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W.P.No.11821 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.03.2024
Pronounced on	25.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.11821 of 2023andW.M.P.Nos.11722, 11723 & 11725 of 2023

M/s.Tamil Nadu Development Foundation Trust,
 Represented by its Managing Trustee,
 Mr.M.Mohamed Ismail,
 S/o. S.Mohamed Yousuf,
 No.26, Barracks Road, Periamet,
 Chennai – 600 003.

...Petitioner

Vs.

1.The Assistant Commissioner of Police,
 Vepery Range,
 Greater Chennai Police,
 Vepery, Chennai.

2.The Manager,
 Indian Bank,
 Dr.Alagappa Road Branch,
 Chennai – 84.



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3.The Union of India,
Rep. by its Secretary,
Ministry of Home Affairs,
(CTCR Division-NI-MFO Section)
North Block, New Delhi – 110 001.

...Respondents

*(R3-suo motu impleaded as per order
dated 12.12.2023 in W.P.No.11821/2023
by SSSRJ & SMJ)*

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 04.11.2022 of the 1st respondent and quash the same as illegal and consequently direct the 2nd respondent to defreeze the savings bank account bearing No.410973519 of the petitioner Trust.

For Petitioner : Mr.I.Abdul Basith

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.Aravind.C.

For R2 : No Appearance

For R3 : Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by Mr.R.Rajesh Vivekananthan



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ORDER

M.S.RAMESH,J.

Heard Mr.I.Abdul Basith, learned counsel appearing for the petitioner, Mr.E.Raj Thilak, learned Additional Public Prosecutor, for the 1st respondent and Mr.AR.L.Sundaresan, learned Additional Solicitor General, for the 3rd respondent. There is no appearance on behalf of the 2nd respondent.

2. The writ petitioner is a registered Trust and engaged in various public welfare and social activities. The Trust also runs institutions in the name of 'Arivagam' in Theni and Tirunelveli Districts. In connection with its activities, the Trust maintains a savings bank account (A/c.No.410973519) with Indian Bank, Dr.Alagappa Road Branch, Chennai. Claiming that the petitioner Trust is an Islamic Centre of the Popular Front of India (PFI), which has been declared as an unlawful association under Section 3(1) of the Unlawful Activities (Prevention) Act (hereinafter referred to as 'the UAP Act'), the aforesaid savings bank account has been frozen by the 1st respondent herein, through the impugned order dated 04.11.2022, in



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exercise of their powers under Section 7 of the UAP Act. Challenging the said order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner Trust is an independent Trust and has no connection or nexus with the PFI and that no funds of the Trust have been ever used for any unlawful activities or against the object of the Trust. He further submitted that the impugned order itself is in violation of the principles of natural justice, since neither a prior opportunity was given to the petitioner Trust to put forth its objections on the present action nor was the impugned order communicated or served on the Trust till date. He also submitted that the 1st respondent has no authority to pass the prohibition order.

4. Per contra, the learned Additional Solicitor General submitted that, if a person is in custody of any money, which is used or intended to be used for any unlawful association, the respondents would be well within their powers to prohibit the usage of such funds, in view of Section 7 of the UAP Act. He further submitted that when the powers under Section 7 are



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invoked against any person or a Trust, which aids an unlawful association, no inquiry or prior opportunity requires to be extended to such person/Trust.

This apart, he also submitted that the Writ Petition is liable to be dismissed, in view of the alternate remedy available to the petitioner under Section 7(4) of the UAP Act to challenge the impugned order before the jurisdictional District Court.

5. Section 3 of the UAP Act empowers the Central Government to declare any association as unlawful, through a notification in the Official Gazette. In accordance with this provision, the PFI has been declared as an unlawful association, through a Gazette notification dated 27.09.2022. In consequence to declaration of an association as unlawful, the Central Government is empowered to pass prohibitory orders against the use of funds of an unlawful association or against any person, who aids an unlawful association with any sort of funds. For the sake of convenience, Section 7 of the UAP Act is reproduced below:-

“7. Power to prohibit the use of funds of an unlawful association.—(1) Where an association has been declared unlawful by a notification issued under



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section 3 which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think it, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).

(2) The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any gazetted officer of the Government it may select, and such copy shall be a warrant whereunder such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person,



touching the origin of any dealings in any moneys, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

(3) A copy of an order made under this section shall be served in the manner provided in the Code of Criminal Procedure, for the service of a summons, or where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.

(4) Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be



used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.

(5) Except so far as is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Central Government.

(6) In this section, “security” includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money.”

6. Section 7(1) also prescribes the procedure for passing prohibitory orders touching upon the usage of funds of an unlawful association. As per the procedure prescribed therein, when the Central Government comes to a subjective satisfaction that any person aids or assists an unlawful association with money or is in custody of money, securities or credits, which is used or intended to be used for the purpose of the unlawful association, it is mandated to conduct an inquiry before passing any prohibitory order. Admittedly, the Central Government has not expressed the



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manner in which they had arrived at a subjective satisfaction, apart from relying upon certain documents from the digital devices, which advertisements evidences the name of PFI alone and not of the petitioner's Trust. To the specific stand taken by the petitioner that their Trust has no connection whatsoever with PFI and that the funds in the savings bank account have never been used for activities of PFI, the respondents were not in a position to substantiate the nexus between the petitioner Trust and the PFI.

7. When Section 7(1) mandates an inquiry to be conducted before passing of a prohibitory order, which admittedly has not been conducted in the present case, the consequential order would be in violation of Articles 14 and 21 of the Constitution of India, apart from violating the principles of natural justice. On this sole ground, the impugned order cannot be legally sustainable.

8. The learned counsel for the petitioner also submitted that the 1st respondent has no authority to pass the impugned order, since it is only the



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State Government, who is the authority to pass such orders. This submission seems to be a misconception of the procedure contemplated under Section 7 of the Act. When the Central Government comes to a subjective satisfaction that a person or body of persons are assisting or intends to assist the unlawful association with funds, the Central Government may prohibit such persons from dealing with any form of funds through a prohibitory order. Thereafter, a copy of the prohibitory order may be endorsed to any Gazetted Officer of the concerned Government for investigation.

9. The powers of the Central Government exercised by it under Sections 7 or 8 of the UAP Act may be delegated to the State Government by virtue of Section 42 of the UAP Act. In accordance with this procedure, the PFI and its associates or affiliates or fronts were declared as an unlawful association under the provisions of the UAP Act, through a Gazette notification dated 27.09.2022. Thereafter, through a notification dated 28.09.2022, it was directed that all the powers, which are exercisable by the Central Government under Sections 7 and 8 of the Act, were delegated to the State Government and Union Territory administration, in exercise of the



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powers conferred under Section 42 of the Act. Through G.O.No.SS.1/372/1, Public (SC) Department, dated 28.09.2022, the Government had republished the notification of the Central Government. Through another order in G.O.No.SS.1/373-1/2022, Public (SC) Department, dated 28.09.2022, the Government has directed that all the powers, which are exercisable by the Government of Tamil Nadu under Sections 7 and 8 of the UAP Act in relation to PFI and its associates, shall also be exercised by the Commissioner of Police in the cities and the District Collectors elsewhere. This delegation is well within the procedure contemplated under Sections 7 and 8, read with Section 42 of the UAP Act. In consequence to such delegation, the Commissioner of Police, through a letter dated 01.11.2022, had authorized the Assistant Commissioner of Police, Vepery Range/the 1st respondent to take appropriate action by attaching the bank account of the petitioner Trust. This authorization to the 1st respondent cannot be termed to be a sub-delegation, but rather only an implementation of the orders passed by the Commissioner of Police for taking necessary action as per law and for sending an action taken report. As such, it cannot be said that the 1st respondent did not possess jurisdiction to pass the impugned order.



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10. The learned Additional Solicitor General also raised a ground of maintainability of the present Writ Petition, in view of the alternate remedy available under Section 7(4) of the UAP Act. In the preceding portion of this order, we have held that the failure to conduct an inquiry before passing the the impugned order would be in violation of the principles of natural justice.

11. This apart, the claim made by the petitioner Trust that the impugned prohibitory order was never served on them, has not been denied by the respondents. It is needless to point out that the prohibitory order would have crippled the functioning of the Trust and disabled to fulfill the object of the Trust. The freezing of the only bank account of the Trust would, therefore, have caused serious prejudice to the Trust. Whenever any coercive action is initiated by the respondents by invocation of Section 7 of the UAP Act, there is a duty cast on them to inform the affected party about the action taken. In other words, such a prohibitory order requires to be served on the affected party, which is crucial, since sub-section 4 provides for an alternate remedy against the prohibitory action taken. This alternate remedy also provides for a limitation of 15 days, within which the



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prohibitory action requires to be challenged and when the order itself is not served on the affected party, we are unable to comprehend as to how the Trust could avail the alternate remedy, in the absence of a copy being served on them. Thus, the failure to serve a copy of the prohibitory order on the Trust, would also amount to violation of the principles of natural justice.

12. The Hon'ble Supreme Court, in several of its decisions, had stipulated guidelines governing the principles for exercising writ jurisdiction by the High Courts, when an alternate remedy is prescribed by the statute. It has also been held in those decisions that when an effective alternate remedy is available to an aggrieved person, the High Court shall not exercise Article 226 of the Constitution of India. However, certain exceptions to the rule of alternate remedy have been reiterated on several occasions and one such exception is when there is a violation of the principles of natural justice, while any order is passed.

13. The cases of *Whirlpool Corporation Vs. Registrar of Trademarks* reported in (1998) 8 SCC 1; *Harbanslal Sahnia Vs. Indian*



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Oil Corporation Ltd., reported in ***(2003) 2 SCC 107***; and ***Radha Krishan***

Industries Vs. State of Himachal Pradesh and Others reported in ***2021***

SCC OnLine SC 334, are some of such decisions, where the principles of natural justice has been held to be an exception to the general rule of entertaining a Writ Petition under Article 226 of the Constitution of India, when the statute provides for an alternate remedy. Thus, the present Writ Petition, challenging the impugned order, which is in violation of the principles of natural justice, would be maintainable.

14. For all the foregoing reasons, the impugned order passed by the 1st respondent dated 04.11.2022 is quashed. In view of quashing of the impugned order, the petitioner's bank account viz., A/c.No.41097359, shall stand de-frozen and the Tamil Nadu Development Foundation Trust would be at liberty to operate the bank account, on furnishing a copy of this order to the concerned Bank. However, the present order shall not stand as an impediment for the appropriate authority to pass orders in accordance with law.



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15. In the result, the Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

[M.S.R.,J.] [S.M.,J.]

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Index: Yes

Neutral Citation: Yes

Speaking order

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To

1. The Assistant Commissioner of Police,
Vepery Range,
Greater Chennai Police,
Vepery, Chennai.

2. The Manager,
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Dr. Alagappa Road Branch,
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3. The Union of India,
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