

Vinod Kujmar Dandona & Ors vs Union Of India & Anr on 26 May, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 1242/2022

VINOD KUJMAR DANDONA & ORS.

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Through: Mr.Maninder Singh, Sr Advoca
with Ms.Neeha Nagpal, Mr.A
Singh Khurana, Mr.Prabhas
Mr.Vishvendra Tomar, Mr.Aj
Sabharwal, Mr.Ayush Aggarw
Ms.Tannavi Sharma, Advocat

versus

UNION OF INDIA & ANR.

Through:

Mr.Piyush Beriwal
and Ms.Rupali Kap
Pleader.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 26.05.2022

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(CRL) 1242/2022, CRL.M.A.No.10624/2022

3. This petition is filed seeking to quash the order dated 17.08.2018 passed by the respondent No.1 under Section 212 (1) (c) of the Companies Act, 2013 for investigation into the affairs of Educomp Solutions Limited (hereinafter referred as ESL) through Serious Fraud Investigation Office (SFIO)/respondent No.2 and to set aside the investigations as being passed in public interest though no public interest is involved in this case and the impugned order is a result of a private corporate rivalry.

4. The learned senior counsel for the petitioner submits the impugned order is violative of natural justice and it was passed on the basis of the complaint made by Raffles Group. A bare perusal of the

final report filed by the EOW would show the complaint of Raffles Group, was investigated by EOW and during investigation EOW found the accountants / statutory auditors of Learning Leadership Foundation and Richmond Education Society had confirmed the ledgers used by the Raffles Group with complaint dated 16.05.2019 are forged. The final report reveals the ledgers used by Raffles Group with complaint dated 16.05.2019 filed by Mr.Chew Han Wei, Vice President of Raffles Education Corporation Limited are false, forged and not genuine as not prepared by Learning Leadership Foundation.

5. The learned senior counsel for the petitioners then referred to an order dated 03.03.2020 passed in Vinod Kumar Dandona vs Reserve Bank of India & Others W.P.(C) No.2424/2020 regarding the investigation conducted by the SFIO into the affairs of ESL and para No.8 of said order notes In the meanwhile, no further measures will be taken pursuant to the petitioner being declared a fraud.

6. Reference is also made to the order dated 10.06.2020 passed in Vinod Kumar Dandona vs CBI & Ors in W.P.(Crl)No.645/2020, more specifically to paras No.22 and 23, which notes:-

22. Therefore, looking into the facts and circumstances of this case that on 2 previous occasions and on the basis of similar allegations no action was taken by the CBI or EOW and the contention of the Ld. Sr. Counsel for the petitioner that despite two closures, again on the same facts, the present FIR has been registered within a period of 4 days of the complaint dated 06.02.2020 without conducting any preliminary inquiry and without following the procedure established by law in regard to the alleged bank fraud cases and moreover, in the instant case, the petitioner had joined the company as a director on 13.11.2013 and all the loan facilities as per the FIR were prior to the petitioner joining the ESL as one of the Director and the only facility pursuant to his Directorship are under the CDR in which no fraud is alleged. Therefore, in these circumstances, the respondent (CBI) is directed to file a detailed reply/status report mentioning about the outcome of the two previous complaints dated 27.03.2019 and 23.05.2019 and as to whether complicity of any public servant was found during the previous two investigations.

23. List on 30.07.2020 before the Roster Bench. Till further orders the investigation in regard to the petitioner is stayed and no coercive action be taken against him. Detailed reply/status report be filed by the respondent-CBI within 4 weeks with an advance copy to the counsel for the petitioner, rejoinder if any within two weeks thereafter.

Notice be also issued to respondent No. 2 by all permissible modes on the steps being taken by the petitioner, returnable on 30.07.2020 before the Roster Bench.

7. Further, per order dated 09.07.2020 passed in Sh.Jagdish Prakash vs CBI & Others in W.P.(Crl) No.1007/2020 this Court noted:-

16. Since the learned SPP for the CBI is not present today the Investigating Officer on his behalf submits they intend to file a reply. Be filed within two weeks from today with an advance copy to the learned counsel for the petitioner.

17. List on 30.07.2020 and till then the order dated 10.06.2020 passed in W.P.CRL.645/2020 shall be applicable in the present two matters also.

8. The learned senior counsel for the petitioners submits the impugned order dated 17.08.2018 is also bad since it was never issued in public interest per Section 212 (1) (c) of the Companies Act, 2013, rather it was passed on the basis of a complaint of the rival group.

9. In Parmeshwar Das Aggarwal vs Additional Director 2016 SCC OnLine Bom 9276, the Bombay High Court held:-

40. Thus, the principle is that there has to be an opinion formed. That opinion may be subjective, but the existence of circumstances relevant to the inference as to the sine qua non for action must be demonstrable. It is not reasonable to hold that the clause permits the Government to say that it has formed an opinion on circumstances which it thinks exist. Since existence of circumstances is a condition fundamental to the making of the opinion, when questioned the existence of these circumstances have to be proved at least prima facie.

48. We do not think that there were materials in the present case and which can be termed as enough to warrant the exercise of power by the Central Government by resorting to section 212(1) of the Act of 2013. The Central Government, in the order under challenge, did not spell out any circumstances, except outlining its power under the above sections to order investigation into the affairs of a company in public interest. None disputes that power or its existence. In para 2 of the impugned order, however, a reference is made to the report of the Registrar of Companies, West Bengal, dated 13th January, 2016. We have already held that the findings in this report are not enough for the Central Government to exercise the drastic power. Something more was required and to be established as circumstances or material enough for exercise of the power. That is clearly lacking in this case.

49. This is the only basis, namely, the report of the Registrar of Companies, West Bengal, or its contents which has enabled the Central Government to exercise its powers under section 212(1)(c). It is, therefore, apparent that it has not necessarily acted in terms of its power conferred by section 212 to direct investigation into the affairs of the company in public interest. The foundation for reaching the opinion or satisfaction is the report of the Registrar. We have referred to the details in that report and we are of the firm opinion that based on that the Central Government could not have recorded a satisfaction or an opinion that investigation into the affairs of the company are necessary.

There is no element of public interest which is projected, save and except some vague and general references to certain allegations in matters of bank finance and allotment of coal mines and alleged diversion of raw materials. There has been absolutely no details furnished nor referred in the report. Rather, the report proceeds on the basis that as far as these issues are concerned nothing can be done by the Ministry of Corporate Affairs or the Registrar of Companies. We fail to understand, therefore, how in the present facts and circumstances and based on allegations and counter allegations between two groups of shareholders can it be even held that it is necessary in public interest to direct an investigation into the affairs of the company. Once we reach the conclusion that there is lack of requisite material to arrive at the requisite opinion or record the necessary satisfaction, then, in exercise of our powers of judicial review, we can safely quash and set aside the impugned order. We find that the opinion recorded or the satisfaction reached is vitiated by total non application of mind. None of the factors which are germane and relevant for forming the opinion have been referred. The opinion or satisfaction is based only on the complaint of the Member of Parliament to the CVC and with regard to which report was called for from the Registrar. Even the contents of that report have been, as held above, misread and totally misinterpreted. Based on that no opinion could have been recorded that it is necessary to investigate the affairs of the company in public interest.

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51. We are in complete agreement with Mr. Godbole that this is an investigation directed at the instance of the rival groups and though Mr. Agarwal tries to persuade us into holding that the Central Government has not been influenced by or is never interested in family matters or disputes, we find that to be essential basis on which the whole action is initiated. It being so initiated at the threshold itself it is vitiated. The law does not permit entering into all such controversies as are essentially factual and existing between groups or shareholders of a private company locked in litigation and which litigation has not reached finality. "

10. The decision of the Bombay High Court was challenged before the Supreme Court in Union of India & Another vs Parmeshwar Das Aggarwal and Others SLP(C) No.38664/2017, but it was dismissed per order dated 19.01.2018.

11. In CRL.M.A.10624/2022 the petitioners are seeking following interim prayers:-

A. Pass an order granting an ad-interim/interim ex-parte stay of the operation, effect and implementation of order dated 17.08.2018 bearing no. 1/52/2017-CL II issued by the Respondent no. 1 and/or proceedings arising therefrom pending disposal of the captioned Writ Petition; and B. Pass an order directing that no coercive action be taken against the Petitioners pending disposal of the captioned Writ Petition; and

12. Considering the above facts and arguments so raised by the learned senior counsel for petitioners, notice is issued.

13. Learned counsel for respondents accepts notice and submits impugned order is about four years old hence petition is bad for latches and seek time to file response. As sought, response be filed within six weeks from today with an advance copy thereof to the learned counsel for petitioner. Rejoinder thereto, if any, also be filed within six weeks thereafter.

14. Considering the above facts, interim prayer A cannot be granted at this stage, but nevertheless, till the next date of hearing no coercive steps be taken against the petitioners.

15. List on 28.09.2022.

YOGESH KHANNA, J.

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