

(2010) 02 DEL CK 0354

Delhi High Court

Case No: Writ Petition (C) No's. 9161 and 9218 of 2007 and CM Appeal No's. 17251 and 17351 of 2007

A.P. Parekh

APPELLANT

Vs

Special Director, Enforcement
Directorate

RESPONDENT

Date of Decision: Feb. 5, 2010

Citation: (2010) 101 SCL 223

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: R.K. Handoo, for the Appellant; Abhishek Agarwal and Jatan Singh, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.

These two writ petitions are directed against the common order dated 19-9-2007 passed by the Appellate Tribunal for Foreign Exchange ("Appellate Tribunal") in Appeal Nos. 688/2000 and 657/2000 respectively. By the impugned order, the Appellate Tribunal rejected the prayer for waiver of pre-deposit and directed each of them to deposit within 30 days their entire respective penalty amounts as determined by the order dated 20-9-2000 of the Special Director of the Directorate of Enforcement.

2. When WP (Civil) No. 9161/2007 was first heard by this Court on 10-12-2007 the following order was passed:

W.P.(C) 9161/2007& CM APPEAL No. 17251/2007

Issue notice, returnable on 18-3-2008.

The applicant's grievance is that the respondent despite being made aware that all the documents had been supplied to him, proceeded to club his case with those of

the others and concluded that the adjudication proceedings were being unduly delayed deliberately. Mr. Handoo, learned Counsel for the Petitioner submitted that the Petitioner replied to the show-cause notice given by the respondent which also sought for personal hearing. It was submitted, *inter alia*, that the continuation of proceedings and passing of an *ex parte* order, in the circumstances, was not supportable in law and that the adjudication order was *ex parte* bad.

I have considered the materials on record. The notices were apparently issued November, 1983. The Petitioner's reply to the show-cause notice does indicate that he did not want to make any grievance about the non-supply of documents. In these circumstances, *prima facie*, there is merit in the applicant's grievance that clubbing of his case with the others was apparently a non-application of mind.

The impugned order was decided the application for waiver of pre-deposit. The Tribunal declined the application which has resulted a liability of one Rs. 67 lakhs as penalty amount which the Petitioner is now required to deposit.

In view of the above observations and having considered the materials on record, I am of the opinion that limitation protection needs to be granted. The Tribunal is permitted to proceed with the hearing of the appeal on its merit; but shall not make any final order till the next date of hearing. Subject to the petitioner depositing 15 per cent of the penalty amount within eight weeks from today.

3. In the second Petition being WP (Civil) No. 9218/2007, the same order was passed on 11-12-2007. It is stated that both Petitioners have since deposited 15 per cent of the penalty amount as directed.

4. The submissions of Mr. R.K. Handoo, learned Counsel for the Petitioners and Mr. Abhishek Aggarwal, learned Counsel for the Respondents have been heard.

5. Learned Counsel for the Petitioners made several submissions touching on the merits of the case to show that the order of the Special Director itself suffered from serious irregularities and illegalities. It was, therefore, submitted that more than *prima facie* case has been made out by each of the Petitioners herein in their appeals before the Appellate Tribunal. It is submitted that these contentions have not been addressed by the Appellate Tribunal in the impugned order. Also the financial condition of each of the Petitioners has not been considered except surmising that since they had been dealing in a substantial amount of wealth, it was difficult to believe that they did not have sufficient assets to make a pre-deposit of the entire penalty.

6. Having considered the submission of learned Counsel for the parties, it appears that the interests of justice would be served if the impugned order of the Appellate Tribunal is modified, and it is directed that the Petitioners' appeal should be heard on merits now that each of them has deposited 15 per cent of the penalty amount as directed by this Court. The impugned order of the Appellate Tribunal will stand

modified accordingly. The Appellate Tribunal will proceed with the final hearing of the Petitioners' appeals and pass a final order thereon within a period of six months from today.

7. It is made clear that no observations made in the impugned order of the Appellate Tribunal will influence its final decision in the appeals pending before it. Further it would be open to the Petitioners to urge the points raised in these petitions before the Appellate Tribunal. Each of the points will be considered by the Appellate Tribunal on merits and a reasoned order passed thereon.

8. These petitions and the pending applications are, accordingly, disposed of. A certified copy of this order be delivered to the Appellate Tribunal within a period of five days from today.