

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO.9765 OF 2023

ORDER:

The present writ petition is filed under Article 226 of Constitution of India for the following reliefs:

"..... pleased to issue a writ or order more particularly one in the nature of writ of mandamus or an appropriate writ or order declaring the provisional attachment order No.4 of 2023, dated 14/03/2023 issued by the 2nd respondent whereunder attached the accounts of the petitioners without giving any valid reasons, illegal, arbitrary and contrary to the PMLA and consequently set aside the same and allowed the petitioners to operate the bank accounts and pass..."

2. Heard Sri I. Koti Reddy, learned counsel for the petitioners, Sri Josyula Bhaskar Rao, learned Standing Counsel for Respondent Nos.1 to 4 and Sri G. Sudhakar Kumar, learned Standing Counsel for the 5th respondent-Union Bank of India.

3. Learned counsel for the petitioners, in elaboration to what has been stated in the affidavit contended that, the 2nd respondent-Deputy Director of Enforcement has passed a provisional attachment order No.4 of 2023, dated 14.03.2023, contrary to the Prevention of Money Laundering Act, 2002 and thereby attached several accounts of the petitioners along with the other properties.

Learned counsel for the petitioners submitted that Account Nos.641301010050403 and 641304010000001 are specifically shown in the schedule of properties annexed to the impugned order, dated 14.03.2023, at Serial Nos.1 & 2 in the table under the head 'Movable Properties'. Insofar as the said accounts are concerned, they were opened by the petitioners in relation to a contract entered with the National Highway Authority of India for laying National Highways. In the said two accounts only transactions relating to the contract entered with the National Highway Authority of India are reflected and no transactions with any third parties are found. In spite of it, those two accounts have been attached, that too, without giving any reasons. In support of his contention, he has drawn the attention of this Court to Section 5(1) of the PML Act and submitted that, as per the said provision, the authorities have to give reasons to believe for attaching the property before passing the provisional attachment order. In the present case, the authorities have not given any reasons while attaching the said two accounts.

Further, the learned counsel for the petitioners has drawn the attention of this Court to the statements of the said two accounts and contended that in the said two accounts, the deposits were made by the National Highway Authorities only and no private transactions or third-party deposits are made. If at all the authorities want to attach

the said accounts also they should do so by giving proper reasons for attaching the said accounts. By virtue of attaching the said accounts, the petitioners are unable to complete the contract works and unable to pay salaries to the employees. As such, prayed to pass appropriate orders.

3. On the other hand, Sri Josyula Bhaskar Rao, learned Standing Counsel for the respondent-authorities vehemently opposed for entertaining the Writ Petition on the following grounds:

i) The Writ Petition cannot be entertained under Article 226 of the Constitution of India, when alternative remedy is available to the petitioners against the provisional attachment order dated 14.03.2023. This aspect is dealt with by the respondent-authorities in para 6 of the counter affidavit.

ii) As per Section 2(u) of the PML Act, the authorities can attach the properties of the equal value of the proceeds of the Crime and therefore, the respondent-authorities have rightly attached the properties listed in the impugned order.

iii) As the petitioners are involved in serious schedule crimes, the PML Act has been invoked and therefore, the impugned order is maintainable. This aspect has been dealt by the respondent-authorities

in paragraphs 9 and 11 of the counter and has drawn the attention of this court to the same.

The learned Standing Counsel further contended that, the 2nd respondent-Deputy Director, pursuant to the provisional attachment Order dated 14.03.2023, filed a case before the Adjudicating Authority *vide* Original Complaint No.1935 of 2023 on 12.04.2023 and pursuant to the said complaint, the Adjudicating Authority has already issued notices to the concerned parties on 17.04.2023. If such is the case, the petitioners have to file an application before the concerned authority for raising the attachment order. However, the petitioners, without pursuing the alternative efficacious remedy available to them, filed the present Writ Petition, which is not proper. Accordingly, prayed to dismiss the Writ Petition.

In support of his contention, the learned Standing Counsel for the respondents relied on the decision of this Court in **B. Trivikrama Prasad v. Enforcement Directorate**¹, wherein it was held that the Writ Court has no jurisdiction to entertain a Writ Petition wherein the party has to approach the competent authority who has issued provisional attachment and draw the attention of this Court to paras 15, 16 and 19 of the said Order.

¹ 2015(2) ALT 602 (S.B.)

4. In reply to the said submission, learned counsel for the petitioners submitted that a ground has been raised by the petitioners that the order impugned is not in consonance with the provisions of Section 5(1) of the Act, 2002. The said ground was not properly answered by the respondent-authorities, except stating in para 36 of the counter affidavit that the Deputy Director has given reasons at para 10 of the impugned order and thereby complied with the requirements of Section 5(1) of the Act, 2002. However, para 10 of the impugned order is also lacking such reasons. As such, the order impugned is contrary to the provisions of Section 5(1) of the Act, 2002 and prayed to pass appropriate order.

5. Perused the Record.

6. Various Scheduled Offences have been registered against the petitioners, for which the respondent-authorities have invoked the PML Act. While invoking the PML Act, provisional attachment of movable and immovable properties has been issued *vide* order dated 14.03.2023.

7. The only issue in the present Writ Petition is with regard to attachment of two bank accounts of the petitioners, viz., Account Nos.641301010050403 and 641304010000001, which were opened in relation to a contract with the National Highway Authority. Learned

counsel for the petitioners contended that, in the said two accounts, except National Highway Authorities, no third party has deposited any amount. In these circumstances, attaching the two accounts, through the impugned provisional attachment order, that too, without assigning any reasons, is not in consonance with Section 5(1) of the Act, 2002 or not is the issue.

8. Now, it is to be answered by this Court whether the said order is inconsonance with Section 5 of the PML Act or not. Section 5 of the PML Act reads as follows:

"Section 5(1) in The Prevention of Money-Laundering Act, 2002

(1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

[\(a\)](#) any person is in possession of any proceeds of crime;

[\(b\)](#) such person has been charged of having committed a scheduled offence; and

[\(c\)](#) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding⁹ [one hundred and fifty days] from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director

or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

¹⁰ [Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be: Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]”

9. Para 10, operative portion of the provisional attachment order dated 14.03.2023, reads as follows:

“Now, therefore, on the basis of material and evidences placed before me, in the ongoing investigation, and having reasons to believe as detailed in Paras above, I, hereby order Provisional Attachment of the properties valued at Rs.6,74,04,642/- (Rupees Six Crores Seventy Four Lakhs Four Thousand Six Hundred and Forty Two Only) as detailed in the below mentioned SCHEDULE OF THE PROPERTIES, being part of the Proceeds of Crime, as defined under Section 2(1)(u) of the PMLA, 2002 and further order that the same shall not be transferred, disposed, parted with or otherwise dealt with in

any manner, whatsoever, until or unless specifically permitted to do so by the undersigned.

The properties attached shall remain under attachment for 180 days from the date of attachment or until order is passed by the Adjudicating Authority under Section 8(3) of the PMLA.”

All other paragraphs of the impugned provisional attachment order, which runs into 105 pages, are with regard to the facts of the case and also about the offences that have been committed by the petitioners.

10. Now, whether as per para 10 of the said order, the reasons for attaching the properties of the petitioners are inconsonance with Section 5 or not is the dispute.

11. On a perusal of para 10 of the impugned attachment order, no specific reasons for attaching Account Nos.641301010050403 and 641304010000001, are stated. If the contention of the petitioners that, no third-party has deposited any amount in the said accounts is taken as true and, in such circumstances, whether such accounts can be attached or not, the reasons are not coming forward in the provisional attachment order. If that is the case, it can be easily presumed that the provisional attachment order, insofar as two accounts referred *supra* is concerned, is without application of mind and without any reasons to believe i.e., the reasons for such belief has

not been recorded. Further, this Court, under Articles 226 of the India, cannot adjudicate or decide the aspect of depositing of amounts by the third parties in the subject accounts.

12. Further, the judgment relied on by the learned Standing Counsel, no doubt is the settled principle of law and the provision under Section 5(1) of the PML Act is also very clear. The scope of entertaining this Writ Petition under Article 226 of the Constitution of India is no doubt limited and this Court cannot adjudicate on provisional attachment order if it is in consonance with Section 5 of the Act, 2002. There is no dispute with regard to the law laid down by various courts in that regard. But Section 5 of the PML Act, referred *supra* clearly says that the authority should record reasons while attaching the properties, both movable and immovable. However, in the present case, in the impugned attachment order, the respondent-authorities have not recorded any reasons for attaching the subject accounts referred *supra*. As such, this Court holds that the attachment of the said accounts is without proper reasons.

13. In view of the same, this Court is inclined to pass the following order:

The impugned order *vide* F.No.ECIR/HYZO/33/2020, dated 14.03.2023, is set-aside only to the extent of attaching Account

Nos.641301010050403 and 641304010000001 of the Union Bank of India. However, the 2nd respondent-Deputy Director is at liberty to look into the said two accounts and if he finds that the said two accounts are to be attached, he may do so by passing a fresh reasoned order, in accordance with law.

Insofar as the other attachments are concerned, this Court is not inclined to interfere.

It is needless to observe that the respondent-authorities are always at liberty to attach the properties of the petitioner under Section 5 of the Act, 2002, if the circumstances so demand.

Accordingly, the Writ Petition is **disposed of**.

JUSTICE RAVI CHEEMALAPATI

28th April, 2023

GBS

Note: Issue CC in five days

(B/o)

GBS