



W.A.(MD)No.456 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.01.2025

DELIVERED ON : 24.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **RMT.TEEKAA RAMAN**

and

THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

W.A.(MD)No.456 of 2021

and

C.M.P.(MD)Nos.1875 of 2021 and 17403 of 2024

The Principal Commissioner of Customs,
O/o.the Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirappalli-620 001.

... Appellant

-vs-

Sabeer Ahamed Sayeed

...Respondent

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.14425 of 2019, dated 11.03.2020 on the file of this Court.

For Appellant :Mr.R.Nanda Kumar

For Respondent :Mr.R.S.Sivaram



W.A.(MD)No.456 of 2021

WEB COPY

JUDGMENT

[Judgment of the Court was made by **N.SENTHILKUMAR, J.**]

The unsuccessful respondent before the Writ Court had filed the present Writ Appeal challenging the order passed by the learned Single Judge in W.P(MD)No.14425 of 2019, dated 11.03.2020.

2.The brief facts of the Writ Petitioner is that he is a Customs House Agent of M/s.Coachin Air Cargo Clearing House, Trichy and he is a 'H' card holder registered under the appellant/respondent. The Government of India framed rules and regulations for appointment of 'H' Card, 'G' Card and 'F' Card holders. The Government of India issued a new regulation, namely, Customs Brokers Licensing Regulations-2018, vide notification, dated 14.05.2018. Under the Customs Act, there are three cards, namely, 'F' card holder, 'G' card holder and 'H' card holder, as per the Regulation No.13. The said regulation is extracted hereunder:

“(h) “G card holder” means a person who has passed the examination referred to in regulation 13 and has been issued a photo identity card in Form G;

(I) “H card holder” means a person who has not passed the examination referred to in regulation 13 and has been issued a photo identity card in Form H;”



W.A.(MD)No.456 of 2021

WEB COPY

3.The Writ Petitioner/respondent is a 'H' card holder of Customs Agency of M/s.Coachin Air Cargo Clearing Housing, Trichy. Vide impugned notification No.1/19, dated 30.01.2019, the appellant had issued a public notice on 30.01.2019 calling for an examination for grant of 'G' card as per Regulation 13(5) of the Customs Brokers Licensing Regulations, 2018, for the year 2019. As the Writ Petitioner/respondent being a 'H' card holder, had applied for 'G' card. The eligibility to take part for getting the 'G' card is that a person, who is having a valid 'H' card and who has passed 10+2 or equivalent shall be eligible to take part in the examination and 100 marks were fixed as qualifying marks in the written examination. As per the notification, the examination will be conducted in two parts, 1) the written examination for 100 marks and 2)viva for 50 marks, altogether 150 marks.

4.It is not in dispute that the Writ Petitioner/respondent was having a valid 'H' card, issued by the Assistant Commissioner of Customs, Trichy, on 14.02.2019, which was valid upto 13.02.2020. The contention of the Writ Petitioner is that when the examination was conducted and results were



W.A.(MD)No.456 of 2021

published, the Writ Petitioner's name was found in Sl.No.31, where he has passed in the written examination and as per the call letter, dated 10.04.2019, an intimation was sent to the Writ Petitioner/respondent to take part in the viva -oc. He was directed to take part in the interview to be held on 30.04.2019 at 02.00 pm and he was further required to attend the interview along with his call letter and admit card. After completion of viva, on 30.04.2019, viva results were declared, where the Writ Petitioner/respondent has been declared failed. The name of the Writ Petitioner/respondent was found place in Sl.No.18. As per Rule 13(5) of the Customs Brokers Licensing Regulations-2018, mere pass in the written examination is sufficient and there is no provision for the viva test and challenging the notification of the appellant, who conducted the viva test, the respondent/Writ Petitioner has filed the above Writ Petition.

5.The learned Single Judge by order, dated 11.03.2020, had allowed the Writ Petitioner and directed the appellant/respondent to appoint the respondent/Writ Petitioner as 'G' card licence holder on or before 31.03.2020, if he is otherwise eligible. Challenging the same, the respondent before the Writ Court has preferred the above Writ Appeal.



W.A.(MD)No.456 of 2021

WEB COPY

6.Mr.R.Nandakumar, learned Senior Standing Counsel appearing for the appellant contended that when the respondent/Writ Petitioner had failed in the viva and therefore, he is not entitled for 'G' card licence. The result of the oral examination was declared 06.05.2019 in which only two persons had passed in the oral interview. The learned Senior Standing Counsel contended that the Writ Court without analysing the rules had directed the appellant to appoint the respondent as a 'G' card holder on or before 31.03.2020, as he has passed the written examination.

7.The learned Senior Standing Counsel further contended that the respondent was having a criminal case in C.C.No.131 of 2001, pending before the Judicial Magistrate Court No.I, Trichy under Section 135 of the Customs Act. The learned Senior Standing Counsel appearing for the appellant had relied upon Rule 13(4) of the Customs Brokers Regulation Rules 2018, which is extracted hereunder:

“Employment of a person referred to in sub-regulation (3) shall be made only after obtaining the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, who shall in granting approval, take into consideration the antecedents and any other information pertaining to the character of such person”.



W.A.(MD)No.456 of 2021

WEB COPY

8.By relying on the above, the learned Senior Standing Counsel contended that as the antecedents of the respondent was doubtful, who had been implicated in a case of attempted export, the criminal complaint before the Judicial Magistrate Court No.I, Trichy in C.C.No.131 of 2001, cannot be ignored, while awarding 'G' card in favour of the respondent.

9.*Per contra*, the learned Counsel appearing for the respondent contended that in an appeal by the respondent Company, namely, M/s.Coachin Air Cargo Clearing House, in Criminal Appeal No.40224 of 2021, dated 29.09.2023, a final order was passed and the appeal was allowed in favour of the respondent Company and therefore, there is no impediment for the appellant for issuing 'G' card licence in favour of the respondent. The exercise of power as per the regulation and keeping in view of the pendency of the criminal case, the respondent cannot deny the issuance of 'G' card holder. The learned Counsel appearing for the respondent relied upon the Public Notices issued by various circles of Customs Department for appointment of 'G' card licence, wherein, it is clearly shown that it is only the education qualification is warranted and there is



W.A.(MD)No.456 of 2021

no condition that there will be a viva for granting 'G' card licence and hence, he seeks dismissal of this appeal.

10. Admittedly, when the notification had not prescribed the procedure beyond the educational qualification and the written examination, conducting viva for the selected persons in the written examination conducted by the appellant is *per se* illegal. Even as per Clause-VI of the 2018 Regulation, the mode of examination do not contemplate for conducting viva. The 2018 Regulation stated supra governs the entire country. The appellant cannot pick and choose on their own method of conducting viva after written examination. The appellant had specifically implanted such a procedure to pick and choose the people, to whom they wish to be selected for grant of 'G' card licence. Clause 13(5) and 13(6) and 13(7) of the 2018 Regulation clearly stated that the qualification for getting 'G' card holder is pass in the examination alone. In the absence of any proviso in the regulation for conducting viva, the viva conducted by the appellant is without jurisdiction and without any power conferred under the Regulation.



W.A.(MD)No.456 of 2021

WEB COPY

11.In view of the same, we do not see any reason to interfere with the order passed by the Writ Court and in the result, the **Writ Appeal is dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

[T.K.R., J.] [N.S., J.]
24.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

cmr



WEB COPY



W.A.(MD)No.456 of 2021

RMT.TEEKAA RAMAN, J.
and
N.SENTHILKUMAR, J.

cmr

W.A.(MD)No.456 of 2021

24.01.2025