

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2015

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

W.P.Nos.7533 and 7534 of 2015

and

M.P.Nos.1 and 2 of 2015 and 1 of 2015

Ramamohan Rao Mynampati ... Petitioner in
both W.Ps

vs.

1.Special Director,
Adjudicating Authority,
Directorate of Enforcement,
Government of India,
6th Floor, Loknayak Bhavan,
Khan Market, New Delhi - 110 003.

2.Special Director, Directorate of
Enforcement,
Southern Regional Office,
Government of India,
Shastri Bhavan, Block III Floor,
26, Haddows Road,
Chennai - 6.

3.Assistant Director,
Directorate of Enforcement,
Government of India, 3rd Floor,
Shakar Bhavan, Fateh Maidan Road,
Basheerbagh, Hyderabad - 500 004.

... Respondents in
both W.Ps

W.P.No.7533 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating adjudicating proceedings in F.No.T-4/01/HYD/2011 on the file of the first and second respondents, quash the same, consequently set aside Notice of personal hearing dated 13.02.2015 in File No.T-4/01/HYD/2011 and forbear the first and second respondents, from proceeding with the inquiry under Rule 4(4) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 against the petitioner herein.

W.P.No.7534 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the complaint in F.No.T-

3/02/HYD/2009 dated 06.12.2010 on the file of the third respondent, quash the same and consequently forbear the respondents 1 to 3 from proceeding further with the adjudication under Section 13 of the Foreign Exchange Management Act, 1999 read with Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, against the petitioner herein.

For Petitioner .. Mr.P.S.Raman, Sr. Counsel
for M/s.P.Giridharan

For Respondents .. Mr.M.Dhandapani

COMMON ORDER

During the course of the investigation under The Foreign Exchange Management Act, 1999, certain information/documents have been called for from M/s.Satyam Computer Services Limited under Section 37 of the Act. Some of the officials of the said concern were also examined. Though the petitioner was one of the officials, he did not appear for enquiry.

2.On a complaint given by the third respondent, a show cause notice was issued by the first respondent. The sum and substance of the complaint is extracted hereunder:

"26.Shri B.Ramalinga Raju, the then Chairman, B.Ramaraju, the then Managing Director, Ram Mynampati, the then Board Director, T.R.Anand, the then Director & Senior Vice President, D.Subramanian, the then Director & Senior Vice President, Keshab Panda, the then Director and Senior Vice President and Virender Aggarwal, the then Director & Senior Vice President of the company were responsible for the day-to-day affairs of the company during the relevant period and as such they, as well as the company, are liable to be proceeded for contravening the provisions of Section 7 (2) and Section 8 of the Foreign Exchange Management Act, 1999 read with Section 49(5)(a) of FEMA, 1999 and Regulations 8, 9 and 13 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 and Regulation 3 of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000 and also read with Section 42(1) of Foreign Exchange Management Act, 1999.

27.That the above Notices have contravened the provision of Foreign Exchange Management Act, 1999 as mentioned above."

3.The petitioner did give his response. The sum and substance of the response of the petitioner is that he was nominated to the Board of Satyam only in August, 2006 and therefore for the period starting

from 1997 to 2004, the petitioner cannot be called for enquiry. The reply given by the petitioner on 05.07.2011 reads as under:

"5.I say that, started working in technical operations out of the Hyderabad office of Satyam from June 1999. I submit that in or about August 2001, I relocated to the USA, to operate from the New Jersey Office of Satyam from August, 2001. I state and submit that it was only in 2003 that I was promoted to the post of President for some businesses and was subsequently nominated to the Board of Satyam only in August 2006."

4.Thus, the petitioner did acknowledge the fact that he was working in Technical Operations in India from June, 1999 and thereafter, from August, 2001 working in New Jersey and in the year 2003, he was promoted to the post of President and then nominated to the Board in August, 2006. By the order dated 13.02.2015, the first respondent, on consideration of the reply given by the petitioner to the show cause notice, formed an opinion that the adjudication proceedings as contemplated in Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 should be held by following the due procedure contemplated thereunder.

5.Challenging the proceedings of the first respondent dated 13.02.2015, by which an opinion was formed after considering the reply of the petitioner, a show cause notice was issued for personal hearing with a further prayer forbearing them from proceeding further with the inquiry under Rule 4(4) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 against the petitioner herein, the writ petition in W.P.No.7533 of 2015 has been filed.

6.Challenging the complaint given by the third respondent dated 06.12.2010 which culminated in the show cause notice issued by the first respondent dated 28.04.2011 with a consequential prayer forbearing the respondents from proceeding further with the adjudication under Section 13 of the Foreign Exchange Management Act, the writ petition in W.P.No.7534 of 2015 has been filed.

7.The learned senior counsel appearing for the petitioner submitted that the factual position being the export bills starting from the year 1997 to 2002 have not been realised and the petitioner having come into picture in the year 2006, there is no basis for the said proceedings. It is further submitted that while forming an opinion as mandated under Rule 4(3) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, the adjudicating authority viz., the first respondent has not recorded his prima facie satisfaction. In support of the said submission, the learned senior counsel for the petitioner relied on the following decisions:

(i) Shashank Vyankatesh Manohar Vs. Union of India and the Directorate of Enforcement (2013(5)ALLMR551)

(ii) Gunmala Sales Private Limited Vs. Anu Mehta and Others ((2015) 1 SCC 103)

8. Mr. Dhandapani, learned counsel appearing for the respondents submitted that even as per the reply of the petitioner, he was involved in the affairs of the concern, even much prior to the nomination as a Board of Director. During the tenure of the petitioner, he has not taken appropriate steps to realise the pending export bills. What is initiated is only an adjudication. The petitioner instead of cooperating with the same has rushed to this Court. As against the final order to be passed by the first respondent, an appeal is provided under the Foreign Exchange Management Act, 1999 and thereafter, further appeal before this Court. Considering the scope and rationale behind the enactment, the authorities will have to be given a free hand to go on with the process of adjudication instead of exercising the power under Article 226 of The Constitution of India, by invoking its extraordinary jurisdiction. The learned counsel for the respondents relied on the decision of this Court in Srinivasan Vs. The Chairperson, Adjudicating Authority under Prevention of Money Laundering Act, 2002 ((2012) 1 MLJ 419).

9. By way of reply, learned senior counsel for the petitioner submitted that Section 42(2) of Foreign Exchange Management Act, 1999 has to be invoked against the petitioner only as a Director. There cannot be any interchange of the positions held at different points of time. The third respondent having taken a particular stand cannot go contrary to it.

10. The facts narrated are not in dispute. While dealing with the enactment of this nature, which is adjudicatory, the Court has to see the underlying object behind it. It is not as if the first respondent lacks jurisdiction. The petitioner cannot be said to be a person aggrieved at this stage as there is no civil consequence involved. The opinion has been formed by the first respondent based upon available materials, which are not controverted. It is the specific case of the petitioner himself, as recorded earlier, that he was working with the concern in different capacities. Section 42 of the Act has to be seen contextually. It deals with the contravention by the company with the consent and connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company as the case may be. Merely because a person was not a director, but in other capacity, with a role attributable to neglect, the rigour of Section 42 of the Act would not be taken away. Adjudication is with reference to the petitioner qua the affairs of the concern. Reliance has been made on the decision rendered by the Apex Court in Gunmala Sales Private Limited Vs. Anu Mehta and Others ((2015) 1 SCC 103). There is obviously a difference between Section 141(1) and 141(2) of the Negotiable Instruments Act.

That is not the case herein. The procedure contemplated under the Negotiable Instruments Act and the FEMA are totally different. In the earlier enactment, complaint is a private one. In the case on hand, it is only an adjudication. A judicial proceeding is different from a quasi-judicial. Therefore, the submission made by the learned senior counsel for the petitioner in this regard cannot be countenanced. Law is quite settled that even in a penal statute, the rule of purposive interpretation can be followed, taking into consideration of the social objective and rationale behind it (see *Rajinder Singh Vs. State of Punjab* ((2015) 6 SCC 477)). Suffice it to state that on the facts of the case, as expressed by the petitioner himself before the first respondent, he cannot come out of the purview of Section 42 of the Act.

11. Coming to the other decision of the Bombay High Court in *Shashank Vyankatesh Manohar Vs. Union of India and the Directorate of Enforcement* (2013(5)ALLMR551), it has to be seen on the context on which it has been followed. The opinion has been formed by the adjudicating authority on the facts of the present case. Such opinion being subjective, has to be considered from the over all perspective. Once we say it is a prima facie opinion, the duty of the Court is to see whether such materials are available or otherwise would have weighed in the mind of the adjudicating authority to proceed further.

12. The decision of this Court made in W.P.No.20592 of 2014 dated 25.8.2014 (*Ramakrishna Setty v. The Special Director, Directorate of Enforcement, Southern Region, Sastri Bhavan, Chennai-6*) would be apposite and para 10 of the said order is extracted hereunder:-

"10. Therefore, the scheme of Section 4 actually provides opportunities at the every stage to the noticee. The forming of an opinion at the stage of show cause notice and receipt of reply, as provided in sub-rule (3) of Rule 4, is almost akin to the forming of an opinion by a disciplinary authority to hold or not an enquiry, upon receipt of a reply to a charge memo in a disciplinary proceeding. Therefore, I do not think that there is any scope for expanding Rule 4(3) to mean that the forming of the opinion as required in Rule 4(3) has to be reflected by an order in writing containing reasons. The interpretation given by the Division Bench of the Bombay High Court to the expression 'opinion' appears to be very elastic".

It is to be noted that this Court has also taken note of the decision rendered by the Division Bench of the Bombay High Court as relied on by the petitioner. A narrow and technical interpretation contrary to the scheme of the Act has necessarily to be eschewed.

13. Thus, this Court is of the considered view that no interference is required at this stage since the role of the petitioner either prior to 2006 or thereafter with reference to the

alleged violation in not taking appropriate steps to realise the pending export bills is a matter for adjudication. The writ petitions are accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

mmi

To

- 1.The Special Director,
Adjudicating Authority,
Directorate of Enforcement,
Government of India,
6th Floor, Loknayak Bhavan,
Khan Market, New Delhi - 110 003.
- 2.The Special Director, Directorate of
Enforcement,
Southern Regional Office,
Government of India,
Shastri Bhavan, Block III Floor,
26, Haddows Road,
Chennai - 6.
- 3.The Assistant Director,
Directorate of Enforcement,
Government of India, 3rd Floor,
Shakar Bhavan, Fateh Maidan Road,
Basheerbagh, Hyderabad - 500 004.

1 cc to M/s.P.Giridharan , Advocate Sr.No.50517

1 cc to Mr.M.Dhandapani , Advocate Sr.No.50545

W.P.Nos.7533 and 7534 of 2015

pur(co)
pmk.18.9.2015

WEB COPY