

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).2816/2006

(From the final judgement and order dated 16/12/2005 in WA No. 899/2002 & WP No.26467/2001 & WP No. 26468/2001 of The HIGH COURT OF MADRAS)

SURACHAN CHANSRICHAWALA

Petitioner(s)

VERSUS

U.O.I. & ORS.

Respondent(s)

(With appln(s) for permission to submit additional document(s) and prayer for interim relief ))

Date: 02/05/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner(s)

Mr. Mukul Rohatgi, Sr.Adv.

Mr. Gopal Jain, Adv.

Mr. R.N.Karanjawala, Adv.

Ms. Reetu Sharma, Adv.

Ms. Diya Kapur, Adv.

Mrs Manik Karanjawala,Adv.

For Respondent(s)

Mr. K. Radhkrishnan, Sr.Adv.

Mr. B.K.Prasad, Adv.

Mr. V.K. Verma,Adv.

Mr. K.N.Bhat, Sr.Adv.

Mr. Kuldeep Parihar, Adv.

Mr. H.S. Parihar ,Adv

Mr. Ranjit Kumar, Sr.Adv.

Mr. Sridhar Potaraju ,Adv

UPON hearing counsel the Court made the following

O R D E R

In view of the order that we propose to pass it is not necessary to consider in detail the facts of the case. We are therefore, only referring to those facts which are relevant for our limited purpose.

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The petitioner before us represents a N.R.I. group which had applied to the Foreign Investment Promotion Board in the year 1994 for permission to acquire certain shares of the Catholic Syrian Bank. The application remained pending till it was decided by the aforesaid Board on 18th February, 1997. The

requisite permission was granted subject to certain conditions as contained in the order granting permission. The permission was valid for two years and required the petitioner to seek necessary permissions from SEBI and RBI where-ever necessary particularly, having regard to the provisions of the Foreign Exchange Regulation Act. It is not disputed before us that after applying for permission to the Board the petitioner started purchasing shares of the aforesaid Bank.

After permission was granted by the Foreign Investment Promotion Board, the petitioner applied to the RBI for necessary permission which the RBI was authorised to grant under Section 29 of the Foreign Exchange Regulation Act, 1973. The RBI refused permission sought for under Section 29 of the FERA. The RBI by its communication of 6th January, 1998 rejected the application of the petitioner in the following terms:-

"In this connection we advise that we have examined the request for transfer of shares of the Catholic Syrian Bank Ltd. in

favour of 11 members of the

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Siam Vidhya Group, Bangkok consisting of Shri Surachan

Chansri Chawla and his family members. However, keeping in

view all the relevant facts, we regret our inability to accede to the

request."

Pursuant to the rejection of the application actions were

taken by the authorities under various statutes including

adjudication proceeding and prosecution. The adjudication

proceeding resulted in forfeiture of the shares and imposition of

penalty. The petitioner has thereafter been prosecuted for

violation of the FERA.

It was submitted before us that the order of RBI was

passed by it in exercise of its statutory power under Section 29 of

the Foreign Exchange Regulation Act. In a case of this nature

where permission of the Government of India was obtained for

acquisition of shares of the aforesaid Bank, the RBI ought not to

have rejected the application of the petitioner for grant of

permission under FERA without recording reasons. He

submitted that the rejection of the application has very serious

and drastic consequences so far as the petitioner is concerned. It

was, therefore, submitted that the letter communicating the

rejection of the permission issued under Section 29 of the Foreign

Exchange Regulation Act, 1973 ought to be quashed and the RBI

should be called upon to pass a fresh order.

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There is a second ground of challenge to the aforesaid communication of RBI dated 6th January, 1998 that is, that from the affidavit filed on behalf of the Government of India before this Court, it is quite apparent that the RBI passed the order in obedience to the directions issued by the Government of India, without application of mind. However, Shri K.N.Bhat, learned senior counsel appearing on behalf of the RBI submitted that Section 75 of the Foreign Exchange Regulation Act, 1973 empowers the Government of India to issue directions and the

RBI is bound by those directions. It cannot, therefore, be said that the RBI acted illegally and without application of mind.

Whichever way we look at it, it is apparent that the RBI did not apply its mind to the application inasmuch as it acted on the basis of certain directions given to it by the concerned administrative department of the Government of India.

It was also submitted before us that in view of policy of liberalisation in international trade and in view of the fact that FERA stands repealed and substituted by FEMA under which no such permission is required, the RBI may have a fresh look into the matter in the changed scenario.

Learned Additional Solicitor General appearing on behalf of the Union of India submitted that there are valid reasons for rejecting the application of the

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petitioner. He submitted that the permission was granted by the Government of India on 18th February, 1997 and the refusal was communicated by the RBI in the year 1998 but the Writ Petition

was filed by the petitioner as late as on 30th December, 2001 after the period of validity of the permission had expired. He submitted that even in its Writ Petition the petitioner did not pray for quashing of the show cause notice issued to him by the Enforcement Directorate relating to forfeiture. There was however a prayer in the Writ Petition for direction to the RBI to reconsider the matter. He, therefore, submitted that in the facts of this case and having regard to the scope of the Writ Petition, this Court will not be justified in quashing the order of the RBI even though it may if considered appropriate, direct the RBI to consider the matter afresh.

Having regard to the rival submissions, we pass the following order :-

The RBI shall consider the application of the petitioner and pass an appropriate order under Section 29 of the Foreign Exchange Regulation Act, 1973 after considering all relevant aspects of the matter. It shall be open to the petitioner to make a

comprehensive representation before the RBI in support of its claim and the RBI shall dispose of the matter by a reasoned order. In the interest of justice RBI may call upon the

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petitioner to appear before it and explain its stand. The RBI in disposing of the application shall take into account all the relevant facts which are there on record and take a firm decision in regard to the claim of the petitioner. The RBI shall also consider whether this is an appropriate case for ex post facto sanction, if it comes to the conclusion that the permission was wrongly refused earlier. It will be open to the RBI to pass such order as it considers appropriate. It may if considers it appropriate consider the matter having regard to the changed scenario and policy of liberalisation in the matter of foreign investments in this Country, and in the light of the changed laws and norms.

A suggestion was made that if the name of the petitioner is permitted to be registered in the register of shareholders of the

Banking company concerned only for the purpose of permitting the petitioners to transfer the shares purchased by him in favour of another person who is eligible to purchase the shares, it may be permitted to do so, so that the petitioner may at least reduce his losses.

We wish to express no opinion in the matter but we leave it to the petitioner to make such a request to the RBI and the RBI shall pass such order as it considers proper and on being satisfied that the purchaser from the petitioner is a proper and fit person.

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Without disposing of the matter, we remit the matter to the RBI to pass a fresh order having regard to all the facts of the case and observations in this order. The RBI shall after giving a fair opportunity of hearing to the petitioner pass its order under Section 29 of the Foreign Exchange Regulation Act, 1973 and may either affirm, modify or set aside the order passed by it

earlier. We expect the RBI to complete the exercise within a period of four months from today subject to petitioner filing a comprehensive representation in support of his application before the RBI within a period of two weeks from today.

Interim order to continue.

Liberty to the parties to inform the Court about the disposal of the matter by the RBI.

(Sukhbir Paul Kaur)

Court Master

(Vijay Dhawan)

Court Master