

**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Criminal Extraordinary Jurisdiction)

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SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE  
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**I.A. No. 03 of 2022**  
**Arising out of W.P. (Crl.) No. 02 of 2015**

Eastern Institute for Integrated Learning  
In Management University through the  
Vice Chancellor, 8<sup>th</sup> Mile, Budang,  
Malbassey, West Sikkim-737121.

..... Petitioner

**Versus**

1. The Joint Director,  
Directorate of Enforcement  
Government of India, CGO, Complex,  
3<sup>rd</sup> MSO Building, 6<sup>th</sup> Floor,  
DF Block, Salt Lake,  
Kolkata-Pin No. 700064.
  2. The Enforcement Officer,  
Directorate of Enforcement  
Government of India, CGO, Complex,  
3<sup>rd</sup> MSO Building, 6<sup>th</sup> Floor,  
DF Block, Salt Lake,  
Kolkata-Pin No. 700064.
  3. The Registrar/Administrative Officer,  
Adjudicating Authority, Jeevan Deep Building,  
Room No. 26, 4<sup>th</sup> Floor, Parliament Street,  
New Delhi, Pin No.110001.
- ...Respondents/Applicants

*The application for modification/clarification of the judgment order dated 22.09.2015 in W.P. (Crl.) No. 02 of 2015 passed by this Court.*

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**Appearance:**

Mr. Shakeel Ahmed, Advocate for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India  
assisted by Ms. Natasha Pradhan and Ms. Purnima  
Subba, Advocates for Respondents/Applicants.

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Date of hearing : 27.06.2023  
Date of judgment : 27.06.2023

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## **ORDER (ORAL)**

### **Bhaskar Raj Pradhan, J.**

1. A judgment dated 22.09.2015 was rendered by the learned Single Judge of this Court in W.P. (Crl.) No. 02 of 2015 filed by Eastern Institute for Integrated Learning in Management University (EILM University) against the Joint Director and the Enforcement Officer, Directorate of Enforcement, Government of India and the Registrar/Administrative Officer, Adjudicating Authority.

2. EILM University had prayed for setting aside the show cause notice dated 03.02.2015 issued by the Adjudicating Authority under sub-section (1) of section 5 of the Prevention of Money Laundering Act, 2002 (PMLA, 2002) and the subsequent proceedings consequential thereto.

3. The principal ground seeking to quash the show cause notice under section 8 of the PMLA, 2002 by the Adjudicating Authority was that it was issued by a Bench constituted under clause (b) of sub-section (5) of section 6 of the PMLA, 2002 which did not have a Judicial Member.

4. The learned Single Judge after hearing all the parties to the writ petition and examining sub-section (1), (2) and (3) and clause (a) and (b) of sub-section (5) of section 6 of the PMLA, 2002 was of the considered opinion that in a case where serious question of law and fact arise, as in the case before him,

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it is essential that one of the members of the Bench constituted under clause (b) of sub-section (5) of section 6 of the PMLA, 2002 by the Chairperson of the Adjudicating Authority should be a Judicial Member.

**5.** In the circumstances, the learned Single Judge issued the following directions to the Directorate of Enforcement (i) to take appropriate steps with the concerned authorities of the Central Government for appointment of Judicial Member of the Adjudicating Authority urgently within a period of three months and not later than that; (ii) on appointment of the Judicial Member the Chairman of the Adjudicating Authority to constitute the Bench consisting of a Judicial Member keeping in view the observations made having regard to the nature of the *lis* and the anxiety expressed by EIILM University; (iii) soon after it is constituted, the Bench to then issue notice upon the EIILM University who shall appear before the Bench and place before it all grievances expressed in the petition; and (iv) since the proceedings before the Adjudicating Authority was stayed by this Court by order dated 02.04.2015, the period of attachment prescribed under sub-section (1) of section 5 to exclude the period spent during the pendency of the case before this Court.

**6.** An application for modification/clarification of the judgment dated 22.09.2015 passed by this Court has been filed by the Joint Director, Directorate of Enforcement on 08.11.2022 after nearly eight years. The applicant prays for clarification as

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to whether Member (Judicial) and Member from the field of Law of the Adjudicating Authority under section 6 (3) (a) (ii) of PMLA, 2002 are the same?

**7.** The application states that pursuant to the judgment dated 22.09.2015 of this Court and in compliance thereto file was moved for reconstitution of Bench of the Adjudicating Authority with the appropriate Ministry of Finance and it was learnt that the Central Government has published a Notification issued vide Gazette of India dated October, 03-09, 2015 for appointment of Shri G.C. Mishra as Member from the field of Law w.e.f. 07.09.2015 having qualified for appointment as member from the field of Law as mandated under section 6 (3) (a) (ii) of PMLA, 2002.

**8.** It is further stated that the Bench of the Adjudicating Authority was reconstituted on 05.10.2015 with Shri Mukesh Kumar as Chairpeson and Shri G.C. Mishra, Member from the field of Law. Thereafter, the case was fixed for hearing on 14.10.2015 in respect of EIILM University. The Adjudicating Authority vide its order dated 01.12.2015 confirmed the attachment order dated 09.01.2017.

**9.** This order of the Adjudicating Authority was impugned before the Appellate Tribunal. The Appellate Tribunal vide its Order dated 09.03.2017 remanded the matter for rehearing by Adjudicating Authority having Member (Judicial)

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on the Bench in compliance of the judgment dated 22.09.2015 of this Court.

**10.** It is stated that the Adjudicating Authority with Shri Tushar V. Shah, Member from the field of Law heard the matter and again confirmed the attachment vide its order dated 26.05.2017.

**11.** An appeal was filed by the EIILM University before the Appellate Tribunal against the order dated 01.12.2015 and the Adjudicating Authority vide its combined order dated 15.06.2017 while disposing six appeals filed against the order dated 01.12.2015 in O.C. No. 409 of 2015 and order dated 03.03.2015 in O.C. No. 381 of 2014 remanded the two provisional attachment orders to the Adjudicating Authority holding that this Court had directed the matter to be decided by Member (Judicial) appointed under section 6 (3) (a) of PMLA, 2002 who has to be a District Judge and the Government has not appointed Judicial Member as directed by this Court.

**12.** According to the applicant since then the provisional attachment orders are kept in abeyance and status quo has been maintained.

**13.** It is also stated that the appeal before this Court against the order dated 15.06.2017 passed by the Appellate Authority was rejected on the ground of delay.

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**14.** The application as well as the learned Deputy Solicitor General of India appearing for the applicant argues that section 6 (3) (a) of the PMLA, 2002 does not mention Judicial Member and therefore, it is not the mandate of section 6 (3) (a) of PMLA, 2002 to have a Judicial Member.

**15.** Referring to the judgment of the Supreme Court in **B. Premanand & Ors. Vs. Mohan Koikal & Ors.**<sup>1</sup> it is submitted that the literal reading of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. Thus, it is submitted that the judgment passed by this Court on 22.09.2015 is required to be modified to make the necessary clarification.

**16.** The learned Deputy Solicitor General of India orally submits that this court could invoke the provisions of section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to make the necessary amendments.

**17.** Section 482 Cr.P.C. saves the inherent powers of the High Court. It provides that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under it, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is settled law that

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<sup>1</sup> (2011) 4 SCC 266

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the extraordinary power under section 482 have to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

**18.** A reading of the judgment dated 22.09.2015 makes it evident that it was precisely the case of the petitioner that the constitution of the Bench without a Judicial Member was not proper. This *lis* was contested by the parties including the present applicant and by a reason judgment the *lis* was decided by the learned Single Judge. Evidently and admittedly this judgment dated 22.09.2015 has not been appealed against.

**19.** The Supreme Court in numerous judgments has held very clearly that such practice of filing application for modification/clarification of judgment rendered must be deprecated as in actual what it seeks is a review or revision of the judgment which is not permissible.

**20.** In ***Indian Council for Enviro-Legal Action vs. Union of India***<sup>2</sup> the Supreme Court examined whether a final judgment of the Supreme Court could be reopened by merely filing interlocutory applications. It was held that a final judgment cannot be reopened by merely filing interlocutory applications where all possible legal remedies have been fully exhausted. In the case before the Supreme Court two interlocutory applications had been filed after the Supreme

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<sup>2</sup> (2011) 8 SCC 161

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Court had pronounced the judgment. It was held that permitting the parties to reopen the concluded judgments by filing repeated I.As is clearly an abuse of the process of law and would have a far reaching adverse impact on the administration of justice.

**21.** Recently in *Ghanashyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Limited*<sup>3</sup> the Supreme Court dismissed an interlocutory application filed for clarification of the judgment and order dated 13.04.2021 passed in Civil Appeal No.8129 of 2019 with cost of Rs.10 lakhs holding that such applications are a total abuse of the process of law while taking note of the fact that there is a growing tendency of indirectly seeking review of the orders of the Supreme Court by filing application either seeking modification or clarification of the orders passed by it. It was held that the valuable time of Court is spent in deciding such applications which time would otherwise be utilized for attending litigations of the litigants who are waiting in the corridors of justice for decades together.

**22.** It was open for the applicant to have preferred a review petition before the learned Single Judge or an appeal before the Division Bench of this Court or even a Special Leave Petition before the Supreme Court against the judgment dated 22.09.2015 within the prescribed time if they were not satisfied with it. However, the applicant chose not to do so for almost

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<sup>3</sup> 2022 LiveLaw (SC) 771



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eight years. The application in fact states that it sought to comply with the judgment dated 22.09.2015. The present application for modification/clarification is evidently a device to persuade this Court to revisit, reopen and reverse the judgment dated 22.09.2015. This is clearly impermissible. Even if this Court was to consider the application for modification/clarification as one filed under Section 482 Cr.P.C. which is the inherent power of this Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice it cannot come to aid a litigant to abuse the process of administration of justice.

**23.** The application is dismissed.

**( Bhaskar Raj Pradhan )  
Judge**

Approved for reporting : **Yes**  
Internet : **Yes**

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