

Directorate Of Enforcement & Ors vs State Of West Bengal & Ors on 7 December, 2021

Author: Rajnish Bhatnagar

Bench: Rajnish Bhatnagar

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 1768/2021 & CRL. M.A. 14550/2021

DIRECTORATE OF ENFORCEMENT & ORS.

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Through: Mr. Amit Mahajan, CGSC
Kritagya Kumar Kait, Ad

versus

STATE OF WEST BENGAL & ORS.

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Through: Mr. Siddharth Luthra, Sr.
with Mr. Anand Grover, Mr.
Mukerji, Ms. Chitralekha D
Abhishek Manchanda, Mr. As
Ahmed and Mr. Adityaa Raju
Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
ORDER

% 07.12.2021

1. Issue Notice. Ld. Sr. counsel for the respondents, who appears on advance notice, accepts notice.
2. The present Writ Petition has been filed under Article 226 of the Constitution of India, 1950 [hereinafter referred to as "the Constitution"] read with Section 482 of the Code of Criminal Procedure, 1973 [hereinafter referred to as "the Cr.PC"] by four petitioners, the first being the Directorate of Enforcement and the others being Sumant Prakash Jain, Ravish Bhardwaj and Pankaj Kumar, who are working as Assistant Directors at the Directorate of Enforcement. The petition has been affirmed by all the three officers separately. The relief sought in the petition is as under:

(a) "Issue a Writ of Certiorari or any other Writ, Order or direction of like nature

quashing the notices dated 22/07/2021 & 21/08/2021 and any other consequential notices and/or orders that may be passed qua the petitioners in FIR No. 33 dated 05.04.2021."

(b) Any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, be also granted in the interest of justice.

3. The petitioner No. 1, the Directorate of Enforcement, is an investigating agency functioning under the Government of India, Ministry of Finance, and is empowered to investigate into matters pertaining to Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PMLA") and Foreign Exchange Management Act, 1999 (hereinafter referred to as "the FEMA"). The case of the petitioners is that the petitioners No. 2, 3, 4 are investigating officers as per Section 48 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PMLA") and while working as Assistant Directors in the Directorate of Enforcement, the said petitioners claim to be Public Servants in terms of section 21 of Indian Penal Code.

4. It is submitted by the petitioners that in the matter concerning illegal coal mining in the State of West Bengal, an FIR No. RC0102020A0022 dated 27.11.2020 was registered by the CBI, Kolkata against certain known and unknown officials of Eastern Coalfield Ltd. [hereinafter referred to as "ECL"], CISF, Railway, other departments and certain known and unknown private persons for alleged commission of a cognizable offence U/s 120B, 409 of the IPC and Section 13 (2) r/w section 13 (1)(a) of the P.C. Act, 1988.

5. It is further submitted by the petitioners that as per the FIR, it has been revealed that illegal excavation and theft of coal is being done by criminal elements from the leasehold area of ECL in active connivance of the officials of ECL, CISF, and Indian Railways and concerned other departments. It is further submitted that during joint inspection conducted by Vigilance Department and Task Force of ECL on several leasehold areas of ECL from May, 2020 and onwards, evidence of extensive illegal mining in the leasehold area of ECL and its transportation was found. It is further submitted by the petitioners that the team found several machineries which were used for excavating coal from illegal mining and during these inspections, a large number of vehicles and equipment's used in illegal coal mining / its transportation and illegally excavated coal have been seized. It is further submitted by the petitioners that several instances of installation of illegal weigh bridges in concrete form were also detected which confirms illegal coal mining and transportation from ECL areas in an organized manner at a very large scale. It is further submitted by the petitioners that illegal mining is being carried out in the leasehold area of ECL behind Topsis village under Kunustoria Area and at Lachhipur Village under Kajora Area by the coal mafias in active connivance with officials of ECL and those of CISF.

6. It is further submitted that during departmental raids on 07.08.2020 at 1 No. Railway Siding of Pandaveswar area, 9.050 MT of stolen coal was recovered and seized. It is further submitted that seizure of stolen coal was made from several other Railway locations as well. It is further submitted that this illegal activity is being run at Railway siding by the criminals with active connivance of unknown Railway officials.

7. It is further submitted that one Shri Anup Majee @ Lala, is one of the main organizers for most of the illegal mining at ECL area and transportation of illegal excavated / stolen coal. It is further submitted that he is also running the above activities in connivance with the aforesaid public servants and those public servants are allowing him to misappropriate the Govt. property i.e., coal from the lease hold area of ECL. It is further submitted by the petitioners that Shri Anup Majee @ Lala has since absconded.

8. It is further submitted that on the basis of facts mentioned in FIR No. RCO102020A0022 dated 27.11.2020, a prima facie case for generation of proceeds of crime in relation to scheduled offences was made out and accordingly, the Directorate of Enforcement, recorded an ECIR bearing No. ECIR/17/HIU/2020 on 28.11.2020 and initiated investigation in the matter.

9. It is further submitted that petitioner No. 2 is the Investigating Officer of the case and petitioner No. 3 & 4 are assisting the petitioner No. 2 being assisting IOs. It is further submitted that during scrutiny of record received from the Income Tax department, which were seized by them during searches conducted at various premises of Shri Anup Majee & his associates in November, 2020, it is revealed as under :

"a. Shri Niraj Singh, Kolkata based accountant of Shri Anup Majee used to maintain the records for the proceeds of crime [hereinafter referred to as "the POC"] generated from the illegal coal mining business operation and only in the span of less than two years (21 months - July, 2018 to December, 2019), POC to the tune of Rs. 1352 Crores have been generated from illegal coal mining business. It is further submitted that the said POC was used to be distributed amongst coal mafias, political leaders and other officers.

b. Evidence in form of statements under section 50 of the PMLA, 2002 revealed that as per direction of Shri Vinay Mishra, Shri Anup Majee and his associates collected huge amounts, which was generated through illegal coal business and illegally delivered the same to various persons as per directions of Shri Vinay Mishra, Shri Vikas Mishra @ Chotu and Shri Ashok Mishra (Inspector Incharge of Bankura Police Station) and records seized by the Income Tax department are related to this illegal coal business, which were maintained by Shri Niraj Singh at Kolkata and Shri Robin Kalai and other employee at Natoria.

c. Evidence in the form of statements & seized documents revealed that out of the said POC of Rs. 1352 Cr, an amount to the tune of Rs. 218 Crore and Rs. 513 Crore were delivered to "Chotu" in Financial year 2018-19 and 2019-20 respectively. During investigation, it has been revealed that "Chotu" is none other than Shri Vikas Mishra."

10. It is further submitted that during analysis of digital evidences shared by the Income Tax Department [WhatsApp chats between Shri Ashok Kumar Mishra (WhatsApp Mob. No.9874809993) and Shri Niraj Singh (Accountant of Shri Anup Majee) (WhatsApp Mob. No. -

9836566333 / 9903566333), it was revealed that Shri Ashok Kumar Mishra forwarded the documents containing the Thai Bank (Kosikorn Bank, Siam Paragon Branch) account details of Ms. Rujira Naroola and a Thai currency note of 1000 Baht through his mobile phone on Whatsapp (Mob. No. 9874809993) for the purpose of transferring a part of POC to the said Thai bank account. In turn, Shri Niraj Singh (Mob. No. 9836566333) sent a bank deposit/payment/transfer slip dated 03.11.2018, after depositing 1.5 Million Baht (15,00,000) in the said account No. 044-1-88095-2 after some time. Similarly, from conversations between these two persons, it is also revealed that funds were also transferred into other overseas bank accounts like Barclays Bank, London of Ms. Rujira Naroola. It is further submitted by the petitioners that Rujira Naroola is the wife of Sh. Abhishek Banerjee.

11. It is submitted that in the present case, two accused namely Vikas Mishra and Ashok Mishra were arrested by the Directorate of Enforcement on 16.03.2021 and 03.04.2021 respectively.

12. It is further submitted that a Prosecution complaint dated 13.05.2021 has been filed against them arraying both of them as accused. In the remand application dated 16.03.2021 & 04.04.2021, and in the said prosecution complaint some incriminating facts were mentioned against Shri Abhishek Banerjee [the complainant of the FIR filed by West Bengal Police wherein the impugned notices have been issued]. It is further submitted that close on the heels of the second arrest, Shri Abhishek Banerjee lodged an FIR No. 33 dated 05.04.2021, against a News Channel under Sections 171 G, 466, 469, 474, 500, 501, 504 read with Section 34 and 120B of the Indian Penal Code, 1860 ("FIR") which had been registered at Kalighat P.S. Kolkata.

13. It is stated that petitioner No. 1 issued summons to Abhishek Banerjee who is complainant of the instant FIR, on 22.07.2021, 04.08.2021 and 18.08.2021 for appearance on 03.08.2021, 12.08.2021 and 06.09.2021 respectively. It is further submitted that Shri Abhishek Banerjee only appeared on 06.09.2021.

14. It is stated that subsequently, the impugned notices dated 21.08.2021 and 22.07.2021 have been issued by the respondents under Section 160 of the Cr.P.C. to the petitioner's 2-4 who are stationed and posted in Delhi. The petitioners have provided a table of the notices received in this regard and the date of the reply of the petitioners regarding the same and the present petition has been filed by the petitioners to quash and set aside the impugned notices issued by the Kolkata Police.

15. I have heard the Ld. counsels for the parties and perused the records of this case and the status report filed during the course of arguments.

16. It is submitted by the Ld. counsel for the petitioners that the three officers i.e. petitioner/s 2-4 were directly associated with the investigation of the instant case in which the role of Shri Abhishek Banerjee is emerging as per the claims of the petitioner agency. He further submitted that the present FIR bearing No. 33 has been registered with a malafide intention to derail the investigation under PMLA being conducted by the Directorate of Enforcement and none of the petitioners have been named in the FIR. He further submitted that the malafide intent of the Respondents is clear from a bare perusal of the contents of the FIR which shows that the complaint has been made with

regard to some fake video being allegedly uploaded by a news channel pertaining to the complainant. He further submitted that no person has been named in the FIR and from the perusal of the same, it is unthinkable that the petitioners would have any role in the commission of any cognizable offence in relation to the same. He further argued that the averments made in the FIR even if accepted to be true without accepting the same to be true then also no offence punishable under section 171 G, 466, 469, 474, 500, 501, 504 & 120 B of the Indian Penal Code, 1860, is made out and therefore issuance of Notices pursuant to the registration of the said FIR is illegal and deserves to be quashed and set aside.

17. He further submitted that as soon as Shri Abhishek Banerjee was summoned on 22.07.2021 in connection to the ECL illegal Coal mining case, on the very same day, the first impugned notice was issued by the respondents. He further submitted that the motive behind registration of the impugned FIR and subsequent issuance of notices under Section 160(1) of Cr.P.C was only to harass the officers of the Directorate of Enforcement and to use the State Police Machinery to halt the investigation being conducted by the officers of the Directorate against highly placed persons in the State Government of West Bengal & their suspected role in the offence of Money Laundering. He further submitted that the notices have been issued malafide and with oblique motives and with a view to pressurize the officers investigating the case related to illegal coal mining involving the complainant in the FIR wherein the impugned notices have been issued.

18. Ld. counsel for the petitioners further submitted that the notices issued under Section 160 (1) of Cr.P.C. can only be issued to a person who is within the local jurisdiction of that police station or is within the jurisdiction or any "adjoining" police station. He further submitted that in the present case, the petitioners are posted in Delhi which is clearly outside the jurisdiction of respondent police officers and police station. Specific reliance in this regard was placed on the judgment in Ravinder Singh V. State and Anr., W.P. (Crl.) No. 971/2010 And Crl. M.A. Nos. 8234-8235/2010, order dated 27.07.2010; T Purshotam V. Circel Inspector of Police & Ors. 1997 Cri. L.J. 4011 (Andhra Pradesh); Krishan Bans Bhadur & Anr. V. The State of H.P. 1975 Cri. L.J.620 (Himachal Pradesh); Mathews Peter V. Asst. Police Inspector & Ors. 2002 Cri. L.J. 1585 (Andhra Pradesh) and M/s Pusma Investment Pvt. Ltd. & Ors. V. State of Meghalaya & Ors. 2010 Cri. L.J. 56 (Gauhati).

19. Ld. counsel for the petitioners further submitted that notices can only be issued to persons who are either the accused or the witnesses and since the present petitioner's agency or any of its officers have neither been named in the FIR as accused and are also not witnesses in the matter, not being acquainted or in knowledge of the facts of the case, the notices issued to the petitioners are without jurisdiction and liable to be set aside.

20. On the other hand, Ld. Sr. counsel for the respondents took a preliminary objection as to the maintainability of the petition. He submitted that a Writ petition under Article 226 cannot be filed by the Directorate of Enforcement as an aggrieved person. He further submitted that notices have been issued to petitioners No. 2, 3 and 4 in their personal capacity and not in their official capacity and therefore, Shri Amit Mahajan, CGSC cannot represent the said persons. He further submitted that there is a difference between the role played by the petitioners No. 2, 3 and 4 as officers of the Directorate of Enforcement and the role of the said persons in their personal capacity. He further

submitted that such officers can always be held to be liable for the offence that they may have committed in their personal capacity.

21. He further raised a preliminary objection as to the maintainability of the petition due to the purported lack of territorial jurisdiction over the present matter. He submitted that this Court lacks territorial jurisdiction as notices have been issued by Kolkata Police in connection to a FIR registered in the State of West Bengal which clearly fall outside the territorial limits of this Court. He further submitted that in view of the same, any Writ challenging the said notices, would only lie in the High Court at Calcutta. Heavy reliance is placed on the judgment in *Rajendra B. Lal Vs. State of UP* MANU/UP/0754/2006 in this regard.

22. He further submitted that the word "adjoining" occurring in Section 160 Cr.PC implies vesting of jurisdiction outside the State as well. In this regard he relied on the judgment in *Anant Brahmachari V. Union of India* ILR (2012) III Delhi 682.

23. Ld. counsel Sh. Anand Grover, in addition submitted that from the investigation so far, a larger conspiracy is emerging which discloses the commission of serious offences.

24. In rebuttal Ld. counsel for the petitioners submitted that as per the settled canons of Article 226, if part of cause of action arose within the territorial jurisdiction of a particular High Court especially where a petitioner resides, the said Court can exercise jurisdiction. He further submitted that the judgment in *Anant Bhramachari* (supra) would not apply to the present case as it concerned an investigation under the National Investigating Agency Act, 2008 which admittedly has pan- India jurisdiction.

25. At this stage, it is clarified that only a prima facie opinion is required to be formed. While the petitioners have raised various wide ranging issues concerning the manner of registration of FIR and malafides, at present, the issues that arise for consideration, can be mentioned as under :

a. Whether the Respondents have the power under Section 160 Cr.P.C to issue the impugned notices?

b. Whether the present petition is maintainable in view of the Directorate of Enforcement being Petitioner No. 1?

c. Whether this Court has the jurisdiction to quash the impugned notices in view of objection raised as to the territorial jurisdiction?

d. Whether the Petitioners have made out a case for any interim relief?

26. In order to appreciate the first issue, it is necessary to take note of the text of Section 160 Cr.P.C. Section 160 of Cr.P.C reads as follows:

"160. Police officer's power to require attendance of witnesses.

(1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides. (2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub- section (1) at any place other than his residence."

27. By a mere reading of the said provisions, it becomes apparent that power of the Police Officer to require attendance of a witness is circumscribed by the words "within the limits of his own or any adjoining station". It is to be noted that if the said power was in the nature of pan-India power, as has been sought to be argued by the respondents, there was no reason for the Legislature to use the terminology quoted above. To the contrary, if the same was the intention of the Legislature, the Legislature would have clearly stated so and bestowed unlimited jurisdiction on the Police Officer by using terminology in the nature of "anywhere in the country" or even "anywhere within the State". The clear departure of the Legislature and the use of the terms "within the limits of his own or any adjoining station" points towards a legislative intention to limit the jurisdiction in this regard. The reliance placed by the respondents in this regard on the judgment in *Anant Brahmachari V Union of India* (supra), may not further the case of the respondents as clearly the said judgment was dealing with a separate statutory setup in the nature of the National Investigation Agency Act, 2008 which would have a strong bearing on the issue as the said agency has jurisdiction across the country. Further, this Court in *Ravinder Singh V. State and Anr.* W.P. (Crl.) No. 971/2010 vide order dated 27.07.2010, has held as under:

"The Section does not need help of dictionaries or other judgments for understanding its meaning when there is no ambiguity and it is so clearly written either within his own police station or in the adjoining police station. I, therefore, consider that summons issued to the petitioner under Section 160 Cr.P.C in Delhi, which is not adjoining police station of Rewari is without jurisdiction and the notice is, therefore, quashed."

28. I am, therefore, prima facie inclined to agree with the dictum in *Ravinder Singh* (supra). Therefore, on the issue of the competence of the Respondents to issue the impugned notices, a serious challenge has been presented by the petitioners, which prima facie, seems to have considerable merit. It may also be noted that the said issue goes to the root of the matter and if the respondents lacks jurisdiction itself to issue the impugned notices, the entire case of the respondents falls.

29. The next issue is with regard to the maintainability of the petition filed by the Directorate of Enforcement. It has been argued that the Petitioner No. 1 being the "State" itself, cannot maintain a

writ petition under Article 226. It may however be noted that the petition has been filed and affirmed also by petitioner No. 2, 3 and 4 who are natural persons and also petitioners in the present case being the actual aggrieved persons. In view of the same, I find no merit in the preliminary objection as to the maintainability of the petition on this ground. The question of law whether the Petitioner No. 1 can maintain writ petition under Article 226 can be decided at a later stage. The Court further does not seek to comment upon whether the counsel for the petitioners can appear for petitioner Nos. 2, 3 and 4 or not as the same is not germane to the present proceedings.

30. With regard to the preliminary objection of territorial jurisdiction to quash the impugned notices, it may be noted that the theory of "part of cause of action" has been far too well settled by this Court and the Hon'ble Apex Court [Kusum Ingots and Alloys Limited v. Union of India (2004) 6 SCC 254; Nawal Kishore Sharma V. Union of India (2014) 9 SCC 329; Navin Chandra N. Majithia V. State of Maharashtra (2000) 7 SCC 640]. Prima facie, it is clear from the factual conspectus that the impugned notices were served to persons in Delhi, who are residing in Delhi. Further, the petitioners have raised a considerable case of malafides on the basis of facts emanating from Delhi. Specifically in this regard the Ld. counsel for the petitioners has pointed out that as soon as the complainant in the FIR was summoned on 22.07.2021 in connection to the ECL illegal Coal mining case, on the very same day, the first impugned notice was issued by the respondents. It may be noted that the said ECL Coal Mining case of the petitioner No. 1 is being investigated from Delhi and the complaint in the said case has been filed in the jurisdictional Court in Delhi. In this regard, further the judgment of Ravinder Singh (supra) may be noted wherein summons issued by Rewari Police [State of Haryana] were quashed by this Court. On a perusal of the entire facts and circumstances pleaded in the petition, and further, specifically the claim of the petitioners that the legal right claimed by them has been infringed by the respondents within the territorial jurisdiction of this Court, I am prima facie of the opinion that the petitioners have made out a prima facie case as to the maintainability of the present petition.

31. I have perused the contents of the status report, but it would not be advisable to discuss the same in detail in the present order as it might prejudice the case of either of the parties. However, the same fails to directly point towards the specific role of petitioners No. 2, 3 and 4 in the commission of the alleged offence in the FIR.

32. Lastly, it is necessary to consider the question of interim relief. It is a settled proposition of law that the three conditions are required to be established for grant of any interim relief: a strong prima facie case, balance of convenience and irreparable injury to the petitioner. In view of the discussions hereinabove, I find that the present case is a fit case for grant of ad-interim relief. Therefore, in view of the same, the operation of the notices dated 22.07.2021 and 21.08.2021 passed qua the petitioners in FIR No. 33 dated 05.04.2021 registered by the respondents is stayed till further orders.

33. The respondents may file their response to the petition within a period of 4 weeks and the petitioners may file a rejoinder affidavit within 2 weeks thereafter. List on 18.02.2022.

RAJNISH BHATNAGAR, J DECEMBER 07, 2021 Sumant