



W.P.Nos.35654, 35657, 35660, 35662, 35664 etc., of 2023 (12 c

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 35654, 35657, 35660, 35662, 35664, 35668,
35636, 35639, 35641, 35644, 35649 and 35652 of 2023(12 cases)
and
W.M.P.Nos.35615, 35619, 35637 and 35642 of 2023

W.P.No. 35654 of 2023

Xiaomi Technology India Private Limited,
Represented by its Chief Financial Officer,
Shri Sameer B.S. Rao.

Having registered office at:
Orchid (Block E), ground to fourth floor,
Embassy Tech Village,
Marathahalli-Sarjapur Outer Ring Road,
Bengaluru – 560 103, Karnataka, India.

... Petitioner

Vs.

1.The Adjudicating Authority,
Special Director (Sr.),
Directorate of Enforcement,
Southern Regional Office, Chennai
'Shastri Bhavan', III Floor, III Block,
26, Haddows Road, Chennai – 600 006.



2. The Assistant Director,
Directorate of Enforcement,
Bangalore Zonal Office,
3rd Floor, B Block, BMTC,
Shanthinagar, TTMC,
KH Road, Shanthinagar,
Bengaluru – 560 027.

3. The Joint Director,
Directorate of Enforcement,
Bangalore Zonal Office,
3rd Floor, B Block, BMTC,
Shanthinagar, TTMC,
KH Road, Shanthinagar,
Bengaluru – 560 027.

... Respondents

Prayer in W.P.No.35654 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to permit the petitioner to inspect the documents forming a part of the material on record (relied upon by the respondents) pertaining to the investigation against the petitioner consequent to complaint of the second respondent in F.No.T-3(BGZO/01/2022 (AD-DM) dated 02.06.2023.

For Petitioner

: Mr.P.S.Raman
Senior Counsel
for Mr.P.Giridharan
: Mr.Harpreet Singh Ajmani
: Mr.H.Siddharth
: Mr.Aadith.S
: Mrs.Radhika.S

(in all W.P's)

For R1 to R3

: Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.Rajnish Pathiyil
(in all W.P's)



COMMON ORDER

WEB COPY The *lis* on hand has been instituted questioning the show cause notice dated 11.09.2023 issued under Rule 4(3) of the Foreign Exchange Management(Adjudication Proceedings and Appeal) Rules, 2000 (hereinafter referred to as 'Rules').

2. The disputed facts between the parties in this case deserves no deeper adjudication in view of the fact that the show cause notice issued under Rule 4(1) and 4(3) are under challenge.

3. The Writ against the show cause notice is not entertainable in a routine manner. A writ would be entertainable if such notice has been issued by an incompetent Authority having no jurisdiction are tainted with the allegations of malafides. Even in case the allegations of malafides are raised, the Authority against whom such allegations are raised must be impleaded as party respondent in their personal capacity in the writ proceedings.

4. The second issue raised is that whether any error occurred in the matter of adhering the procedures as contemplated under Rule 4 of the Rules.



If at all, certain lapses in communicating the relied upon documents or non-adherence of certain procedures, whether it is curable or incurable is also to be considered.

5. The petitioner is Xiaomi Technology India Private Limited. The show cause notice under Rule 4(1) of the Rules dated 09.06.2023 was originally issued to the writ petitioner. The said show cause notices contain the allegations raised against the petitioner-company. Paragraph No.6 of the notice under Rule 4(1) indicates that the petitioners as to show cause in writing within 30 days from the date of receipt of the notice as to why inquiry should not be held against them, in the manner as provided in Rule 4 of the Rules.

6. It is not in dispute that the Bank accounts with reference to the allegations were already attached by the Enforcement Directorate. On receipt of Rule 4(1) notice dated 09.06.2023, the petitioners addressed a letter to the Adjudicating Authority on 13.06.2023. A request was made for inspection of the entire records of investigation conducted by the complianant against the notice and further request was made by the petitioners to furnish the true



copy of such records maintained in the investigation by the complainant. It is not in dispute between the parties that the respondents permitted the petitioners/Authorised Representatives/Lawyers/Chartered Accountants for inspection of the relied upon documents. The Authorised Representatives have inspected the relied upon documents in the Office of the respondents. However, *vide* letter dated 31.07.2023, the petitioners/company requested the respondents to furnish four more relied upon documents, which were not furnished to them on earlier occasions and relied upon by the Adjudicating Authority. Those relied upon documents are as follows:

<i>Sl.No.</i>	<i>Date</i>	<i>Particulars</i>
1.	02.08.2022	Signed statement of Mr.Han Gang, Director of M/s BYD India Pvt.Ltd.
2.	13.07.2022	Signed statement of Mr.Abhishek Garg, Director of DBG Technology India Pvt.Ltd.
3.	14.07.2022	Signed statement of Mr.Hariharan V, Director of Bharat FIH Ltd.

7. The learned Senior Counsel for the petitioner Mr.P.S.Raman would submit that several letters addressed to the respondents to furnish those four relied upon documents went in vain and therefore, the petitioners were not in a position to submit their complete explanations to meet out the allegations raised in the show cause notice issued under Rule 4(1) of the



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Rules. Finally, the respondents have agreed to produce those relied upon documents and admittedly, the petitioners have received all the four relied upon documents, which were sought for by them through several representations. All the four documents requested by the petitioners were received on 22.11.2023. Therefore, the petitioners are entitled for further opportunity to submit their explanations on the additional relied upon documents supplied to them.

8. The learned Senior Counsel Mr.P.S.Raman would submit that Rule 4(3) notice was issued in proceedings dated 11.09.2023. The said impugned hearing notice would reveal that the Adjudicating Authority has formed an opinion to proceed with an inquiry as contemplated under Rule 4 of the Rules. Since the decision has been taken before supplying those four relied upon documents sought for by the petitioners, the impugned hearing notice dated 11.09.2023 is liable to be set aside.

9. Mr.P.S.Raman, learned Counsel for the petitioners would further submit that an opportunity of hearing in compliance of principles of natural justice at no circumstances be denied to the petitioners. Such valuable



opportunity has been reiterated by the Apex Court in the case of *Natwar*

Singh Vs. Director of Enforcement and anr. reported in 2010 (13) SCC

255. The Hon'ble Supreme Court in Paragraph No.19 and 20 reproduced the procedures as contemplated under Rule 4 of the Rules for holding of inquiry.

10. Relying on Rule 4, the learned counsel contend that procedures contemplated are structured by the statutes and Rules in force. Therefore, the respondents have no discretion to dispense with the procedures. Such mandatory procedures and its compliance are part of the Statutes and Rules and therefore, the non-adherence would vitiate hearing notice, which is impugned in the present writ proceedings.

11. When the principles of natural justice being a statutory requirement under the Act and Rules, it is to be followed scrupulously. In the present case, the compliant of the petitioners is that the hearing notice under Rule 4(3) was issued on 11.09.2023 and the additional four relied upon documents sought for by the petitioners were supplied thereafter on 22.11.2023 and therefore, the notices are to be set aside and the petitioner must be provided with an opportunity to submit their explanations in entirety



with reference to all the relied upon documents by the respondents.

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12. The learned Additional Solicitor General Mr.AR.L.Sundaresan, would strenuously oppose the contentions raised on behalf of the petitioners by stating that no doubt that the petitioners have made request to furnish four relied upon documents, in addition, which were not initially supplied to them along with other documents. Admittedly, the petitioners were permitted to inspect all the relied upon documents in the office of the respondents excluding those four relied upon documents which were subsequently supplied. However, the fact remains that those relied upon documents which were supplied to the petitioners after issuance of the show cause notice under Rule 4(3) on 11.09.2023.

13. Question arises whether non-supply of those four relied upon documents to the petitioners caused any prejudice, warranting interference from the hands of this Court. Undoubtedly the procedures enumerated under Rule 4 of the Rules did not speak about furnishing of copies of the relied upon documents to the noticees. In the absence of specified procedures, either under the Statutes or in Rules, the Supreme Court in the case of *Natwar*



Singh Vs. Director of Enforcement and anr. reported in 2010 (13) SCC

255 emphasised that documents shall be supplied to the noticees enabling them to defend their case in an effective manner. Furnishing of relied upon documents was considered as part of the compliance of the rules of natural justice and therefore, this Court is of the opinion that the documents are to be furnished to the noticees, irrespective of the fact whether it causes prejudice or not.

14. When the petitioners were permitted to inspect all other documents except those four relied upon documents, at the time of inspection, the procedure requires that the four relied upon documents as such sought for also to be produced in order to comply with the requirement of fair hearing and adjudication as contemplated under the Act and Rules.

15. However, an error or mistake or a decision not to furnish those four relied upon documents by the Authorities occurred cannot be construed as incurable. It is a curable error and in public interest such errors cannot be taken as a ground to vitiate the entire proceedings, which is otherwise in consonance with the provisions of the Act or Rules. Such curable mistakes



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will not provide any further ground for the petitioners to escape from the clutches of the provisions of the Act. Therefore, this Court is of the considered opinion that in order to comply with the principles of fair hearing and to ensure sufficient opportunity to the noticees, an opportunity to submit explanations in entirety for consideration and to form final opinion to proceed with the adjudication, is to be provided.

16. The learned Senior Counsel Mr. P.S.Raman would raise an objection with reference to the impugned order dated 11.09.2023 that a decision has been taken by the Adjudicating Authority and to proceed with the inquiry as contemplated under Rule 4. Therefore, such decision taken before receiving the explanations from the writ petitioners is to be set aside.

17. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India would oppose the said contention by stating that it is an opinion formed by the Authorities based on the materials available on record and further opinion may be formed on receipt of any further explanation from the petitioners with reference to the additional documents, if any as per their request.



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18. May that as it be, under Rule 4(1) show cause notice is contemplated and under Rule 4(3) notice of hearing is contemplated. Before proceeding with the adjudication, two notices are contemplated. Rule 4(1) stipulates that a show cause notice may be issued to such persons requiring him to show cause within such period as may be specified in the notice, why an inquiry should not be held against him. In the present case, admittedly, the said notice was issued on 09.06.2023. The said notice contains the details regarding the allegations. Based on the said allegations, the petitioners submitted explanations and further requested to furnish four relied upon documents. However, the Authorities have issued 4(3) hearing notice on 11.09.2023, stating that the Adjudicating Authority upon carefully going through the materials available on record formed an opinion, an inquiry may should be held in the case of the petitioners as contemplated under Rule 4 of the Rules.

19. It is needless to state that while taking a decision to issue hearing notice under Rule 4(3), the Adjudicating Authority would have probably considered all the documents including the four relied upon documents, which were sought for by the petitioners after issuing the show cause notice



under Rule 4(1) of the Rules. However, the fact remains that those four relied upon documents were furnished to the petitioners subsequently. Irrespective of the fact whether the Adjudicating Authority has considered the said four relied upon documents, while forming an opinion to conduct an inquiry or not, an opportunity is to be granted to the petitioners for the purpose of submitting their explanations including the four relied upon documents subsequently supplied to them.

20. In view of the fact that the Adjudicating Authority has considered the materials available on record and formed an opinion an inquiry is to be conducted, it becomes unnecessary to set aside the said order, since the non-supply of the additional four relied upon documents would not vitiate the entire proceedings. But an opportunity is to be provided to the petitioners for submitting their explanations in respect of those four relied upon documents. Thus, on receipt of explanation from the petitioners, in entirety, including for the four additional relied upon documents, the Adjudicating Authority shall take the decision and proceed with the inquiry or drop the same as the case may be based on the materials available on record and on merits.



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21. The scope of notice under Rule 4(3) cannot be expanded so as to arrive at a conclusion that the Adjudicating Authority has determined the issues. It is only an opinion formed for the purpose of conducting an inquiry and on receipt of further explanations from the petitioners, further opinion may be formed by the Adjudicating Authority either to proceed or to drop further proceedings.

22. The opinion formed by the Adjudicating Authority may be based on the available material records. Even in the absence of those four relied upon documents supplied to the petitioners, there is a possibility of forming an opinion by the Adjudicating Authority that an inquiry is to be proceeded under Rule 4 of the Rules. The Adjudicating Authority is the empowered to take a decision based on the materials available.

23. Since an opinion has already been formed by the Adjudicating Authority to proceed with the inquiry under Rule 4 of the Rules and the additional relied upon documents sought for by the petitioners were supplied subsequently after the issuance of 4(3) notice, it would be suffice, if an



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opportunity is provided to the petitioners to submit their explanation in entirety once again before the Adjudicating Authority, who in turn is bound to consider the explanations and form further opinion, whether to proceed to inquire or to drop the same as the case may be and accordingly communicate the same to the petitioners without causing undue delay. In order to comply with the above procedures, the petitioners are granted 30 days time from today i.e. 23.01.2024 to submit their explanations in entirety to the Adjudicating Authority and on receipt of the same, the Adjudicating Authority shall take a decision and communicate the same to the petitioner and thereafter, proceed in accordance with law and in the manner contemplated under the Act and Rules in force.

With the above directions, the Writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

23.01.2024

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Index : Yes/No
Speaking order/Non-Speaking Order
Neutral Citation : Yes/No



To

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Special Director (Sr.),
Directorate of Enforcement,
Southern Regional Office, Chennai
'Shastri Bhavan', III Floor, III Block,
26, Haddows Road, Chennai – 600 006.
2. The Assistant Director,
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S.M.SUBRAMANIAM, J.

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