

THE SPECIAL DIRECTOR AND ANR.
v.
MOHD. GHULAM GHOUSE AND ANR.

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JANUARY 9, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Constitution of India, 1950—Article 226—Writ petition—Show cause notice Challenged—Petition entertained by High Court and interim relief granted restraining the proceedings—On appeal, held: Petition against show cause notice should not be entertained as a matter of routine, unless Court is satisfied that the notice was totally non-est for absolute want of jurisdiction of authority to even investigate into the facts—While granting interim order, Court should be cautious of not denuding the statutory functionaries of their powers and to ensure that in the interim order ultimate relief is not granted—Foreign Exchange Regulation Act, 1973—Foreign Exchange Management Act, 1999.

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Respondent No.1 filed writ petition before High Court questioning legality of show cause notice issued by appellant No.1, praying for quashing the same. Prayer for interim injunction restraining the appellants from initiating any proceedings pursuant to show cause notice was also made. High Court issued 'Rule' and ordered for 'status quo' without giving any reason.

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In appeal to this Court, appellant contended that the writ petition was misconceived as it challenged show cause notice; and that High Court, by granting interim relief has in effect allowed the writ petition even before it was heard on merits.

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Allowing the appeal, the Court

HELD: 1. Unless High Court is satisfied that the show cause notice was totally non-est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petition should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause

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A notice was founded on any premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. [402-B-D]

B 2.1. When the Court passes an interim order, it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted. [402-D]

C 2.2. In the instant case, High Court has not indicated any reason while giving interim protection. Though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which has weighed with it in granting such an extra ordinary relief in the form of an interim protection. [402-E]

[The Court directed that the protection emanating from the show cause notice shall be continued, but the final order passed pursuant thereto shall not be communicated to respondent No.1, without leave or further orders of the High Court.]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 35 of 2004.

From the Judgment and Order dated 11.9.2002 of the Bombay High Court in W.P. No. 1065 of 2002.

F A.L. Panda, Ms. Neelam Sharma for B. Krishna Prasad for the Appellants.

V.R. Reddy, Rajindra Singhvi for Ashok Kumar Singh for the Respondents.

G The Judgment of the Court was delivered by.

ARIJIT PASAYAT, J. Leave granted.

H The interim order passed by a Division Bench of the Bombay High Court is under challenge by the Union of India and the Special Director,

Enforcement Directorate, Ministry of Finance, Govt. of India. Respondent A
 No.1 filed a writ petition before the Bombay High Court questioning legality
 of the show cause notice no.T-4/144/SDE/(AKB)/B/2002 dated 31st May,
 2002 issued by the appellant No.1 and prayed that the same may be quashed
 and set aside, for allegedly being illegal, null and void. A prayer for interim
 relief was made to the effect that pending hearing and final disposal of the B
 writ petition, the Court be pleased to pass an order of injunction restraining
 the respondents i.e. present appellants before this Court and the State of
 Maharashtra (respondent No.3 in the present appeal) and/or his subordinates
 or any other officer acting on his behalf from initiating any proceeding pursuant
 to the show cause notice referred to above, as issued by the present appellants.
 The High Court passed the following order on 11.9.2002: C

“Rule. Status quo”.

According to the appellants the writ petition is thoroughly misconceived
 as it challenges a show cause notice and in any event the final relief as sought
 for by respondent No.1-writ petitioner in relation to the show cause notice D
 should not have been granted by an interim order of the nature passed by
 withholding any further action in this regard . It was pointed out that respondent
 No.1 is responsible for financial irregularities involving nearly Rupees 270
 crores and documents have been forged, accounts have been manipulated; E
 and in any event respondent No.1 was free to canvass all the points that were
 taken in the writ petition before the authority issuing the notice. Instead of
 doing that he rushed to the High Court and unfortunately the High Court not
 only entertained the writ application but also granted interim relief which
 was in effect allowing the writ petition even before it was heard on merits.
 The final relief sought for itself, in substance, was granted by the interim F
 order. There was clear violation of the provisions of Foreign Exchange
 Regulation Act, 1973 (in short the ‘FERA’) and Foreign Exchange
 Management Act, 1999 (in short the ‘FEMA’). The Enforcement Directorate
 has clearly indicated in the notice the various infractions which led to such
 large scale illegal transactions of more than Rupees 270 crores. Respondent
 No.1 (writ petitioner) was clearly guilty of various provisions of FERA and G
 FEMA. The High Court should have thrown out the writ petition at the
 threshold.

Per contra, learned counsel for respondent No.1 submitted that the
 show cause notice is clearly unfounded in law, cannot stand the test of legal H

A scrutiny and the High Court was justified not only in entertaining writ petition but also in granting the interim protection.

This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection, not granted.

E In the instant case, the High Court has not indicated any reason while giving interim protection. Though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which has weighed with it in granting such an extra ordinary relief in the form of an interim protection. This admittedly has not been done in the case at hand.

While issuing notice on 7.7.2003, this Court had granted interim stay of the impugned interim order. The respondent had entered appearance and we have heard the learned senior counsel on either side. In the fitness of things, taking into account the above circumstances, we dispose of the appeal with a direction that the proceedings emanating from the show cause notice shall be continued, but the final order passed pursuant thereto shall not be communicated to the respondent No.1 (writ petitioner) without leave or further orders of the High Court. The writ petition shall be disposed of on merits in accordance with law. Any observation made in this appeal shall not be

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construed to be expression of any opinion on the merits of the matter pending before the High Court. Since the controversy is of a very limited as well as serious nature, the High Court may explore the possibility of early disposal of the writ petition. The appeal is allowed to the extent indicated with no order as to costs. A

K.K.T.

Appeal allowed.