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IN THE HIGH COURT OF BOMBAY AT GOA

**MISC. CIVIL APPLICATION NO.132, 131, 133, 134, 135, 136
OF 2024
IN
WRIT PETITION NO.715 OF 2023**

DELTA CORP. LIMITED
THR. ITS AUTH. REP.
MR. ASHISH KAPADIA AND ANR.APPLICANTS

Versus

UNION OF INDIA,
THR. THE JOINT SECRETARY
AND 8 ORS.RESPONDENTS

Mr Darius Khambata, Senior Advocate (thru' VC), Mr Raghav Shankar (thru' VC), Mr Parag Rao, Ms Shambhavi Rao, Mr Rajendra Barot (thru' VC), Mr Suresh Varanasi (thru' VC), Mr Dhirajkumar Totala (thru' VC), Mr Sagnik Chatterjee (thru' VC), Ms Harsha Uppal (thru' VC), Ms Vasudha Jain, Mr Ajay Menon, Ms Gunjan Pande (thru' VC), Mr Rohan Satija (thru' VC), Mr Ajay Raj (thru' VC), Advocate the Applicants.

Mr Pravin Faldessai, Deputy Solicitor General with Mr Raviraj Chodankar, Central Government Standing Counsel for Respondent No.1 in all the applications.

Mr N. Vernekar, Additional Government Advocate for State in MCA No.132/2024.

Ms M. Correia, Additional Government Advocate for State in MCA No.131/2024 & 136/2024.

Mr Suhas Parab, Additional Government Advocate for State in MCA No.135/2024.

Ms Akshata Bhat, Additional Government Advocate for State in MCA No.134/2024.

Mr Deep Shirodkar, Additional Government Advocate for State in

MCA No.133/2024.

Ms Asha Desai, Senior Standing Counsel with Ms N. Volvoikar,
Advocate for Respondent Nos.5,6 and 7 in all the applications.

CORAM: **M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

Reserved on : **12th MARCH 2024**
Pronounced on : **14th MARCH 2024**

ORDER :

- 1.** Heard learned Counsel for the parties.
- 2.** The learned Counsel for the parties submitted that a common order could dispose of all these civil applications by treating Civil Application No.132/2024 in Writ Petition No.715/2023 as the lead application. They submitted that all these civil applications are based on the same facts, and even the relief prayed for is the same. Accordingly, we propose to dispose of all these civil applications by a common order by treating Misc. Civil Application No.132/2024 in Writ Petition No.715/2023 as the lead matter.
- 3.** The petitioners in Writ Petition No.715/2023 and connected matters have challenged the constitutional validity of Section 15(5) of the CGST Act and Rule 31-A of the CGST Rules. The petitioners also challenged the show cause notice dated 27.09.2023, *inter alia*, on the grounds that such notice was issued under the provisions, which were unconstitutional according to the petitioners.

4. On 23.10.2023, this Court issued Rule in Writ Petition No.715/2023 and connected petitions. On the issue of interim reliefs, Ms Desai, the learned Senior Standing Counsel, submitted that the petitioners, without prejudice to their rights and contentions in these petitions, may file a response to the impugned show cause notices dated 27.09.2023. On instructions, she stated that respondents she represents will not pass any final orders on the show cause notices without the leave of this Court. This statement was accepted.

5. Accordingly, without prejudice to their rights and contentions in these petitions, the petitioners have filed their replies to the impugned show cause notices. The petitioners also applied for certain documents/material from the respondents. Some documents and materials were furnished to the petitioners. However, aggrieved by the non-furnish of some of the documents or denial of inspection, these civil applications have been filed seeking broadly, the following reliefs:-

(i) *For a restraint on respondent no.8 from proceeding with the impugned show cause notices dated 27.09.2023 until full and complete inspection of all documents sought for by the petitioners is not provided;*

(ii) *For a direction to respondent nos.6 and 8 to provide complete inspection of all documents pertaining to the investigation initiated against the petitioners including but not limited to the documents sought for by the petitioners in paragraphs 28 and 29 of the application.*

6. Paragraphs 28 and 29 of the civil application refer to the documents sought by the petitioners and, therefore, the said paragraphs are transcribed below for the convenience of reference: -

"28. As evidenced hereinabove, Petitioner No. 1 has made several requests and sought inspection of all documents pertaining to the investigation from Respondent Nos.6 and 8, including but not limited to the investigation report referred to and/or relied upon during the course of the investigation; the office files as maintained by Respondent No.6; opinions, internal notes, reports whether referred to and/or relied upon during the course of the investigation or otherwise, during the process of forming the contents of the Impugned SCN and/or referred to by Respondent No. 6 during the course of the investigation ("Documents Sought"). The said inspection has however remained incomplete till date.

29. Based on the Impugned SCN and annexures thereto, the Petitioners are seeking inspection of the Documents Sought, which illustratively include (but are not limited to) the following:

- i. Documents to show how and what "specific intelligence" was developed by Respondent No.6 (as referred in the Impugned SCN at para 2),*
- ii. Documents to show on what basis the said "specific intelligence" was developed by Respondent No. 6,*
- iii. Documents to show the reasoning behind engaging Indian Statistical Institute, Hyderabad ("ISI"),*
- iv. Data provided by Respondent No.6 to ISI,*
- v. Communication between Respondent No.6 and ISI,*

vi. Investigation report prepared by Respondent No.6, its agents, officers and/or any other concerned personnel,

vii. Documents relied upon by Respondent No.6 to formulate a 'reasonable belief' under Section 67 of the CGST Act for conducting search(es) at the premises of Petitioner No.1,

viii. Inter-departmental communication pertaining to the investigation,

ix. Any other documents relevant to and pertaining to the investigation basis which the Impugned SCN has been issued.

7. Ritesh Kumar, Senior Intelligence Officer, Director General of GST intelligence, has filed an affidavit on behalf of respondents nos.6, 7 and 8 opposing the maintainability and/or grant of any reliefs in these civil applications. This was followed by a rejoinder dated 06.03.2024 on behalf of the petitioners.

8. After the applications were taken up for hearing on 06.03.2024, Ms Desai requested time up to 11.03.2024 to file an additional affidavit. Accordingly, the matters were posted on 12.03.2024 at 2.30 p.m. for further hearing.

9. Mr S. Shuhab Peera, Senior Intelligence Officer and director General of GST Intelligence, filed an additional affidavit on 09.03.2024.

10. Mr Khambata submitted that the petitioners were pressing for the following: -

(A) *Documents pertaining to “specific intelligence developed” by respondent no.6 and investigation report prepared by respondent no.6,*

(B) *Inter-departmental communication pertaining to the investigation as well as office records/file notings maintained by respondent no.6,*

(C) *Data/information shared by respondent no.6 with Indian Statistical Institute, Hyderabad (“ISI”).*

11. Mr Khambata submitted that from the perusal of the impugned show-cause notices as well the returns filed on behalf of the respondents, it is apparent that the specific intelligence developed had culminated into an investigation report. Based upon this investigation report, the impugned show cause notices came to be issued to the petitioners. Relying on *T. Takano V/s. Securities and Exchange Board of India and Anr.*¹, Mr Khambata submitted that the petitioners were entitled to a copy of such investigation report and that the failure to furnish the same would violate principles of natural justice and fair play. He, therefore, submitted that necessary directions ought to be issued to the respondents to furnish their investigation report.

12. Mr Khambata submitted that assuming this intelligence report contained any sensitive information affecting the commercial interests

¹ (2022) 8 SCC 162

of third parties, the same could always be redacted and furnished to the petitioners. However, refusing to furnish the investigation report would amount to a breach of the principles of natural justice, thereby denying the petitioners an effective opportunity to deal with the impugned show cause notices.

13. Mr Khambata submitted that the petitioners should also be furnished with the inter-departmental communications pertaining to the investigations, the official records, and the file notings maintained by the sixth respondent. He submitted that the respondents could not be the Judges of the relevancy and sensitivity of such documents as was held in *J.N. Meena V/s Union of India through the Secretary, Ministry of Finance, Department of Revenue and Anr.*². Mr Khambata submitted that the denial of this information/inspection would amount to a breach of principles of natural justice and fair play.

14. Mr Khambata finally submitted that the petitioners must also be furnished data/information shared by respondent no.6 with the Indian Statistical Institute (ISI). He submitted that denial of this information/data raises serious concerns about transparency and fair play. He relied on *Reliance Industries Limited V/s. Securities and Exchange Board of India and Ors.*³

² 2022 SCC OnLine Bom 1071

³ (2022) 10 SCC 181

15. Ms Asha Desai submitted that these civil applications are not maintainable because the petitioners did apply before the Adjudicating Authorities for information and documents, and most of such information and documents were furnished to the petitioners. She submitted that it is still open to the petitioners to file detailed applications specifying the documents that they require and their relevance for defending the case. For these reasons, she submitted that the applications are premature and may not be entertained. Without prejudice, she submitted that the Adjudicating Authority could better adjudicate any request for information/documents, and this is an additional ground for dismissing these applications.

16. Ms Desai, relying on the additional affidavit dated 09.03.2024 (paragraph 4), submitted that the investigation report is, in fact, the impugned show-cause notice. Hence, the show-cause notice is a self-contained document containing the entire facts related to the investigation. She submitted that there is no separate investigation report as such, and the show-cause notice should itself be treated as the investigation report.

17. Ms Desai referred to the impugned show cause notices and submitted that the same contained all details. She submitted that all the Relied Upon Documents (RUD) have already been furnished to the petitioners. She submitted that apart from this, even the Non-Relied Upon Documents (Non-RUD) were also furnished to the petitioners. She submitted that a statement has been made in the reports that show

cause notices would be decided on the basis of the documents furnished/non-furnished to the petitioners. Accordingly, she submitted that there was no breach of whatsoever of the principles of natural justice and fair play.

18. Ms Desai submitted that the petitioners were avoiding stating the precise documents/information they required and, therefore, applications were extremely vague. She submitted that all this was an attempt to avoid/delay the adjudication proceedings. She referred to certain paragraphs of *T. Takano* (*supra*) to point out how there was no obligation to disclose sensitive information affecting the commercial rights of the other party or the requirement of compliance with the principles of natural justice does not encompass the right to a roving disclosure on matters unconnected or as regards the dealings of third parties.

19. Ms Desai relied on *Jagannathdham Superstructures Pvt. Ltd. V/s. Deputy Director, Directorate General of Goods and Service Tax Intelligence and Anr.*⁴ to submit that mere issuance of show cause notices does not mean that the process of investigation has been concluded. She submitted that such issuance is only one of the steps to arrive at a final decision. As such, any disclosure of information at this stage would impede the process of investigation. Ms Desai also relied on

⁴ 2023 SCC OnLine Ori 6964

*Kanwar Natwar Singh V/s. Director of Enforcement & Anr.*⁵ to focus on the scope of the duty of adequate disclosure in such matters.

20. For all the above reasons, Ms Desai submitted that these applications ought to be dismissed.

21. The rival contentions now fall for our determination.

22. From the pleadings in these civil applications, we find that the respondents have disclosed all the Relied-upon Documents (RUD) to the petitioners. In addition, several Non-Relied-upon Documents (non-RUD) have also been furnished to the petitioners. Ms Desai, by referring to affidavits filed on behalf of the respondent, also submitted that the show cause notices would be disposed of based on the RUDs and Non-RUDs, copies of which have been duly furnished to the petitioners.

23. After perusing the averments in paragraphs 28 and 29 of the civil application, we cannot completely discount Ms Desai's submission that the petitioners have embarked upon a fishing expedition or a roving inquiry to delay the adjudication proceedings or to lay a foundation for an eventual challenge based upon a violation of the principles of natural justice and fair play.

24. This is more so because the petitioners have avoided the specifics. The petitioners did file the application before the Adjudicating

⁵ 2010 (13) SCC 255

Authorities for information and documents and it is not as if such information and documents were not furnished to the petitioners. All the documents or information may not have been supplied, but that was mainly because the petitioners avoided the specifics and even refused to explain the relevancy. All this has to be considered in the light of a clear and categorical submission/statement that the impugned show cause notices are to be disposed of based upon the RUDs and the non-RUDs already furnished to the petitioners.

25. In *T. Takano* (supra) relied upon by the petitioners, the Hon'ble Supreme Court has held that it could not be oblivious to the wide range of sensitive information that the investigation report submitted under Regulation 9 of the SEBI Regulations may cover, ranging from information on financial transactions and on other entities in the securities market, which might affect third-party rights. The Court held that the report may contain market sensitive information which may impinge upon the interest of investors and the stability of the securities market. Therefore, the Court held that the requirement of compliance with the principles of natural justice cannot therefore be read to encompass the right to a roving disclosure on matters unconnected or as regards the dealings of third parties. The investigating authority may acquire information of a sensitive nature bearing upon the orderly functioning of the securities market. The right of the noticee to disclosure must be balanced with a need to preserve any other third-party rights that may be affected.

26. In *T. Takano* (supra), the Hon'ble Supreme Court relied upon *Natwar Singh* (supra), wherein it was observed that there are exceptions to the general rule of disclosing evidentiary material. The Court held that such exceptions can be invoked if the disclosure of material causes harm to others, is injurious to public health or breaches confidentiality. The Court held that while identifying the purpose of disclosure one of the crucial objectives of the right to disclosure is securing the transparency of instructions. The claims of third-party rights vis-a-vis the right to disclosure cannot be pitted as an issue of public interest and fair adjudication. The creation of such a binary reduces and limits the purpose that disclosure of information serves. The Adjudicating Authority should *prima facie* establish that the disclosure of the report would affect third-party rights. The onus then shifts to the noticee to prove that the information was necessary to defend his case appropriately.

27. *T. Takano* (supra), no doubt, holds that the Board should determine such parts of the investigation report under Regulation 9, which have a bearing on the action which is proposed to be taken against the person to whom the notice to show cause is issued and disclose the same. It can redact information that impinges on the privacy of third parties. It cannot exercise unfettered discretion in redacting information. On the other hand, such parts of the report necessary for the noticee to defend his case against the action proposed against him need to be disclosed. Needless to say, the investigating authority is duty-bound to disclose such parts of the report to the

noticee in good faith. If the investigating authority attempts to circumvent its duty by revealing minimal information to the appellant's prejudice, it will violate the principles of natural justice. In an appropriate case, the court/appellate forum will be empowered to call for the investigation report and determine if the duty to disclose has been effectively complied with.

28. Since the petitioners have now emphasised the information listed in paragraph 10 above (in terms of the note submitted at the time of the hearing on 12.03.2024), the main issue is whether any case has been made out to direct the concerned respondents to furnish such documents/information so that the petitioners have a fair opportunity to defend their case consistent with the principles of natural justice and fair play.

29. The show cause notice refers to "*specific intelligence*" developed by respondent no.6, based on which the impugned show cause notices were issued. Accordingly, the petitioners sought such "*specific intelligence*" or the documents, reports, etc., in which such "*specific intelligence*" was contained.

30. Respondents have contended that all the documents relied upon in the show cause notice have already been furnished to the petitioners. Further, it was stated that even non-RUDs were retrieved by the petitioners from respondent no.6's office on 18.12.2023. Response, however, states that the source of information/identity of the informants

cannot be disclosed. Still, the gist of information was already provided in paragraph 2 of the impugned show cause notices.

31. Since the above response in Ritesh Kumar's affidavit filed on 04.03.2024 was not very clear whether “*specific intelligence*” referred to any intelligence or investigation reports, at the request of Ms Desai, the matter was adjourned from 06.03.2024 to 12.03.2024 to enable the respondents to file an additional affidavit on this issue.

32. In the additional affidavit filed by Mr S. Shuhab Peera, dated 09.03.2024, the deponent has made the following statements in paragraphs 3 and 4:-

“3. The petitioner is seeking inspection of intelligence/investigation file without specifying any document. In this regard, it is submitted that the file contains sensitive information such as the source of intelligence, business and commercial interests of the third parties etc. which cannot be disclosed. As submitted above, the contents of the intelligence/information have already been covered in great detail in the SCN.

4. It is respectfully submitted that on conclusion of investigation proceedings, the investigation report is prepared by the investigating team and on acceptance of the same by the competent authority, the said investigation report culminates into a detailed SCN which is sent to the notice. Therefore, the investigation report is in the SCN. Hence, SCN issued to the noticee is a self-contained document containing entire facts related to investigation, the relevant provisions of the law contravened by the etc.”

33. In paragraph 3, the plea is that the files contained sensitive information, a source of intelligence, and commercial and business information of third parties that cannot be disclosed. Further, the contents of the intelligence/information have already been covered in great detail in the impugned show cause notices. Still, paragraph 3 does not clearly indicate whether any investigation report was prepared based on the “*specific intelligence*” received by the respondents.

34. In paragraph 4, there is a clear statement that “*on the conclusion of investigation proceedings, the investigation report is prepared by the investigating team and on acceptance of the same by the competent authority, the said investigation report culminates into a detailed SCN which is sent to the noticee*”. This is followed by the statement that “*the investigation report is in fact the SCN. Hence, SCN issued to the noticee is a self-contained document containing the entire facts relating to the investigation, the relevant provisions of the law contravened by the noticee, etc.*”.

35. Since paragraph 4 suggests that on the conclusion of the investigation proceedings, an investigation report was prepared by the investigating team and further on the acceptance of the same by the competent authority, the said investigation report culminated into a detailed show cause notice, which was sent to the noticee, at least, *prima facie*, there does appear to be some investigation report prepared by the respondents based upon which the impugned show cause notices came to be issued to the noticees. There is no categorical statement about

there being no separate investigation report prepared by the investigating team. The statements about the investigation report being the SCN are vague and unclear.

36. *T. Takano* (supra) provides that a quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication. A mere ipse dixit of the authority that it has not relied on certain material would not exempt it from its liability to disclose such material if it is relevant to and has a nexus to the action taken by the authority. Thus, the actual test is whether the material that is required to be disclosed is relevant for the purpose of adjudication. If so, then the principles of natural justice require its due disclosure.

37. If, as stated in paragraph 4 transcribed above, on conclusion of investigation proceedings, the investigation team indeed prepared an investigation report, and further it is on acceptance of the same by the competent authority that the show cause notices were issued, then subject to exceptions being made out by the respondents, copy of such investigation report should be furnished to the petitioners. If such an investigation report contains sensitive information regarding the identity of the sources or regarding third parties and unrelated transactions, respondents can always furnish such investigation reports to the petitioners by redacting such portions and such information. However, a blanket refusal to furnish an investigation report would not be proper. Nothing in the decisions of *Jagannathdham Superstructures*

Pvt. Ltd. (*supra*) or *Kanwar Natwar Singh* (*supra*) would justify the non-disclosure of the investigation report, even in the redacted form.

38. In so far as the inter-departmental communication pertaining to the investigation and the office records/file notings are concerned, we agree to a great extent with Ms Desai that this is nothing but a fishing expedition or an all-encompassing roving inquiry, possibly to avoid or at least delay the adjudication proceedings. The attempt, at least *prima facie*, is to drown the Adjudicating Authorities with all such applications and objections and, if possible, to lay a foundation for some eventual challenge by alleging failure of natural justice.

39. The above request on behalf of the petitioners has to be considered in the context of the detailed show cause notices issued to them. The show cause notices refer to and rely upon several documents, all of which have been duly supplied to the petitioners. Besides, the petitioners were offered inspection in the course of which they have retrieved several documents, that is, non-RUDs. The respondents have already stated that the impugned show cause notices would be disposed of based on the documents furnished to the petitioners. Despite all this, insistence on the furnishing of some inter-departmental communications or records/files, without even an attempt to be a little specific or to explain the relevance, does not appear to be proper. The attempt does not appear to stall or delay adjudication proceedings indefinitely or, in any case, lay a foundation for alleging failure of natural justice. We do not think we should assist the petitioners in such

an endeavour by issuing general directions for disclosure of all inter-departmental communications, records or file notings.

40. Similarly, regarding the data/information shared by respondent no.6 with ISI, from the tenor of the questions posed by the petitioners and the information requested, we think there is no sufficient justification. To collate the data reflected in the impugned show cause notices, if some decision was taken to engage the Indian Statistical Institute (ISI), the petitioners cannot insist upon “*Documents to show the reasoning behind engaging Indian Statistical Institute, Hyderabad (ISI)*”.

41. In any case, paragraph 7.3.5.4 of the impugned show cause notices clearly states that since the data available on a private website was submitted without any regulatory and statutory backing, “*in order to verify the fairness and correctness of the House Advantages furnished by M/s Delta; and also for suggesting any better methodology for arriving at the 100% of the face value of bet (gross bet value) than the methodology proposed by M/s. Delta, the services of Indian Statistical Institute (ISI) were obtained*”.

42. Paragraph 7.3.5.4 of the impugned show cause notices further states that the Indian Statistical Institute (ISI) is an institute of high repute and a public university public university recognised as an Institute of National Importance by the 1959 Act of the Indian Parliament. The relevant extracts from the report submitted by ISI were also transcribed in the impugned show cause notices.

43. Thus, the reasons for engaging ISI were clearly disclosed to the petitioners. Still, the petitioners insist they be informed of the reason for engaging ISI. This does not appear to be proper. Besides, the information furnished by the petitioners was supplied to the ISI. The affidavit states that most of the information furnished by the petitioners and supplied to the ISI was given to the petitioners. Therefore, to say that most of the information was furnished means that all the information was not furnished, and on that basis, to allege failure of natural justice is nothing but an attempt to lay a foundation to allege failure of natural justice eventually.

44. Therefore, no directions are called for in the context of inter-departmental communications or records/file notings or data/information shared with ISI. Records show that respondents have furnished all the documents relied upon in the show cause notices and even allowed the petitioners' inspection based upon which they retrieved the Non-Relied Upon Documents. The show cause notice is detailed and refers to the material/documents based upon which it is issued. All this, coupled with the statement/submission that the show cause notices would be disposed of by reference to the documents furnished to the petitioners, suggests sufficient transparency and fairness. Accordingly, we do not find any breach of the principles laid down in *J. N. Meena* (supra) or *Reliance Industries Limited* (supra).

45. However, in the context of the investigation report, referred to in paragraph 4 of the respondents' affidavit dated 09.03.2024 is

concerned, we direct the respondents to furnish such an investigation report to the petitioners' within two weeks. If the respondents maintain that the investigation report is, in fact, the show cause notices, then we clarify that the issue of failure of natural justice on this score would remain open. The petitioners, as held in *T. Takano* (supra), could then raise this issue before the Court or Tribunal should any occasion arise for questioning the adjudication order. This is provided respondents are unable to make good their contention about there being no separate investigation report and the investigation report is, in fact, the impugned show cause notices itself. Again, as clarified earlier, the investigation report can be furnished by redacting the portions which deal with sources of identities or sensitive information concerning the commercial interest of third parties, etc.

46. Further, we clarify that even if the investigation report is not furnished, the petitioners cannot delay or avoid the adjudication proceedings now that liberty is granted to the petitioners to raise the issue of failure of natural justice on the grounds of the non-furnish of the investigation report. By recording their objection, the petitioners must join the adjudication process and not delay the same. This clarification is necessary because Ms Desai, at the stage of admitting these petitions, has made a statement that final orders will not be made without the leave of this Court.

47. With the above directions, all these civil applications are disposed of. There shall be no order for costs.

48. All concerned to act on an authenticated copy of this order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

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KISHOR HALDANKAR
HALDANKAR Date: 2024.03.14
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