

A. Abdul Samath and Another Vs. Union of India and Another

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Court : Chennai

Decided On : Mar-10-1995

Reported in : [1995]83CompCas99(Mad); 1996CriLJ727; 1995(2)CTC102; 1995(50)ECC74; 1995(78)ELT429(Mad)

Judge : Doraiswamy Raju and; K.A. Swami, JJ.

Appeal No. : Writ Appeal No. 851 of 1994, W.P. No. 3487 of 1994, W.M.P. No. 5621 of 1994 and C.M.P. No. 9741 of 1

Appellant : A. Abdul Samath and Another

Respondent : Union of India and Another

Judgement :

Raju, J.

1. The above writ appeal and writ petition have been posted together and heard since they involved consideration of identical issues.

2. W.P. No. 3487 of 1994 has been filed for a writ of certiorari to call for and quash Memorandum No. T-4/15/SZ/C/94, dated February 9, 1994, issued by the Deputy Director (Sri A. K. Banerjee), Enforcement Directorate, Southern Zone, Madras-600 006. The said memorandum calls upon the petitioner and three others to show cause within the time stipulated as to why adjudication proceedings as

contemplated in section 51 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as 'the Act'), should not be held against them for the contravention of the various provisions referred to therein and as to why US Pounds 13,000 and Rs. 2,60,915 Indian currency seized from the petitioner stated to be the amount involved in the contravention in question should not be confiscated to the Central Government under section 63 of the Act. The said memorandum also informs the recipients including the petitioner of the said memorandum, that in issuing the said proceedings reliance is placed, inter alia, on the documents listed in the annexure thereto, that the originals of the said documents will be made available to the party or their lawyer or to their authorised, representative to inspect, if they so desire at the place mentioned after fixing an appointment with the deputy director, in addition to inviting their attention to the proviso to rule 3 of the Adjudication Proceedings and Appeal Rules, 1974 (hereinafter referred to as 'the Adjudication Rules'), and the rights available thereunder.

3. The petitioner approached this court by filing the above writ petition on more than one ground, but at the time of hearing, the challenge was confined by learned senior counsel to only a few of the grounds to which a reference will be made hereinafter. The main ground of challenge directed against the memorandum in question is that the impugned memorandum, on the face of it, is shown to have been issued by a Deputy Director of the Enforcement Directorate of the Southern Zone and does not contain any indication of having been issued by the said authority as adjudicating officer and that the proceedings for adjudication could not be initiated or undertaken by any one except the designated adjudicating officer. Consequently, it is contended that the very memorandum is rendered wholly without jurisdiction and contrary to law and cannot be pursued further against the petitioner. The second ground of challenge urged is the one based upon rule 10 of the Adjudication Rules. It is contended for the petitioner, relying upon the said rule, that the impugned memorandum came to be served not on the petitioner himself personally, but on the wife of the petitioner and this method of service is not only an unauthorised one, but is contrary to the rules particularly rule 10 of the Adjudication Rules inasmuch as the wife cannot be considered to be the duly authorised agent of the petitioner. The third and the last of the contention urged at

the time of hearing on behalf of the petitioner is that though the annexure to the memorandum lists out four categories of documents, items Nos. 1 and 4 have not been supplied to the petitioner along with the impugned memorandum and that this has caused grave prejudice to the petitioner resulting in violation of the principles of natural justice, for which the impugned memorandum is liable to be set aside.

4. The respondent has filed a counter affidavit. While traversing the various averments and claims made in the affidavit filed in support of the writ petition in detail, so far as the points urged at the time of hearing, as noticed supra, are concerned, it is stated that the memorandum under challenge is valid and there is no justification to strike down the same. The Deputy Director, Sri A. K. Banerjee, was said to have been authorised to issue the show-cause notice as adjudicating officer under section 50 read with section 3 of the Act as per which all officers not below the rank of an Assistant Director of Enforcement were appointed as adjudicating officers under section 50 of the Act read with the Central Government Notification No. 1202, Cabinet Secretariat Order No. 19/7/75-AVD-IV(ii), dated March 29, 1976. The claim on behalf of the petitioner that copies of the documents seized from Raman Chelliah were not given are stated to be false and they were also said to have been given along with other annexures to the memorandum and that there is no need to intimate the petitioner about the further course of action taken against the said Raman Chelliah. As for the claim about the defective and irregular service of the memorandum, it is contended for the respondents that the impugned memorandum was duly sent by registered post with acknowledgment due to the petitioner and the postal acknowledgment card for the same has been signed by his wife and, therefore, the service of the impugned memorandum upon the petitioner is quite in accordance with law. It is also stated that the petitioner also sent a telegram to the Deputy Director, Madras, confirming the receipt of the memorandum and, therefore, the impugned memorandum does not call for any interference by this court at this stage of the proceedings.

5. W.A. No. 851 of 1994 has been filed against the order of the learned single judge dated June 22, 1994, in W.P. No. 8326 of 1994, whereunder the learned judge has chosen to summarily dismiss at the stage of admission the writ petition

filed by the appellant seeking for a writ of certiorari to call for and quash the proceedings culminating in Memorandum No. T-4/70-M/SCN/93, dated December 29, 1993. The impugned memorandum dated December 29, 1993, came to be issued by one Sri S. S. Renjhen, Special Director, Enforcement Directorate, Government of India, Headquarters Office, New Delhi-3, to the appellant and two others, calling upon them to show cause within the time stipulated therein as to why adjudication proceedings as contemplated in section 51 of the Act should not be held against them for the various contraventions referred to therein and as to why the foreign exchange of US Pounds 1,92,493 Saudi Riyals 5,44,000 Qatar Riyals 12,000 U.A.E. Dirhams 70,500 and Singapore Pounds 11 seized from the residence of the appellant on July 15, 1993, stated to be the amount involved in the contravention noticed in the memorandum should not be confiscated to the Central Government under section 63 of the Act. It is also stated therein that the memorandum is issued relying upon the documents listed in the annexure thereto as in the other case making it known to the persons concerned that the original documents will be made available for inspection and also apprising the petitioner and others of the rights under the proviso to rule 3 of the Adjudication Rules.

6. Before the learned single judge, three contentions appear to have been made, the first of which seems to be that the memorandum has been issued only by one Sri S. S. Renjhan, Special Director of the Enforcement Directorate, and that he had no authority under the Act to issue such a notice, he being only a Special Director and not the authority referred to in section 50 of the Act. The second submission made appears to be that the said Sri S. S. Renjhen, the Special Director, has not signed the show-cause notice as the adjudicating officer and has merely signed it as Special Director. The last of the submissions appears to be that W.P. No. 3487 of 1994 has already been admitted and interim orders have been granted and, therefore, W.P. No. 8326 of 1994 also should be admitted and interim orders granted. The learned single judge, on a careful consideration of the submission, chose to reject every one of them. As for the first of the contentions, the learned judge placed reliance upon the unreported decision of another learned single judge of this court dated April 21, 1994, in W.P. No. 1280 of 1994 (K. M. A. Abdul Kabeer v. Special Director, Enforcement Directorate 1995 82 Comp Cas 526 and concurred with the view taken therein that the notification empowering

persons not below the rank of the Assistant Director of Enforcement would be a sufficient answer to the objection raised on behalf of the appellant before the learned judge. As for the second ground of challenge about the Special Director issuing the memorandum in his capacity as Special Director only, the learned judge again adverted to the decision in W.P. No. 1280 of 1994 (K. M. A. Abdul Kabeer v. Special Director, Enforcement Directorate [1995] 82 Comp Cas 526 (Mad)) : and the notification dated September 22, 1989, published in the Gazette of India, specifically authorising the Special Director to be an Officer of Enforcement for the purposes of enforcing the provisions of the Act and to exercise the powers under section 50 of the said Act as constituting a sufficient answer. As for the plea raised based on the earlier admission of W.P. No. 3487 of 1994, the learned single judge chose to reject the same on the ground that the issues raised stood already decided finally in W.P. No. 1280 of 1994 and, therefore, there is no scope for admitting the writ petition on that account. That apart, the learned judge also placed reliance upon the decision of the apex court in State of U. P. v. Brahm Datt Sharma, : [1987]2SCR444 , to come to the conclusion that there is no justification to entertain the writ petition at that stage of the proceedings, namely, the show-cause notice stage.

7. Mr. S. Govindswaminathan, learned senior counsel appearing for the appellant and the petitioner in the above matters, while reiterating the stand taken before the learned single judge, contended that the failure to disclose the proper identity or description of the authority which has initiated the proceedings under challenge in those matters before us and the absence of any indication in the memorandum under challenge that they have been issued by the persons concerned in the capacity of the adjudicating officer in exercise of the powers of adjudication under the Act would constitute a serious infirmity going to the very root of jurisdiction and render the impugned proceeding without the authority of law and liable to be struck down. As for the case which is the subject-matter of the writ appeal, it was also contended that the Special Director could not be said to be the proper authority inasmuch as by virtue of the notification relied upon for the respondent as also the provision under which the notification empowering the Special Director came to be issued, he must be considered to be an officer below the rank of an assistant director and, therefore, totally lacks jurisdiction to invoke the powers of

adjudication conferred under the Act. Further, learned senior counsel also reiterated the grounds about the irregular service of the proceeding under challenge and the denial of opportunity in the case which is the subject-matter of the writ petition before us.

8. Learned Additional Central Government Standing Counsel, while adopting the reasoning of the learned single judge, reiterated the stand taken in the counter filed in the writ petition to which a detailed reference has already been made *supra*.

9. We have carefully considered the submissions of learned counsel appearing on either side. We are of the view that there is absolutely no merit whatsoever in any of the contentions raised both in the writ petition as also in the writ appeal.

10. So far as the plea raised on the ground that unless the memoranda under challenge in these proceedings have been shown or disclosed to have been issued by an officer of the rank and also with the designation of the adjudicating officer in the proceedings themselves the impugned proceedings are liable to be struck down is of no substance. In the light of the notifications referred to and relied upon for the respondents as also by the learned single judge, the ground of challenge lacks any merit. In Notification F. No. 174/2/89-TC(E), dated September 22, 1989, the Central Government appointed Shri S. S. Renjhen invoking the powers of section 4(1) read with clause (e) of section 3 of the Act to be an Officer of Enforcement with the designation of Special Director of Enforcement for the purposes of enforcing the provisions of the said Act. The said notification also, in exercise of the powers conferred under section 50 of the Act, empowered him to adjudicate cases of contravention of any of the provisions thereof other than section 13, clause (a) of sub-section (1) of section 18 and clause (a) of sub-section (1) of section 19 or of any rule, direction or order made thereunder. Similarly, Notification No. 14/93 (F. No. 1/1/93-Ad. IC. S.O. 696(E)), dated September 17, 1993, notifies in pursuance of section 50 read with sub-section (3) of section 4 of the Act and in supersession of the earlier notification dated March 11, 1989, empowering every Deputy Director of Enforcement to adjudicate cases of contravention of any of the provisions of the Act other than section 13, clause (a)

of sub-section (1) of section 18, section 18A and clause (a) of sub-section (1) of section 19 or of any rule, direction or order made thereunder, involved an amount or a value not exceeding Rs. 10 lakhs. In the light of the two notifications by the Government of India, there could be no valid challenge to the authority of the persons who issued the memorandum under challenge in these cases or to their jurisdiction to issue the same and pursue the adjudication proceedings. The two notification referred to above constitute sufficient authority to confer jurisdiction upon the respective officers who have purported to exercise the powers of adjudication under the memoranda which are the subject-matter of challenge in these proceedings.

11. The question for consideration would be as to whether the non-mentioning of their designation at the top of the proceedings as also beneath their signature that they are exercising the powers of the Adjudicating Officer could be said to be a serious error undermining their jurisdiction to initiate the adjudication proceedings and pursue the same and pass final orders. The plea that since the deputy director and Special Director have their own administrative roles also to be played in the Enforcement Directorate or Department, unless they specifically purport to exercise the powers of an adjudicating officer by specific reference to such designation, quasi-judicial powers of an adjudication cannot be claimed to be exercised under the impugned proceedings, is devoid of merit. Even a cursory perusal of the impugned memorandum would show that they have been issued in exercise of the powers of adjudication on account of the specific mention contained in such proceedings not only of the relevant provisions including sections 50 and 51 of the Act, but also the reference made to the Adjudication Proceedings and Appeal Rules, 1974. Consequently, the pretended confusion or lack of disclosure of the proper identity and authority of the officer issuing the memorandum is nothing but a futile attempt and seems to be desperately made to drag on the proceedings or delay the adjudication process and thereby thwart the action in law against the appellant and the petitioner in these cases. The impugned proceedings, in our view, do not leave either scope or room for any doubt that they have been issued in exercise of the powers of adjudication conferred upon the duly and properly constituted adjudicating officers, though the memoranda themselves do not purport to describe those officers as adjudicating

officers. Of course, the authorities could have been more discreet and careful in properly describing their identity but the failure on their part in this regard, in our view, does not in any manner undermine their authority to issue the impugned memoranda or pursue the adjudication process further in accordance with law. The challenge in this regard shall stand rejected as of no merit of acceptance. The plea based on the irregular service of the notice under challenge upon the petitioner in W.P. No. 3487 of 1994 also proceeds upon a surmise and misapprehension. Rule 10 of the Adjudication Proceedings and Appeal Rules, 1974, provides for more than one manner of service of which one is by delivering or tendering the notice or order to that person concerned or his duly authorised agent. This obviously governs the cases of service directly by the department by adopting personal service methods. The other mode of service contemplated under clause (b) of rule 10 is by sending the notice or order to the person concerned by registered post with acknowledgment due to the address of his place of residence or his last known place of residence or the place where he carries on, or last carried on, business or personally works, or last worked for gain. In this case, it is not in dispute and as a matter of fact, it was admitted that the impugned proceedings were issued for service through registered post with acknowledgment due and if during delivery by the postal authorities while effecting service of the same, the wife of the petitioner received the envelope with its contents sent through registered post and acknowledged the same, the officers of the department could not be accused of having not observed the rule. The rule postulates only the sending of notice by registered post with acknowledgment due and has nothing to do with the person to whom alone it could be tendered nor does it stipulate as to who are the persons who alone could acknowledge the notice sent by registered post. So long as the notice has been sent by registered post and delivered by the postal authorities, it matters very little as to whether the addressee himself has received it or anyone in his family or office to which the communication has been addressed has received. It can be safely presumed that the postal authorities would not deliver it to strangers. Further, it can also be inferred from the proved facts that the wife could not have received the registered letter with acknowledgment due unless she had been authorised by the addressee to receive the same. The procedure adopted, in our view, does not in any manner

appear to be contrary to the stipulation contained in the rules in question and cannot also be said to vitiate the proceedings. This is all the more so since the petitioner appears to have further confirmed the receipt of the same by sending a telegram addressed to the authority which issued it. This contention also, therefore, fails and shall stand rejected. The further plea on behalf of the petitioner that of the four annexures listed in the memorandum items Nos. 1 and 4 have not been served on the petitioner and that this constitutes violation of the principles of natural justice and, therefore, the impugned memorandum is liable to be struck down is equally devoid of merit. In the counter-affidavit, it is denied that two items of annexures have not been served. For the purpose of the present case, it is unnecessary to enter into the controversy and adjudicate upon the factual position as to whether the same has really been served or not. So far as the case on hand and particularly the one which is the subject-matter of the writ petition before us is concerned, it is only at the stage of show-cause notice. The memorandum itself disclosed that the original annexures on the basis of which the memorandum came to be issued are available for perusal by the petitioner or his counsel or authorised agent. If really the copies in respect of two annexures have not been issued and served upon the petitioner, there is every scope to obtain the same, inasmuch as nothing precludes the petitioner from pointing out the same and seeking copies of the same either before the perusal of the originals, if so desired or even without such perusal and on or after perusal of the originals. It is only where in spite of such a request made complaining of the non-receipt of the annexures, for furnishing copies thereof the proceedings are pursued without furnishing copies and final orders are passed, that a grievance could be made out that the petitioners have been denied an effective opportunity or that the proceedings came to be passed in violation of the principles of natural justice. Inasmuch as the proceedings are at the stage of show-cause notice only, this grievance about the denial of opportunity pales into insignificance and lacks merit. It is always open to the petitioner, if he so desires, to seek such copies and on such request being made, the department also has to oblige the petitioner with such request. That being the correct position, we do not see any merit in this ground of challenge as well.

12. That apart, we are also of the view as the learned single judge observed that the petitioner ought not to be allowed to approach this court even at the stage of show-cause notice, unless any ground of total want of jurisdiction is substantiated. Inasmuch as we have held supra that the respondents who have issued the impugned proceedings do not lack jurisdiction to initiate the adjudication proceedings and finalise the same in accordance with law, these proceedings are liable to be rejected on the said ground also.

13. For all the reasons stated above, we are of the view that the challenge made to the impugned proceedings does not merit our acceptance and consequently, the writ petition as also the writ appeal shall stand dismissed, but in the circumstances of the case, there shall be no order as to costs. Consequently, the connected W.M.P. and C.M.P in the above writ petition and writ appeal shall also stand dismissed.

14. Before parting with the case, we would like to observe that in order to avoid such technical contention which only tends to delay the proceedings, it is always advisable to state in the show-cause notice the order under which the officer or the authority is empowered to issue such notice and issue such notice under the same designation as authorised.