

Arvind Kumar Joshi Vs. Union of India

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Court : Madhya Pradesh

Decided On : May-16-2013

Appellant : Arvind Kumar Joshi

Respondent : Union of India

Advocate for Def. : Shri. Aditya Adhikari

Advocate for Pet/Ap. : Shri. Pratul Shandilya

Judgement :

1 WP No.7637/13 16.05.2013.

Shri Neetesh Gupta, learned senior counsel with Shri Pratul Shandilya, learned counsel for petitioners. Shri R.S.Siddiqui, learned standing counsel for respondent no.1.

Shri P.K.Kaurav, learned Addl.

AG for respondent no.2.

Shri Aditya Adhikari, learned counsel for respondent no.3.

Ad-interim writ This petition is filed challenging the notices of confiscation dated 9.4.13, issued by the Court of Authorized Officer under MP Vishesh Nyayalaya Adhiniyam, 2011 in Special Case No.5/13 by which petitioners have been directed to show cause as under :- That your assets are disproportionate to your known

sources of income; you are hereby called upon to report by 18th May,2013 as to your sources of income, earning of assets, out of which or by means of which you have acquired such money/property, the evidence on which you intend to rely upon and submit relevant information and particulars and show cause as to why all or any such money/property should not be declared to have been acquired by means of offence and confiscated to State Government.It is submitted by the petitioners that some properties were seized somewhere in the month of February,10, the FIR was lodged on 9.12.10 and the notices have been issued on 9.4.13 under the provisions of the Act, namely, MP Vishesh Nyayalaya Adhiniyam, 2011 which has been enacted and published in the 2 Gazette of M.P.on 10th February, 2012, and has been made effective with effect from the same date.

It is submitted by the petitioners that in view of the specific provision, as contained in Article 20(1) of the Constitution of India, no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act, charged as an offence, not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

It is submitted that at the relevant time when FIR was lodged on 9.12.10, there was no such provision for confiscation of the properties.

This provision has been made by the aforesaid Act which has come into force on 10th of February, 2012, and on the basis of the provisions, as contained in the aforesaid Act, the properties of the petitioners cannot be confiscated.

Sarva Shri Kaurav and Adhikari supported the action.

They have drawn our attention to various provisions of the Act.

It is submitted by them that the entire procedure has been provided in the Act itself, and notice for confiscation is issued under Section 14 of the Act which provides for issuance of notice, hearing of the affected person, and under Section 17 of the Act, an appeal is provided to the High Court.

It is submitted that till date, no order of confiscation has been passed, so this petition is pre-mature, and no interim order may be issued.

Shri Kaurav, learned Addl.AG has also placed reliance on a judgment of Patna High Court in CWJ.Nos.10455

10456. 10692,10735 and 10983 of 2010 dated 23.02.11 in which the action under similar Act has been affirmed and it has been found that it is retrospective in nature.

Shri Adhikari, learned counsel appearing for respondent no.3 also submitted that an application filed by respondent no.3 is pending before the Special Court which is to be considered and decided as per Section 14 of the Act.

It is also submitted by him that no interim order may be issued in the matter.

In reply to it, Shri Gupta, learned senior counsel has placed reliance on three judgments of the Apex Court in K.Kalimuthu versus State by DSP (2005) 4 SCC 512.State of Karnataka through CBI versus C.Nagarajaswamy (2005) 8 SCC 370.Harjit Singh versus State of Punjab (2011) 4 SCC 44.and submitted that the further proceedings before the Special Court in continuation to the show cause notices may be stayed.

We have heard learned counsel for the parties.

After hearing learned counsel for the parties, we have examined the relevant provisions.

Section 13,14,15,17,18 and 19 are relevant which are quoted below :- 13(1) Where the State Government, on the basis of prima facie evidence, have reasons to believe that any person, who has held or is holding public office and is or has been a public servant has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorize the Public Prosecutor for making an application to the Authorized Officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence .

(2) An application under sub-section (1).(a) shall be accompanied by one or more affidavits, stating the grounds on which the belief, that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and (b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.

14(1) Upon receipt of an application made under Section 13, the Authorized Officer shall serve a notice upon the person in respect of whom the application is made (hereafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the source of his income, earnings or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information and particulars and to show cause as to why all or any of such money or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government.

(2) Where a notice under sub-section (1) to any person specified any money or property or both as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

5 (3) Notwithstanding anything contained in sub- section (1).the evidence, information and particulars brought on record before the Authorized Officer, by the person affected or the State Government shall be open to be rebutted in the trial before the Special Court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the Special Court under this Act.

(15) (1) The Authorized Officer may, after considering the explanation, if any, to the show cause notice issued under Section 14 and the materials available before it, and after giving to the person affected (and in case where the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record

a finding whether all or any other money or properties in question have been acquired illegally.

(2) Where the Authorized Officer specifies that some of the money or property or both referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money or property, then it shall be lawful for the Authorized Officer to specify the money or property or both which, to the best of his judgment, have been acquired by means of the offence and record a finding accordingly under sub-section (1). (3) Where the Authorized Officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances:

6. Provided that if the market price of the property confiscated is deposited with the Authorized Officer, the property shall not be confiscated.

(4) Where any share in a Company stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share.

(5) Every proceeding for confiscation of money or property or both under this Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section (1) of Section 15.

(6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under Section 17 be final and shall not be called in question in any Court of law.

(17)(1) Any person aggrieved by any order of the Authorized Officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.

(2) Upon any appeal preferred under this Section, the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as

it thinks fit.

(3) An appeal preferred under sub-section (1) shall be disposed preferably within a period of six months from the date it is preferred and stay order, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal.

18(1) Where any money or property or both have been confiscated to the State Government under this Act, the concerned Authorized Officer shall order the person affected, as well as any other person, who may be in possession of the money or property or both to surrender or deliver possession thereof to the concerned Authorized Officer or to any person duly authorized by him in this behalf, within thirty days of the service of the order : Provided that the Authorized Officer, on an application made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the Authorized Officer may take possession of the property and may, for that purpose, use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the Authorized Officer may, for the purpose of taking possession of any money or property or both referred to in sub-section (1), requisition the service of any Police Officer to assist and it shall be the bounden duty of such officer to comply with such requisition.

19.

Where an order of confiscation made under Section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the

rate of five percent per annum thereon calculated from the date of confiscation.

Section 14 of the Act specifically provides filing of an application under Section 13 of the Act, thereafter a show cause notice and an order thereon by the Special Court.

Section 17 of the Act provides an appeal against such an order before the High Court, and Section 19 of the Act provides that in case order is modified by the High Court, the properties and money confiscated are to be refunded to the concerned person.

Though in this case, the constitutional validity of the aforesaid provisions have been challenged, but until and unless such provisions are stayed by this Court or declared ultra vires, aforesaid provisions have to be given effect to.

In the present case, under Section 14 of the Act a show cause notice has been issued and petitioners have been extended an opportunity to show cause and to submit their case on merits before the Special Court.

After hearing the petitioners, Special Court has to pass an order after considering all the objections which may be raised by the petitioners on the aforesaid show cause notices.

In these circumstances, at this juncture, it would not be appropriate to stay further proceedings in continuation to the show cause notices, and we find it appropriate to leave free the Special Court to consider and decide the application in accordance with law.

Accordingly, we direct thus :- (i) The Special Court shall be free to consider and decide the application after considering all the objections, as may be raised by the petitioners before the Special Court, by a reasoned order; (ii) The aforesaid order shall be subject to an appeal as may be filed under Section 17 of the Act.

However, we also observe that all the proceedings shall be subject to final decision in this writ petition.

With the aforesaid, the prayer for ad-interim writ is finally disposed of.

C.c.as per rules.

(Krishn Kumar Lahoti) (M.A.Siddiqui) Acting Chief Justice Judge.

Jk.

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