(1980) 08 MAD CK 0016

In the Madras High Court

Case No : A.A.O. No. 35 of 1977 and C.M.P. No. 12251 of 1979

Director of Enforcement, Madras APPELLANT

Vs

Rama Arangannal and Another RESPONDENT

Date of Decision : 29-08-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Foreign Exchange Regulation Act, 1973 — Section 52, 54

Citation : AIR 1981 Mad 80 : (1981) 1 MLJ 62

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : U.N.R. Rao, for the Appellant; G. Ramaswanti, for S. Venkataraman and R. Mahesh, for the Respondent

Judgement

Ramanujam, J.—The above appeal had been filed by the Director of Enforcement against the order dated 13th Dec. 1974 of the Foreign

Exchange Regulation Appellate Board, allowing the appeal filed by the respondents herein and setting aside the order of adjudication of the Deputy

Director of Enforcement., dated 28th August 1972 holding the respondents guilty of contravention of the provisions of Section 4(1) of the Foreign

Exchange Regulation Act, 1947, and imposing a personal penalty of Rs. 5000 on each of the respondents.

2. The appellant, the Director of Enforcement, has filed the appeal claiming him self to be aggrieved against the said order of the Foreign Exchange

Regulation Board. A preliminary objection has been taken by the respondents herein as to the maintainability of the appeal by the Director of

Enforcement. The preliminary objection raised by the learned counsel for the respondent is two-fold, (1) Under the Foreign Exchange Regulation

Act 1073, it is only the Central Government which can be taken to be aggrieved against the decision of the Foreign Exchange Regulation Appellate

Board u/s 54 of the Act, allowing the appeal filed by the respondents and the Director of Enforcement who passed the initial order of adjudication

cannot file the appeal treating himself as an aggrieved person; (2) The. Director of Enforcement being himself a quasi judicial Tribunal passing an

order of adjudication cannot be, In any event, taken to be aggrieved against the decision of the Foreign Exchange Regulation Appellate Board

reversing his decision, and, that, therefore, this appeal filed by the Director of Enforcement cannot, in any events be maintained.

3. These preliminary objections have been, raised even at the earlier stage when Sathiadey, J. Taking note of these objections, the appellant, was

hearing the appeal; Director of Enforcement has chosen to file C. X. P. No, 12251 of 1979 seeking an amendment of the cause title in the

memorandum of appeal grounds by substitution of the name of the appellant as the Government of India, represented by the Director of

Enforcement'' Instead of the original appellant ''Director of Enforcement''. Though the said petition purports to be an innocuous one for amendment

of the cause title in the memorandum of grounds, it really amounts to the substitution of a new appellant in'' the place of the original appellant, the

Director of Enforcement whose rights to file and maintain an appeal against the order of the Foreign Exchange Regulation Board has been

questioned. In para 12 of the affidavit in support of the said petition for amendment, it has been stated that though the appellant''s name is shown as

the Director of Enforcement, the appeal has, in fact, been filed on behalf of the Government of India, and therefore, the appeal should be treated as

having been filed by the Government of India. I do not see how the appeal which is purported to have been filed by the Director of Enforcement

can be said to have been filed by the Government of India Even if the Director of Enforcement has been authorised to file the appeal and the

appeal has been filed at the instance of the Government of India, the cause title of the appeal memorandum should show the. Government of India

as the appellant But when the memorandum of grounds of appeal shows the Director of Enforcement as the appellant, If is not open either to the

director of Enforcement or to the Government of India, to say that the appeal has been filed the Government of India, Admittedly, the Director of

Enforcement is an authority subordinate to the Government of India, and he is a person Invested with certain powers under the statute as well as

by the Government of India. Therefore, the Director of Enforcement I cannot in any sense be equated with or treated as the Government of. India.

Further, it is significant to note that even the amendment petition has been filed only by the Director of Enforcement and not by the Government of

India. It would have been a different matter if the Government of India had filed a petition stating that the appeal has been filed at their instructions,

but it has been Mad by mistake or inadvertence In the name of the Director of Enforcement and, therefore, Government of India may be allowed

to be shown as the appellant, Having regard to the fact that the Government of India has not so far come into the picture, the petition for

amendment filed by the original appellant, the Director of Enforcement, for a change in the name of the appellant from the Director of Enforcement

into the Government of India, represented by the Director of Enforcement cannot be allowed. Hence, the said petition has to be dismissed and it is

dismissed accordingly.

4. On the question as to the maintainability of the appeal, it is seen that the Explanation to Section 54 of the Foreign Exchange Regulation Act

1973 treats only the Central Government as an aggrieved party for the purpose of filing an appeal to the High Court in respect of orders passed by

the Foreign Exchange Regulation Appellate Board under that section. Therefore, only the Central Government can file and prosecute an appeal

against the order of the Appellate Board, and not any other authority, In this case, the appeal has been filed by the Director of Enforcement, who is

the initial authority who passed the adjudication order against the respondents and whose order has been set aside by the Appellate Board on an

appeal filed by them. Therefore, the - Director of Enforcement cannot be said to be aggrieved by the order of the Appellate Board merely because

the Appellate Board has set its order of adjudication aside. If that were to be possible, every subordinate Tribunal can file an appeal against the

order of the Appellate Tribunal reversing its decision, to a further appellate forum. The Director of Enforcement cannot be treated as an aggrieved

party, for while passing the order of adjudication, he has acted only as a quasi-judicial Tribunal, and such a quasi-judicial Tribunal cannot have a grievance when a higher appellate forum sets its order aside. If he entertains a grievance when the appellate forum sets aside its order, then he

should be taken to have had a bias in the dispute, which has been adjudicated by him. Therefore it will be against the principle of natural justice if

we assume that the Director of Enforcement who is a quasi judicial tribunal adjudicating a matter between the Government and the person sought

to be proceeded against for violation of the provisions of the Act, had an interest, personal or otherwise, in the matter which was the subject matter

of the dispute which he adjudicated. It would have been a different matter if the statute authorised - the Director of Enforcement to file an appeal.

But admittedly in this case, the Director of Enforcement has not been statutorily authorised to file an appeal against the order of the Appellate

Board at the instance of the Government of India or otherwise. If the quasi judicial Tribunal is expected to question the orders of the appellate

bodies, a specific power has to be given to the initial tribunal under the relevant statute, Under Sections 253 and 256 of the Income Tax Act the

Income tax Officer who passes the original order of assessment in his capacity as quasi judicial Tribunal is enabled to file an appeal against the

order of the Appellate Assistant Commissioner setting aside his orders, on the directions or at the instance of the Commissioner of Income Tax. u/s

37 Of the Tamil Nadu General Sales-tax Act power is given to the Deputy Commissioner of Commercial Taxes to file a revision to the High Court

against the order of the Sales-tax Appellate Tribunal. We can cite many such instances where the statute specifically enables the initial quasi-

judicial authority to file an appeal against the reversal of its judgment by the appellate authority to a further appellate or revisional forum. Such a

statutory provision is necessary for the reasons aforestated as otherwise, it will lead to the inevitable conclusion that the initial authority had an

interest in the dispute before it, and, therefore, it considers itself aggrieved when its judgment was reversed by an appellate forum. In this view of

the matter, the Director of Enforcement, who is the appellant in this case, cannot be said to be an aggrieved person.

5. A faint argument was advanced on the side of the appellant that the original order of adjudication was passed by the Deputy Director of

Enforcement, and not by the Director of Enforcement, who is the appellant herein. Even so, the Deputy Director of Enforcement should be taken to have acted by virtue of the powers delegated to him by the Director of Enforcement and therefore, the order of adjudication should be taken to

have been passed only by the Director of Enforcement. In this case apart from the fact that the cause title in the memorandum of grounds of appeal

shows only the Director of Enforcement as the appellant, no material has been placed before the court, even after the question of maintainability

has been raised, to convince the court that the Central Government actually decided to appeal against the order of the Appellate Board and

instructed the Director of Enforcement to file the appeal on their behalf. In those circumstances, I am inclined to hold that the appeal filed by the

Director of Enforcement against the order of the Appellate Board cannot be maintained.

6. The appeal is, therefore, dismissed as not maintainable. There will be no order as to costs. The dismissal of this appeal is, however, without

prejudice to the right of the Government of India to file an appeal against the order of the Appellate Board, if they are so advised, with a Petition to

excuse the delay if it is possible.

7. Appeal dismissed.