

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 03.02.2010

ORDERS PRONOUNCED ON : 12.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.NO.9221 OF 2018
AND
W.M.P.NO.11041 OF 2018

Shafeeque Ahamed K.K. .. Petitioner

Vs.

The Special Director of Enforcement,
Directorate of Enforcement,
Southern Regional Officer,
Shastri Bhavan, III Block, III Floor,
No.26, Haddows Road, Chennai-600 006. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order No.SDE/SRO/CEZO/13/2018 (KRUB), dated 26.02.2018 of the respondent issued in File No.T4/02/CZ/SRO/2013 and quash the same.

For petitioner : Mr.G.Derrick Sam
For respondents : Mr.V.Pari Vallal

ORDER

R.SUBBIAH, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the record pertaining to the impugned order No.SDE/SRO/CEZO/13/2018 (KRUB), dated 26.02.2018 of the respondent issued in File No.T4/02/CZ/SRO/2013 and quash the same.

2. The petitioner has thus challenged the order passed by the respondent/Adjudicating Authority in imposing penalties under Section 13(1) of the FEMA, 1999, for contravention of Sections 3(b) and 3(d) of the FEMA, 1999.

3. The only submission made by the learned counsel for the petitioner is that as per Chapter V relating to "adjudication and appeal" in Section 16(6) of the FEMA, the Adjudicating Authority shall deal with the complaint under sub-section (2) therein as expeditiously as possible and endeavour shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint, provided that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period. In the instant case, the complaint dated 21.09.2012 against the petitioner was filed by the Assistant Director of the Directorate of Enforcement, Cochin under Section 16(3) of the FEMA, 1999. Under such circumstances, as per Section 16(6) of the said FEMA, the complaint ought to have been disposed of within one year from the date of receipt of the complaint. In case the complaint could not be disposed of within one year, then the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the said complaint within the said period. In the case on hand, the impugned order dated 26.02.2018 was passed after a period of six years from the date of complaint, but no reason was recorded by the Adjudicating Authority for not disposing of the complaint within a period of one year from the date of receipt of the complaint.

4. The learned counsel for the petitioner further contended that the petitioner was given personal hearing and he submitted his written submission only on 24.01.2014 and even from the date of personal hearing, there was a delay of four years in passing the impugned order disposing of the said complaint. Hence, looking at any angle, the impugned order is to be quashed.

5. In reply, it is the submission of the learned counsel appearing for the respondent, by filing a detailed counter affidavit, that based on the complaint under Section 16(3) of the FEMA, filed by the Assistant Director on 21.09.2012, the Adjudicating Authority started the Adjudication proceedings by way of issuance of show cause notice, dated 06.03.2013 in No.T-4/2/CZ/SRO/2013 within one year from the date of receipt of the complaint. After perusal of the records of the case and evidence on record, impugned Adjudicating Order in No.SDE/SRO/CEZO/13/2018 (KRUB), dated 26.02.2018 was passed by the Adjudicating Authority and that the time taken to complete the Adjudication proceedings will not absolve the petitioner of the contraventions of the FEMA committed by him. In fact, the petitioner has not brought out on record any prejudice that had been caused by the delay in passing the order to the petitioner.

6. The learned counsel appearing for the respondent further submitted that as against the impugned order, the petitioner is

having an alternative remedy of appeal before the appropriate authority under the FEMA.

7. Heard both sides and perused the materials available on record.

8. Though very many contentions have been raised in the Writ petition, at the time of arguments, the learned counsel for the petitioner restricted his submissions only to the submissions referred to above, which was suitably replied by the learned counsel appearing for the respondent. Ultimately, we are of the opinion that when the appeal remedy is available to the petitioner under the FEMA itself, this Court cannot entertain the Writ Petition merely on the ground that as per Section 16(6) of the FEMA, the complaint was not disposed of within one year from the date of receipt of the complaint.

9. Therefore, the petitioner has to work out his remedy only by filing appeal as against the impugned order under the FEMA. Accordingly, the petitioner is granted four weeks' time from today to file the said appeal, subject to limitation and in the said appeal to be filed before the appellate authority, the petitioner is entitled to raise all grounds that are raised in the present Writ Petition.

10. With the above liberty, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Special Director of Enforcement,
Directorate of Enforcement, Southern Regional Officer,
Shastri Bhavan, III Block, III Floor,
No.26, Haddows Road, Chennai-600 006.

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.11340
+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.12500
+2cc to Mr.V.Pari Vallal, Advocate, S.R.No.11471

W.P.No.9221 of 2018

PM(CO)
CS/12/03/2020