

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2018

DATE OF DECISION : 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.2815 of 2016

N.Srinivasan

Petitioner

...
-vs-

1. Union of India
rep. by its Secretary
Department of Revenue
Ministry of Finance
New Delhi
2. The Special Director
Enforcement Directorate
Government of India
Western Region
Kaiser-Hindu, Ground Floor
Currimbhoy Road
Ballard Estate
Mumbai

Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the second respondent in T-4/16-B/SDE/R/2011(SCN I-XI)/2304 dated 9th November 2015 and quash the same.

For Petitioner :: Mr.P.R.Raman
Senior Counsel for
Mr.C.Seethapathy

For Respondents:: Ms.G.Hema
Special Public Prosecutor for
Directorate of Enforcement

ORDER

Challenging the impugned proceedings dated 9.11.2015 bearing No.T-4/16-B/SDE/R/2011(SCN I-XI)/2304 issued by the Special Director, Enforcement Directorate, Government of India, Western Region, Mumbai, the petitioner has filed the present writ petition seeking to quash the same. It is seen that the impugned

proceeding is the final outcome of the rejection of the preliminary objection on the jurisdictional issue against the petitioner under Rule 4(3) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000.

2. Learned senior counsel for the petitioner submitted that the petitioner was the Honorary Secretary of the Board of Control for Cricket in India, hereinafter referred to as "the BCCI", a society registered under the Tamil Nadu Societies Registration Act, 1975 having its registered office at M.A.Chidambaram Stadium, Chennai from September, 2008 to September, 2011. He has further pleaded that the BCCI is a society having 30 members, of whom 25 are State Cricket Associations, 2 are private cricket clubs and 3 are Government bodies and has no individual members. Even right from its inception in the year 1929, the BCCI has promoted the sport of cricket in India, as it is responsible for selecting and sending the team for all bilateral international matches. While so, in the year 2007, the BCCI decided to launch the Indian Premier League, hereinafter referred to as "the IPL" and a Sub-Committee of BCCI called the Governing Council of the IPL was constituted to manage the IPL. Mr.Lalit Kumar Modi, the then Vice President of BCCI from North Zone was appointed as the first Chairman of the Governing Council and the Governing Council invited tenders on 18.12.2007 for eight franchises and the first edition of the IPL. In due course, the BCCI also proposed to have the second edition of IPL between 10th April, 2009 and 24th May, 2009, hereinafter referred to as "the IPL-2", which coincided with the general elections announced by the Election Commission of India, as a result, finding it difficult to reschedule the IPL-2 matches, the working committee decided to conduct the IPL-2 outside India and accordingly authorised the President to take suitable action regarding an alternative venue outside India. Since the petitioner was the Secretary of BCCI at the relevant point of time, the BCCI had entered into an agreement with ICC for conduct of the IPL-2 in accordance with the standard arrangements for the conduct of tournaments by a host cricket board. After final discussions with the Cricket South Africa, hereinafter referred to as "the CSA", a decision was taken to hold the IPL-2 at South Africa and the CSA also agreed for the following terms, namely, (i) that all payments made by the BCCI to CSA would be transferred to a dedicated bank account of CSA in the name of IPL South Africa; (ii) that the payments for IPL related expenditure would be met from this bank account; (iii) that all ticket revenues would be deposited into this bank account; etc. In terms of the CSA host agreement, a separate bank account in the name of CSA Pty Ltd., IPL(SA) was made for the second edition of IPL, BCCI transferred a total sum of USD 49,862,799.42 to CSA between 31.3.2009 and 27.8.2010 in foreign exchange through the State Bank of Travancore, Jaipur Branch who is the authorised dealer.

3. In relation to the IPL-2 and the aforesaid transaction with the CSA, the Assistant Director, Directorate of Enforcement, Mumbai made a complaint on 16.11.2011 under Section 16(3) of the Foreign Exchange Management Act to the Special Director, Enforcement Directorate, the second respondent herein making inter alia several allegations against the BCCI office bearers and employees including the petitioner herein that without prior approval of RBI, huge amount was transferred to South Africa. On the basis of the complaint, the second respondent issued a show cause notice dated 25.11.2011 inter alia stating that the petitioner appeared to have contravened the provisions of Section 42(1) of the Foreign Exchange Management Act. Hence, a detailed preliminary reply dated 23.2.2012 was filed on the issue of whether Section 42 of the Foreign Exchange Management Act was at all applicable insofar as the BCCI is concerned, with a request to decide the said issue before the petitioner was called upon to answer the allegations in the show cause notice. When the petitioner raised a preliminary objection that the BCCI is a society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 and it is an unincorporated body of associations not coming within the ambit of the word 'company' used in Section 42 of the Foreign Exchange Management Act, 1999, inasmuch as it does not extend to all persons covered by the definition of the word 'person' used by Section 2(u) of the Foreign Exchange Management Act, the provisions of Section 42 are not applicable, therefore, there is no jurisdiction to issue the show cause notice to the petitioner. However, rejecting all the contentions made by the petitioner, the second respondent came to the conclusion that the status of BCCI as a company has already been settled by the Division Bench of the Bombay High Court in Writ Petition No.5305 of 2013 (Shashank Vyankatesh Manohar v. Union of India and another) in its judgment dated 7.8.2013, wherein it has been held that the invocation of the vicarious liability clause framed against the noticees under Section 42(1) and (2) has been justified.

4. Mr.P.R.Raman further submitted that it is well settled that a registered society is not a body corporate. Therefore, the BCCI, a society registered under the Tamil Nadu Societies Registration Act, 1975, can never be considered as a body corporate, for the simple reason that it promotes sports. Moreover, the BCCI is not even an association of individuals, but it is an association of other State level associations. In view thereof, no part of the explanation can include the BCCI as being a company under Section 42 of the Foreign Exchange Management Act. In support of his submissions, he has also heavily relied on the judgments of the Apex Court in The South Gujarat Roofing Tiles Manufacturers Association and another v. The State of Gujarat and another, AIR 1977 SC 90 and in

P.Kasilingam and others v. PSG College of Technology and others, 1995 Supp.2 SCC 348.

5. But I am not impressed by the arguments advanced by the learned senior counsel for the petitioner. Admittedly, the issue raised in the present writ petition with regard to the application of Section 42 of the Foreign Exchange Management Act for the alleged violations during the conduct of IPL-2 in South Africa, was already raised by the President of BCCI, while challenging the show cause notice impugned therein, before the High Court of Bombay in Writ Petition No.5205 of 2013 on the ground that the BCCI is a society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 and as such it is an unincorporated body of associations not falling under the definition of 'company' used in Section 42 of the Foreign Exchange Management Act and that it does not extend to all persons covered by the definition of the 'person' used by Section 2(u) of the Foreign Exchange Management Act. While repelling the said contention, the Division Bench of the Bombay High Court, in its long and detailed judgment dated 7.8.2013, has held against the President of the BCCI that the impugned notice is legally maintainable and hence it would be too much to say that the complaint against the BCCI is not maintainable, as it is not a company or a firm or an association of persons, but it is an association of societies. The said judgment also has been confirmed by the Supreme Court.

6. As the issue raised in the present writ petition is no longer res integra, as it has been already settled by the Division Bench of the Bombay High Court in Writ Petition No.5305 of 2013 dated 7.8.2013 (Shashank Vyankatesh Manohar v. Union of India and another) holding that the definition of 'person' in Section 2(u) of the Foreign Exchange Management Act, 1999 is inclusive one and therefore the BCCI as well as the Governing Council of IPL are the persons within the definition of Section 2(u) of the Act, which judgment has also been confirmed by the Supreme Court, the petitioner, who was the Secretary of BCCI during the relevant period, cannot once again agitate the same issue before this Court. Therefore, this Court, being bound by the judgments, finding no merits whatsoever in the writ petition, is not inclined to interfere with the impugned proceedings. Accordingly, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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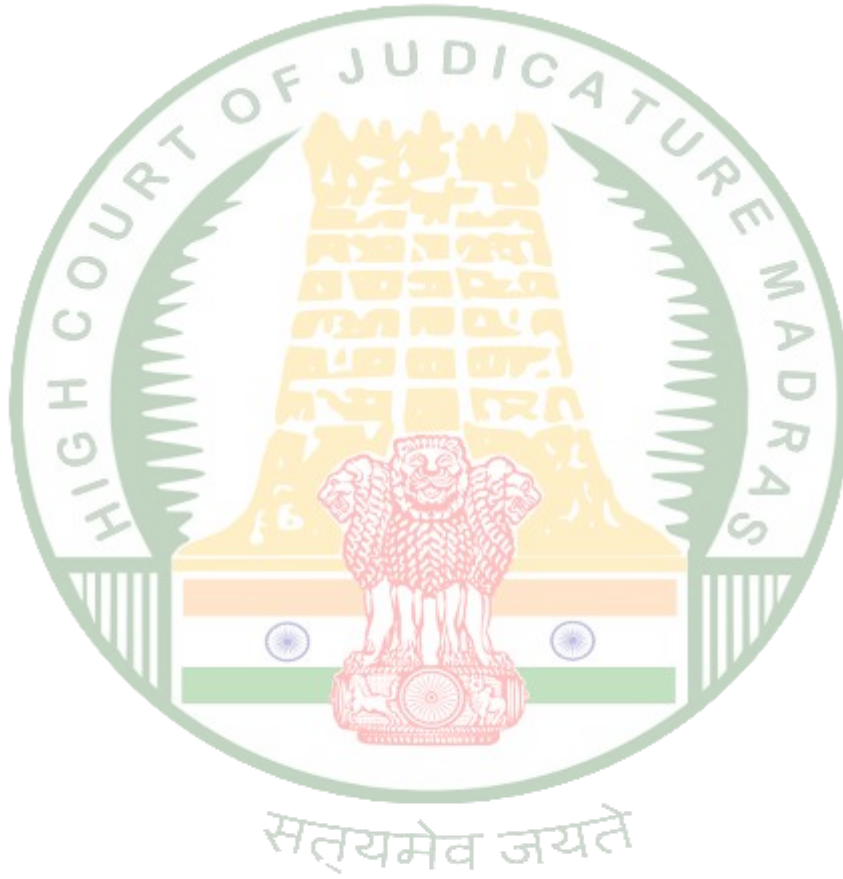
To

+lcc to Mr.C.Seethapathy, Advocate sr.no.44311

+lcc to M/s.G.Hema, Special Public Prosecutor, sr.no.44311

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