**(2014) 03 CAL CK 0148**

**In the Calcutta High Court**

**Case No :** W.P. No. 952 of 2011

Montosh Kumar Saha APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 07-03-2014

**Acts Referred:**
Customs Act, 1962 — Section 146(2)
Penal Code, 1860 (IPC) — Section 419, 468, 471

**Citation :** (2014) 3 CHN 554 : (2014) 309 ELT 440 : (2014) 46 GST 292 : (2016) 36 GSTR 118

**Hon'ble Judges :** Indira Banerjee, J

**Bench :** Single Bench

## Judgement

Indira Banerjee, J.—This writ application has been filed by the petitioner challenging the communication being Office Memorandum No. F.S. 45-47/2011 Estt. dated 7/10.10.2011 of the Commissioner of Customs, CHA, Customs House, Kolkata, rejecting the application of the petitioner for grant of fresh Customs House Agents Licence, which was considered pursuant to an order dated 17th May, 2011 passed by the Division Bench of this court in Appeal Case [MAT No. 539 of 2011/CAN No. 4007 of 2011/CAN No. 4008 of 2011]. The relevant portions of the impugned communication are set out herein-below:--

"... in compliance to the above judgment passed by the Hon''ble Division Bench of Calcutta High Court the application for CHA Licence of your concern has duly been examined and on verification it has been found that the proposed actually engaged person i.e. Shri Montosh Saha is not qualified under Regulation 8 of CHALR''2004 and therefore M/s. M.K. Saha & Co. is not entitled to get a CHA Licence in terms of Regulation 9(1) of CHALR''2004. Moreover, on verification of the antecedents of Shri Montosh Kumar Saha it has been found that a Charge Sheet vide No. 260/10 dated 13.09.2010 u/s. 419/468/471 IPC has been lodged at Baranagar P.S. against Shri Monotosh Saha which does not support an unblemished record."

2. The petitioner Monotosh Kumar Saha and his brother Debtosh Saha were partners of a partnership firm M/s. Saha Shipping Agency, which carried on business, inter alia as clearing agent. The petitioner was granted a temporary Customs House Agent Licence No. S-60 in 1995. The licence was later confirmed and renumbered as S-64 vide an order dated 5th October, 1996.

3. It transpires that disputes and differences arose between the petitioner Monotosh Kumar Saha and his brother Debtosh Saha and the said Debtosh Saha lodged an FIR against the petitioner, Monotosh Kumar Saha, at the Baranagar Police Station. The said Debtosh Saha also made representations/complaints to the Commissioner of Customs for suspension of the Customs House Agents Licence granted to the petitioner.

4. The said Debtosh Saha also filed a Writ Petition No. 16945 of 2010 in this court which was disposed of by an order dated 25th January, 2011, the relevant part whereof is set out hereinbelow for convenience:--

"The writ petitioner has alleged that the private respondent, being the other partner of M/s. Saha Shipping Agency, has opened a Bank Account in the name of the partnership firm by forging the signature of the petitioner. A criminal case has been initiated Proceedings have commenced.

It is true, as argued on behalf of the respondent authorities, that the allegations of forgery are required to be investigated into. However, the licence having been issued to a partnership firm of which both the petitioner and the private respondent are partners, the licence would necessarily have to be revoked if there, are such serious disputes between the partners.

When one of the two partners of a partnership firm has sought suspension of the licence granted to the partnership, the licence cannot be allowed to operate. The licence would necessarily have to be cancelled. The partnership firm cannot continue with a licence under the Customs House Agents Licensing Regulations, when there is no agreement between the partners. The private respondent being the other partners, might apply for independent licence.

The writ application is disposed of by directing the concerned respondents to cancel the licence of the partnership firm. The cancellation of the licence will not, however, prevent the other partner from applying for fresh licence, if he is otherwise eligible."

5. In appeal the Division Bench held:--

"We, thus, find that in the facts of the present case, the ultimate conclusion arrived at by the learned Single Judge was correct. We, therefore, dispose of the appeal by maintaining the order passed by the learned Judge.

We make it clear that we have, otherwise, not gone into the dispute and only because, one of the partners of the licensee is not willing to act as such licensee along with the other partner, we direct the Customs Authority to terminate the licence only on that ground. Both the parties are at liberty to apply for fresh licence either in their own names or as a partner of other firm, if they constitute any such firm.

The appeal is, thus, disposed of to the extent indicated above."

6. Thereafter, the petitioner applied for a fresh licence as proprietor of Monotosh Kumar Saha and Company. The application has been rejected by the order impugned.

7. The application of the petitioner has been rejected on two grounds. The first ground is that the petitioner is not qualified under Regulation 8 of the Customs House Agents Licensing Regulation, 2004, hereinafter referred to as CHALR 2004, and also on the ground that on verification of the antecedents of the petitioner, it was found that a charge-sheet No. 260 of 2010 dated 3rd September, 2010 had been issued against the petitioner u/s 419/468/471 of the Indian Penal Code pursuant to a complaint lodged at Baranagar Police Station. Incidentally the complaint was lodged by Debtosh Saha, brother of the petitioner and partner of Saha Shipping Agency.

8. It is not in dispute that the petitioner had been granted a licence under the Customs House Agents'' Licensing Regulation, 1984. In exercise of power conferred u/s 146(2) of the Customs Act, 1962, the Central Board of Excise and Customs made the Customs House Agents'' Licensing Regulations, 1984, hereinafter referred to as the CHALR 1984. Some of the provisions of the CHALR 1984 are set hereinbelow for convenience :

"4. Invitation of application.--The Commissioner may invite application for the grant of such number of licences as assessed by him, to act as Customs House Agents in the month of January every year by means of a notice affixed on the notice board of each Customs Station as well as through publication in at least two newspapers having circulation in the area of his jurisdiction, specifying therein the last date of receipt of application. Such application shall be for clearance work within the jurisdiction of the said Commissioner.

5. Application for licence.--(1) An application for a licence to act as a Customs House Agent in a Customs Station shall be made in Form A and shall inter alia contain the name and the address of the person applying, and

(2) If the applicant is a firm--

(a) the name and address of every partner of the firm name and

(b) the name of the partner or the duly authorized employee who will actually be engaged in the clearance of goods or conveyances through the Customs;

(3) If the applicant is a company -

(a) the name of each director, manager, managing director, and

(b) the names of director, manager or the duly authorized employee, who will actually be engaged in the clearance of goods or conveyances through the customs.

6. Conditions to be fulfilled by the applicant.--The applicant or the person referred to in clause (b) of sub-regulations (2) and (3) or Regulation 5 as the case may be, shall prove to the satisfaction of the Commissioner that:

(a) the applicant is a graduate from a recognized University and is an employee of a licencee and that he possesses a permanent pass in Form G prescribed under regulation 20 and has the experience of work relating to clearance of goods through the Customs, for a period of not less than three years in the capacity of such a pass-holder:

Provided that the Commissioner may relax the possession of permanent pass in Form G to one year for reasons to be recorded in writing.

(b)** ** **

7. Scrutiny of applications for licence.--On receipt of application under regulation 5 the Commissioner may make enquiries for verification of the particulars set out in the application and also such other enquiries as he may deem necessary including enquiries about the reliability and financial status of the applicant.

8. Grant of Temporary licence.--(1) Any applicant whose application is received within the last date specified in regulation 4 and who satisfies the requirements of regulations 5 and 6 shall be permitted to operate as Customs House Agent at the Customs Station for which the application is made initially for the period of one year against temporary licence granted by the Commissioner in this regard in Form B:

Provided that when evidence is produced to the Commissioner that the applicant has already availed of two chances for qualifying in the written or oral examination prescribed in these regulation and would like to avail of the third chance as soon as the next examination is held in terms of regulation 9 and that the applicant has been able to account for the minimum volume of work prescribed for such agents in the course of one year''s working, the Commissioner may extend the aforesaid period of one year for which the temporary licence has been granted by another six months or such further period not exceeding one year to enable the applicant to avail of the third chance for qualifying the examination in terms of regulation 9. While granting such extension the Commissioner of Customs shall satisfy himself that the requirements of Regulation 10(1)(a) and 10(1)(b) had been fully met by the applicant.

(2) & (3) * * * * * *

9. Examination of the applicant.--(1) The holder of a temporary licence in the case of an individual and the person or persons who will be actually engaged in the work of clearance of goods through customs on behalf of the firm or

 

company holding a temporary licence, as the case may be, shall be required to qualify in examination, at the earliest opportunity. Such person or persons shall be eligible to appear in the examination as soon as temporary licence is granted and shall be permitted to avail of three chances within a period of 2 years from the date of issue of the temporary licence on payment of prescribed examination fee of Rs. 5000/- for each examination.

(2) The examination referred to in sub-regulation (1) shall include a written and oral examination and will be conducted twice every year. Each applicant would be permitted to avail of a maximum of three chances to qualify in the said examination but all such chances should be availed of within a maximum period of 2 years from the date of grant of temporary licence.

(3) The examination may include questions on the following :--

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(4) The Commissioner shall also satisfy himself whether the licensee in Form B if he is an individual, possesses, or in the case of a firm or company, the persons who will be actually engaged in the work relating to clearance of goods through customs on behalf of that firm or company, possess satisfactory knowledge of English and the local language of the Customs Station:

Provided that in the case of persons deputed to work exclusively in the docks, knowledge of English will not be compulsory. Knowledge of Hindi will be considered as an additional or desirable qualification.

(5) The holders of a regular licence under Regulation 10 may authorize one of their employees or partners or directors, to appear for the examination referred to in sub-regulation (1), on behalf of such holders of regular licence in addition to the person of their agency who has passed the examination referred to sub-regulation (1).

10. Grant of regular licence.--(1) The Commissioner shall, on receipt of an application in Form C, grant a regular licence in Form D on payment of a fee of Rs. 5000/- to such holder of a temporary licence who qualifies in an examination referred to in regulation 9 and whose performance is found to be satisfactory with reference, inter alia, to the following :

(a) quantity or value of cargo cleared by such licensee confirming to norms as may prescribed by the Commissioner;

(b) absence of instances of delay either in the clearance of goods or in the payment of duty for any reason attributable to such licensee and any complaints of misconduct including non-compliance of any of the obligations specified in regulation 14.

(2)** ** **

(3) The Commissioner may reject an application for the grant or regular licence

 

to act as Customs House Agent if the holder of the temporary licence fails to qualify in the examination in terms of Regulation 9, or the holder of temporary licence on evaluation of his performance in terms of Regulation 10 is not considered suitable due to any other reason to be stated in the orders passed by the Commissioner................

12. Period of validity of a regular licence.--(1) A licence granted under regulation 10 shall be valid for a period of five years, but may be renewed from time to time in accordance with procedure provided in sub-regulation (2).

(2) The Commissioner of Customs, may on application made by the licensee, before the expiry of the validity of the licence under sub-regulation (1) renew the licence for a period of five years from the date of expiration of the original licence granted under regulation 10 or of the least renewal of such licence, as the case may be, if the performance of the licensee is found to be satisfactory with reference, inter alia to the following:--

(a) quantity or value of cargo cleared by such licensee conforming to norms as may be prescribed by the Commissioner.

(b) Absence of instances of delay either in the clearance or in the payment of duty for any reason attributable to such licensee any complaints of misconduct including non-compliance of any of the obligations specified in regulation 14.

(3) The fee for renewal of a licence under sub-section (2) shall be Rs. 3000/-.

13. Licence not transferable.--Every licence granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee and to licence shall be sold or otherwise transferred."

9. The CHALR 1984 has been replaced by the Customs House Agents'' Licensing Regulations, 2004, hereinafter referred to as CHALR 2004. Regulations 3, 4, 5, 6, 8, 9(1) and 9(2) of CHALR 2004, relevant for the purpose of this application, are set out hereinbelow for convenience :

"3. Customs House Agents to be licensed.--No person shall carry on business as a Customs House Agent relating to the entry or departure of a conveyance or the import or export of goods at any Customs Station unless such persons holds a licence granted under these regulations:

Provided that no licence under these regulations shall be required by :--

(a) an importer or exporter transacting any business at a Customs Station solely on his own account,

(b) any employee of any person or firm transacting business generally on behalf of such person or firm, and holding an identity card or a temporary pass issued by the Deputy Commissioner of Customs or Assistant Commissioner of Customs,

(c) an agent employed for one or more vessels or aircrafts in order solely to enter or clear such vessels or aircrafts for work incidental to his employment as such agent.

4. Invitation of application.--The Commissioner of Customs may invite applications for the grant of such number of licences as assessed by him, to act as Customs House Agent in the month of January every year by means of a notice affixed on the notice board of each Customs Station as well as through publication in at least two newspapers having circulation in the area of his jurisdiction, specifying therein the last date of receipt of application. Such application shall be for clearance work within the jurisdiction of the said Commissioner of Customs.

5. Application for licence.--(1) An application for a licence to act as Customs House Agent in a Customs Station shall be made in Form A and shall, inter alia, contain the name and the address of the person applying;

(2) If the applicant is a firm--

(a) the name and address of every partner of the firm, the firm''s name, and

(b) the name of the partner or the duly authorized employee, who will actually be engaged in the clearance of goods or conveyance through the customs.

(4) If the applicant is a company--

(a) the name of each director, managing director, manager and

(b) the names of director, managing director, manager of the duly authorized employee, who will actually be engaged in the clearance of goods or conveyances through the customs.

6. Conditions to be fulfilled by the applicant--The applicant referred to in clause (b) of sub-regulations (2) and (3) of regulation 5 as the case may be, or a person who has passed the examination referred to in regulation 8, shall prove to the satisfaction of the Commissioner of Customs, that--

(a) the applicant, or his authorized employee, is a graduate from a recognized University and assesses a professional degree viz. CA./M.B.A./L.L.B./Diploma in Customs Clearance work from any Institute or University recognized by the Government with a working knowledge of computers and customs procedures, or is a graduate having at least three years experience in transacting Customs House Agent work as a Gcard holder, or a person who has passed the examination referred to in regulation 8, or is a retired Group ''A'' officer from the Indian Customs and Central Excise Service [IC&CES] having a minimum of ten years experience to Group ''A''.

(b) the applicant has financial viability supported by a certificate issued by a Scheduled Bank or such other proof acceptable to the Commissioner of Customs evidencing possession of assets of value of not less than Rs. 2 lakhs;

(c) the applicant is a citizen of India.

 

7** ** **

8. Examination of the applicant.--(1) Any applicant whose application is received within the last date specified in the notice or publication, as the case may be, referred to in regulation 4 and who satisfies the requirements of regulations 5 and 6, shall be required to appear for the written as well as oral examination conducted by the Director General of Inspection at specified centers and specified dates, twice every year, for which intimation shall be sent individually in advance before the date of examination:

Provided that an applicant who has already passed the examination referred to in regulation 8 will not be required to appear for any further examination.

(2) The applicants declared successful in written examination shall be called for oral examination.

(3)** ** **

(4) An applicant shall be allowed a maximum period of seven years within which he shall pass both the written and oral examinations. No further extension of time shall be granted.

(5) Notwithstanding anything contained in sub-regulation (4), any person who holds a temporary licence granted under regulation 8 of the Customs House Agents Licensing Regulations, 1984, shall be allowed to pass the examination within a period of two years from the date of commencement of these regulations.

(6) The examination may include questions on the following :--

* * * * * *

(7) The Commissioner of Customs shall also satisfy himself whether the applicant, if he is an individual, possesses, or in the case of a firm or company, the persons who shall be actually engaged in the work relating to clearance of goods through customs on behalf of that firm or company, possess satisfactory knowledge of English and the local language of the Customs Station:

Provided that in the case of persons deputed to work exclusively in the docks, knowledge of English shall not be compulsory. Knowledge of Hindi shall be considered as an additional or desirable qualification.

(8) The holders of a licence under regulation 9 may authorize any one or more of their employees or partners or directors to appear for the examination referred to in sub-regulation (1) on behalf of such holders of licence, in addition to the person of their agency who has passed the examination referred to in sub-regulation (1).

9. Grant of licence.--(1) The Commissioner of Customs shall on payment of a fee of Rs. 5,000/- grant a licence in Form B to an applicant who has passed the examination referred to in regulation 8.

 

(2) The Customs House Agents who are granted licences under sub-regulation (1) shall be eligible to work in all Customs Stations within the country subject to intimation in Form C to the Commissioner of Customs of the concerned Customs Station where he intends to transact business. No separate licence shall be required in places where in addition to a Customs House handling imports by sea, there is also an international airport to handle imports by air, even if under the jurisdiction of a different Commissioner of Customs."

10. CHALR 1984 provided for grant of a temporary licence, and later, upon clearance of an examination as provided in Regulation 9, regular licence which was to be valid for a period of five years, but renewable. CHALR 2004 has, however, done away with grant of two licences, one temporary and the other regular. Regulation 9 provides for grant of licence to an applicant who has passed the examination referred to in Regulation 8, subject to payment of the requisite fee.

11. The short question in this writ application is, whether the application of the petitioner No. 1 for license under CHALR 2004 could have been rejected on the ground that the petitioner No. 1 had cleared the examination under Regulation 9 of CHALR 1984.

12. In the unreported judgment dated 5th September, 2006 of this Court in W.P. No. 204 of 2006 [A.P. Clearing Agency (P.) Ltd. v. Union of India] this Court held that a temporary license holder, who had passed the examination under Regulation 9 of CHALR 1984 was not required to clear a examination under Regulation 8 of the 2004 Regulations for grant of permanent license. This Court further held that:

"A comparative reading of regulation 9(3) of the 1984 Regulations and Regulation 8(6) of the 2004 Regulations show that the syllabus prescribed under the 2004 Regulations is almost identical to the syllabus prescribed under the 1984 Regulations, except for insertion in the 2004 Regulations of Regulation 8(6)(q) extracted hereinbelow:

"(a) on-line filing of electronic shipping bills or bills of entry and Indian Customs and Central Excise Electronic Commerce/Electronic Data interchange Gateway [ICEGATE] and Indian Customs Electronic Data Interchange Systems [ICES]."

Regulations 8(6)(a) to 8(6)(p) of the 2004 Regulations are a verbatim reproduction of Regulations 9(3)(a) to 9(3)(p) of the 1984 Regulations except for the changes indicated hereinbelow:

Regulation 9(3)(m) and 9(3)(o) of the 1984 Regulations provided as follows :

"(m) drawback;

(o) the provisions of allied Acts including Imports and Exports (Control) Act, 1947 (18 of 1947), Foreign Exchange Regulation Act, 1973 (46 of 1973), Indian Explosives Act, 1884 (4 of 1884), Arms Act, 1959 (54 of 1959), Opium Act, 1878

 

(1 of 1878) Drugs and Cosmetics Act, 1940 (23 of 1940), Destructive Insects and Pests Act, 1914 (2 of 1914), Dangerous Drugs Act, 1930 (2 of 1930) insofar as they are relevant to the clearance of goods through customs;"

Regulation 8(6)(m) and 8(6)(o) of the 2004 Regulations provide as follows :

"(m) drawback and export promotion schemes;

(o) the provisions of allied Acts including Foreign Trade [Development and Regulation] Act, 1992 [22 of 1992], the Central Excise Act, 1944 [1 of 1944], Foreign Exchange Management Act, 2000 [42 of 1999], Indian Explosives Act, 1884 [4 of 1884], Arms Act, 1959 [54 of 1959], the Narcotics Drugs and Psychotropic Substances Act, the Drugs and Cosmetics Act, 1940 [23 of 1940], Destructive Insects and Pests Act, 1914 [2 of 1914], Dangerous Drugs Act, 1930 [2 of 1930] insofar as they are relevant to the clearance of goods through customs;"

On behalf of the respondents it was argued that the new regulations have made the examinations more stringent by introduction of additional subjects as indicated above. It was also argued that the passing of an examination did not, in itself, create any right to a regular licence under the 1984 Regulations. Grant of regular licence was linked to performance and quantity and value of cargo clearance. Even an applicant who had cleared the examination could be refused regular licence."

** ** **

The prefatory statement to the 2004 Regulations clearly states that the said 2004 Regulations have been issued superseding the 1984 Regulations except in respect of things done or omitted to be done before such supersession.

[Emphasis supplied]

The 2004 regulations expressly save things done before framing of the said 2004 Regulations. There is nothing in the 2004 Regulations wherefrom it may be deducted that a person who has cleared the Customs House Clearing Agent''s examination under Regulation 9 of the 1984 Regulations would again be required to appear for an examination.

On the other hand a careful and harmonious reading of the various provisions of the 2004 Regulations and in particular, the Prefatory Statement, Regulation 6, the proviso to Regulation 8(1) and Regulation 9 of the 2004 Regulations reveal that the examination referred to in Regulation 8 includes the Customs House Clearing Agent Examination under the old Regulations.

Regulation 6 enumerates the conditions required to be fulfilled for grant of licence. Regulation 6 provides that the applicant or the person referred to in Clause (b) of sub-regulation (2) or Clause (b) of sub-regulation (3) of Regulation 5, as the case may be, or a person who has passed the examination referred to in Regulation 8 shall prove to the satisfaction of the Commissioner of Customs that the applicant or his authorized employee is a graduate from a recognized University and possesses the professional degree as specified in the said regulation, has diploma in customs clearance work from any Institute or University recognized by the Government with working knowledge of computers and customs procedures; or is a graduate having at least 3 years experience in transacting Customs House Agent work as a G-Card holder; or a person who has passed the examination referred to in Regulation 8; or is a retired Group ''A'' officer from the Indian Customs and Central Excise Service having a minimum of ten years experience in Group ''A''."

An applicant who has passed the examination under Regulation 8 would under the 2004 Regulations, and in particular, Regulation 9 be entitled to grant of licence subject to payment of the requisite fee."

13. The view of this Court has been affirmed by the Supreme Court by its judgment dated 27th April, 2012 in Union of India v. Sunil Kohli Civil Appeal Nos. 4053-4061 of 2012, dated 27-4-2012 [Arising out of SLP(C) Nos. 19124019132 of 2010].

14. As held by me in A.P. Clearing Agency (P.) Ltd. (supra) a temporary licence holder who had passed the examination under Regulation 9 of the CHALR 1984 is not required to clear an examination under Regulation 8 of the CHALR 2004 for grant of permanent licence. The place from which examination under Regulation 9 of the CHALR 1984 is not material.

15. In the instant case, it appears that the petitioner had a regular licence. However, this licence was in the name of the firm M/s. Shipping Agency. It was the petitioner who was actually engaged in the work of clearance of goods through customs on behalf of the firm. It was the petitioner who appeared for the examination. The petitioner cannot be disqualified on the ground of not having cleared the examination under Regulation 8 of CHALR 2004.

16. The licence of the petitioner has not been rejected only on the ground that the petitioner has not cleared the examination under Regulation 8 of CHALR 2004, but also on the ground that on verification of the antecedents of the petitioner it was found that a charge-sheet had been issued u/s 419/468/471 of the Indian Penal Code which did not support an unblemished record.

17. CHALR licence is essential for carrying on business as Customs House Agent. The question is whether a licence to carry on business can be declined only on the ground of issuance of a charge-sheet in a criminal case, when admittedly the petitioner has not yet been convicted. As held by the Supreme Court, in Harendra Sarkar Vs. State of Assam, presumption of innocence is a human right. Such a legal principle cannot be thrown aside under any situation.

18. There can be no doubt that a person guilty of commission of an offence may be debarred from licence. However, it is one thing to be charged with an offence and a different thing to be held guilty of actual commission of that offence.

 

Chances of false implication cannot altogether be ruled out, particularly in a case like the present one, where family disputes have cropped up. It would, in my view, be totally arbitrary and against all norms of fair play to deprive a citizen of his right to carry on business in the absence of any verdict of a Court of law holding him guilty of a criminal offence.

19. In Kailash Gour and Others Vs. State of Assam, cited by Mr. Chatterjee, the Supreme Court in effect and substance held that the possibility of a complaint of an offence being lodged out of previous enmity, could not be ruled out.

20. In the instant case, the petitioner had carried on business as clearing house agent. A licence had been issued to him. It is a case of continuance of business and/or deprivation of the right to carry on business.

21. In my view, a person who has been carrying on business ought not to be prevented from carrying the business on the basis of allegations not proved in Court of law.

22. The writ petition is, therefore, allowed and the impugned notice is set aside and quashed. The Commissioner shall consider the petitioner''s application for fresh licence in the light of the observations above. In the event it is found that the petitioner had cleared the examination under the 1984 Regulations and if it is found that criminal charges against the petitioner are yet to be proved, licence shall not be denied to the petitioner. Needless to mention that steps may be taken for cancellation of the licence, in the event the petitioner is found guilty of the offences for which he has been charged. Let photostat certified copy of this judgment and/or order, if applied for, be supplied to the learned advocates appearing for the parties subject to compliance of requisite formalities.