(1982) 08 MAD CK 0056

In the Madras High Court

Case No : Writ Petition No. 6666 of 1982

P.M. Srinivasan — APPELLANT

Vs

The Assistant Director, Enforcement Directorate, Cabinet Secretariat, Department of Personnel, Government of India and Another — RESPONDENT

Date of Decision : 19-08-1982

Acts Referred:

Citation : (1984) 2 ECC 276

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—In this writ petition, the petitioner has questioned the constitutional validity of Section 23-F of the Foreign Exchange Regulation Act, 1947, read with Section 23-D as ultra vires and beyond the legislative competence of Parliament. u/s 23-D the Director of Enforcement is conferred a power to adjudicate and hold an enquiry in the prescribed manner and if he is satisfied on such enquiry that the person has committed the contravention of the provision of Section 23(1)(a), he may impose such penalty as he thinks fit in accordance with the provisions of the said Section 23. Section 23-F reads as follows:

Penalty for contravention of order made by Director of Enforcement and Appellate Board.--If any person fails to pay the penalty imposed by the Director of Enforcement or the Appellate Board or the High Court, or fails to comply with any of their directions or orders, he shall, on conviction before a court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

2.According to the learned Counsel, in Section 23-D proceedings, the Director of Enforcement is enabled to impose a penalty and for the same offence the person is also made liable to imprisonment u/s 23-F. Though it comes in different stages, it is a continuation of the same and, therefore, it is in the nature of double jeopardy. In any case, according to the learned Counsel, the mere non-payment of the penalty itself is made an offence u/s 23-F and, therefore, the provision Confers such an arbitrary and unreasonable power to imprisonment and, therefore, the provision is ultra vires. The question of double jeopardy does not arise in this case because the offence contemplated u/s 23-F is different from the one for which the penalty is levied u/s 23-F is non-payment or failure to pay penalty imposed by the Director u/s 23-D , whereas the penalty imposed u/s 23-D is for contravention of the provisions of Sections 4, 5, 9, 10, 12(2), 17, 18-A, 18-B or any rules, directions or orders made thereunder. Since they cover different field and different offences, the question of double jeopardy would not arise. The learned Counsel for the petitioner is also not well-founded in his contention that there is an automatic conviction on failure to pay without regard to any of the other circumstances or facts, and that, therefore, the provisions of Section 23-F are ultra vires. The power conferred u/s 23-F is a power conferred on a court and since this is a penal provision, there could be no doubt that the words "if any person fails to pay the penalty imposed by the Director" could only mean a case of failure to pay wilfully or deliberately or fraudulently or any other circumstances which go to show that there is a sort of wilful or deliberate non-payment. In the circumstances, I am unable to agree that there is any unreasonableness or arbitrariness or automatic conviction by reason merely of the order u/s 23-D without any further facts. The provision therefore, cannot be held to be ultra vires on any grounds mentioned. The question of legislative competency could not arise as the Foreign Exchange Regulation Act, 1947, is an enactment by Parliament and even if none of the specific entries in List I cover this, the residuary entry will cover. The writ petition, accordingly, fails and it is dismissed.