

India Awake For Transparency Vs. Union Of India

India Awake For Transparency Vs. Union Of India

SooperKanoon Citation : sooperkanoon.com/1233278

Court : Karnataka

Decided On : Feb-12-2021

Judge : P.S.Dinesh Kumar

Appeal No. : WP 172/2021

Appellant : India Awake For Transparency

Respondent : Union Of India

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE12H DAY OF FEBRUARY, 2021 BEFORE R THE HONBLE MR. JUSTICE P.S. DINESH KUMAR WRIT PETITION No.172 OF2021(GM-RES) BETWEEN : INDIA AWAKE FOR TRANSPARENCY REP. BY P. SADANAND AUTHORISED SIGNATORY SHRISTHI CRESCENDO24 DESIKA ROAD MYLAPORE, CHENNAI-600 004 ... PETITIONER (BY SHRI. R. SUBRAMANIAN ,ADVOCATE) [THROUGH VIDEO CONFERENCE]. AND :

1. UNION OF INDIA THROUGH ITS SECRETARY MINISTRY OF CORPORATE AFFAIRS SHASTRI BHAWAN NEW DELHI-110 001 2. MR. AZIM H. PREMJI SURVEY NO.574 DODDAKANNELLI VILLAGE SARJAPUR ROAD BENGALURU560 035 3. MRS. YASEEM AZIM PREMJI SURVEY NO.574 DODDAKANNELLI VILLAGE SARJAPUR ROAD BENGALURU560 035 4. MR. PAGALTHIVARTHI SRINIVASAN NO.524, 16TH CROSS2INDIRA NAGAR II

STAGE BENGALURU-560 038 5. M/S. HASHAM INVESTMENT AND TRADING COMPANY PVT LTD REP. BY MR. AZIM H PREMJI DIRECTOR NO.134, NEXT TO WIPRO CORPORATE OFFICE DODDAKANNELLI SARAJAPUR ROAD BENGALURU-560 035 ... RESPONDENTS (BY SHRI. S. GANESH, SENIOR ADVOCATE AND SHRI. C.V. NAGESH, SENIOR ADVOCATE FOR SHRI. SANDEEP HUILGOL, ADVOCATE FOR R5) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 TO FORTHWITH BASED ON THE INFORMATION DTD.14.03.2017, 30.01.2020 AND 09.11.2020 FURNISHED BY THE PETITIONER UNDER ANNEXURE-Y AND BASED THEREON DIRECT INVESTIGATION OF THE R-5 UNDER SECTION 212 OF THE COMPANIES ACT 2013 AND ETC. THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON 29.01.2021, COMING ON FOR PRONOUNCEMENT OF

ORDER

S THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

This is third petition in succession filed by 'India Awake for Transparency' against different authorities to initiate action in the matter of acquisition of shares and amalgamation of Company. In all the cases, Shri. Ganesh, learned Senior Advocate appearing for private respondent has raised a preliminary objection with regard to maintainability of writ 3 petitions. In substance, the preliminary objection is, petitioner has filed a public interest litigation registered as W.P.No.3635/2020 with a prayer inter alia for issuance of a writ of mandamus and to direct respondents No.1 to 10 therein to constitute a multi-disciplinary investigation team to investigate and prosecute Mr.A.H.Premji (respondent No.11 therein) and his associates for the offences alleged to have been committed by them, set out in petitioner's representations submitted to respondents No.1 to 6 therein. The Ministry of Corporate Affairs against whom a direction is sought in this writ petition was arrayed as respondent No.2 in the said PIL. Petitioner has unconditionally withdrawn the PIL. Thereafter, it has filed five separate writ petitions against

various statutory authorities. W.P. No.13838/2020 is against SEBI, W.P. No.12073/2020 is against Enforcement Directorate, W.P. No.11482/2020 is against Reserve Bank of India (RBI). All three writ petitions have been dismissed.

2. Shri. Ganesh has submitted that this writ petition is directed against the Ministry of Corporate Affairs which was second respondent in the PIL. In view of unconditional withdrawal of the PIL, this petition is not maintainable and liable to be dismissed.

3. I have carefully considered rival contentions and perused the records.

4. In the PIL, the Ministry of Corporate affairs is respondent No.2. It is arrayed as first respondent in this writ petition. In the PIL, petitioner has sought for a direction against respondents No.1 to 10 therein to forthwith constitute a Multi- Disciplinary Investigation Team to investigate and prosecute respondent No.11 therein (Mr. A.H. Premji and his Associates) based on the representations dated January 30, 2020 and February 3, 2020 submitted by the petitioner.

5. In this writ petition, petitioner has prayed for a direction against respondent No.1 to act on the basis of information given by him on March 14, 2017, January 30, 2020, November 9, 2020.

6. Shri. C.V. Nagesh, learned Senior Advocate for respondent No.5 argued that petitioner has approached Delhi High Court also in WP(C) No.4905/2017 with a prayer inter alia to direct Department of Financial Services, Ministry of Finance, Ministry of Corporate Affairs and the RBI to take action on its complaints dated November 1, 2016, March 14, 2017 and April 28, 2017. By its order dated May 29, 2017, a Division Bench of Delhi High Court has disposed of the said writ petition with a direction to the Ministry of Finance and the Ministry of Corporate Affairs to examine the complaints. Pursuant thereto, Ministry of Corporate Affairs has passed an order dated November 10, 2017.

7. Shri. Nagesh further submitted that petitioner has also filed a private complaint against the Secretary, Ministry of Corporate Affairs with a prayer to register an 'Information Report' on the basis of petitioner's three letters mentioned therein and

to direct an investigation. He submitted that in the said private complaint, list of persons allegedly involved in the commission of offences have been mentioned in the schedule and they are not shown as accused in the cause-title. He argued that such a private complaint is alien to the standard practice because, the accused are required to be described in the cause-title. 6

8. Shri. Nagesh further submitted that petitioner - Company is no more in existence pursuant to orders passed by the Regional Director, Ministry of Corporate Affairs on August 17, 2018 revoking the licence issued to the petitioner - Company.

9. Shri. Nagesh further submitted that petitioner has approached Delhi High Court with a prayer for a direction against Ministry of Corporate Affairs to initiate action in respect of three complaints mentioned in the petition. The complaint dated March 14, 2017 is common in writ petition filed before the Delhi High Court as also in this writ petition. The complaint dated January 30, 2020 is common in the PIL and this writ petition.

10. In reply, Shri. Subramanian, learned Advocate for petitioner made following submission: the relief sought in the PIL and in this writ petition are not one and the same; if a petitioner seeks different relief on the same cause of action, the doctrine of res judicata does not apply; what was under consideration before the Division Bench while hearing the PIL was, maintainability of PIL at the instance of the petitioner. Petitioner withdrew the writ petition as a PIL was not maintainable and thereafter filed independent writ petitions against different respondents; 7 the PIL was withdrawn as there was a formal defect which had rendered the writ petition incompetent. Therefore, petitioner cannot be barred from agitating his cause in this writ petition.

11. With the above main contentions, Shri. Subramanian sought to oppose the preliminary objection.

12. I have carefully considered rival contentions and perused the records.

13. At the outset, it is relevant to note that this very Bench has dismissed W.Ps. No.13838/2020 (India Awake for Transparency Vs. The Chairman, Securities and Exchange Board of India and others decided on January 8, 2021) and W.P. No.12073/2020 (India Awake for Transparency Vs. The Director, Directorate of Enforcement and others decided on January 21, 2021). A coordinate Bench of this Court has dismissed W.P. No.11482/2020 (India Awake for Transparency V/s. Reserve Bank of India and others decided on January 18, 2020). In all these three cases, this Court has followed the principle laid down in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P.Gwalior and others¹.

14. Shri.Ganesh, learned Senior Advocate has relied upon two authorities. Adverting to Udyami Evam Khadi Gramodyog Welfare Sanstha and another Vs. State of Uttar Pradesh and others², he argued that repeated filing of writ petitions amounts to criminal contempt. Adverting to paragraph No.153 in Union of India and others Vs. Cipla Limited and another³, he submitted that the Apex Court has held that one of the category of forum shopping is approaching different Courts for the same relief by making minor changes in the prayer clause of the petition.

15. It is also relevant to note that the orders dismissing the three writ petitions filed by the petitioner after withdrawal of the PIL, were available well before hearing began in this case. This Court specifically brought this aspect to petitioner's notice. However, petitioner sought to argue the writ petition as if it was 1 (1987) 1 SCC52 (2008)1 SCC5603 (2017)5 SCC2629 a stand alone writ petition and sought to make repeated and elaborate arguments.

16. Admittedly, petitioner has approached Delhi High Court for a direction against the Ministry of Corporate Affairs. Pursuant to the order passed by the Delhi High Court, Ministry of Corporate Affairs has passed a detailed order on November 10, 2017 after examining the issue raised by the petitioner and it reads as follows:

"This has reference to your letter cited above, which was forwarded by the Ministry of Corporate Affairs vide its letter dated 02/05/2017 for examination. In this regard, you are informed that this office examined the issue raised by you in so far as it relates to the role of this office, O/o ROC and O/o OL in the case of merger of three transferor companies, viz

- 1) M/s. Vidya Investment and Trading Company Private Limited,
- 2) M/s. Napean Trading and Investment Company Private Limited
- 3) M/s Regal Investment and Trading Company Private Limited with the transferee Company viz M/s Hasham Investment and Trading company Private Limited vide CP No.182 to 185/2014 (not 181 to

184) as marked by you) and have to state as follows.

1. The equity shareholding of all the three transferor companies are interlinked/cross held and that each of the transferor companies owned by the other two transferor companies. M/s. Vidya Investment and Trading Company Private Limited is owned by M/s. Napean Trading and Investment Company Private Limited and M/s Regal Investment and Trading Company Private Limited jointly, while M/s. Napean Trading and Investment Company Private Limited is owned by M/s. Vidya Investment and Trading Company Private Limited and M/s Regal Investment and Trading Company Private Limited. Similarly, M/s Regal Investment and Trading Company Private Limited is owned by M/s. Vidya Investment and Trading Company Private Limited and M/s. Napean Investment and Trading Company Private Limited each of these companies are registered under Companies Act and therefore, are legal persons capable of owning property and enjoy the privileges of a corporate person. Hence, it is not correct to say that the transferor companies are ownerless and that the assets of the said companies belong to Union of India.

2. It is further stated that, the Companies Act allows a company to be incorporated with the subscription to the Memorandum by Corporate Entities. There is no stipulation that these shall be natural persons for subscribing to the Memorandum. Accordingly, a private company can be incorporated and also owned by the stipulated number of companies registered under the subsisting Company Law.

3. At the time of consideration of the scheme, the transferee company (i.e M/s Hasham Investment and Trading Company Private Limited) was having the following shareholders:a) Azim Premzi:-40,05,010 equity shares b) Yasmeen

Premzi:- 5010 equity shares The scheme provided for merger of the three transferor companies to M/s. Hasham Investment and Trading Company Private Limited which was fully owned by Mr.Azim Premzi and Yasmeen Premzi. This fact was reported by the ROC, Bangalore in his report to the Regional Director on 27.08.2014. Thus, no private trust was holding any shares of M/s.Hasham Investment and Trading Company Private Limited at that point of time.

4. The brief for the ROC in respect of such scheme is to report to Regional Director if the companies under the scheme are facing any complaints, inspection, investigation and like as well as to provide observations if any, on the proposed schemes. In the instance case, the scheme is a Vanilla scheme with merger of assets and liabilities of transferor companies to the transferee company without any saving whatsoever. None of the companies involved in the scheme are also not facing any complaints nor any Regulatory actions. 11

5. Accordingly, there is no negative ground or observation whatsoever for the Regional Director to report to the Hon'ble Court in the said scheme, except to the extent that, the transferee company is not NBFC while the three transferor companies were NBFC's and were registered with the RBI, being the Regulator. The Regional Director had also observed that the transferee company cannot undertake the business of transferor company and hence, need to undertake to register with RBI as NBFC company. The Regional Director's report to the Hon'ble Court specifically requires submission on NOC from RBI. It also dealt with/pointed out the qualifications of Auditors on the balance sheets of transferor companies which were relating to certain non-compliance of RBI Regulations applicable for NBFCs thus, the Regional Director has carried on due diligence before filing his report on the merger before the Hon'ble High Court in response to the notice u/s 394A of the Companies Act, 1956.

6. It is also observed that the OL, Bangalore had caused appointment of Chartered Accountant firm (Ramraj & Co) to verify the books and records of the transferor companies before filing his report. The said firm opined that the transferor companies have not conducted their affairs against public interest or against interest of its members.

7. In the light of the above, it may be noted that there were no grounds for the Regional Director either to have made any negative observations before the Hon'ble High Court of Karnataka at the time of merger nor are there any tenable grounds to seek annulment/ revocation of the approved merger."

(Sic.) 17. Not being satisfied, petitioner has filed a PIL in this Court and withdrawn unconditionally. Thereafter, he has filed five separate writ petitions against different authorities. 12

18. Shri. Subramanian's specific contention is, relief sought in this writ petition is not the same as in the PIL before this Court. Prayers in clauses (a), (b), (c), (d) and (f) are not sought in the PIL. In prayer clause (e), petitioner has sought for a direction against the Ministry of Corporate Affairs to authorize petitioner under Section 439(2) of the Companies Act, 2013 to prosecute respondents No.2 to 5.

19. But, to a pointed question by this Court as to when the alleged offences have taken place, Shri. Subramanian replied that they have taken place between 2010 and 2016-17.

20. Prayer Clause (a) in this writ petition is for a mandamus against Ministry of Corporate Affairs to act on the information in its representation/complaint dated March 14, 2017, January 30, 2020 and November 9, 2020 furnished by the petitioner.

21. In paragraph No.1 of its complaint dated March 14, 2017, petitioner has stated that three Companies namely Vidya Investment and Trading Company Pvt. Ltd., Regal Investment and Trading Company Pvt. Ltd., and Napean Trading and 13 Investment Company Pvt. Ltd., have net worth in excess of Rs.40,000 Crores even though their Capital was small.

22. In paragraph No.5 of its complaint dated January 30, 2020, petitioner has stated that the said three Companies together with 100% owned subsidiaries are worth Rs.50,000 Crores; that the three Companies were set out as part of promoter group of Wipro Ltd.; and neither Mr. Azim Premji or his family members had any equity in these Companies.

23. In paragraph No.1 of its complaint dated November 9, 2020, petitioner has stated that the entities controlled by Mr. Azim Premji including the seven companies named therein have committed various violations under the Companies Act. Out of the said seven Companies, three are the very same Companies namely Vidya Investment and Trading Company Pvt. Ltd., Regal Investment and Trading Company Pvt. Ltd. and Napean Trading and Investment Company Pvt. Ltd.

24. In the PIL filed before the Delhi High Court, petitioner has prayed for a direction against the Ministry of Finance, Ministry of Corporate Affairs and Reserve Bank of India 14 to decide within four weeks that nature of actions required in law to be taken by them in respect of complaints dated November 1, 2016, March 14, 2017 and April 28, 2017. In paragraph No.14 of the said writ petition, petitioner has averred that the very same three Companies namely, Vidya Investment and Trading Company Pvt. Ltd., Regal Investment and Trading Company Pvt. Ltd. and Napean Trading and Investment Company Pvt. Ltd., were registered as non-Banking Finance Companies. In paragraph No.29 of the said writ petition, petitioner has averred that the said three Companies had given large sums of monies to a Private Trust.

25. It is important to note that petitioner's complaint dated March 14, 2017 upon which petitioner has relied is common in the PIL filed before the Delhi High Court and this writ petition.

26. In W.P. No.3635/2020 (India Awake for Transparency Vs. Union of India and others), the PIL filed in this Court, petitioner has sought directions against the respondents therein based on his representation/complaints dated January 30, 2020 and February 3, 2020. Though the dates of complaint is 15 different, the subject matter is again the same i.e., transactions involving three Companies namely Vidya Investment and Trading Company Pvt. Ltd., Regal Investment and Trading Company Pvt. Ltd. and Napean Trading and Investment Company Pvt. Ltd. (paragraph No.10 of the writ petition).

27. Thus, there remains no doubt that petitioner is indulging in forum shopping on the very same cause of action. As held in Udyami², this amounts to criminal

contempt as the core issue in all these writ petitions is one and the same.

28. In the result, this writ petition is not only devoid of merits, but an absolute abuse of process of law. Though petitioner was forewarned, he chose to argue this writ petition as a stand-alone petition wasting the valuable time of this Court to deal with such frivolous cases. Therefore, imposition of punitive cost is necessary.

29. In view of the above, the preliminary objection raised by Shri. S. Ganesh and Shri. C.V. Nagesh are sustained and this writ petition is dismissed with cost of Rs.10,00,000/- (Rupees 16 Ten lakhs) payable by petitioner to the Registrar General, High Court of Karnataka, Bengaluru within four weeks from today. Registry shall report compliance after expiry of four weeks.

30. In view of dismissal of this petition, I.A. No.1/2021 does not survive for consideration and the same is disposed of. Sd/- JUDGE SPS

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com