INDIA / JUDGMENT

MANOHAR LAL SHARMA versus CENTRAL BUREAU OF INVESTIGATION & ORS.

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[2017] 10 S.C.R. 562

MANOHAR LAL SHARMA

v.

CENTRAL BUREAU OF INVESTIGATION & ORS.

(Wnt Petition (Crl.) No.65 of20 I 6)

OCTOBER09,2017

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[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.].

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Panama Paper Leaks Case- Tax evasion by some individuals/ entities by way of offshore bank accounts/business - Petitioner C sought direction to the CBI to conduct an investigation/inquiry against the Indian offshore bank account holders, revealed in "Panama Papers" and further to register FIR and conduct investigation against Securities and Exchange Board of India (SEBI) Chairman, his associate directors, share brokers and companies - D Averments made in the Petition that "Panama Paper Leaks" report (information relating to tax evasion by some individuals/entities posted on a website) were not acted upon by the concerned authorities, particularly SEEi resulting in seriousfinancial loss to the general public and protection of black money hoarders - Held: In instant case, the Special Investigation Team(SIT) has already been constituted under the orders of the Supreme Court - The terms of reference of the SIT covers the subject matter of this petition which is also clear from the notification issued by the Ministry of Finance

- Further, the Government of India, Department of Revenue vide office memorandum has constituted Multi Agency Group(MAG) to F go into issues arising out of "Panama Papers" - Reports of MAG to be submitted to the SIT and MAG to carry out any direction which SIT or

Supreme Court may give in tlie other pending writpetition being WP(C) No.176 of 2009 - Writ petition disposed of - Prevention of Money Laundering Act, 2002 (PMLA, 2002) - G Unlawful Activities (Prevention) Act, 1967 (UAPA, 1967)-s.51A SEBI (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations)

Public Interest Litigation - Scope of- Held: Public Interest Litigation is a mechanism by which Court can initiate action for

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protection of rights of public on account of inaction of any public authority or to oversee any abuse of power by the public authority-At the same time, the PJL weapon is to be used with great. caution keeping in mind the fact that governance is the basicfanction of the Executive - Unless there is a clear abuse of power or.failure of governance, the Court may not interfere.

CRIMINAL ORIGINAL JURISDICTION : Writ Petition

(Criminal)No.65 OF2016

Under Article 32 of the Constitution oflndia.

WITH·

S.L.P. (Civil) No.13908of2016.

Atul Babasaheb Dakh, Adv. for the Petitioner.

Petitioner-in-person.

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ChanderUday Singh, P. S. Narasimha, Ms.A.shaR. S., Mrs.Anil D

Katiyar, K. Parameshwar, Rishi Gaulam, Bhargava V. Desai,Akshat Malpani, Ms. Meenakshi G., Rajat Nair, Ritin Rai, Mukesh Kumar Maroria, H. S. Parihar, Ad vs. for the Respondents.

The following Order of the Court was delivered:

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WRIT PETITION (CRL.) NO. 65 OF 2016

ORDER~·

1. This petition seeks a direction to the CBI to conduct an investigation/inquiry against the Indian offshore bank account holders, . revealed in "Panama Papers", and to file their report before this Hon'ble F Court. Direction has also been sought to register FIR and conduct investigation against the Securities and Exchange Board of India (SEBI) Chairman, his associate directors, share brokers and companies .

. 2. Averments in the petition are that "Panama Paper Leaks" report G

(which refers to information relating to tax evasion by some individuals/ entities by way of offshore bank accounts/business to evade tax. International .Consortium oflnvestigation Journalists (ICU) posted the documents on its website.) have not been acted upon by the concerned authorities, particularly the SEBI resulting in serious financial loss to the

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A general public and protection ofblackmoney hoarders. Reference has been made to certain individuals who are said to be having offshore undisclosed bank accounts and who have manipulated the capital market. It is alle_ged that the SEBI has failed to perform its functions as capital market regulatory. The black money kept in foreign accounts can be B used to facilitate terrorism, money laundering, tax evasion, corruption, crimes etc. Funds of the offshore accounts are circulated in Indian stock market via participatory notes. The Special Investigation Team(SIT) on black money constituted by this Court vi de order dated 4 tl• July, 2011 in Writ Petition (Civil) No.176 of2009 has revealed various transactions. C The report shows failure of the SEBI in doing its statutory duty. The petition refers to newspaper reports as the main source of infonnation.

3. Counter affidavit has been filed by the Ministry of Finance and Economic Affairs stating that the Government has constituted a Multi Agency Group (MAG) consisting of officers of the Central Board of D Direct Taxes (CBDT), Reserve Bank of India (RBI), Enforcement Directorate (ED), and Financial Intelligence Unit (FIU). Member (Investigation) CBDT is the convener of the MAG. MAG is to ensure speedy and coordinated investigation in the cases of persons whose names have appeared in "Panama Paper Leaks". The MAG is monitoring the progress of various investigating agencies. Till the filing of the affidavit dated 27th September, 20 I 6, six reports had been submitted to the MAG The SIT on black money constituted by this Court was rebrularly updated on such issues. Holding of offshore bank accounts is regulated by Notification dated 21 '1 January, 2016, Indian residents can open offshore accounts only with the general or special permission of the RBI. Further reference has been made to policies and orders issued in this regard. Investigation of Indian foreign assets/bank accounts has been conducted and is st~! being conducted.

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4. Additional affidavit was filed by the Department of Economic Affairs on 6th April, 2017 on the question whether a separate SlT was G required, apart from SIT already constituted under the orders of this Court. It was submitted that investigation was being conducted with all seriousness and at the fastest possible pace. Foreign assets are hidden beneath multiple layers of shell companies/trusts. The Department has

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received infonnation under tax treaties and Mutual Legal Assistance A Treaty (MLAT). The Income Tax Department has taken necessary proceedings in the matter. Investigation is being made about the names of persons disclosed in "Panama Paper Leaks".

5. An affidavit has also been filed by the SEBI stating that the SEBI has put in place the necessary guidelines under the Prevention of B Money Laundering Act, 2002 (PMLA, 2002). SEBI has also isstted Circular dated 23rd October, 2009 to give effect to Section 51 A of the Unlawful Activities (Prevention) Act, 1967 (UAPA, 1967). All entities operating in Securities Market are governed by the fratilework put in place by SEBI. Special reference has been made to SEBI (Foreign C Portfolio Investors) Regulations, 2014 (FPI Regulations). The RBI has also issued directions to checkAnti Money Laundering (AML)/Combating Financial Terrorism(CFT).

6. The Committee on Rationalization oflnvestment Routes and Monitoring of Foreign Portfolio Investments recommended categorization D ofFPls on the basis of risk profiling in compliance to the FATF (Financial Action Task Force) recommendations, as per which the FPls are categorized in Category (I), Category (ll) and Category (lll).

7. We have heard the petitioner in-person, learned Additional Solicitor Geneqtl Shri P.S. Narasimha, learned senior counsel for the E

· SEBI Shri Ch~der Uday Singh and perused the record.

8. Public Interest Litigation is a mechanism by which this Court can initiate action for protection of rights of public on account of inaction ofanypublic authority or to oversee any abuse of power by the public F authority. At the same time, the,PIL weapon is to be used with great caution keeping in mind the fact that governance is the basic function of the Executive. Unless there is a clear abuse of power or failure of governance, the Court may not interfere.

9. In the present case, SIT has already been constituted under G

the orders of this Court which comprises of two former judges of this Court. The terms of reference of the SIT covers the subject matter of this petition also which is clear from the notification dated 29'h May, 2014 issued by the Ministry of Finance which inter alia is as follows:

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"2. The terms ofreferences of the Special Investigation Team will be as per order dated 04.07.2011 ofHon'ble Suprepie Court and includes as under:-

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(i) The Speci?l lnvestigation Team shall function under the guidance and direction of Chairman and Vice Chairman.

(ii) The said Special Investigation Team shall be charged with the responsibilities and duties of investigation, initiation of proceedings, and prosecution, whether in tli.e context of appropriate criminal or civil proceedings of:-

" -,

a) all issues relating to the matters concerning and arising from unaccounted monies of Hassan Ali Khan and the Tapurias;

b) all other investigations already commenced and are pending, or awaiting to be initiated, with respect to any other known instances of the stashing of unaccounted monies in foreign bank accounts by Indians or other entities operating in India; and

c) all other matters with respect to unaccounted monies being stashed in foreign banks by Indians or other entities operating in India that may arise in the course of such investigations and proceedings.

(iii) It is also the responsibility of SIT to ensure that the matters are also investigated, proceedings initiated and prosecutions conducted with regard to criminality and/or unlawfulness of activities that may have been the source for such monies, as well as the criminal and/ or unlawful means that are used to take such unaccounted monies out of and/or bring such monies back into the country, and use of such monies in India or abroad.

(iv) The Special Investigation Team shall also be charged with the responsibility of preparing a comprehensive action plan, including the creation of necessary institutional structures that can enable and strengthen the country's battle against generation

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of unaccounted monies, and their stashing away in foreign A banks or in various forms domestically.

3. The said Special ,Investigation Team should be responsible to the Hon'ble Supreme Court and that it shall be charged with the duty to keep Supreme Court informed of all major developments by filing of periodic status reports and following of any special B orders that Supreme Court may issue from time to time; .

4. All organs; agencies, departments and agents of the State, whether at the level of the Union·oflndia, or the State Gove1111hent, including but not !imited to all statutorily formed individual bodies, and other constitutional bodies, extend all the cooperation C necessary for the functioning of Special investigation Team.

5. The Union of India and where needed the State Governments will facilitate the conduct of the investigations, in their fullest measure, by the Special Investigation Team and functioning, by D extending all the necessary financial, material, legal, diplomatic and intelligence' resources, whether such investigations orportions of such investigations occur inside the country or abroad.

6. The Special Investigation Team also empowered to further investigate even "".here charge-sheets have been previously filed; E and that the Special Investigation Team may register further cases, and conduct appropriate investigations and initiate proceedings, for the purpose ofbringing back unaccounted monies unlawfully kept in bank accounts abroad."

10. The Government of India, Department of Revenue vide Office F

Memorandum dated 4•h April, 2016, has constituted MultlAgency Group to go into the issues arising out of"Panama Papers". The reports of MAG are being submitted for consideration by the SIT constituted by this Court. We record the submission made on behalf oflearned counsel for the respondents that further reports of the MAG will also be submitted G to the SIT and MAG will carry out any direction which SIT may give or this Court may give in pending writ petition being Writ Petition (Civil) No.176of2009.

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In view of the above, we do not consider it necessary to give any further direction as the concern ex pressed in the writ petition stands addressed.

The petition is accordingly disposed of

SPECIAL LEAVE PETITION (CIVIL) N0.13908 OF2016

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In view of the order passed in the above writ petition, this petition

is also disposed of

C Ankit Gyan

Petitions disposed of

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