



WA NO. 1532 OF 2021

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2025:KER:71930

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 26TH DAY OF SEPTEMBER 2025 / 4TH ASWINA, 1947

WA NO. 1532 OF 2021

AGAINST THE ORDER DATED 11.08.2021 IN WP(C) NO.13112 OF 2021 OF THE HIGH
COURT OF KERALA

APPELLANT/S:

- 1 STATE OF KERALA, THROUGH CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
- 2 DEPARTMENT OF HOME,
REPRESENTED BY ADDITIONAL CHIEF SECRETARY, ROOM NO. 357(A) & 358,
GROUND FLOOR, MAIN BLOCK, SECRETARIAT, THIRUVANANTHAPURAM, CITY-
695 001.
- 3 DEPARTMENT OF GENERAL ADMINISTRATION,
STATE OF KERALA, THROUGH ITS PRINCIPAL SECRETARY, ROOM NO. 394, 1ST
FLOOR MAIN BLOCK, SECRETARIAT, THIRUVANANTHAPURAM CITY 695 001.

BY ADVS.
ADVOCATE GENERAL
SHRI.V.MANU, SENIOR G.P.
SHRI.T.B.HOOD, SPL.G.P. TO A.G.
GOVERNMENT PLEADER
SHRI.V.MANU, SPL.G.P. TO A.G.

RESPONDENT/S:

- 1 ENFORCEMENT DIRECTORATE,
THROUGH THE DEPUTY DIRECTOR OF ENFORCEMENT COCHIN ZONAL OFFICE,



WA NO. 1532 OF 2021

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AK SESHADRI ROAD, COCHIN 682 011.

2 UNION OF INDIA.
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF
REVENUE, 128-A/ NORTH BLOCK, NEW DELHI 110001.

BY ADVS.
O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA
SHRI.SUVIN R.MENON, SENIOR PANEL COUNSEL
GOVERNMENT PLEADER
SHRI.JAISHANKAR V.NAIR, SC, ENFORCEMENT DIRECTORATE

THIS WRIT APPEAL HAVING RESERVED ON 06.08.2025, THE COURT ON 26.09.2025, THE
SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Sushrut Arvind Dharmadhikari, J.

The present intra-Court Appeal under Section 5 of the Kerala High Court Act 1958 assails the interim order dated 11.08.2021 passed in W.P.(C) No.13112/2021, filed by the Directorate of Enforcement established by the Central Government challenging Ext.P1 notification issued by the State Government, in exercise of the powers under Section 3 of the Commissions of Inquiry Act, 1952 (for short 'Act of 1952'), whereby the learned Single Judge held that the writ petition is maintainable at the behest of the Directorate of Enforcement and has also stayed the Ext.P1 notification.

2. The appellants herein are the respondent nos.1 to 3, and the respondents are the writ petitioner and the 6th respondent in the writ petition, respectively.

3. The prayer clause of the writ petition filed by the Enforcement Directorate, through the Deputy Director of Enforcement, Cochin Zonal Office, is as follows:



- “a) Pass a writ of mandamus or any other appropriate writ, order or direction calling for the entire records/original file including all the material/documents/correspondences forming part of the said original file which resulted into the publication of the Notification dated 7.05.2021 bearing No. Home- SSA2/67/2021-HOME issued by Respondent No 2 under the provisions of Commission of Inquiry Act, 1952 and after perusing the same pass a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the same for being wholly without jurisdiction and contrary to law;
- b) In the alternative and without prejudice to the prayer (a) above, declare that appropriate government to initiate any inquiry into the facts and material stated in Notification dated 7.05.2021 bearing No. Home- SSA2/67/2021-HOME under the provision of Commission of Inquiry Act 1952, would be the Central Government;
- c) Grant such further reliefs as this Hon't necessary to meet the ends of justice;
- d) Allow the writ petition with costs.”

3.1 The interim prayer sought for by the writ petitioner in the writ petition pending disposal of the same is as follows:

“For the reasons stated in the above writ petition and in the accompanying affidavit, it is most respectfully prayed that pending consideration and final adjudication of the present petition, this Hon'ble Court may be pleased to stay the operation, implementation of Notification dated 7.05.2021 bearing No. Home- SSA2/67/2021-HOME and



restrain the 5th respondent Commission to exercise any power or to take any action in exercise of the said powers conferred upon it under the provisions of Commission of Inquiry Act, 1952.”

4. The brief facts of the case are that Ext.P1 notification issued by the appellant herein constitutes a Commission of Inquiry to investigate into: (i) an audio clip attributed to accused Swapna Suresh, and (ii) a letter by accused Sandeep Nair, both relating to the gold smuggling case, alleging coercion of officers of the Enforcement Directorate to implicate political leaders of the State. The Enforcement Directorate/respondent herein has challenged Ext.P1 notification, contending that the constitution of the Commission is *ultra vires* the provisions of the Act of 1952 since the subject matter pertained to investigations under the Prevention of Money Laundering Act, 2002, (PMLA 2002) and Unlawful Activities (Prevention) Act, 1967, (UAPA 1967). Both are central legislation, and the subject matter of the inquiry is one related to the entries enumerated in List-1 of the Seventh Schedule to the Constitution. Hence, the State Government/the appellant is incompetent to order an inquiry into the same under Section 3 of the Act of 1952.



5. After hearing both parties, the learned Single Judge held that the Enforcement Directorate has *locus* to file the writ petition and also granted an interim stay of Ext.P1 notification. Being aggrieved, the appellant/State of Kerala has filed the present writ appeal.

6. Mr K. Gopalakrishna Kurup, learned Advocate General, appearing for the appellants, contended that the learned Single Judge erred in overlooking the fact that the Enforcement Directorate is not a juristic person or a body corporate entitled to or liable to be sued in its name, thereby maintaining such a writ petition. The learned Single Judge also overlooked the fact that no Statute conferred any authority on the Enforcement Directorate to be treated as a body corporate, entitled to sue and liable to be sued under its name.

6.1 Further, it is contended that the Enforcement Directorate is only a department of the Central Government and, as such, it cannot file a writ petition. The learned Advocate General relied on the decision of the Apex Court in the case of *Chief Conservator of Forests, Govt. of A.P. v. The Collector and others* [(2003) 3 SCC 472] in support of the said



contention. The objection of the learned Advocate General as regards the maintainability of the writ petition is that if the Central Government is aggrieved by the impugned notification, the only remedy available is under Article 131 of the Constitution of India for redressal of the same. The order passed by the learned Single Judge deserves to be set aside, and it be held that the writ petition filed by the Enforcement Directorate is not maintainable.

7. *Per contra*, the learned Counsel appearing for the respondents vehemently opposed the prayer and submitted that so far as the maintainability of the writ petition is concerned, the arguments of the learned Advocate General are misplaced. In the present case, the Enforcement Directorate owes its existence to Section 36 of the Foreign Exchange Management Act, 1999, which established the Enforcement Directorate. Further, under Section 48 of the Prevention of Money Laundering Act, 2002, the Deputy Director is notified as a statutory authority, *vide* Central Notification dated 13.09.2005.

7.1 The writ petition has been filed in the name of “*Directorate of*



*Enforcement represented by the Deputy Director”, which was in substance by a statutory authority empowered under the law. The objection raised reduces to a matter of description and not competence. In **Bhagat Ram v. State of Himachal Pradesh [(1972) 2 SCC 466]**, in paragraph 7, the Supreme Court emphasized that in matters of procedural defects, 'Rules of procedure are intended to sub-serve the cause of justice and not to trip parties on technicalities. Where the substance of the matter is clear, trivial errors in description or form should not result in dismissal'.*

7.2 Likewise, in **Kailash Chandra Agrawal v. State of Madhya Pradesh [(1987) 3 SCC 513]**, in paragraph 11, it was reiterated that substance prevails over form, and technical mis-description should not defeat substantive rights.

8. Applying these principles, the Enforcement Directorate, acting through its Deputy Director, has the *locus* to maintain the writ petition. Therefore, the learned Single Judge did not commit any error in rejecting the hyper-technical plea of the State. Since the issue involves a deeper investigation as to whether the appellant herein is the



“*appropriate government*” to constitute a Commission when the subject falls under List-1 (Union) or List-II/III (State/Concurrent), the learned Single Judge rightly stayed the operation of Ext.P1 notification, during the pendency of the writ petition.

8.1 The impugned notification seeks to inquire into allegations connected with the investigation under PMLA 2002 and UAPA 1967, which are both central legislation traceable exclusively to List-1 (Entries 93, 10, 14, etc). The substance of the inquiry was whether central investigating officers coerced the accused to implicate political leaders. The State Government cannot, under the guise of “*public importance*”, trench upon a matter exclusively within the Union List. The *doctrine of pith and substance* requires the Court to examine the true nature of the inquiry, which, in this case, is integrally bound to central investigations pending before the special investigating Courts.

9. The Act of 1952, is a legislation intended only to provide a machinery for fact-finding on definite matters of public importance. Section 3 of the Act of 1952 empowers the “*appropriate Government*” to



appoint a Commission if it is of the opinion that such inquiry is necessary in the public interest, and Section 2(a) of the Act of 1952 makes a clear constitutional distinction: *where the subject is relatable to the Union List, the Central Government alone is competent; where it falls within the State or Concurrent List, the State Government may act.* The powers of a Commission under Section 4 of the Act of 1952 are those of a civil court in respect of summoning witnesses, compelling production of documents, requisitioning public records and receiving evidence. Section 5 of the Act of 1952 further authorises the Government to confer additional powers and to deem the proceedings to be judicial for limited penal purposes. The ambit of the Act of 1952 is thus confined to the collection of facts and making of recommendations; its report is advisory and has no binding or adjudicatory effect.

9.1 As explained by the Supreme Court in ***Ram Krishna Dalmia v. Justice Tendolkar*** [AIR 1958 SC 538], and ***State of Karnataka v. Union of India*** [(1977) 4 SCC 608], a Commission cannot determine civil or criminal liability nor supplant regular judicial or investigative



processes. Courts have consistently held that while the Act has a broad investigative scope, its exercise cannot trench upon matters exclusively within the Union List, nor can it run parallel to or obstruct pending criminal proceedings under the Code of Criminal Procedure or special Statutes. The Statute is, in essence, a tool for governance to ascertain facts in the larger public interest, not an instrument to adjudicate rights or interfere with ongoing prosecutions. At this juncture, no interference to the interim order passed by the learned Single Judge is called for and the writ appeal is bereft of merit.

10. Heard Mr K. Gopalakrishna Kurup, learned Advocate General and Mr V Manu, learned Special Government Pleader to the Advocate General, for the appellants, and Mr A.R.L. Sundaresan, learned Additional Solicitor General of India, and Mr Jaishankar V. Nair, learned Central Government Counsel, for the respondents.

11. It is a settled legal position that writ appeals against an interim order are not maintainable. Writ Appeals would be maintainable only under certain circumstances where the interim relief granted is in the



nature of a final order affecting the rights of the parties. In the present case, taking into consideration the controversy involved, the learned Single Judge concluded that the writ petition is maintainable and, with a view to avoiding creation of complications in the matter, has stayed the operation of the notification in Ext.P1.

11.1 The objection as to the *locus standi* raised by the appellants is without any substance inasmuch as the Directorate of Enforcement is a statutory body constituted under Section 36 of the FEMA 1999, and its officers are designated as statutory authorities under Sections 48 and 49 of the PMLA 2002. The learned Single Judge was right in coming to the conclusion that the writ petition filed through the Deputy Director is, thus, maintainable. The argument of non-juristic personality is a matter of form and not substance, and therefore, it cannot defeat the statutory right of recourse under Article 226 of the Constitution of India.

12. No fault can be found with the findings of the learned Single Judge so far as the maintainability of the writ petition is concerned. As far as the legislative competence of the State Government in issuing



Ext.P1 notification is concerned, the same shall be decided by the learned Single Judge when the writ petition is finally heard. We do not wish to address the question of competence, as only the interim order is challenged in this writ appeal.

12.1 So far as staying Ext.P1 is concerned, the learned Single Judge took into consideration the fact that, in the light of Ext.P1 notification, continuation of the Commission would run parallel to and interfere with criminal investigations and prosecutions pending before the Special Court under Section 44 of the PMLA 2002, and permitting the Commission at this stage to inquire into such matters would prejudice the accused, derail the course of justice, and is impermissible under the settled law that a Commission of Inquiry is only a fact-finding body without adjudicatory powers.

13. In view of the aforesaid, we are of the considered view that the learned Single Judge has not committed any error in entertaining the writ petition as well as staying Ext.P1 notification.

The Writ Appeal, being bereft of merit and substance, is hereby



dismissed. The interim order dated 11.08.2021 passed by the learned Single Judge in W.P.(C) No.13112/2021 is affirmed. However, it is made clear that any of the discussions/observations made by this Court herein-above would not come in the way of the learned Single Judge in deciding the writ petition on its own merits.

Sd/-

SUSHRUT ARVIND DHARMADHIKARI

JUDGE

Sd/-

SYAM KUMAR V.M.

JUDGE