

14.03.2022
Court No.13
Item No.18 & 19
AP

WPA 2038 of 2021
With
CAN 1 of 2021
M/s. Easy Fit Jewellery (P) Limited and Anr.
Vs.
Union of India and Ors.

With
WPA 8460 of 2020
Nillesh Parekh
Vs.
Union of India and Ors.

(Through Video Conference)

Mr. Samir Chakraborty, Senior Advocate
Mr. Pramit Bag
Mr. S. Banerjee
Mr. Amit Agarwalla
Mr. Anirudha Agarwalla

... For the Petitioners in WPA 2038 of 2021
and WPA 8460 of 2020.

Mr. Siddhartha Lahiri

... For the Respondent Nos. 2 & 3 in
WPA 2038 of 2021 and WPA 8460 of 2020.

Mr. Anirban Mitra

... For the CBI in WPA 2038 of 2021.

Mr. Kaushik Dey

... For the Respondent No.5 in
WPA 2038 of 2021.

In Re.: WPA 2038 of 2021
With
CAN 1 of 2021

Let WPA 2038 of 2021 with CAN 1 of 2021 be
detached from the WPA 8460 of 2020.

Let WPA 2038 of 2021 with CAN 1 of 2021 be
listed separately on 23rd March 2022.

In Re.: WPA 8460 of 2020

The writ petition challenges notice dated 6th July 2020 issued by the Office of the Special Director, Eastern Region, Enforcement Directorate under the provisions of 16(3) of the Foreign Exchange Management Act, 1999.

In terms of Para 11 thereof, the petitioner was asked to appear in person or through legal practitioner to explain and produce documents or evidence as may be useful for the subject of enquiry. Prior thereto, a complaint was sent on the same date by the Assistant Director to the Adjudicating Authority as regards a series of complaints detailing failure on the part of the petitioner to bring back foreign exchange - being export proceeds - to the extent of about seven thousand crores.

Mr. Samir Chakraborty, learned Senior Advocate appearing for the petitioner would argue that the adjudicating authority did not follow the procedure prescribed in Rule 4(1) and 4(2) of the Adjudication Rules of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000.

It is also argued that by reason of such omission, the petitioner is seriously prejudiced in that he has no clear idea as to the subject matter or scope of the enquiry. It is submitted that the consequences of such adjudication are extreme and serious.

It is also argued by Mr. Chakraborty that the petitioner has been seriously prejudiced by refusal and

failure to supply documents relied upon by the complainant Assistant Director.

Reliance is placed by Mr. Chakraborty on the decision of the Supreme Court in the case of ***Natwar Singh Vs. Director of Enforcement and Anr.*** reported in ***(2010) 13 SCC 255*** particularly Paragraphs 21 to 31.

Reliance is also placed on the decision of the Division Bench of the Bombay High Court in the case of ***Shashank Vyankatesh Manohar Vs. Union of India and Anr.*** reported in ***2014 (1) Maharashtra Law Journal 838*** particularly Paragraphs 10 to 16.

This Court has carefully considered the submissions of the petitioner and those of the respondents.

Indeed as noted in the ***Natwar Singh's (supra)*** decision, the procedure before an adjudicating authority under the provisions of the Foreign Exchange Management Act read with the Rules of 2000 is unique unlike any other statutory quasi judicial inquiry. A two-stage process is stipulated, most likely, given the huge civil consequences that would visit the noticee. The other consequences being civil prison and prosecution.

The facts of the instant case are rather different. The decision of ***Natwar Singh (Supra)*** was dealing with transactions in foreign exchange totally away from the Indian shores. The decision of ***Shashank Vyankatesh***

Manohar (supra) was dealing with a case of a widely published cricket tournament.

In the instant case, failure to bring back export proceeds to the extent of seven thousand crores arose out of loan transactions between the petitioner and his entities and about 23 banks.

It is now well settled that every infraction of the principles of natural justice or procedure stipulated for adjudication would not vitiate a proceeding. The petitioner has to demonstrate actual and real prejudice. Reference in this regard is made to *State Bank of Patiala Vs. S.K. Sharma* reported in 1996 AIR 1669.

The two tier procedure under Rule 4 which warrants a preliminary enquiry to form an opinion before the process of actual adjudication, may have laudable objects given the very serious civil consequences. The need of demonstration of prejudice due to infraction of such procedure would still be necessary to vitiate the proceedings, and would not otherwise be given a go-by merely because of codification of principles of natural justice into separate Rules in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000.

Since the petitioner himself submits that the notice issued by the Adjudicating Authority was under Rule 4(3), this Court requires the adjudicating authority to submit a brief gist of its satisfaction of prima facie case

against the petitioner along with copies of necessary documents within a period of 15 days from date.

Upon receipt of such gist, the petitioner shall show cause both to the notice dated 6th July 2020 as well as the gist. The procedure prescribed under Rule 4(3) would thereafter be undertaken by the adjudication authority.

The proceedings before the adjudicating authority shall be completed expeditiously and preferably within a period of two months from the date of supplying the gist as indicated hereinabove.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)