

W.P.M.P.No.1966 of 2021 in W.P.No.28453 of 2010

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V.BHARATHIDASAN.J.,

This miscellaneous petition has been filed by the petitioner in the Writ Petition seeking clarification of the order of this court dated 13.11.2019 made in W.P.No.28453 of 2010.

2. The writ petition was filed challenging the interim order of the 1st respondent/adjudicating authority whereby the request of the petitioner to cross examine the two witnesses viz., (i) Shri. T.Ravikumar and (ii) Shri.Vijayakumar was rejected. The grievance of the petitioner was that, the adjudication proceedings had been initiated against him for the alleged contravention of Section 3(d), 3(a), 4 & 8 of The Foreign Exchange Management Act, 1999 (in short, "the FEMA"). During enquiry, the 2nd respondent enquiry officer recorded the statement of more than ten witnesses and the petitioner wanted to cross examine all those witnesses. However, the 2nd respondent permitted to the petitioner cross examine only four witnesses out of ten witnesses and the

petitioner wanted to cross examine two more witnesses. Fresh summons were already issued for examination of the witnesses on 29.10.2010. Even though two witnesses viz., (i) Shri. T.Ravikumar and (ii) Shri.Vijayakumar were very much present on that date, since his counsel could not present at the office due to unavoidable circumstances, as he was held up in traffic, the petitioner was not able to cross examine those witnesses in time. Thereafter, the counsel reached the office and made a request to permit him to cross examine those witnesses, but that was rejected. In those circumstances, the petitioner came up with the writ petition.

3. This court, earlier by order dated 13.11.2019, allowed the writ petition on payment of cost of Rs.,10,000/- each to be paid by the petitioner to the witnesses (i) Shri. T.Ravikumar and (ii) Shri.Vijayakumar and on such payment, the 2nd respondent was directed to issue fresh summons to the witnesses fixing a date and time for the cross examination.

4. Now, the grievance of the petitioner is that even though the petitioner was permitted to cross examine four witnesses, at the time of enquiry, out of four

only two were present for cross examination, the petitioner was permitted to cross examine those two witnesses only and the two other witnesses were not at all examined. Now, the petitioner wanted to cross examine all those four witnesses. But, the adjudicating authority is not permitting the petitioner to cross examine the other two witnesses who were not cross examined by the petitioner.

5. The The 2nd respondent filed a detailed counter affidavit stating that the petitioner did not come forward to cross examine those two witnesses as per the order passed by the authority and therefore, now, they are not entitled to cross examine them.

6. Admittedly, the authorities had permitted the petitioner to cross examine four witnesses and out of them only two were present on the date fixed for the cross examination, but, due to the default of the petitioner, those two witnesses were not cross examined. However, subsequently, this court permitted the petitioner to cross examine those two witnesses, who were not present on the date of enquiry and cross examined. As per the original order of the adjudicating authority, the petitioner was entitled to cross examine all the four witnesses.

7. On considering the above facts and circumstances, this court directs the 2nd respondent adjudicating authority to permit the petitioner to cross examine all the four witnesses as permitted by him earlier.

8. In view of the clarification made herein above, this court directs the 2nd respondent adjudicating authority to complete the adjudication proceedings and pass a suitable orders therein within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to co-operate with the adjudicating authority so as to complete the adjudication proceedings within such time.

9. The order of this court dated 13.11.2019 made in W.P.No.28453 of 2010 stands clarified accordingly.

In the result, this miscellaneous petition is allowed to the extent as indicated above.

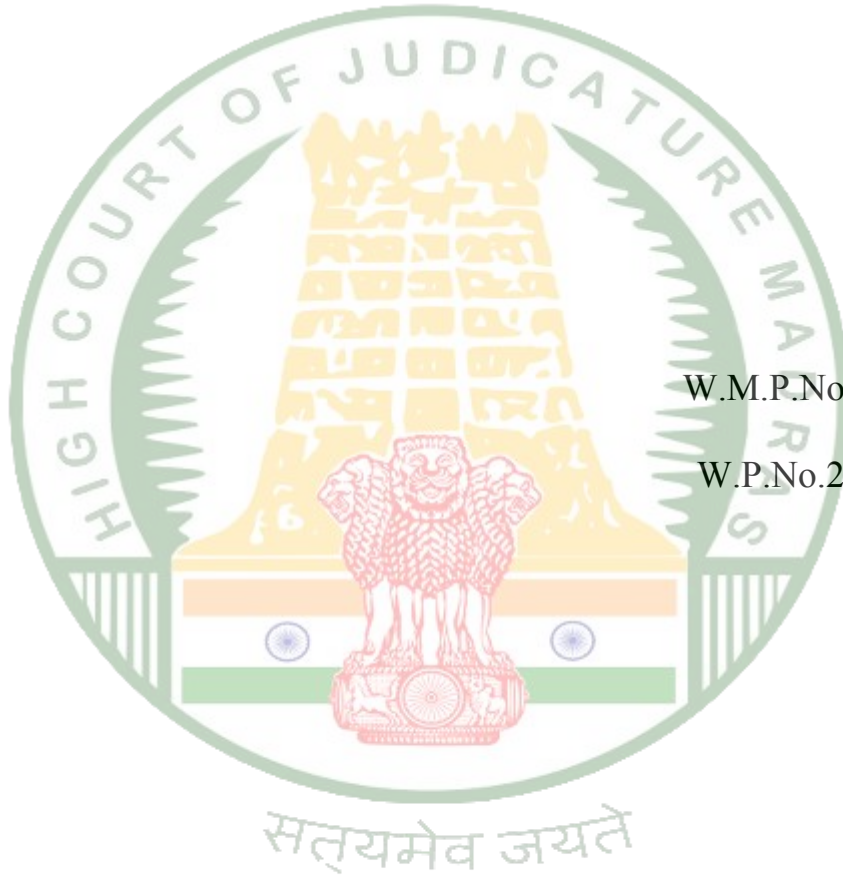
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