

(2003) 11 DEL CK 0021
In the Delhi High Court
Case No : C.W. No. 7717-19 of 2003

Capt. Satish Sharma and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-11-2003

Acts Referred:

Adjudication proceedings and Appeal Rules, 1974 — Rule 3, 3(3)
Constitution of India, 1950 — Article 226
Foreign Exchange Regulation Act, 1973 — Section 49(3), 49(4), 51, 64(2)

Citation : (2004) 109 DLT 938

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Sidharth Luthra, for the Appellant; Atul Batra and Neeraj Jain, for the Respondent

Judgement

Badar Durrez Ahmed, J.—Petitioners are aggrieved by the communication dated 20.10.2003 whereby the respondent No. 2 has communicated to the petitioners that its Special Director is of the opinion that adjudication proceedings as contemplated in Section 51 of the Foreign Exchange and Regulations Act, 1973 (hereinafter referred to as the FERA) should be held against the petitioners in accordance with the procedure laid down in the Adjudication Proceedings and Appeal Rules, 1974 (hereinafter referred to as a said Rules) and intimating the petitioners of the date of personal hearing. The petitioners are aggrieved by the fact that in the said communication dated 20.10.2003, it is communicated that the petitions had failed to reply to the memorandum/show-cause notice issued by the respondent No. 2. The show cause notice/memorandum dated 23.5.2002 had been issued by the respondent No. 2 to all the petitioners. The allegations against the petitioners are under the provisions of Sections 9(1)(a)(c) and (f) read with Section 64(2) of FERA read with Sections 49(3) and 49(4) of Foreign Exchange Management Act, 1999 (hereinafter referred to as a FEMA). All the petitioners sent tentative replies to the said show-cause notice on 29.7.2002, copies whereof have been placed at pages 46, 52 and 57 of the paper book. As

such, it does appear that the statement contained in the communication dated 20.10.2002 is not entirely correct to the extent that the petitioners had in fact filed the replies.

2. The petitioners are also aggrieved by the fact that, according to them, the documents that were necessary and that have been referred to in the show-cause notice had not been supplied to them. However, in this respect, learned Counsel for the respondents have handed over a photo copy of the handwritten receipt of a clerk of an Advocate by the name of Mr. A.K. Vali, acknowledging receipt of photocopies of documents relied upon in the said case. The same is taken on record. There is, however, some controversy with regard to the fact as to whether this receipt has been issued by an authorised person or not. Be that as it may, the entire writ petition can be disposed of in view of the fact that the respondents, although they submit that they have already supplied documents, are willing to supply a second set of the documents that are relied upon in this case being the documents mentioned in Annexure "B" to the said show-cause notice/memorandum.

3. The procedure prescribed under the said rules and in particular Rule 3 thereof becomes clear upon a reading of the same.

"3. Adjudication proceedings.--(1) In holding an inquiry u/s 51 for the purpose of adjudging u/s 50 whether any person has committed contravention as specified in Section 50, the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why adjudication proceedings should not be held against him.

(2) Every notice under Sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that adjudication proceedings should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence alleged to have been committed by such person indicating the provisions of the Act or of the rules, directions or orders made there under in respect of which contravention is alleged to have taken place.

(5) The adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date; and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).

(6) If any person fails, neglects or refuses to appear as required by Sub-rule (3)

before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

(7) If, upon consideration of the evidence produced before the adjudicating officer the adjudicating officer is satisfied that the person has committed the contravention he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of Section 50:

Provided that the notice referred to in Sub-rule (1), and the personal hearing referred to in Sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived."

4. From Sub-rule (1) of Rule 3, it becomes clear that in the first instance, the adjudicating officer issues a notice to a person who has allegedly contravened the provisions of FERA specified in Section 50 thereof requiring him to show cause within such period as may be specified as to why adjudication proceedings should not be held against him. Sub-rule (3) of Rule 3 provides that if on considering the cause shown by the person (if any), the adjudicating officer is of the opinion that adjudication proceedings should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representatives. The communication dated 20.10.2003 has been issued in purported compliance of Sub-rule (3) of Rule 3. However, as indicated above, the communication records that the replies had not been filed by the petitioners whereas, in fact, they have been filed. This is an obvious error in the impugned communication. As such it would be proper to set aside the impugned communication dated 20.10.2003 and to remand the matter. It is so remanded to the Adjudicating Officer to consider the replies already filed by the petitioners and then to arrive at an opinion as to whether adjudication proceedings should be held or not. The documents that have been sought by the petitioners and which have been indicated above, shall be supplied by the respondents within a week of this order to a person or persons authorised by the petitioners in this behalf. If any further reply is necessary on the supply of the documents, the petitioners may file additional replies within a week thereafter. The Adjudicating Officer shall thereafter proceed with the matter as per the provisions of the said rules as expeditiously as possible.

With these directions, the writ petitions are disposed of.

dusty to both the parties.