



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.56621 OF 2018 (GM-FE)

BETWEEN:

M/S. ANNESTY INTERNATIONAL INDIA PRIVATE LIMITED
A COMPANY REGISTERED UNDER THE
COMPANIES ACT, 1956
WITH REGISTERED OFFICE AT
NO.235, 13TH CROSS,
INDIRANAGAR II STAGE,
BANGALORE - 560 038
INDIA.

REP. BY MR. RAJ KISHOR KAPIL
COO.

... PETITIONER

(BY SRI PROF. RAVIVARMA KUMAR, SENIOR ADVOCATE A/W
SRI JAGADEESHA B.N., ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY MINISTRY OF FINANCE
NORTH BLOCK, CABINET SECRETARIAT,
RAISINA HILL, NEW DELHI - 110 001.
REPRESENTED BY ITS SECRETARY.

2. DIRECTORATE OF ENFORCEMENT,
BENGALURU ZONAL OFFICE,
3RD FLOOR, B BLOCK,
BMTCL, SHANTHINAGAR - TTMC
KH ROAD, SHANTHINAGAR,
BANGALORE - 560 027.
REPRESENTED BY
THE JOINT DIRECTOR.

... RESPONDENTS

(BY SRI H. JAYAKARA SHETTY, SENIOR CGS FOR R-2)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE THAT THE SECTION 37 OF FEMA R/W SECTION 132(1) (C) OF THE INCOME TAX ACT 1961 IS ULTRA-VIRUS OF ARTICLE 14, 19(1)(g) AND 21 OF THE CONSTITUTION OF INDIA; DECLARE THAT THE SEARCH AND SEIZURE CONDUCTED BY RESPONDENT NO.2 DATED 25.10.2018 IS INVALID, ILLEGAL AND ULTRA VIRES THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 AND ISSUE CONSEQUENTIAL RELIEF AS THE HON'BLE COURT MAY PLEASE AND ETC.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner in this writ petition is seeking the following prayers:

- (i) to declare that Section 37 of FEMA read with Section 132(1)(C) of the Income-tax Act, 1961 is ultra vires of Articles 14, 19(1)(g) and 21 of the Constitution of India;
- (ii) to declare that the search and seizure conducted by respondent No.2 dated 25/10/2018 is invalid, illegal and ultra vires the Foreign Exchange Management Act, 1999 and for issuance of consequential relief and
- (iii) to quash the direction dated 25/10/2018 File No.T-3/BGZO/103/2018 (Annexures-F1 & F2) issued by respondent No.2 to Kotak Mahindra



Bank, HDFC Bank or any other bank(s) to whom the respondent has issued orders stopping the operation of petitioner's bank account.

2. Brief facts of the case are that:

The petitioner is a registered company having registered under the Companies Act, 1956 as "Social Sector Research Consultancy & Support Services (India) Private Limited" and renamed as "Amnesty International (India) Private Limited", engaged in the business of rendering, *inter alia*, research (primary and secondary) and consultancy services regarding human rights. It is stated that on 25/10/2018 without any notice to the petitioner, search and seizure was conducted in the premises of the petitioner. It is stated that during the said search and seizure, several documents pertaining to the financial records, various agreements and during the search, cell phones were scrutinized and confiscated from the employees of the petitioner-company by the officials of the 2nd respondent. The 2nd respondent also issued a direction to the petitioner's



bank and asked to stop the operation in the accounts held by the petitioner.

3. Pursuant to which, the bank accounts of the petitioner in HDFC Bank and Kotak Mahindra Bank were frozen by a "Government Order" without any notice to the petitioner by the 2nd respondent. It is stated that the actions taken up by the 2nd respondent issuing directions to the HDFC Bank and Kotak Mahindra Bank to stop the operation of the petitioner's bank account is in violation of Section 132 of Income Tax Act, 1961.

4. Aggrieved by the action of the 2nd respondent and issuance of directions dated 25/10/2018 at Annexures-F1 and F2, the present writ petition is preferred.

5. Heard learned senior counsel, Prof. Ravivarma Kumar appearing along with Sri Jagadeesha B.N. learned counsel for the petitioner and Sri H. Jayakara Shetty, learned Senior Central Government Standing Counsel for respondents.



6. Learned senior counsel for the petitioner would submit that the controversy involved in this petition is squarely covered by the orders of this Court in ***W.P.No.47822/2018 disposed on 14/02/2019 in the case of Greenpeace India Society vs. Union of India and others [Greenpeace India Society]***, wherein the Co-ordinate Bench of this Court placing reliance on the following judgments quashed the impugned order:

- (a) Shri B.K.Nowlakra & others vs. Union of India & ORS., [1991 SCC ONLINE DEL 456];***
- (b) Windson Electronics Pvt. Ltd. & anr. vs. Union of India & ors. [2004 SCC ONLINE CAL 802] and***
- (c) Mr.Darryl Bruce Thorpe & anr. vs. Union of India & ors. [2015 SCC ONLINE BOM 2062].***

4. Learned senior counsel for the petitioner would also submit that against the said order, a writ appeal came to be filed by the Union of India in W.A.No.1090/2019 and the Division Bench of this Court, disposed of the writ appeal on 12/02/2020 confirming the order of the learned Single Judge.



5. Learned Senior Central Government Standing Counsel appearing for the respondent would fairly submit that no appeal has been preferred against the order passed in W.A.No.1090/2019 by the Union of India as on today and the order in writ appeal has attained finality. Learned CGSC would also submit that this judgment would be applicable only to the present petition and it cannot be a precedent to be applied in all the matters.

6. The said submission is taken on record.

7. In light of the order in **Greenpeace India Society** stated supra, confirmed in the **Writ Appeal No.1090/2019** the questions involved therein is no more *res integra*. The learned senior counsel for the petitioner has taken this Court to the provisions of limitation clause under the provisions of Sections 132(iii)(3) and (8)A of the Income Tax Act, 1961 and the same reads as under:

"132. xxx xxx xxx

(iii) seize any such books of account, other documents, money, bullion, jewellery or other



valuable article or thing found as a result of such search:

Provided *that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorized officer shall make a note or inventory of such stock-in-trade of the business;”*

xxx xxx xxx

(3) The authorized officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section(1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

xxx xxx xxx

(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.”

(emphasis supplied)

8. On perusal of the provisions of Section 132(8A) of the Act, it is evident that order under Sub-Section (3) of Section 132 of the Income Tax Act would not be in force



beyond sixty days from the date of the order. In light of the provisions of Section 132 (8A), the impugned notices dated 25/10/2018 at Annexures-F1 and F2 have lost their efficacy by efflux of time as the period of sixty days has expired.

9. Accordingly, the impugned order at Annexures-F1 and F2 are not sustainable.

10. For the reasons stated supra, this Court pass the following:

ORDER

- (i) The writ petition is ***allowed***.
- (ii) The impugned notices dated 25/10/2018 in File No.T-3/BGZO/103/2018 at Annexures-F1 and F2 are hereby ***quashed***.
- (iv) All the contentions are left open to be urged before the appropriate authority in accordance with law.

No order as to costs.

**Sd/-
JUDGE**

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