In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.12335 of 2023

R. P. Infosystems Limited and another
Vs.
The Adjudicating Authority and another

For the petitioners	:	Mr. Ratnanko Banerji, Mr. Sakya Sen, Mr. Subhankar Nag, Mr. Rajdeep Mantha, Mr. J. Biswas, Mr. M. Bhattacharya, Mr. B. Kumar, Mr. D. Sen, Mr. R. Ganguly
For the Enforcement Directorate	:	Mr. Arijit Chakrabarti, Mr. Deepak Sharma
Hearing concluded on	:	08.06.2023
Judgment on	:	16.06.2023

Sabyasachi Bhattacharyya, J:-

1. At the outset, learned counsel appearing for the respondent no.2, the Enforcement Directorate (ED), raises an objection regarding determination of this Court to take up the matter. In the list of determinations, out of the matters assigned by the Chief Justice to be heard by this Court, "matters relating to police" have been excluded. Learned counsel for the ED cites a Notification of this Court dated

September 30, 2022, issued by order of the then Chief Justice, which clarifies that matters relating to CBI and Central Agencies in writ petitions under Article 226 of the Constitution are already included within the comprehensive reading of the special category „Police" in the Appellate Side Rules, therefore, there is no need to mention "CBI and Central Agencies" separately. Accordingly the same stood deleted.

2. It is contended that since the ED is a Central Agency, the said exclusion applies to the present case.

3. Learned senior counsel appearing for the petitioners submits that the present writ petition has not been filed against any inaction or action of the Police or any Central Agency, including the ED. The challenge has been preferred with regard to the jurisdiction of the Adjudicating Authority under the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as "the PMLA"), which is a quasi-judicial statutory authority and not a "Central Agency".

4. Learned senior counsel also places reliance on an unreported judgment dated December 23, 2022 of a Division Bench of this Court, presided over by the then Hon"ble Chief Justice himself, in *MAT 1762 of 2022 [Directorate of Enforcement, Ministry of Finance Vs. Menka Gambhir and another]*, where it was observed that if the learned Single Judge had no jurisdiction to pass the order under appeal, then the said order becomes non-est. On the date of the passing of the order, the Learned Single Judge had the determination, as in the present case, to hear residuary matters under Group-IX (excluding matters related to Police inaction etc.). The jurisdiction of the Learned Single

Judge was questioned on the ground that the said matter fell under the category of Police inaction. However, the Division Bench held that such plea cannot be accepted in view of the fact that the Hon"ble Supreme Court, in the matter of Vijay *Madanlal Choudhury and others Vs. Union of India and others*, reported in 2022 *SCC OnLine SC 929*, has settled that the process envisaged by Section 50 of the PMLA is in the nature of inquiry against the proceeds of crime and is not „investigation" in strict sense of the term for initiating prosecution and the Authorities under the PMLA are not Police Authorities as such. Thus, the objection as to jurisdiction of the learned Single Judge was turned down.

5. Hence, it is argued by the petitioners that this Court has jurisdiction, under its present determination, to entertain and decide the matter.

6. In view of the ratio laid down in the cited Division Bench judgment and keeping in view the extreme urgency pleaded by the petitioners, since short dates are being fixed by the Adjudicating Authority, the matter is being taken up by this Bench.

7. Learned senior counsel for the petitioners challenges the impugned order of the PMLA authority on the ground of *coram non judice*. Section 6(2) of the PMLA stipulates that an Adjudicating Authority shall consist of a Chairperson and two other Members:

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

8. Although sub-section (5)(b) stipulates that a Bench may be constituted by the Chairperson with one or two Members as the

Chairperson of the Adjudicating Authority may deem fit, since the Adjudicating Authority in the present case is functioning with only one Member, that is, the Chairperson, the option to appoint one or several members under sub-section (5)(b) is not available in the first place.

9. Moreover, the expression used in sub-section (2) of Section 6 is "shall", which makes it mandatory for the authority to consist of three Members.

10. It is next argued by the petitioners that the conduct of the Adjudicating Authority clearly shows bias against the petitioners. The venue of the first hearing was fixed as the ED Office itself. Since the ED is the complainant, it is argued that such fixation of venue itself vitiates the authority of the Chairperson.

11. It is further contended that a rejoinder used by the ED was filed on the date of hearing. However, the Authority, without granting any opportunity of hearing to the petitioners, closed the arguments. Even no opportunity of filing any objection was granted to the petitioners.

12. Subsequently, upon the writ petition having been filed and brought to the notice of the Authority, the Authority observed that it would not rely on the rejoinder, which position was again resiled from in a subsequent order.

13. In its order dated May 27, 2023, the Adjudicating Authority mentioned that learned counsel of the ED could not join the final argument and the officer of the ED relied on the contents of the original application. It was recorded in the said order that no prejudice was caused to the interest of the petitioners as a result of the inability of the petitioners

to hear the proceeding, because "nothing more could be added other than the contents of the original application". It is contended that the petitioners" counsel admitted to join the hearing online but due to electronic disruptions, could not hear the proceedings.

14. In the same order dated May 27, 2023, the petitioners sought extension of date, which was held to be beyond the limitation period under Section 8(2) of the PMLA for completion of the proceedings and was, thus, refused. The Authority directed the petitioners to file written submissions taking into account the contents of the rejoinder, but confining it to the contents of the original application.

15. It is argued that the scheme of hearing contemplated under Section 17 of the PMLA is being sought to be frustrated by the Adjudicating Authority itself, which is palpably *de hors* the law.

16. Apart from being tainted with bias, it is argued by the petitioners that the entire procedure sought to be followed by the Adjudicating Authority is full of contradictions.

17. Learned counsel for the ED submits that the petitioners have been repeatedly attempting to stall the proceedings under Section 17(4) of the PMLA. Apart from filing criminal revisions, the present writ petition has been filed for such purpose.It is argued that Section 17(4) of the PMLA does not contemplate a detailed hearing and is only a preliminary stage of the proceeding. The same contemplates adjudication on an application requesting for retention of the record or property ceased under sub-section (1) of Section 17 or for

continuation of the order of freezing served under sub-section (1A) thereof.

18. It is argued that, as per Section 6(7) of the PMLA, only if at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit. Hence, the normal rule is hearing by a single Member and not by two or more Members. Only in circumstances arising under sub-section (7), an exception is to be made by referring the matter to a larger Bench.

19. Moreover, under Section 6(5)(b), a Bench may be constituted by the Chairperson with one or two Members as deemed fit by the Chairperson. Hence, there is no irregularity in the Chairperson taking up the matter himself.

20. Insofar as the objection of the petitioners to the venue being fixed in the ED Office is concerned, it is submitted by learned counsel for the ED that, *vide* order dated May 27, 2023, it was clarified that the Adjudicating Authority did not sit in the Office of the ED on the date of hearing but in the Office of the Settlement Commission of the Custom and Central Excise Department, although situated on the same floor of the same building. It was stated to be only an administrative requirement and not any favour.

21. In fact, in a communication of the petitioners‟ counsel, the petitioners‟ counsel had conceded to the direction of the Chairperson that the rejoinder filed by the ED would not be taken into consideration, though its counsel/officers present were allowed to rebut orally the reply of the defendants. Such communication was made *vide* e-mail dated May 26, 2023, which is produced by both the parties. In the same e-mail, counsel for the petitioners requested the Adjudicating Authority to list the matter for hearing after June 14, 2023, as he was travelling and had no access to the records. A physical hearing was also sought by learned counsel for the petitioners.

22. The Adjudicating Authority, at each stage, acceded to the prayer for adjournment of the petitioners and lastly the matter was fixed for passing of order on June 16, 2023, after being repeatedly adjourned on several occasions at the behest of the petitioners. Hence, there cannot be any apprehension of bias in any manner whatsoever.

23. It is argued that the hearing contemplated under Section 17(4) is of a summary nature and does not require detailed arguments on pleadings. Hence, the petitioners are delaying the proceedings on flimsy pretexts.

24. By placing reliance on a judgment of a learned Single Judge of the Delhi High Court in *M/s. Gold Croft Properties Private Limited Vs. ED*, learned counsel for the ED advances the proposition that only at the time of hearing of any matter, if the Chairperson or a Member feels that the matter or case is of such a nature that it ought to be heard by a Bench of two Members, the Chairperson may assign a two-Member

Bench for hearing of the said order. In the said case, the learned Single Judge of the Delhi High Court held that there had been no opinion expressed by the Adjudicating Authority to the effect that the matter was so complex so as to require a two-Member Bench. The petitioner had moved court seeking constitution of a two-Member Bench, the maintainability of which itself could be suspect inasmuch as there had been no opinion expressed by any Member of the Authority that such a Bench is required.

25. Heard the arguments of both sides. Insofar as the objection as to *coram non judice* is concerned, there are two interpretations possible regarding the provisions of Section 6 of the PMLA.

26. The one in favour of the petitioners is on the basis of sub-section (2) of Section 6, which stipulates that an Adjudicating Authority shall consist of a Chairperson and two other Members. The qualifications of the Members have also been provided in the proviso. Hence, as per the Scheme of the Act,the Adjudicating Authority has to comprise of three Members in total, out of whom one will be the Chairperson. However, it has been argued that at present the Adjudicating Authority is functioning only with a Chairperson, without any other Member having been appointed to fill the vacancies. Thus, the question of *coram non judice* arises.

27. On the other hand, sub-section (5)(b) provides that a Bench may be constituted by the Chairperson with one or two Members, as the Chairperson of the Adjudicating Authority may deem fit. Hence, it is evident that the Chairperson has the discretion even to function with

only one Member, which can very well be herself/himself. Proceeding on such premise, the objection as to *coram non judice* cannot be accepted.

28. Again, the ED has relied on sub-section (7) of Section 6 which provides that, if at any stage of the hearing of any case or matter, it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for being transferred, to such Bench as the Chairperson may deem fit.

29. Hence, on a comprehensive interpretation of Section 6, it is clear that not only has the Chairperson the discretion to constitute a Bench with only one Member, but the norm also as per Section 6(7) is that the Bench will consist of a single Member and, only if the case is of a critical nature, a Bench consisting of two Members will be assigned the hearing.

30. In the present case, the Chairperson, as a single Member, has proceeded to take up the hearing of the application under Section 17 of the PMLA which, in the light of Section 6, cannot be held to be vitiated on the ground of*coram non judice*.

31. The next argument of the petitioners is that the apprehension of bias arises since the Chairperson has been proceeding in hot haste and fixed the first hearing at the office of the ED, which is itself the complainant.

32. The respondents have sought to explain away such venue by arguing that the CGO Complex, where the sitting was scheduled, houses all the officesCentral Government including the ED office. Although in the Notice it was indicated that the meeting would be held in the ED office, it was held in a different Government office of the same building which was on the same floor as the ED office.

33. That apart, the petitioners‟ counsel participated in the hearing and never took the objection as to the venue.

34. Moreover, administrative convenience has been cited by the ED.

35. In the present case, we must bear in mind that the proceeding is only at the preliminary stage of hearing of an application under Section 17 of the PMLA, which pertains to search and seizure. Under sub-section (4) of Section 17, which is the relevant Section here, the authority seizing any record or property or freezing any record or property shall, within a period of thirty days from such seizure or freezing, file an application requesting for retention of such record or property seized under sub-section (1) of Section 17 or for continuation of the order of freezing before the Adjudicating Authority.

36. Moreover, the petitioners themselves have applied for examination of the records by an independent authority on the apprehension of tampering of documents, on the basis of which a revisional court has already directed the examination of the records to be done by the CFSL (Central Forensic Science Laboratory). Thus, admittedly, the records are lying in the office of the ED. Hence, the administrative convenience of holding a meeting at the office of the ED cannot also be

brushed aside, since the records, which are the bone of contention in the present application, are admittedly lying with the ED and might be difficult to be transmitted elsewhere due to security reasons.

37. Thus,the mere selection of the ED office as a venue in the present context,in the absence of any other clinching factor to indicate bias, would not vitiate the proceeding, more so since the matter has not yet reached the final hearing stage.

38. That apart, it is also an admitted position that the petitioners themselves participated, through counsel, in the first hearing, which was ultimately not held in the ED office but elsewhere in the same building. Thus, the objection as to venue has nowturned stale, having never been agitated at the relevant point of time by the petitioners.

39. Insofar as the rejoinder is concerned, the Chairperson of the Adjudicating Authority made it clear that he will not rely on the rejoinder. In fact, learned counsel for the petitioners had expressed his appreciation on such count in writing to the Chairperson. Hence, at this belated stage, the petitioner cannot resile from such position and agitate its perceived lack of opportunity to deal with the rejoinder.

40. Hence, the same is also not a valid defence for the petitioners.

41. An argument which could rationally be raised by the petitioners with regard to Section 6(5)(b) is that, since the Adjudicating Authority is functioning at present with only one Member, that is, the Chairperson, the Chairperson does not even have an option of constituting a Bench with one or more Members;hence, it is a matter

of compulsion now for the Adjudicating Authority to proceed with a single-Member Bench.

42. Yet, such argument is rather academic, in view of the Chairperson having expressed his intention to constitute himself as the Bench. Even under sub-section (7) of Section 6, as rightly argued by the ED, the normal rule is to constitute a Bench consisting of a single member and only in case the Chairperson or Member finds that the adjudication is critical or complex, the matter shall be referred to a multiple-Member Bench. The Single Bench decision of the Delhi High Court, cited by the ED, also corroborates the same view.

43. Hence, it cannot be said that the Chairperson committed any jurisdictional error in himself, as a single Member, to entertain and proceed with the hearing of the application pending before the Authority.

44. In fact, sufficient opportunity has already been given to the petitioners by the Adjudicating Authority to present their case.

45. The next date fixed for hearing is June 16, 2023.

46. The repeated attempts of the petitioners to come up in challenge in connection with the pending proceeding indicates that the petitioners want to stall the same unnecessarily. Such dilatory tactics on the part of the petitioners ought not to be encouraged.

47. It would be relevant, in the context of the allegation of undue haste of the Adjudicating Authority levelled by the petitioners, to examine the Statement of Objects and Reasons of the PMLA, which stresses that it is being realized, world over, that money-laundering poses a serious

threat not only to the financial systems of countries, but also to their integrity and sovereignty. In view of an urgent need for the enactment of a comprehensive legislation *inter alia* for preventing money-laundering and connected activities (within which serious crimes like illicit drug trafficking have also been included), confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money-laundering, etc. the connected Bill was introduced. The seriousness and implicit urgency involved in a proceeding to combat such grave issues would justify some amount of urgency. Thus, it cannot be said that merely because the Adjudicating Authority is trying to expedite the proceeding, it is biased against the petitioners.

48. Accordingly, there is no scope of entertaining the writ petition at this stage. However, in order to allay the apprehension of bias in the mind of the petitioners, a further opportunity of hearing ought to be given to the petitioners before closing the hearing on the pending interim applications.

49. Thus, WPA No.12335 of 2023 is disposed of by directing the Adjudicating Authority to afford an opportunity of hearing to the petitioners and/or their counsel and thereafter to pass necessary orders. As clarified by it earlier, the Adjudicating Authority shall also not rely on the rejoinder filed by the ED, unless adequate opportunity is given to the petitioners to file a written objection thereto.

50. There will be no order as to costs.

51. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)