

W.P.No.34313 of 2018
and
W.M.P.Nos.39886 & 39888 of 2018

N.KIRUBAKARAN,J.
And
R.PONGIAPPAN,J.

(Order of the Court was made by N.Kirubakaran, J.)

Though the prayer sought for by the petitioner is wide, as an interim measure, this Court passes the following order:-

Regulation 46-A has been introduced by way of notification dated 06.12.2018 by which the role of the advocates have been allegedly restricted in case of accompanying a person summoned by the Director General. Mr.C.Prabhakaran, learned Senior Counsel appearing for the petitioner would submit that the notification applies only to advocates and it does not speak about other persons viz., Chartered Accountants, Cost and Works Accountants and Company Secretaries, whereas, as per the original Regulation 46, no such restriction has been imposed.

2. That apart, Regulation 46 allows Chartered Accountants, Cost and Works Accountants and Advocates are authorised to represent a person before the Director General. When Regulation 46 speaks about the appearance of Chartered Accountants, Legal practitioners, Cost and Works Accountants and Company Secretaries, the new Regulation 46-A, prima facie, appears to be illegal and discriminatory, as it is applicable only to the Advocates alone, violating Article 14 of the Constitution. No doubt, 46-A has been brought in as per the judgment of the Division Bench of the Honourable Supreme Court in "***L.P.A.No.607 of 2016 dated 24.05.2018***" in "***Competition Commission of India and Anr. Vs. Oriental Rubber Industries Private Limited***".

3. The Judgement has been given only to see that the Commission's functions are not affected and to see that the investigation and recording of the evidence of witnesses is not vitiated and only for creation of conducive atmosphere for the Director General to examine the witnesses. If it is so, the Regulation 46-A should also include the other persons who are authorised to appear such as Chartered accountants, Company secretaries and Cost and Works Accountants. Therefore, Regulation 46-A should be understood in such a manner

that it would be applicable to all the professionals who have been named in Regulation 46 of the Competition Commission of India (General) Regulations, 2009.

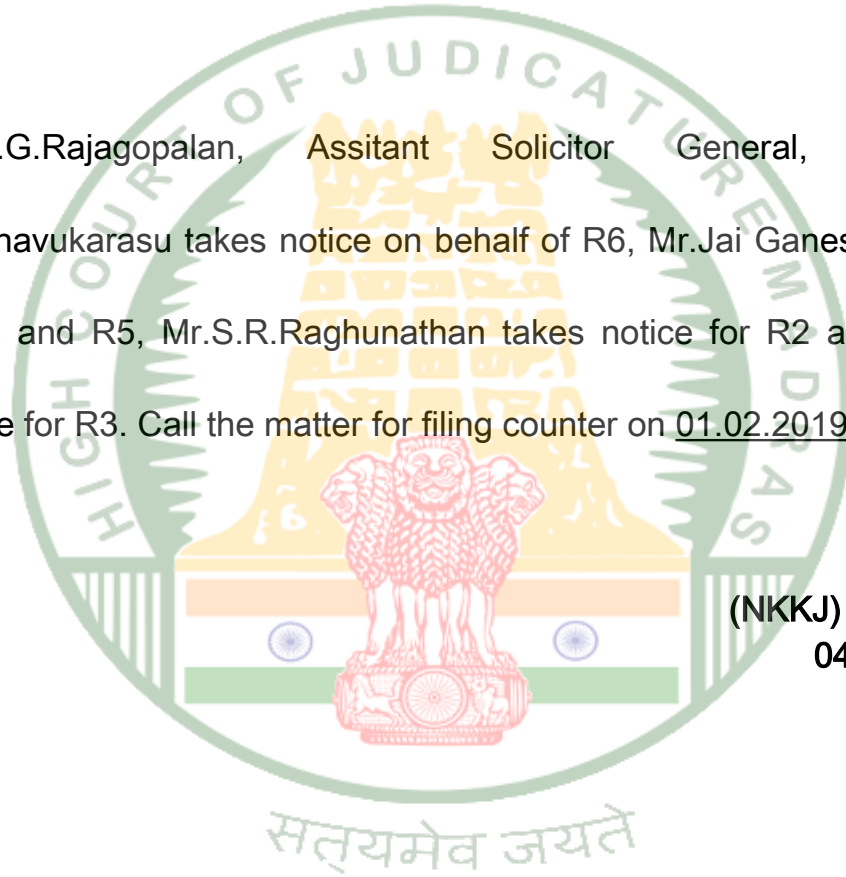
4.A perusal of Regulation 46-A would disclose that if there is a misconduct by the advocates, it has been stated in 46-A (2) that the Commission could debar an advocate, guilty of misconduct, from appearing in the proceedings before the Director General as well as before the Commission in future or till such time as the Commission deems it necessary. It appears that regulation is in contrary to the provision of the Advocates Act. The only statutory body, "Bar Council of the State" is competent to take any action against advocates, including debarring the advocates from practising.

5.No doubt, Regulation 46-A (3) speaks that the Commission shall forward the complaint in case of misconduct of the advocate to the effect in writing to the Bar Council of the State in which the advocate is a member. When 46-A (3) takes care of the situation in which there is a misconduct by the advocate, prima facie, it appears that the power given to the Commission under Regulation 46-A (3) to

debar the advocate from practising or appearing before the Director General as well as the Commission in case of misconduct is contrary to the Advocates Act and therefore, Regulation 46-A (2) of Competition Commission of India (General) Regulations, 2009 alone is hereby stayed until further orders.

6.Mr.G.Rajagopalan, Assitant Solicitor General, assisted by Mr.R.Thirunavukarasu takes notice on behalf of R6, Mr.Jai Ganesan takes notice for R1, R4 and R5, Mr.S.R.Raghunathan takes notice for R2 and Mr.J.Pothiraj takes notice for R3. Call the matter for filing counter on 01.02.2019.

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(NKKJ)

(RPAJ)

04.01.2019

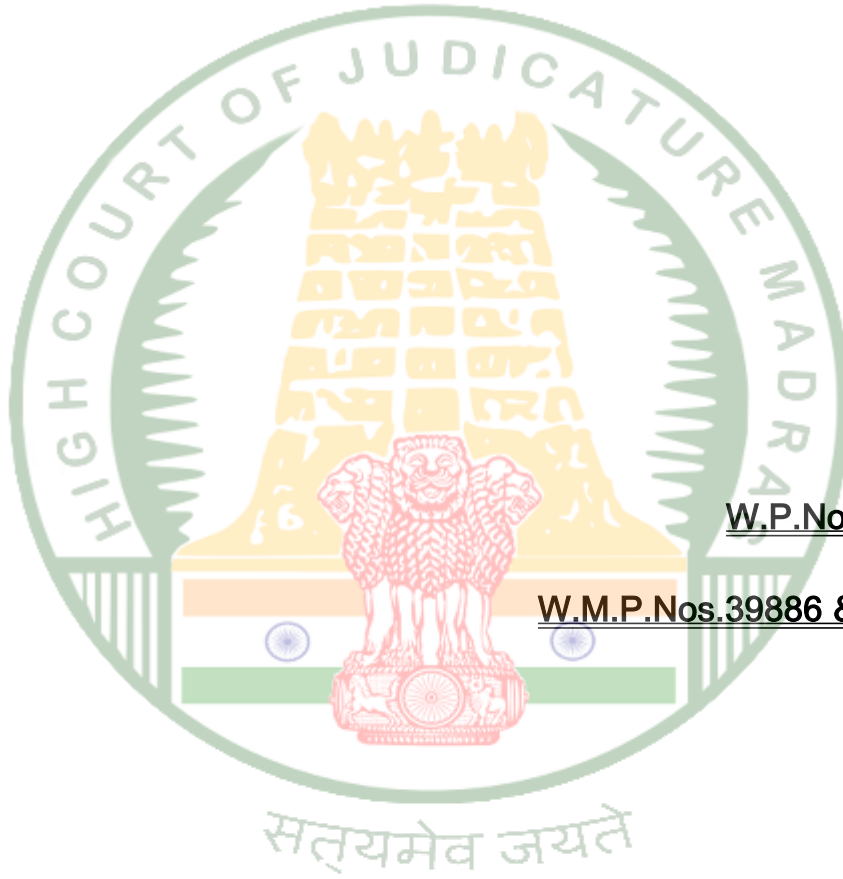
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Dated : 04.01.2019