

Ashwini V

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 15474 OF 2022

Ali Mohammed Balwa ...Petitioner  
*Versus*  
Directorate of Enforcement (Prevention of ...Respondent  
Money Laundering Act)

WITH  
WRIT PETITION NO. 15664 OF 2022

Salim Usman Balwa ...Petitioner  
*Versus*  
Directorate of Enforcement ...Respondent

WITH  
WRIT PETITION NO. 15652 OF 2022

Hotel Balwas Pvt Ltd ...Petitioner  
*Versus*  
Directorate of Enforcement ...Respondent

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**Mr Vijay Aggarwal, a/w Mudit Jain, Yash Agrawal, Jasmin Purani,**  
*Yash Agrawal and Jasmin Puravi i/b Rahul Aggarwal for the*  
*Petitioner in WP No.15474 of 2022 and WP No. 15652 of 2022.*  
**Mr Chetan Kapadia, a/w Mudit Jain, Rahul Aggarwal and Jasmin**  
*Puravi for the Petitioner in WP No.15664 of 2022.*  
**Mr HS Venegavkar, a/w Aayush Kedia for the Respondent in all WP.**  
**Mr Rajiv Sharma a/w Kuldeep Singh ED Officer in all WP.**

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**CORAM G.S. Patel &  
Dr Neela Gokhale, JJ.**  
**DATED: 3rd February 2023**

**PC:-**

1. The three petitions have taken an unconscionable amount of this Court's time, although it was clear from the moment the matters were called that, at the very least, the Petitioners ought to have considered amending the Petition to include a challenge to the order dated 30th January 2023 passed under Section 8 of the Prevention of Money Laundering Act, 2002 ("**the PMLA Act**"; "**the Act**"). Mr Venegavkar for Respondent authority pointed out at the very beginning that such an order had been passed. Mr Aggarwal for the Petitioner in Writ Petition No 15474 of 2022 said that though he knew the order had been passed, it had not yet been served. We specifically asked whether the Petitioners wanted time to include an amendment. We were permitted to grant leave to amend immediately even without a draft amendment, let alone a formal interim application for amendment. Presumably on instructions, Mr Aggarwal said that he wished to press his petition without even considering the position and whether an amendment was necessary. He then proceeded to address us for over an hour. It then turns out that every point that was sought to be urged before us under Article 226 of the Constitution of India in relation to Section 17 of the Act and other sections, including citing of authorities, was already previously canvassed before the adjudicating authority. These submissions are noted at page 31 of the 30th January 2023 order,

from paragraph 6 onwards. This is captioned as the “gist of the reply”. That summation goes on for a good six pages.

2. We repeatedly asked Mr Aggarwal whether it was his case that no reasons at all were recorded as required by Section 17(1) or whether we were being asked to examine the sufficiency of those reasons. At one point, we were told — admittedly without seeing the Section 17 order — that there were no reasons at all. Surprised by so emphatic an assertion, we asked Mr Venegavkar to show us the file. He had it brought to court over the lunch recess and showed it to us. We find that there are indeed reasons. We make no comment on those reasons.

3. In the meantime, Mr Aggarwal sought to proceed, sight unseen, on the basis that even if there were reasons these ‘had to be insufficient’, because, on his exposition of the merits of the case, there could not possibly have been adequate reasons. In other words, Mr Aggarwal’s canvass was that the reasons were bound to be insufficient. This argument was advanced without even demanding a copy of the Section 17(1) reasons (and we leave open the question of whether the Petitioners are even entitled to that, which Mr Venegavkar refutes) or even seeing the subsequent Section 8 adjudication order on the question of the seizure. Even that order, apart from noting the arguments of the respondents before the officer, notes that there were reasons recorded as required by Section 17(1).

4. Various authorities were also shown to us for the proposition that a writ court is not denuded of its powers to intervene in an appropriate case and that the existence of an alternate remedy is not always a bar.<sup>1</sup> This principle is well settled and does not require constant reiteration. But the question is whether we are being asked to judicially review the decision-making process or the merits of a decision. When a petitioner invokes our writ jurisdiction under Article 226 of the Constitution of India, we are engaged in a judicial review of administrative or quasi-judicial action. Typically, we do not look typically at the merits of the decision itself. If there are no reasons at all, or if those reasons have no nexus with the action, or if this can be shown on cogent material perhaps, arguably, other considerations may arise. But this is not to be taken for granted or assumed, and to embark on this, the Petitioner must at the very least have the material to be able to show to the Court. There is no room for speculation here. The argument that has taken over an hour and half is premised entirely on conjecture and surmise: first, that there were no reasons recorded at all (factually incorrect); and that whatever be the reasons recorded, they could not have been sufficient or adequately connected to the action (without seeing the material). The entire argument is constructed on the basis that the facts according to the Petitioner fall in certain manner and no other view is ever possible; there can be no reasons, and the reasons, if any, are allegedly legally vulnerable.

5. It is only now, at this late stage, when we indicated that we are not impressed by these arguments, and are inclined to reject the

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<sup>1</sup> *Maharashtra State Board of Wakfs v Sk Yusuf Bhai Chamla*, 2022 SCC OnLine SC 1653

Petitions, that both Mr Aggarwal and Mr Kapadia for the Petitioners in one of the companion matters, seek leave to amend. Mr Aggarwal now states that he proposes to include a prayer for disclosure of the Section 17(1) reasons. Mr Kapadia, perhaps more sagely, says that he intends to challenge the impugned Section 8 adjudication order of 30th January 2023.

6. So be it. We grant leave to amend. We are, as we said, not asking for a draft amendment or an interim application. That will only waste time. But we will require these amendments to be effected with a proper re-verification of the Petition, and that re-verification is to be done before an officer of this court, not a notary public. Amendments are to be carried out by 17th February 2023.

7. There remains this question of costs. Mr Venegavkar leaves this to the Court, correctly pointing out that this is a matter between the Petitioners and the court, though he does mention the amount of money alleged to be involved in this money laundering. We are not concerned with that amount. But we do believe that when we have as long a daily list as we do and others are waiting patiently with cases that range from service to pensions and to non-payment of transit rent and delayed possession in re-development cases, to consume the time of this Court is both unfair and unconscionable. It is not just a matter of ‘wasting the Court’s time’. It is the consumption of that time at the cost of other litigants, many of them in extremely dire straits, some very needy and in abject conditions. Matters are worsened when, at the outset, before even arguments began, not only did Mr Venegavkar for the Respondent in complete

fairness point out the possible need for an amendment, but we too, asked Mr Aggarwal if he wanted to amend. The answer was clearly no. Instead, this request for an amendment came only after more than an hour of persistent argumentation.

8. Therefore, while we grant leave to amend as noted above, we do so subject to the Petitioners paying costs of Rs. 1 lakh. Mr Venegavkar says the costs may be routed to an appropriate worthy cause. We appreciate that submission. The amount of Rs. 1 lakh in each of the Petitions is to be paid by 17th February 2023 to St Jude ChildCare Centres, a voluntary organisation that supports cancer-affected children and their families. The remittance details are as follows:

<b>Name</b>	St. Jude India ChildCare Centres
<b>A/c No.</b>	02402320004130
<b>Bank Name</b>	HDFC Bank Ltd.
<b>Branch</b>	Sandoz House, Dr AB Road, Worli, Mumbai 400 018
<b>RTGS/IFSC/NEFT Code</b>	HDFC0000240

9. Proof of payment of costs is required before the Registry permits the amendments to be carried out.

10. The amended petition will be served on Mr Venegavkar's attorneys by 22nd February 2023.

11. List the Petition for directions on 24th February 2023.

12. We make it clear that it is not necessary for Mr Venegavkar to file an Affidavit-in-Reply. We leave it to him to decide whether he wishes to proceed without an Affidavit-in-Reply. in any case we will endeavour to dispose of all three petitions finally on that date.

13. As regards the amendments, all contentions are kept open on both sides.

**(Dr Neela Gokhale, J)**

**(G. S. Patel, J)**