

P.B.SURESH KUMAR, J.

- W.P.(C) No.13112 of 2021

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Dated this the 11th day of August, 2021

ORDER

This writ petition is instituted by the Directorate of Enforcement established by the Central Government, challenging Ext.P1 notification issued by the State Government, in exercise of power under Section 3 of the Commissions of Inquiry Act, 1952 (the Act), in terms of which a Commission of Inquiry consisting of a former Judge of this Court has been appointed to inquire into the question whether the contents of a voice clip and a letter stated to have been issued by the accused persons in a gold smuggling case investigated by the various central agencies would reveal any conspiracy to falsely implicate the leaders of the political front of the State. The Terms of Reference, as mentioned in the notification read thus:

"1. To enquire into the facts stated in the voice clip, alleged to be that of Smt.Swapna Prabha Suresh, an under trial

prisoner housed in the Women's Prison, Thiruvananthapuram circulated first through the digital news platform "The Cue" and later through other visual, print and social media, revealing an attempt to falsely implicate the Honourable Chief Minister of the State of Kerala in serious criminal offences.

2. To enquire into the facts and circumstances leading to the letter dated 5th March, 2021, widely circulated in the media, written by Shri.Sandeep Nair, S/o.Harikesavan Nair, an under trial prisoner and an inmate of Central Prison, Thiruvananthapuram, addressed to the Sessions Judge, Ernakulam and forwarded through the Superintendent of the said Prison, revealing an attempt to falsely implicate the Honourable members of the Council of Ministers of the State of Kerala and the Honourable presiding dignitary of the Kerala Legislative Assembly in serious criminal cases.

3. To enquire as to whether the contents of the aforementioned voice clip and letter, as well as the circumstances leading to the same and the facts relating to the same, reveal any conspiracy to falsely implicate the leaders of the political front of the State in serious criminal offences.

4. If the enquiry of the Commission finds any such conspiracy, to identify the persons who have thus conspired and attempted to implicate the leaders of the political front of the State in serious criminal offences.

5. To enquire into any other facts incidental, ancillary or connected therewith as the commission deems fit and proper."

The Officers of Enforcement in the Directorate of Enforcement are investigating the case registered under the Prevention of Money-Laundering Act, 2002 (the PML Act) in connection with

the gold smuggling referred to in the notification. The Explanatory Note to the notification recites that the contents of the voice clip and letter issued by the accused persons in the case referred to in the Terms of Reference confirmed that the various central agencies conducting investigation in the case are diverting the investigation from its original purpose, for the purpose of falsely implicating the leaders of the political front in the State in serious criminal cases. The Explanatory Note to the notification reads thus:

Explanatory Note

(This does not form the part of the notification, but it is intended to indicate its general purport.)

"Various Central Agencies have been conducting investigation in the case of gold smuggling from July, 2020 onwards. But the investigations are diverted from the original purpose for which it has been ordered. This has been confirmed with the revealing of the accused Smt.Swapna Prabha Suresh and Sri. Sandeep Nair, in the gold smuggling case. Central Agencies like Customs, Enforcement Directorate etc. are falsely implicating the leaders of the political front of the State in serious criminal cases. These actions of the Central Agencies clearly shows the unprofessional approach in conducting investigation of cases. In order to examine the matter objectively and to submit a report in this respect, Government have decided

to appoint a Commissions of Inquiry under Commission of Inquiry Act, 1952.

The notification is intended to achieve the above object.”

2. Sri.Tushar Mehta, the learned Solicitor General of India appeared for the petitioner and submitted that the subject matter of the inquiry being one relatable to the Entries enumerated in List-I of the Seventh Schedule to the Constitution, the State Government is incompetent to order an inquiry into the same under Section 3 of the Act. It was also submitted by the learned Solicitor General that the subject matter of the inquiry being one relating to the investigation of offences by the designated agencies authorised and empowered to conduct the investigation, there cannot be any inquiry into the same by any authority other than the Court, under whose supervision the investigation is conducted. It was pointed out by the learned Solicitor General that two First Information Reports lodged earlier by the Crime Branch Wing of the State Police alleging criminal conspiracy against Officers of Enforcement in the Enforcement Directorate on the basis of

the contents of the voice clip and letter referred to in the notification have been quashed by this Court in terms of Ext.P2 judgment, holding that only the Special Court, under whose supervision the investigation of the case is conducted, is authorised and empowered to examine the correctness of the allegations in the First Information Reports. Placing reliance on the said judgment, the learned Solicitor General has contended that the inquiry ordered under the Act is wholly without jurisdiction. It was also submitted by the learned Solicitor General that inquiries of the instant nature would impede and derail the investigations conducted in respect of serious offences.

3. Sri.Gopalakrishna Kurup , the learned Advocate General who appeared for the State as also respondents 2 and

3 at the time of admission of the matter raised preliminary objections as to the *locus standi* of the petitioner to institute the writ petition and also as to the maintainability of the writ petition. The objection raised as to the *locus standi* of the petitioner is that the Enforcement Directorate is only a

Department of the Central Government, and a Department of the Central Government cannot file a writ petition, for it is not a juristic person which can sue or be sued. The learned Advocate General relied on the decision of the Apex Court in **Chief Conservator of Forests, Govt. of A.P. v. Collector and others**, (2003) 3 SCC 472, in support of the said contention. The objection raised by the learned Advocate General as regards the maintainability of the writ petition is that if it is a case where the Central Government is aggrieved by the impugned notification, only the remedy provided for under Article 131 of the Constitution could be invoked for redressal of the same.

4. Sri.K.M.Nataraj, Additional Solicitor General of India who appeared for the sixth respondent supported the arguments advanced by the learned Solicitor General of India.

5. It is seen that the Directorate of Enforcement is a statutory body established by the Central Government under Section 36 of the Foreign Exchange Management Act, 1999 in terms of a notification issued on 01.06.2000. Section

36 of the said Act reads thus:

“36. Directorate of Enforcement.—

(1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called Officers of Enforcement, for the purposes of this Act.

(2) Without prejudice to provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint Officers of Enforcement below the rank of an Assistant Director of Enforcement.

(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.”

The notification issued by the Central Government on 01.06.2000 reads thus:

**MINISTRY OF FINANCE
(Department of Revenue)**

NOTIFICATION

New Delhi, the 1st June, 2000

S.O.534(E)- In exercise of the powers conferred under sub-section (1) of Section 36 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby establishes a directorate called the Directorate of Enforcement with the following officers as “Officers of Enforcement” for the purposes of this Act, namely-

- (a) Director of Enforcement;
- (b) Special Director of Enforcement;
- (c) Additional Director of Enforcement;
- (d) Deputy Director of Enforcement;
- (e) Deputy Legal Adviser;
- (f) Assistant Director of Enforcement; and
- (g) Assistant Legal Adviser.

[Notification No.10/2000/F. No.1/2/2000-Ad. I-C]

Abhay Thirpathy, Dy.Secy. "

It is seen that it is by virtue of the various notifications issued by the Central Government in exercise of the powers under Section 49 of the PML Act that the Officers of Enforcement in the Directorate of Enforcement are exercising the powers of the authorities under the PML Act.

6. Insofar as the Directorate of Enforcement is a statutory body, the contention that it is only a Department of the Central Government is only to be rejected. The proposition that a statutory body is entitled to file a writ petition invoking Article 226 of the Constitution cannot be doubted. In other words, the Directorate of Enforcement is certainly entitled to institute a writ petition in its name.

7. That apart, in Chief Conservator of Forests

relied on by the learned Advocate General itself, it is clarified by the Apex Court that where an official of the Government acting as a statutory authority sues or pursues further proceedings in its name, it will not be a suit or proceedings for or on behalf of a State/Union of India, but by the statutory authority as such. The relevant paragraph in the said judgment reads thus:

"13. The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh — a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz. in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event,

it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.
(underline supplied)

As seen from the notification issued by the Central Government under Section 36 of the Foreign Exchange Management Act, Deputy Director of Enforcement in the Directorate of Enforcement is a statutory authority in terms of the provisions of the said Act. Section 48 of the PML Act which deals with the authorities under the said Act reads thus:

"48. Authorities under the Act.-There shall be the following classes of authorities for the purposes of this Act, namely:-

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) such other class of officers as may be appointed for the purposes of this Act."

As evident from the extracted provision, the Deputy Director is one of the statutory authorities under the PML Act. It is seen that in terms of a notification issued on 13.09.2005, Deputy Director of Enforcement in the Directorate of Enforcement has

been notified as Deputy Director for the purposes of PML Act.

The said notification reads thus:

MINISTRY OF FINANCE
(Department of Revenue)

ORDER

New Delhi, the 13th September, 2005

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S.O.1274(E)- In exercise of the powers conferred by sub-section (1) of Section 49 of the Prevention of Money-Laundering Act, 2002 (15 of 2003), the Central Government hereby appoints, with effect from the first day of July, 2005, the Deputy Director holding office immediately before the said date under the Foreign Exchange Management Act, 1999 (42 of 1999), as the Deputy Director for the purpose of the prevention of Money-Laundering Act, 2002.

[F.No.6/2/2005-
E.S.] ANUJA SARANGI,
DIRECTOR

In other words, Deputy Director of Enforcement is a statutory authority under the PML Act and in that capacity, he is certainly entitled to file a writ petition. As such, even assuming that the Directorate of Enforcement is not entitled to institute a writ petition in its name, it cannot be said that the Deputy Director of Enforcement has no *locus standi* to institute the writ petition. Of course, the Deputy Director of Enforcement is not

shown as the petitioner in the writ petition. Instead, the Directorate of Enforcement represented by the Deputy Director of Enforcement is shown as the petitioner in the writ petition. This is a trivial defect which can be rectified by amending the cause title. In matters of this nature, what is to be seen by the Court is the substance, not the form [see **Management of Borpukhurie Tea Estate v. Presiding Officer, Industrial Tribunal, Assam**, (1978) 2 SCC 667 and **Alappat Home Furniture Decors v. V.A. Ramesh Chandran**, 2017 (2) KHC 975].

8. Coming to the merits of the matter, as noted, the inquiry is ordered into the question whether the contents of a voice clip and a letter stated to have been issued by the accused persons in a gold smuggling case investigated by the various central agencies including Directorate of Enforcement in terms of the provisions of the PML Act would reveal any conspiracy to falsely implicate the leaders of the political front of the State. As held by this Court in Ext.P2 judgment, the question of conspiracy in a case of this nature is one to be

examined by the Special Court supervising the investigation. If parallel investigations and inquiries are conducted into questions of the said nature, I am of the *prima facie* view that the same would impede and derail the investigation and would ultimately go to the benefit of the accused, defeating the object of the legislation under which the accused are booked.

In the said view of the matter, I am inclined to admit the writ petition and pass an interim order as prayed for in the matter. Ordered accordingly. Notice to respondents 4 and 5 is dispensed with.

Sd/-

**P.B.SURESH KUMAR
JUDGE**

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