

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27<sup>TH</sup> DAY OF MAY 2013

BEFORE

HON'BLE MR.JUSTICE MOHAN .M. SHANTANAGOUDAR

W.P.NO.21049 OF 2013 (GM-RES)

BETWEEN:

M/S. AXIS BANK LIMITED  
A COMPANY REGISTERED UNDER THE PROVISIONS OF  
THE COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT  
"TRISHUL",  
THIRD FLOOR, OPP. SAMARTHESHWAR TEMPLE  
NR. LAW GARDE, ELLSBRIDGE  
AHMEDABAD-380 006  
AND HAVING ITS CORPORATE OFFICE AT:  
BOMBAY DYEING MILLS COMPOUND  
PANDURANG BIDHKAR MARG  
WORLI  
MUMBAI-400 025  
REPRESENTED BY ITS  
VICE PRESIDENT MR. N. NACHAPPAN

.....PETITIONER

(BY SRI: SHREYAS JAYASIMHA, ADV., FOR AZB &  
PARTNERS)

AND:-

1. ADJUDICATING OFFICER  
UNDER THE INFORMATION AND TECHNOLOGY  
ACT, 2000  
PRINCIPAL SECRETARY TO GOVERNMENT  
DEPARTMENT OF IT, BT AND S & T  
GOVERNMENT OF KARNATAKA



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6TH FLOOR, 5TH STAGE, M.S. BUILDING  
DR. B.R AMBEDKAR ROAD  
BANGALORE-560 001.

2. GUJARAT PETROSYNTHESE LIMITED  
NO.24, II MAIN, DODDANEKKUNDI INDUSTRIAL AREA  
PHASE 1, MAHADEVAPURA POST  
BANGALORE-560 048  
REPRESENTED BY ITS  
MANAGING DIRECTOR .....RESPONDENTS

( BY SRI: VEERESH KUMAR, ADV., FOR CHAITANYA &  
ASSTS., FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICE VIDE ANNEXURE-A DATED 26.4.2013 ISSUED BY THE RESPONDENT NO.1 UNDER RULE 4(C) OF THE INFORMATION TECHNOLOGY (QUALIFICATION AND EXPERIENCE OF ADJUDICATING OFFICERS AND MANNER OF HOLDING ENQUIRY) RULES, 2000 (IT RULES) IN COMPLAINT NO.17 OF 2011.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

### ORDER

The order Annexure-A passed by the Adjudicating officer dated 26<sup>th</sup> April 2013, by which the Adjudicating officer has recalled the order dated 27<sup>th</sup> December 2011 passed by the earlier Adjudicating officer, is called in question in this writ petition.





2. The records reveal that respondent No.2 herein filed complaint No.017/2011 before the Adjudicating officer under Section 43 of the I.T. Act, 2000 against the petitioner and others. The petitioner herein had raised the question of jurisdiction before the adjudicating officer. After hearing the arguments of the complainant, petitioner and others, the order dated 27<sup>th</sup> December 2011 came to be passed by the Adjudicating Officer as per Annexure-D by observing that the complaint of respondent No.2 herein (complainant company) is not sustainable and the same is not adjudicable under Section 43 of the I.T. Act, consequently, complaint filed by respondent No.2 came to be rejected by the Adjudicating officer. As against the said order dated 27<sup>th</sup> December 2011, second respondent is said to have approached the Appellate Authority



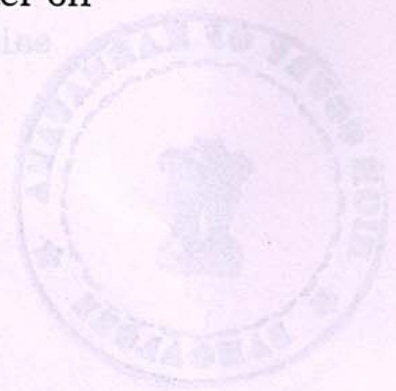


i.e., Cyber Appellate Tribunal by filing Appeal No.1/2012 and the same is pending consideration.

When the facts stood thus, it appears second respondent again (during pendency of the appeal) approached the Adjudicating officer for recalling the order dated 27<sup>th</sup> December 2011. The Adjudicating officer after seeking the opinion of the law department has passed the impugned order dated 26<sup>th</sup> April 2013 recalling its earlier order dated 27<sup>th</sup> December 2011.

3. Both the learned Advocates submitted their arguments in support of their respective case.

4. Sri. Shreyas Jayasimha, learned counsel for the petitioner apart from arguing the matter on





merits has submitted that the Adjudicating Officer has no authority to recall his earlier order dated 27<sup>th</sup> December 2011 without notice to the petitioner. He further submits that since the matter is said to have been pending before the Appellate Authority, it is open for respondent No.2 to pursue the appeal before the Appellate Authority.

5. Per-contra, learned counsel for respondent No.2 argued in support of the impugned order.

6. There cannot be any dispute that the order dated 27<sup>th</sup> December 2011 passed by the Adjudicating officer was after hearing both the parties. If it is so, rules of natural justice require that the petitioner, who was party to the order dated 27<sup>th</sup> December 2011 ought to have been notified and heard before recalling the said order.





The question as to whether the Adjudicating officer can recall his order, is also a question needs to be considered.

Be that as it may, this Court does not wish to enter into that question at this stage, inasmuch as, the matter can be disposed of on a short point. Since the impugned order is passed without notice to the petitioner and without hearing it, the same cannot be sustained. The order dated 27<sup>th</sup> December 2011 though was passed after hearing the parties including the petitioner, was recalled by the Adjudicating officer without notice to the petitioner. Therefore, impugned order cannot be sustained, inasmuch as, the same is in violation of principles of natural justice. Accordingly, impugned order stands quashed. It is open for the second respondent to pursue appeal No.1/2012





filed by it before the Appellate Authority as per law.

Petition stands allowed accordingly.

Sd/-  
JUDGE



"TRUE COPY"

108 Mr 5/6/13  
Section Officer  
High Court of Karnataka  
Bangalore-560 001.

- a) The date on which the application was made 29/5/13  
b) The date on which charges and additional Charges if any are called for 03/6/13  
c) The date on which charges and additional Charges if any are deposited/Paid 04/06/13  
d) The date on which the copy is ready 05/06/13  
e) The date of notifying that the copy is ready For delivery 08/06/13  
f) The date on which the applicant is required to appear on or before 10/06/13  
g) The date on which the copy is delivered to the Applicant 6/6/13  
h) Examined by