IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:	**Pronounced on:**
17.06.2025	15.07.2025

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.Nos.4297 & 4300 of 2025
and
W.M.P.Nos.4807 & 4809 of 2025

R.K.M Powergen Private Limited,
Represented by its Director,
T.M.Singaravel,
45/14, Dr.Giriappa Road,
T, Nagar,
Chennai – 600 017. .. Petitioner
(in both cases)

Vs.

1.The Assistant Director,
Directorate of Enforcement,
Govt. of India, Chennai Zonal Office,
No.2, 5th and 6th Floor,
BSNL Administrative Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034.

2.The Joint Director,
Directorate of Enforcement,
Govt. of India, Chennai Zonal Office,
No.2, 5th and 6th Floor,

BSNL Administrative Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034. .. Respondents
(in both cases)

Prayer in W.P.No.4297 of 2025: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and to quash the order under Section 17(1-A) of the PMLA 2002 dated 31.01.2025 freezing the fixed deposits on the file of the 1st respondent and quash the same.

Prayer in W.P.No.4300 of 2025: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from proceeding in investigation since there are no proceeds of crime or in the alternative restrict such investigation to matters connected with the coal block until its cancellation.

(In both cases):

For Petitioner : Mr.B.Kumar,
Senior Counsel
for Mr.S.Ramachandran

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by
Mr.N.Ramesh
Special Public Prosecutor (ED)

C O M M O N O R D E R

(Order of the Court was made by *V.LAKSHMINARAYANAN, J.*)

These two writ petitions seek for the following reliefs:

> "**W.P.No.4297 of 2025**: to issue a Writ of Certiorari, to call for the records and to quash the order under Section 17(1-A) of the PMLA 2002 dated 31.01.2025 freezing the fixed deposits on the file of the 1st respondent and quash the same."

> "**W.P.No.4300 of 2025**: to issue a Writ of Mandamus, forbearing the respondents from proceeding in investigation since there are no proceeds of crime or in the alternative restrict such investigation to matters connected with the coal block until its cancellation."

Facts leading to the Writ Petition

2.A private company was incorporated in the year 1991. It was titled as 'R.K.Powergen Private Limited, Chennai' (hereinafter referred to as 'RKPP'). This was a venture by five women entrepreneurs. The primary business of the company was to set up and operate a Bio Mass Power Generation Plant in Karnataka. Subsequently, on 15.12.2004, this company and one Mudajaya

Corporation, an entity based out of Malaysia, incorporated another company under the name and style of 'R.K.M.Powergen Private Limited' (hereinafter referred to as 'RKMP'). This entity was set up for the purpose of creating, establishing and operating coal powered electricity generation plant.

3.On 13.07.2005, a joint venture agreement was entered into between Mudajaya and RKPP. In terms of the agreement, Mudajaya agreed to invest in RKMP. Pursuant to this agreement, on 08.02.2007, a shareholders' agreement was entered into between RKPP and Mudajaya. Under this agreement, 26% of the equity shares of RKMP were to be allotted to Mudajaya, or its nominee. The allotment would not be at face value, but at a premium. The premium was to be calculated in line with the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2000.

4.RKMP began preparation for establishing a coal based power generation plant in the State of Chattisgarh. In order to have an uninterrupted supply of coal for this plant, which is the

fundamental and basic ingredient, RKMP wrote to the Secretary, Ministry of Coal, Government of India on 24.01.2005, seeking permanent coal linkage. Five months thereafter, this request was renewed with a slight change. In January, 2005, RKMP had proposed to install 5 x 210 MW power plant. This was revised in May, 2005, to a 4 x 300 MW power plant. Taking this proposal forward on 15.12.2005, RKMP wrote another letter to The Additional Secretary (Coal) and Chairman, Standing Linkage Committee, Ministry of Coal, New Delhi, giving details of its coal requirement. RKMP stated that the requirement per annum would be 9.072 million tonnes and the period of operation would be around 50 years. Thereby, specifying its total requirement as 453.6 million tonnes.

5.It is pertinent to point out here, even while making the application for permanent coal linkage, RKMP had stated that in case of allotment of captive coal blocks in its favour, and if such coal block would provide adequate coal supply, it would migrate to the captive coal mining system. Simultaneously, RKMP approached M/s.Power Finance Corporation Limited, a

Government of India undertaking, for a project appraisal. The Power Finance Corporation also issued an information memorandum for Phase-I of this project. Phase-I of this project was supposed to install and operate a power generating plant with a capacity of 350 MW. Subsequently, for Phase-II of this project, another information memorandum was made ready by the Power Finance Corporation in September, 2008.

6.Soon after the first project appraisal report was issued by the Power Finance Corporation, RKMP entered into an agreement with an entity called MIPP Capitals International Limited. The purpose of this agreement was to supply equipment for the project. It was one of the terms of the contract that it would come into force from the date of issuance of “notice to proceed”, as defined under Clause 3.24.0, read with Clause 8.1.0 of the said contract. Pursuant to the agreement so signed on 18.07.2007, RKMP also made payment of US $500,000 on the same day.

7.As stated in its letter to the Ministry of Coal on 26.05.2005, RKMP approached the Union of India for the

allocation of a coal block. On 13.11.2006, the Ministry of Coal decided to make allocations for 38 coal blocks. Out of the 38 blocks, 15 blocks were reserved for power projects, and the remaining 23 blocks for steel and cement companies. Preferential allocation of coal blocks had been a policy decision taken by the Ministry of Coal from 1993 onwards. The Ministry of Coal, after consultation with Coal India Limited and other similar bodies, would allot coal blocks for captive mining for eligible end user companies. For this purpose, a screening committee was created by the Union of India. In order to guide the screening committee, as to how to identify the determining factors and for evaluation, the Ministry of Coal used to issue appropriate guidelines. The screening committee followed these guidelines and on that basis, granted allocation. The aforesaid advertisement in 2006, calling for allotment of coal blocks, in which the petitioner participated, was one such allocation.

8.Pursuant to the advertisement, RKMP applied for allocation of a coal block in Fatehpur East coal block. This application was made on 14.11.2006. RKMP had stated that in

case, a coal block is allotted to it, it would be utilized for the 1200 MW thermal power plant. At the time of making the application, the company mentioned that its net worth was 306.14 crores. Within a month, it amended its net worth from 306.14 crores to 2752.19 crores.

9.The application for allotment of coal block was taken up for consideration by the Ministry of Coal. Presentations were made to the 35th Screening Committee. When feedback forms were submitted, the net worth of the company was revised once again from 2752.19 crores to 2963.37 crores.

10.On the basis of the guidelines that had been issued, the net worth of a company had to be Rs.0.50 crores per MW of the maximum capacity. The minimum capacity for coal block allocation was fixed at 500 MW. In all, 187 applications had been received by the screening committee. Out of 187 applications, 115 applications were found eligible. RKMP was one such eligible candidate. After the analysis of all the 115 applications, RKMP was found to be qualified for allotment. It was recommended for

allocation of Fatehpur East Coal Block. Along with RKMP, four other companies were also allotted the Fatehpur East Coal Block. The other companies are:

(i)M/s.JLD Yavatmal Energy Ltd.;

(ii)M/s.Green Infrastructure Pvt. Ltd.;

(iii)M/s.Visa Power Ltd.;

(iv)M/s.Vandana Vidhyut Energy Ltd.

11.These five entities joined together and formed another entity in the name and style of 'M/s.Fatehpur East Coal Private Limited'. In accordance with the regulations, this entity also furnished a Bank Guarantee of Rs.100 crores in favour of the Union of India. After securing a coal block, when Fatehpur East Coal Private Limited went to inspect the property, they found that it was a reserved forest. Being a reserved forest, it is incapable of any non-forest activity which includes coal mining.

12.Taking note of allotment of coal blocks through the screening committee route and Government dispensation route, a writ petition was filed by one Manoharlal Sharma. The Public

Interest Litigation challenged the validity of such allotments. A three Judges Bench of the Supreme Court, headed by Mr.Justice R.M.Lodha, CJ, heard the matter. Judgement was pronounced on 25.08.2014, holding that such allotments were illegal. The judgment is reported in ***[2014 (9) SCC 516]***. At the time of disposal of this writ petition, taking into consideration the facts placed before the Court, the Supreme Court decided that an investigation / enquiry has to be ordered into the same. Accordingly, the Central Bureau of Investigation (hereinafter referred to as 'CBI') was called upon to investigate each of the allocations and take appropriate action.

13.Insofar as the case at hand is concerned, the CBI registered a case in FIR.RC.219 201 4E 0018 on 07.08.2014. FIR was registered for the offences under Sections 420 and 120B of the Indian Penal Code read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

14.On the registration of the offences, the Enforcement Directorate (hereinafter referred to as 'ED') registered a case on 07.01.2015. Investigation was taken up under the provisions of

the Prevention of Money Laundering Act, 2002 (Act 15 of 2003) [hereinafter referred to as 'PMLA']. The ED came to a *prima facie* conclusion that there appeared to be an offence of money laundering as defined under Section 3 of PMLA. Consequently, it passed an order on 22.05.2015, freezing all the bank accounts of RKMP.

15.At that relevant time, RKMP had taken loans from several financial institutions. On account of the freezing order, it could not carry out its operations. On 20.02.2015, ED also informed the bankers of RKMP not to permit any operations. This letter and other proceedings came to be challenged by way of writ petitions in W.P.Nos.7854, 10643, 14448 and 15317 of 2015. Those writ petitions came to be ordered on 26.08.2015. This Court held the respondents had the power to pass the impugned order therein, but set aside the same on the ground that the power is not unlimited or unbridled. It held the power of freezing is only a prelude to a proposed action and cannot operate as a substitute. It further found that on account of the freezing order, the entire activity of RKMP had come to a grinding halt. Salaries

could not be paid and the project could not be commenced. It placed reliance upon the letter issued by the Power Finance Corporation dated 22.05.2015, wherein it was specifically stated that the accounts of RKMP were under a “trust and retention” form duly monitored by the lenders at the time of the release.

16.This Court further found that the fixed deposits had been created only to augment interest and that none of those factors had been taken into consideration by the respondents. It was also pointed out that the respondents had treated the power exercisable during investigation with the one available under Section 5, and that no justification was provided for the prolonged investigations.

17.Consequent to this discussion, the Court held the continued freezing of the accounts was improper. It consequently allowed the writ petition. The ED pleaded that it was proposing to file an appeal and sought for interim stay of the proceedings. Though this Court granted the relief, no appeal had been preferred by the ED. This judgement rendered by Hon'ble

Mr.Justice M.M.Sundresh (As His Lordship then was) is reported in **2015 Writ L.R. 851**.

18.Subsequent to the order, RKMP completed the project and had commissioned both phases of power generation. The first phase was commissioned on 27.11.2015 and the second phase was commissioned on 12.02.2016.

19.Turning to the FIR, CBI did not find any material to proceed further. Therefore, it filed a closure report as 'mistake of fact' before the Special Judge, CBI (Coal Blocks Allocation Cases), Patiala House Courts, New Delhi. The closure report was filed on 21.07.2017.

20.The CBI Court did not agree with the closure report. It queried with the Investigating Officer regarding the other claims made by the Government in the application submitted to the Ministry of Coal and also regarding land and water environmental clearance during the said process leading to the allocation of the coal block. As the investigation was silent on

these aspects, the learned Judge referred the matter back to CBI for further investigation on the following aspects:

> *".... the claims made by applicant company M/s R.K.M. Powergen Pvt. Ltd qua all aspects / issues as were made in their application submitted to MOC or at any subsequent stage during the processing of their application in MOC leading to allocation of Fatehpur East Coal Block to it may also be properly investigated and the result thereof is duly reflected in the final report to be filed in the court."*

21.The learned CBI Judge was cautious enough to hold that he would not go into any further depth in this matter, at this stage.

22.After this order was passed in the year 2017, there was not much of a progress in this case. However, the petitioner, its contractors and its suppliers were repeatedly called upon for enquiry and investigation by the ED. Consequently, RKMP approached this Court again by way of another writ petition in W.P.No.24700 of 2021. The prayer in that writ petition was for a mandamus forbearing the ED from investigating the ECIR/01/CEZO-11/PMLA/2015 under the Prevention of Money

Laundering Act, 2002, as the investigation is without jurisdiction.

23.This matter came up for hearing before a Division Bench of this Court. After hearing both sides, the writ petition was allowed on 08.06.2022.

24.The relevant portions of the Division Bench order are extracted hereunder:

> *"24.Coming to the allegation of "round tripping" which was strenuously pursued by the learned Additional Solicitor General, it is necessary to briefly notice the import of this expression. "Round tripping" can be defined as a practice by which funds are transferred from one country to another and transferred back to the origin country for purposes like black money laundering or to get the benefit of tax concession/evasion/avoidance from countries like Mauritius, which enjoy low taxes, etc. It is the case of the Enforcement Directorate, as discernable from the ECIR, that a 10 rupee share of RKM Company was sold at a premium of Rs.240. In this way, it is contended that the Malaysian promoter had paid only Rs.1174.92 crore for acquiring 26% equity, whereas, the Indian promoter paid Rs.133.75 crore for acquiring 74% of the equity in RKM Company which resulted*

in substantial financial benefit to the RKM Company.

25.In this connection, our attention was invited to the letters dated 04.07.2008 and 28.09.2012 issued by the Reserve Bank of India to RKM Company acknowledging the statutory declarations made by them under the Foreign Exchange Management (Transfer or issue of security by a Person Resident Outside India), Regulations 2000. These communications clearly demonstrate that the sale of shares with a face value of Rs.10/~ each at a premium of Rs.240/~ per share was reported to the Reserve Bank of India by submitting the statutory declarations. This belies the contention of the Enforcement Directorate that RKM Company engaged in a clandestine deal with Mudajaya. On the contrary, these facts were fully reported to the Reserve Bank as statutorily required under Rule 9 of the 2000 Regulations.

27.It is necessary to point out that the case of the Enforcement Directorate in the ECIR is grounded on the twin allegation that RKM Company had obtained the allocation of Fatehpur East Coal Block by resorting to misrepresentation of facts. However, it is an undisputed fact that there was no mining from the said coal block with the result that RKM Company did not derive any benefit from the same. The Enforcement Directorate admits to this factual position as is evident from paragraph 18 of its counter affidavit wherein it is stated thus:

> "Admittedly, the evidences available on record implied that no mining activity was carried out by M/s Fatehpur East Coal

> Private Limited, the joint venture created by the joint allottees of the subject Coal Block and no mine land was even purchased, but the entity had incurred expenditure on mine development activities."

It is, therefore, clear that even according to the Enforcement Directorate, no mining was carried out and on the other hand, RKM Company had expended funds from its coffers on mine development activities. Once it is held that RKM Company had not derived any benefit from the allocation of the coal block, it follows that the corpus delicti of the offence viz., the proceeds of crime, does not exist.

28.The allegation of round~tripping, even assuming there is one, as alleged by the Enforcement Directorate, is a criminal activity, falling within the domain of Foreign Exchange Management Act (FEMA), there is no arrest provision under the provisions of FEMA, whereas, threat of arrest looms large in an investigation under the PML Act with bail conditions being very stringent.

29.As regards the contention of the Enforcement Directorate that Customs Duty was not paid properly for the imports that were made by RKM Company, be it noted, this falls within the domain of the Customs authorities under the Customs Act. Moreover, these imports of plant and machinery were made by RKM Company for commissioning their power plant in Ucchpinda Village in Chhattisgarh during 2011 and after the said imports, the power plant itself has been commissioned, as stated above. In any event, as on date there is no predicate office under the Customs Act, 1962. The

Enforcement Directorate cannot exercise its powers of investigation under the PML Act, 2002 to discover the existence of a predicate offence which is tantamount to putting the cart before the horse."

25.On the basis of these findings, the Court came to the following conclusion:

"39.In view of the above discussion, we hold that in the absence of there being any predicate offence under the Customs Act, 1962, for the present, and the fact that the alleged offence under the FEMA, 1999, is not a predicate offence under the PML Act, 2002, it follows that there cannot be any offence of money~laundering under Section 3 of the PML Act, 2002 qua these offences. Consequently, a writ of mandamus is issued restraining the Enforcement Directorate from exercising its powers under the PML Act, 2002, qua the investigation of alleged money~laundering in respect of these offences alone. We make it abundantly clear that we have not interdicted the investigation pertaining to the allegations of money~laundering qua the predicate offences forming the subject matter of FIR No.RC 219 2014E 0018 which is being investigated by the CBI. These investigations will proceed in terms of the directions/orders of the Supreme Court in Manohar Lal Sharma v Union of India9, unhindered, and uninfluenced by any of the observation(s)/direction(s) made in this order."

26.Aggrieved by this order, ED preferred a Special Leave

Petition to the Supreme Court. This was in S.L.P.(Criminal).Nos.8975 – 8976/2022.

27.Pending the appeal before the Supreme Court, the CBI filed a supplementary final report on 30.08.2023. This supplementary final report found that there are sufficient incriminating materials warranting prosecution under Section 120-B read with 420, 471 of IPC, Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. As the final report had been filed, ED withdrew its SLP before the Supreme Court. The order of the Supreme Court dated 19.11.2024 is extracted as hereunder:

> *"The learned Additional Solicitor General, who appears on behalf of the petitioners, states that the petitioners will not press the present special leave petitions in view of subsequent developments and as the Central Bureau of Investigation has filed the charge sheet. While relying on the observations made in the impugned judgment, which give liberty to the petitioners to initiate proceedings under the Prevention of Money Laundering Act, 2002, in accordance with the law, she seeks permission to withdraw the present special leave petitions.*

The special leave petitions are dismissed as withdrawn with liberty as prayed."

28.After the withdrawal of the SLP, ED conducted a search from 31.01.2025 to 01.02.2025 in the premises of the Directors & holding companies associated with RKMP. On the very same day, on 31.01.2025, a freezing order was passed under Section 17(1A) of PMLA. By that order, the fixed deposit to the tune of Rs.901,00,00,000/- was frozen by the ED. The present writ petition challenges the said order.

29.We heard Mr.B.Kumar, Senior Counsel for Mr.S.Ramachandran for the writ petitioner, Mr.AR.L.Sundaresan, Additional Solicitor General of India for Mr.N.Ramesh, Special Public Prosecutor (ED) for the respondents.

Submission of the petitioner:

30.Mr.B.Kumar after narrating the facts, submitted as follows:

(i)The coal allocation was never given effect to as the land

allotted was found to be a forest land, the contract entered into between Fatehpur East Coal (P) Limited and the Union of India became frustrated. Consequently, a demand for return of bank guarantee has been made. The Union of India also returned the bank guarantee. No prospecting license was given to the aforesaid company, and therefore, there was no money generated, and consequently, there could not be any proceeds of crime.

(ii)Charging of premium of Rs.240/- on the allotment of shares was a subject matter before the Income Tax Department. The Transfer Pricing Officer (hereinafter referred to as 'TPO') has adopted the “other method” as provided under Rule 10AB of the Income Tax Rules, 1962. He made a downward adjustment of a sum of Rs.407,25,95,597/- to the value of import of plant and machinery. The Assessing Officer relied upon the said adjustment made by the TPO and passed a final order under Section 143(3) read with Section 92CA of the Income Tax Act, on 31.03.2017. Challenging the order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The

Appellate Authority passed an order modifying the order passed by the Assessing Officer on 20.03.2023. Challenging the same, the petitioner had preferred a further appeal to the Income Tax Appellate Tribunal at Chennai. The Tribunal analysed all the issues and came to the conclusion that the order of the lower authorities cannot be sustained and partly allowed the appeal. This order is reported in ***[(2024) 160 Taxmann.com 480]***. Similarly, the Assistant Commissioner of Income Tax had also preferred an appeal before the Tribunal which came to be dismissed in ***Assistant Commissioner of Income Tax Vs. RKM Power Limited, [(2024) 169 Taxmann.com 692]***. Therefore, Mr.B.Kumar pleads the differences in pricing that is relied upon by the respondents cannot be valid, as the very order has been set aside by the jurisdictional Tribunal.

(iii)The investments that had been made by the foreign entities had approval from the Reserve Bank of India. Therefore, those amounts cannot be treated as “proceeds of crime”.

(iv)“Round tripping”, which is the basis on which ED has

commenced enquiry, cannot be a subject matter of investigation, since the CBI in its final report had stated that it has to be looked into by the aforesaid Directorate under The Foreign Exchange Management Act, which is not a scheduled offence.

(v)The reason for leaving it to the ED is because it is the Directorate of Enforcement which has the jurisdiction to investigate such matters under the Foreign Exchange Management Act (FEMA). This aspect has been overlooked by the ED. He adds that any infringement of FEMA will not automatically trigger the investigation under PMLA, as FEMA is not one of the legislations found in the schedule.

(vi)Insofar as the alleged misrepresentation and classification of records are concerned, he states there is no predicate offence and hence, no investigation can proceed under PMLA. For the said purpose, he relied upon the celebrated judgment of the Supreme Court in ***Vijay Madanlal Choudhary and others Vs. Union of India and others, 2022 SCC Online SC 929***. He pleads that this issue having been settled by the

Division Bench of this Court in W.P.No.24700 of 2021 on the previous occasion, and that in case ED proceeds further, it is in violation of the mandamus issued under that order.

(vii)The amounts which lie in the hands of RKMP are in "trust and retention" basis, and therefore, there is no question of any fear of the flight of the amounts pending investigation. He pleads repeated attachments is illegal, and therefore, requires interference.

(viii)He adds that the CBI charge sheet does not expand the scope of coal allocation offence, and therefore, there is no predicate offence for the respondents to proceed. Hence, he pleads the writ petition be allowed and the impugned order be set aside.

31.Insofar as W.P.No.4300 of 2025 is concerned, he urges that as an order has already been passed by this Court in W.P.No.24700 of 2021, the said writ petition also deserves to be allowed.

Respondent's submission:

32.Mr.AR.L.Sundaresan, learned Additional Solicitor General for India argues as follows:

(i)Section 17(1-A) is linked to Section 17(1) and if there are any “proceeds of crime”, then the authority gets the jurisdiction to attach the amount, even if there is no predicate offence.

(ii)He points out the judgment of this Court in ***2015 Writ L.R. 851*** does not prevent the present impugned order, since, when the order was passed on 20.02.2015, no further steps were taken under Section 5 of PMLA. This constrained this Court to interfere. However, in the present situation, not only have the ED proceeded under Section 17(4), but have also taken steps under Section 5 of the PMLA, in relation to the fixed deposits.

(iii)With respect to the order passed in W.P.No.24700 of 2021, he points out that this Court had not restrained the ED from proceeding further with respect to the coal allocation cases,

and since the CBI had subsequently filed a charge sheet, the ED can pass the present order.

(iv)He points out the correctness of the allegations made by the CBI cannot be examined by this Court in this writ petition challenging an order under Section 17. It would have to be dealt with independently, by the jurisdictional Special Court in Delhi.

(v)He refers to para.Nos.16.45, 16.48, 16.53 to 16.57 of the chargesheet filed by the CBI, to urge that the ED has jurisdiction to pass the impugned order.

(vi)He points out that the net worth of the company was puffed up, which resulted in the detailed project report to be submitted to the Power Finance Corporation and other financial institutions, on which basis, loans had been availed. This attracts the provisions of Section 471 & 420 of IPC, which are scheduled offences, and therefore, the ED has jurisdiction to deal with the matter.

(vii)He points out, it is not a case of total lack of jurisdiction, but a situation of exercise of proper jurisdiction by the authorities and hence, an order under Section 17(1-A) cannot be interdicted.

(viii)In any event, he states there is an alternate remedy for the petitioner and therefore, the writ petition is unsustainable.

33.In response, Mr.B.Kumar points out that invoking Section 66(2) of the PMLA, the ED had written to the CBI, but the CBI had not filed any fresh complaint. The letter had been written as early as on 18.07.2019. Till date, no proceedings had been initiated. He points out the ED can investigate only with respect to the predicate offence pointed out in the final report, and cannot expand on the basis of the said report.

34.He adds the argument of Mr.AR.L.Sundaresan is literally an attempt to re-argue what had already been settled in W.P.No.24700 of 2021, and hence, is impermissible. He points out the entire argument of ED is with regards to the “round

tripping", which had already been interdicted by the Court. He states order under Section 17(1-A) passed after a period of nine years is erroneous. He urges new materials should have been produced before the ED in order to take a different view after such a long lapse of time. Finally he states that as there is no affirmation that ED have come out with the existence of proceeds arising out of the agreement; remedy by way of a writ petition is maintainable.

35.The learned counsels relied on the following authorities:

*Petitioner's side:

(i) ***Himachal EMTA Power Limited Vs. Union of India and Others, 2018 SCC OnLine Del 11078***;

(ii) ***Prakash Industries Ltd. and another Vs. Directorate of Enforcement, 2022 SCC OnLine Del 2087***;

(iii) ***M/s.Pawanjay Steel and Power Ltd. & anr. Vs. The Deputy Director, Directorate of Enforcement, Kolkata, 2024 (12) TMI 292***;

(iv) ***K.Govindaraj and others Vs. Union of India, (2024) 3 MLJ (Crl) 251***;

(v) ***Dr.Natesha D.B., Vs. Directorate of***

Enforcement, W.P.No.32956 of 2024 (GM-RES);

(vi) ***Bishnu Ram Borah and another Vs. Parag Saikia and others, (1984) 2 SCC 488***;

(vii) ***Dr.Jaya Thakur Vs. Union of India and others, (2023) 10 SCC 276***;

(viii) ***Tusharbhai Rajnikantbhai Shah Vs. Kamal Dayani and others, (2025) 1 SCC 753***;

(ix) ***M/s.Indian Bank, Egmore, Chennai Vs. Government of India, 2012 Writ L.R. 702*** and

(x) ***The Government of India Vs. M/s.Indian Bank, Egmore, Chennai, W.A.Nos.2614 and 2615 of 2012***.

*Respondent's side:

(i) ***Special Director and another Vs. Mohd. Ghulam Ghouse and another, 2004 SCC OnLine SC 57***;

(ii) ***United Bank of India Vs. Satyawati Tondon and others, 2010 SCC OnLine SC 776***;

(iii) ***Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and another, 2010 SCC OnLine SC 459***;

(iv) ***Vijay Madanlal Choudhary and others Vs. Union of India and others, 2022 SCC OnLine***

SC 929;

(v) ***South Indian Bank Ltd. and others Vs. Naveen Mathew Philip and another, 2023 SCC OnLine SC 435***;

(vi) ***Santiago Martin and another Vs. Union of India, 2023 SCC OnLine Ker 6259***;

(vii) ***Santiago Martin and another Vs. Union of India, W.A.No.1450 of 2023 dated 21.09.2023***;

(viii) ***V.R.Balamurugan Vs. Union of India and others, W.P.Crl.No.871 of 2024 dated 07.08.202***4 and

(ix) ***Enforcement Directorate & Ors. Vs. Satish Motilal Bidri, Special Leave to Appeal (Crl.) No.13429 of 2024***.

36.We have heard the counsels in detail and have gone through the records.

Issue No.I – Maintainability of writ petition:

37.As an issue of maintainability has been raised by the learned Additional Solicitor General, we will deal with that issue first.

38.We have to point out that there is a difference between "maintainability" and "entertainability" of a writ petition. Maintainability of a writ petition goes to the root of the matter. If a Court comes to a conclusion that the writ is not maintainable, it means that the Court is not entitled to even look into the papers. "Entertainability" implies that the writ is maintainable, but the Court will not exercise its discretion and deal with the matter. This issue is *no longer res integra*. It has been settled by the Supreme Court in ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer cum Assessing Authority, (2023) SCC OnLine SC 95***. The relevant portion is extracted hereunder:

> *"**4.**Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded*

articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine

but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper."

39.This view has been adopted by the Bombay High Court in ***Hikal Limited Vs. Union of India and Others, (2024) SCC OnLine Bom 620***. We respectfully adopt the reasoning in the aforesaid judgments.

40.Further, even if there is an alternate remedy, it is only a factor that has to be taken into consideration by the Court before coming to a conclusion as to whether the writ does not deserve a

consideration by it. At the time of considering the writ petition, a holistic view has to be taken by the High Court after referring to all relevant factors. (*See*, ***Maharashtra Chess Association Vs. Union of India, (2013) 13 SCC 285)***. In case, there is a threat to the Rule of Law, the writ jurisdiction of the High Court should come to the aid of justice, and for the mere fact that an alternate remedy exists, the Court need not throw up its hands and push the petitioner away from its doors.

41.Hence, we conclude that the mere existence of an alternate remedy by way of a statutory appeal, does not mean that this Court should not interfere. Mr.AR.L.Sundaresan is right in stating that the view which prevailed more than a decade and beyond was that, due to the existence of alternate remedy, the writ petition itself was held to be not maintainable. In the watershed case of Godrej, cited above, the Supreme Court made a difference between maintainability and entertainability. It is finally the discretion of a Court to decide whether it wants to entertain the writ petition or not, but certainly it cannot hold that the writ itself is not maintainable.

42.Seeking writ by way of a petition under Article 226 is too precious a constitutional right to be surrendered for the very existence of an alternate statutory remedy. Furthermore, in this case, not once, but twice, writ petitions have been entertained by this Court and orders have been passed in favour of the writ petitioner.

43.At the first instance, the ED did not choose to file an appeal, and at the second instance, it chose to file an appeal, but it withdrew the SLP. Furthermore, being a complicated issue of law, we feel that this Court has jurisdiction to deal with the issue.

44.Even the alternate remedy that Mr.AR.L.Sundaresan refers to is the appeal under Section 42 of the PMLA. Under Section 42, the High Court has jurisdiction over the orders passed by the Appellate Tribunal. The Appellate Tribunal exercises jurisdiction as against any orders passed by the adjudicating authority, or under any authority under this Act.

The adjudicating authority passes an order, in terms of Section 8 of the Act. It is true that an application had been filed under Section 17(4), which can be adjudicated upon by the authority under Section 8. While these authorities deal with law and facts, we confine ourselves only with the aspect of jurisdiction.

45.We have set forth the facts in detail. CBI enquiry commenced due to the order passed by the Supreme Court in Manoharlar Sharma's case. CBI had originally filed a final report stating that the case against the petitioner may be closed. It was remitted for further investigation by an order of the Special Court dated 29.07.2017, stating that the CBI should undertake a further investigation to find out if any public servant is involved in the matter. The Court had further given liberty to the CBI to investigate any other aspect of the matter which may come to its notice during the course of investigation. For the mere fact that the CBI had filed a positive final report does not mean that the ED automatically acquires the jurisdiction to enquire into matters not covered by the charge sheet. This requires us to read Section 17 of the said Act. It reads as follows:

"***17. Search and seizure.***-- *(1) Where the Director, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person---*

(i) has committed any act which constitutes money-laundering, or
(ii) is in possession of any proceeds of crime involved in money-laundering, or
(iii) is in possession of any records relating to money-laundering,
(iv) is in possession of any property related to crime,

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of

any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

(1-A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58-B or sub-section (2-A) of section 60, it becomes practical to seize a frozen property, the officer authorised under subsection (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority, seizing any record or property under this section, shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the Adjudicating Authority."

46.A reading of Section 17(1) to 17(4), shows that there must be in possession of the officials, materials or information suggesting that there has been money laundering or possession of any proceeds or property related to crime, with the person who is the target of the agency. The Parliament has defined the scope of money laundering. Section 2(p) states money laundering has the meaning assigned to it under Section 3 of the Act. Hence, we turn to Section 3. Section 3 reads as follows:

> ***"3.Offence of money-laundering.**--Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering."*

47.All these Sections have been analysed in Vijay Madanlal Choudhary's case in detail. The Supreme Court held that for the

mere fact that there is a crime, does not mean there is money laundering. Even paragraph No.300 (as given in SCC OnLine reports) that was relied upon by the learned Additional Solicitor General of India, points out there has to be satisfaction that the property involved is a result of money laundering. We are mindful of the position of law that for the invocation of Section 17, there need not be a complaint on file. However, that situation does not arise here, since the investigation has been going on for over a decade and the ED has not brought forth any new materials in order to show that the fixed deposits attached in this case are the result of money laundering. We should point out here that the fixed deposits had been created in January, 2025.

48.Invocation of Section 17(1-A) arises when the officer comes to a conclusion that the property, whether attached, seized or frozen, is a result of money laundering. A perusal of the Panchanama / seizure memo that has been produced in this case shows that the fixed deposits were frozen in order to prevent frustration of the investigation into the proceeds of crime in the case. However, in the impugned order, nowhere has the authority

stated that the fixed deposits are the result of proceeds of a crime. The conclusion portion is a mere extract of the provisions of Section 17(1-A). Such a reproduction does not pass ouster.

Definition of Jurisdiction:

49.Before we proceed to the merits of the case, we would like to discuss the meaning of jurisdiction. Jurisdiction has its origin in Latin. It is a mixture of two words: '*juris*', which means law, and '*dictio*' which means speaking. In conjunction, it means "speaking of the law". Jurisdiction is defined as the territory within which a Court or Government Agency may properly exercise its powers. [See, ***Ruhrgas AG Vs. Marathon Oil Company, ETAL 526 US 574 (1999)***].

50.Having stated what jurisdiction means in law, we will now proceed to refer to a few authorities which deal with jurisdictional error. The High Court of Australia, in ***LPDT Vs. Minister for Immigration, Citizenship, Migration services and multi cultural affairs, [2024] HCA 12*** has given an indication on jurisdictional errors and the principles to be

applied in such cases. The Court held:

> "*jurisdictional error can refer to breach of an express or implied condition of a statutory conferrer of decision – making authority, which results in a decision made in the purported exercise of that authority lacking the legal force attributed to exercise of that authority by statute. Though a decision affected by jurisdictional error is a decision in fact, it is "in law ... no decision at all" and in that sense void.*"

51.To reach this conclusion, that Court applied the principles in two earlier precedents, namely, ***Minister for Immigration and Multi Cultural Affairs Vs. Bharadwaj, 2002 (209) CLR 597, 616*** and ***Hossain Vs. Minister for Immigration and Border Protection, (2018) 264 CLR 123 at 133, 143***. The view rendered in LPDT's case found acceptance at the hands of the Supreme Court in ***Bhudev Mallick Alias Bhudeb Mallick and another Vs. Ranajit Ghoshal and others, (2025) 2 MLJ 395 (SC)***. The Supreme Court in this Judgement pointed out the difference between the old Rule and the new Rule in matters of errors of fact and errors of law. For

ready understanding, the same is given in the tabular column below:

Errors of fact:

Old Rule	New Rule
The Court would quash only if the erroneous fact was jurisdictional.	The Court will quash if an erroneous and decisive fact was (a) jurisdictional (b) found on the basis of no evidence; or (c) wrong, misunderstood or ignored.

Errors of law:

Old Rule	New Rule
The Court would quash only if the error was (a) jurisdictional; or (b) on the face of the record.	The Court will quash for any decisive error, because all errors of law are now jurisdictional.

52.The Court further held that the test for establishing jurisdictional error is two fold. First, it must be established that an error occurred and secondly, the error must be material such that the decision affected by error could realistically have been different if there was no error.

53.In the very judgement, the Court held that such re-defined jurisdictional errors is for the benefit of all the Courts

across the country to be applied when any matter comes up before it for judicial review. The Court also pointed out that not every breach of an express or implied condition of making a decision will render the decision, "no decision" at all.

54.We would apply the revised test as laid down by the Full Court of the High Court of Australia as approved by the Supreme Court during the course of discussion in this case.

55.Though there are several precedents of the Supreme Court, we refer only a couple of them, namely, ***Central Potteries Ltd. Nagpur v. State of Maharashtra, AIR 1966 SC 932*** and ***P.Dasa Muni Reddy Vs. P.Appa Rao, AIR 1974 SC 2089***. The Supreme Court, in Central Potteries pointed out the difference between want of jurisdiction and irregular assumption to jurisdiction. The said portion is extracted hereunder:

> *"In this connection it should be remembered that there is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction, and that whereas an order passed by an authority with respect to a matter over which it has no jurisdiction is a nullity and is open to collateral attack, an order passed by an*

authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity. It may be liable to be questioned in those very proceedings, but subject to that it is good, and not open to collateral attack."

56.In ***P.Dasa Muni Reddy Vs. P.Appa Rao, AIR 1974 SC 2089***, the Court held:

" 12. ..... Want of jurisdiction must be distinguished from irregular or erroneous exercise of jurisdiction. If there is want of jurisdiction the whole proceeding is coram non judice. The absence of a condition necessary to found the jurisdiction to make an order or give a decision deprives the order or decision of any conclusive effect. (See Halsbury's Laws of England, 3rd Edn. Vol. 15, para 384)."

57.Since the issues of jurisdiction have been raised, on this ground too, we are entertaining this writ petition.

How this case falls outside the jurisdiction of ED

58.On the aspect of jurisdiction, we need not labour much for. The Supreme Court had made it very clear in *Vijay Madanlal*

Choudhary's case and subsequent cases that the condition precedent for an enquiry by the ED is the existence of a predicate offence. The predicate offence, which led the CBI to file a final report, is the coal allocation scam case. The alleged offence of "round tripping" of funds, diversion of public loans and misuse of share premiums are not relatable to coal allocation scam. In paragraph No.7 of the counter, the ED has pleaded that the aforesaid three aspects have led it to withdraw the SLP and continue with its investigation. Even assuming that they are true, for the purpose of ED to investigate into these aspects, there should have been a complaint at the instance of the Power Finance Corporation and other financial institutions, who had lent monies to RKMP, for ED to swing into action.

59.When this aspect was pointed out to Mr.AR.L.Sundaresan, the Additional Solicitor General pointed out that criminal law can be set into motion by any person. That is a general principle of criminal law. No one can dispute it, and we certainly are not going to do it. If any criminal act takes place,

it is certainly open to any individual to bring it to the notice of police or appropriate authorities who are entitled to register a complaint on these aspects. A perusal of the papers show that no complaint had been lodged with respect to any of the aforesaid alleged criminal activities. The ED is not a super cop to investigate anything and everything which comes to its notice. There should be a "criminal activity" which attracts the schedule to PMLA, and on account of such criminal activity, there should have been "proceeds of crime". It is only then the jurisdiction of ED commences. The *terminus a quo* for the ED to commence its duties and exercise its powers is the existence of a predicate offence. Once there exists a predicate offence, and the ED starts investigation under the PMLA, and file a complaint, then it becomes a stand alone offence. As long as there is no predicate offence, ED cannot plead that since no one set up the criminal law into motion, it will rely on that doctrine and commence proceedings under the PMLA.

60.It is too well settled that where an act has to be done in a particular way, it must be done in that way and in no other way.

The PMLA demands the existence of a predicate offence. When there is no predicate offence, initiation of proceedings under PMLA is a non starter. If the arguments of the Additional Solicitor General is accepted, then the ED on registration of an ECIR can conduct a roving enquiry with respect to other aspects also. That is not the position of law. To put it pithily, no predicate offence, no action by ED.

61.A careful perusal of Section 66(2) of PMLA points out that if during the course of investigation, the ED comes across violations of other provisions of law, then it cannot assume the role of investigating those offences also. It is to inform the appropriate agency, which is empowered by law to investigate into that offence. If that Agency, on the intimation from the ED, commences investigation and registers a complaint, then certainly the ED can investigate into those aspects also, provided there are “proceeds of crime”. In case, the investigating agency does not find any case with respect to the aspects pointed out by the ED, then the ED cannot *suo motu* proceed with the investigation and assume powers. The essential ingredient for the

ED to seize jurisdiction is the presence of a predicate offence. It is like a limpet mine attached to a ship. If there is no ship, the limpet cannot work. The ship is the predicate offence and "proceeds of crime". The ED is not a loitering munition or drone to attack at will on any criminal activity.

62.As there is no predicate offence with respect to the three aspects in paragraph No.7 of the counter, we conclude that the impugned order suffers from a jurisdictional error and the order of attachment is *per se* without jurisdiction. We come to this conclusion because this is not a case where the CBI is yet to come up with the offence. The Supreme Court had directed registration of the offence in 2014. The complaint was also registered in the year 2015. After a period of nine years, the ED's jurisdiction to attach and investigate is being traced to the CBI charge sheet. We entirely agree that the ED has jurisdiction if it can trace "proceeds of crime" from coal allocation scam. It does not and cannot possess jurisdiction based on the phantoms that it sees from the charge sheet.

63.Unless and until proceeds of crime linked to the predicate offence are shown, ED by virtue of a combined reading of 2(1)(u), 2(1)(p), 3 read with Section 17, does not have the power to proceed further in fine lacks the jurisdiction to proceed further. In the light of the above decision, the impugned order is set aside. W.P.No.4297 of 2025 is allowed with costs. Cost memo to be filed within one week from today. Consequently, the connected miscellaneous petition is closed.

W.P.No.4300 of 2025:

64.Since there is already an order of this Court in W.P.No.24700 of 2021 dated 08.06.2022, apart from reiteration of para No.39 of the said order, no further directions are required in W.P.No.4300 of 2025. Consequently, the connected miscellaneous petition is closed.

(M.S.R., J) **(V.L.N., J)**

15.07.2025

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Assistant Director,
Directorate of Enforcement,
Govt. of India, Chennai Zonal Office,
No.2, 5th and 6th Floor, BSNL Administrative Building,
Kushkumar Road, Nungambakkam, Chennai – 600 034.

2.The Joint Director,
Directorate of Enforcement,
Govt. of India, Chennai Zonal Office,
No.2, 5th and 6th Floor,
BSNL Administrative Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034.

M.S.RAMESH, J.
and

V.LAKSHMINARAYANAN, J.

krk

W.P.Nos.4297 & 4300 of 2025

15.07.2025