

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE P.B. BAJANTHRI

CRIMINAL PETITION NO.5457 OF 2019

BETWEEN:

SRI.VIJAY TATA
SON OF RAVIPATI
SATHYANARAYANA MURTHY
AGED ABOUT 53 YEARS
RESIDING NO. 1002, D BLOCK
GANESHA TEMPLE ROAD
MINISTRY OF COMMUNICATION
EMPLOYEES CO-O, SAHAKARANAGAR
BENGALURU NORTH
BENGALURU-560 092
REP. BY HIS
SPECIAL POWER OF ATTORNEY HOLDER
MR.DASTAGIR SHARIFF
S/O.NUNULLA SHARIFF
NO.482, HMT LAYOUT
OPP. BMTC BUS DEPOT
R.T.NAGAR, BANGALORE-560 032

... PETITIONER

(BY SRI.ASHWIN VAISH, FOR
SRI.GAUTHAM S.BHARADWAJ, ADV.)

AND:

OFFICIAL LIQUIDATOR
M/S.CENTURY GAS AND
PETROCHEMICALS LTD.,
4TH FLOOR, D AND F WING
KENDRIYA SADAN, KORAMANGALA
BANGALORE-560 034
REP. BY SRI.ARVIND SHUKLA

... RESPONDENT

(BY SRI.SHRISHAIL NAVALGUND, ADV.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PLEASED TO A. ISSUE AN APPROPRIATE DIRECTION QUASHING THE ORDER DATED: 22.04.2019 PASSED IN CRL.RP.NO.616/2018 BY THE LXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU PRODUCED AS ANNEXURE-A AND B. ISSUE AN APPROPRIATED DIRECTION QUASHING THE ORDERS DATED: 23.07.2018 AND 18.08.2018 PASSED BY THE SPECIAL COURT (ECONOMIC OFFENCES), BENGALURU IN C.C.NO.112/2018 PRODUCED AS ANNEXURE-B AND C RESPECTIVELY.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In the instant petition petitioner has prayed for the following reliefs:

- A) Set aside the order dated 22.4.2019 passed in Crl. R.P. 616/2018 by the LXV Additional City Civil and Sessions Judge, Bengaluru produced as Annexure-A.
- B) Set aside the orders dated 23.07.2018 and 18.08.2018 passed by the Special Court (Economic Offences), Bangalore in C.C. No.112 of 2018 produced as Annexure B and C respectively.

2. Perusal of the records, it is evident that Official Liquidator is stated to have drawn notice on 21.6.2002 or 12.7.2004 asking the petitioner to furnish certain records pertaining to company called M/s. Century Gas and Petrochemicals Ltd., in liquidation. Undisputedly, service of notice dated 21.6.2002 or 12.7.2004 was incomplete on the petitioner. Official Liquidator filed P.C.R. No.117/2007 against the petitioner. The petitioner feeling aggrieved by the proceedings in CrI.R.P. No.616/2018 arising out of C.C. No.112/2018 r/w orders dated 23.07.2018 and 18.8.2018 passed by the Special Court (Economic offences), Bengaluru presented this petition.

3. Learned counsel for the petitioner vehemently contended that service of notice raised under Section 538 (1)(c) of the Companies Act (for short 'the Act'), 1956 is incomplete and it is not disputed. Unless and until notice and proceedings laid down under Section 538 (1) (c) of the Act, 1956 is completed further proceedings do not hold good. Thus, the

proceedings in Crl.R.P. No.616/2018 and orders are liable to be set aside.

4. Per contra, learned counsel for the respondent vehemently contended that issuance of notice is not required under Section 538 (1)(c) of the Act, 1956. As abundant caution, notice has been prepared and issued to the petitioner. Even though it is not served on the petitioner, Official Liquidator is empowered to initiate action against the petitioner in compliance of Section 538 (1)(c) of the Act, 1956.

5. Heard the learned counsel for the parties.

6. Section 538 (1)(c) of the Act, 1956 reads as under:

Does not deliver up to the liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;

7. Ingredients of sub Section (1) (c) of Section 538 requires Official Liquidator to produce books and

papers of the company as a custodian or which are under his control and which he is required by law to deliver. Even though if there are any lapse on the part of the petitioner to the extent that he has not *suo moto* acted upon under the aforesaid provision, in such circumstance, it was pointed out that the Liquidator to issue notice asking the petitioner to produce relevant documents as is evident from the notice dated 12.7.2004, certain documents have been sought from the petitioner. However, it was not served on the petitioner so as to act upon the notice issued by the Official Liquidator. Supreme Court time and again held that even in the absence of any statutory provision providing for principles of natural justice if there are any civil consequences likely to be affected to a person, minimum requirement is to provide a notice or hearing.

It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including *audi alteram partem*, have developed. It is for this reason that the courts have consistently insisted that

such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

Therefore, petitioner is entitled for notice. Undisputedly, Official Liquidator rightly raised a notice for production of certain documents from the petitioner. It was not served. Therefore, in not completing the proceedings like receipt of notice by the petitioner and

further explanation or production of documents sought by Official Liquidator and initiation of further proceedings would be arbitrary. Accordingly, P.C.R. No.117/2007 and further proceedings arising out of C.C. No.112/2018 stands quashed. Petition stands allowed reserving liberty to the respondent to proceed from the stage of issuance of notice for compliance of Section 538 (1)(a) of the Act, 1956.

Sd/-
JUDGE

BS