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W.P.No.834 of 2021
and W.M.P.Nos.6115, 903, 905 and 906 of 2021

THE HON'BLE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY, J.

(made by the Hon'ble Chief Justice)

The matter pertains to the alleged embezzlement of funds by the trustees of Franklin Templeton Asset Management India Pvt. Ltd. in respect of six mutual funds.

2. The case of the petitioner is that a substantial part of the investments in such funds was paid off in related party transactions and transactions that ought to be termed as insider trading, to benefit persons who had invested in the funds but were closely related to the persons in control of the funds.

3. It is submitted on behalf of the relevant mutual funds company that the matter has received the attention of the Supreme Court and, contrary to what the petitioner portrays, five of the six funds had improved considerably in 2021 compared to how they fared at the corresponding time in the year 2020. The sixth fund is hovering marginally below the NAV level 12 months ago. It is the further submission of such company that upon the investors of the relevant mutual funds consenting thereto, the six funds are being wound up. There is the market regulator which is overseeing the winding-up and a financial institution,

which is subsidiary of State Bank of India, has been tasked by the Supreme Court to vet the process.

4. However, paragraph 42 of the order dated February 12, 2021, passed by the Supreme Court provides as follows:

“42. In view of the aforesaid discussion, we hold that for the purpose of clause (c) to Regulation 18(15), consent of the unitholders would mean consent by majority of the unitholders who have participated in the poll, and not consent of majority of all the unitholders of the scheme. In view of the findings and reasons stated above, we reject the objections to poll results and hold that the unitholders of the six schemes have given their consent by majority to windup the six schemes. Winding up and disbursements would be in terms of our directions in earlier orders dated 2nd February, 2021 and 9th February, 2021 and paragraph 41 above. We, however, clarify that this order does not examine and decide other aspects and issues including the questions whether Regulation 18(15)(c) would apply when the trustee's form an opinion that the scheme should be wound up in accordance with Regulation 39(2)(a) and the contention of the objecting unitholders regarding misfeasance, malfeasances, fraud and the effect thereof.”

5. The writ petitioner in the present case indicates that the role of the writ petitioner here is to attempt to unearth the flight of capital of about Rs.2,000 crore due to related parties transactions and redemption to the extent of 5,000% increase on account of insider trading. According to the writ petitioner, these have led to the NAVs pertaining to the six mutual funds to falter and be much lower than what they ought to have been otherwise.

6. The petitioner says that complaints in such regard ought to be investigated into by investigating agencies which have the wherewithal and domain knowledge to undertake such tasks. The writ petitioner laments that though an Economic Offences Wing has been created in the State police, no degree of specialization has been attempted and it is the usual transfer of a Deputy Superintendent of Police from one district or some Inspector of Police from another branch without identifying appropriate personnel having an aptitude or understanding of economic affairs or market conditions to undertake the highly sophisticated investigation necessary as in the present case.

7. It appears that despite earlier orders of this Court to ensure that the Economic Offences Wing is manned by trained personnel who have experience in or knowledge of accounting, auditing and market conditions, no attempt has been made to either train personnel or recruit trained personnel or even engage experts or consultants in such regard. There are several auditors and investment

managers in the State whose services may be availed of by the State police whether to train a set of personnel or to develop a stream to deal only with economic offences. Such wing may also aid in unearthing or appropriately dealing with many a matter under the Prevention of Corruption Act.

8. Accordingly, it is necessary that the investigation into the role of those in control of the six funds be conducted and, at the same time, the Economic Offences Wing in the State police is beefed up, so to say, with appropriate personnel. For the moment, the Securities Exchange Board of India is added as a party to the present proceedings. The Enforcement Directorate is also added as party to the present proceedings as the market regulator and the said investigating agency may be best equipped to delve into the transactions pertaining to the six mutual funds to unearth anything remiss therein.

9. At the same time, the Chief Secretary and the Home Secretary, Government of Tamil Nadu, are called upon to file a report by the time the matter appears next suggesting measures to introduce a degree of specialization in the Economic Offences Wing of the State police, particularly in the manner of recruitment or even engagement of consultants or the like.

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10. The amendments to the cause-title should be carried out by the Department by incorporating the names and particulars of SEBI and the Enforcement Directorate as the respondent nos.4 and 5, respectively. The added respondents should be served notices and copies of this order so that they may be represented when the matter appears next, four weeks hence.

11. Franklin Templeton Asset Management India Pvt. Ltd. will be heard in the matter and its impleadment application may be considered on the adjourned date.

12. List on 07.06.2021.



(S.B., CJ.) (S.K.R., J.)

29.03.2021

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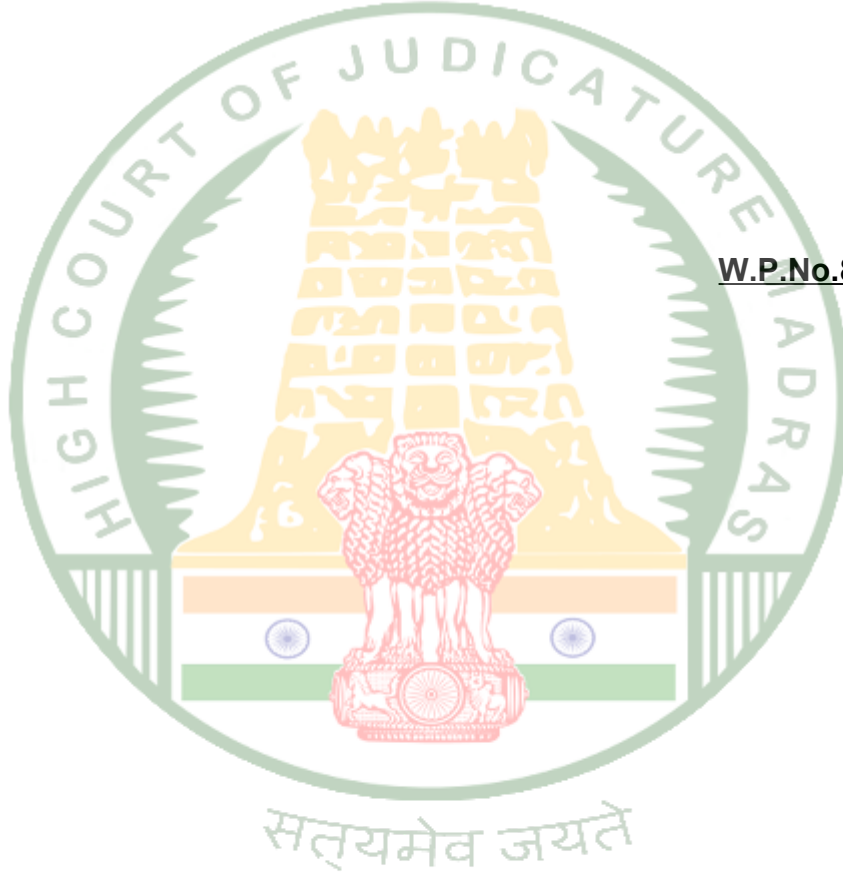
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