an amount of Rs.50,000/-(rupees Fifty Thousand) before the Jail Superintendent, Taloja Jail;

(iii) The concerned Jail Superintendent is directed to ensure that this order is complied with forthwith;

(iv) Upon release, petitioners shall furnish surety of Rs.5,00,000.00 (Rs.Five Lacs) each in Remand Application No. F. No. V/AE/ Bel GrA(New)12-159/OPOS/20-21 before the Judicial Magistrate First Class, Vashi at C.B.D. Belapur tomorrow i.e. 12.03.2021;

(iv) Within six weeks of their release, petitioners to furnish one solvent surety each of the like amount before the said authority;

(v) Petitioners shall cooperate in the investigation and shall not make any attempt to interfere with the ongoing investigation;

(vi) Petitioners shall not tamper with any evidence or try to influence or intimidate any witness;

(vii) Petitioners shall deposit their passports before the Judicial Magistrate First Class, Vashi at C.B.D. Belapur.”

This order has continued since then.

4. In the case of *Nagpur Cable Operators Association Vs. Commissioner of Police, Nagpur*¹, the Division Bench of this court (Nagpur Bench) has expounded procedure with reference to the Rules and the law as to in which circumstances criminal writ petition and which circumstances civil writ petition is to be filed and placed before

¹ AIR 1996 BOM 180

the court as per the allocation of work. The Division Bench made following observations:

“..... if the writ petition/application under Articles 226 and/or 227 of the Constitution arises out or relates to a proceeding in which, if carried to its conclusion ultimately it may result in sentence of death or by way of imprisonment, fine or forfeiture of the property then such writ petition/application under Article 226 of the Constitution of India and / or under Article 227 of the Constitution, should be treated as a “criminal writ petition” and styled as such. For hearing and decision of such petition, it should be listed before the Division Bench allocated such business by Hon’ble the Chief Justice or if it pertains to the single Judge jurisdiction, before the Bench assigned such work.”

The learned counsel for the Petitioners has drawn our attention to order passed in A.S.Writ Petition No.471 of 2021 dated 8 February, 2023 where similar view was taken.

5. On a query was put to learned counsel for the Petitioners as to whether the Petitioners intends to prosecute the challenge to the provisions of the CGST Act, the learned counsel for the Petitioners states that instructions have been taken that the Petitioners would not press these challenges, and the interim order be continued for some time. The learned counsel for the Petitioners states that this is so because complaint has now been filed and as regards the remedy concerning liberty of the Petitioners, the Petitioners, would take necessary action by approaching the criminal court and for that purpose seek extension of the interim order passed in these petitions.

This would indicate that the main prayer was for protection from arrest. Therefore, in light of the decision of the *Nagpur Cable Operators Association's* decision, the petitions ought to have been filed as criminal writ petitions.

6. Be that as it may, since the Petitioners are not pressing the petitions and seeking only the extension of the protective measures, we have to consider this request. The Petitioners have been at liberty for almost two years under the interim order which the Respondents have not challenged. Therefore, in these circumstances, we are inclined to continue the interim order in these petitions for a period of six weeks, for the Petitioners to take steps for the purpose mentioned above.

7. Writ Petitions are accordingly disposed of. Interim order granted in these petitions shall continue for period of six weeks.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

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