(2020) 05 DEL CK 0103

In the Delhi High Court

Case No : Civil Writ Petition No. 3187 Of 2020

Binty APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 19-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21, 226
Consumer Welfare Rules, 1987 — Rule 10A
Central Goods And Services Tax (CGST) Rules, 2017 — Rule 97
Consumer Protection Act, 1986 — Section 12(1), 14(1)(hb), 17(1), 21(i)(a)
Central Excise Act, 1944 — Section 12(c)
Central Goods And Services Tax (CGST) Act, 2017 — Section 57

Citation : (2020) 05 DEL CK 0103

Hon'ble Judges : Manmohan, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Yadunandan Bansal, Maninder Acharya, Anurag Ahluwalia, Abhigyan Siddhant, Shaurya Jain, Viplav Acharya, Dhananjaya Mishra, Nisha Sharma, Rajesh Manchanda, Rajat Manchanda

Final Decision : Dismissed

Judgement

Manmohan, J

CM APPL. 11076/2020

Allowed, subject to just exception.

W.P.(C) 3187/2020

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein.

2. The petition has been heard by way of video conferencing.

3. It is pertinent to mention that present public interest litigation has been filed against as many as eighty respondents primarily seeking to convert the Consumer Welfare Fund Bill, 2010 into the Consumer Welfare Fund Rules, 2010

and for transfer of the unclaimed or unpaid amounts of unidentifiable consumers lying with respondents to Consumer Welfare Fund or a Suspense Account as well as for refund of the same and to disburse Rs. 5 crores out of the said amount to senior resident doctors of Safdarjung Hospital and to donate an additional sum of Rs. 5 crores to Sardarjung Hospital to fight the coronavirus. The prayer clause reads as under:-

"In the abovementioned facts and circumstance this Hon"ble Court may graciously pleased to:-

(a) Issue writ of mandamus directing the appropriate government to convert the Consumer Welfare Fund Bill, 2010 into the Consumer Welfare Rules, 2010;

(b) Issue writ of prohibition and certiorari directing appropriate government to transfer unclaimed or unpaid unidentifiable consumer amount, lying with Banks, RD accounts, PPF, NPPA, Postal Services, Life Insurance, direct & indirect tax authorities, SEBI, DG Civil Aviation and other government entities and also any type of consumer unclaimed or unpaid amount mentioned in above drawn chart or illegally diverted into other account(s) into CWF or to a Suspense Account under CPA, 1986 or under CPA, 2019 in terms of CWF, Bill 2010;

(c) Issue writ of certiorari directing appropriate government to refund unclaimed and unpaid unidentifiable consumers amount to them in terms of judgment rendered by the constitutional bench of the Hon"ble Supreme Court of India in Mafatlal Industries Ltd Vs. Union of India reported in (1997) 5 SCC 536 read with the Consumer Welfare Fund Bill, 2010;

(d) Issue writ of certiorari directing the central government to disburse Rs.5 Cr. or more to the Senior Resident doctors Safdarjung Hospital from the unclaimed amount belongs to innumerable and unidentifiable consumers throughout India;

(e) Issue writ of prohibition directing the appropriate government to credit all public money into the account of Consumer Welfare Fund which is not meant for Consolidated Fund of India;

(f) Issue writ of mandamus directing the appropriate government to enact Consumer Welfare Fund Act, 2010 in terms of clause (k) of sub-section (1) of Section 19 (Powers and functions of Central Authority to advise the Ministries and Departments of the Central and State Governments on consumer welfare measures) of the CPA, 2019;

(g) Issue writ of mandamus directing respondents to file their responses with regard to total unclaimed amount of consumers amount which is lying with them till today in the absence of any statute;

(h) Issue writ of mandamus directing respondents to file a detailed sheet as to how much consumers unclaimed amount, received under Section 12 (1) or 17 (1) or 21(i)(a) or CPA, 1986; or fine under section 14(1) (hb) of the CPA, 1986; or cost of adjournment, has been directed to deposit in CWF established under section 12(c) of the Central Excise Act, 1944 in terms of Rule 10A of the Consumer Welfare Rules, 1987;

(i) Issue writ of probation directing the appropriate government not to transfer consumers unclaimed amount (in trillions) of consumers in any other account till the proper statute is not enacted;

(j) Issue writ of certiorari to deposit consumers unclaimed amount (in trillions) in "Consumer Welfare Fund" or Suspense account till the proper statute is not enacted;

(k) Issue a writ of mandamus directing R-13 to allow the present Central Consumer Protection Council through its members to donate on behalf of the consumers the said sum of Rs.5 crores (Right Five Crores only) to the Safdarjang Hospital of Delhi to fight the coronavirus, COVID-19; and

(l) pass any other order(s) as this Hon"ble Court may deem fit and proper in the abovementioned facts and circumstances."

4. Learned counsel for the petitioner contends that the respondents cannot siphon off hard earned money of unclaimed or unrefunded amounts belonging to unidentifiable customers due to lack of any enactment. In support of his contention, he relies upon judgment of the Supreme Court in Mafatlal Industries Ltd. and Others Vs. Union of India and Others, (1997) 5 SCC 536.

5. The Petitioner also strongly feels that legislative void to deal with the aspects highlighted in the petition, should persuade us to accept the petition. He profusely relies upon several vital Articles of the Constitution of India, including but not limited to Articles 14, 19 and 21. In addition to the above, the preamble of the Constitution is also cited in an effort to lay emphasis on the importance of the issue sought to be canvassed in the petition.

6. However, we feel that reliance on the provisions of the Constitution alone cannot justify the maintainability of a petition. In our view, a writ petition is not the correct remedy to address the grievance of the petitioner. We cannot assume the role of the Legislature and convert a 'Bill' proposed by the Petitioner in a 'Law', no matter the same may have been pending consideration with the Government for some time. This is one chamber of the Constitution for which we do not have the key. It is for the Parliament or the Executive answerable to the Parliament to decide as to how the said amounts are to be utilized and not for the courts especially when it is not the case of the petitioner that respondents are acting contrary to any statutory mandate. It is settled law that the Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive. If there is a law, the Court can certainly enforce it; but Court cannot create a law or policy and seek to enforce it [See Suresh Seth v. Commr., Indore Municipal Corpn. and Another, (2005) 13 SCC 287; Asif Hameed and Others v. State of Jammu and Kashmir and Others,

1989 Supp (2) SCC 364 and Divisional Manager, Aravali Golf Club and Another v. Chander Hass and Another, (2008) 1 SCC 683].

7. Consequently, this Court is of the firm view that present writ petition is untenable in law inasmuch as the petitioner has failed to appreciate that there is a system of separation of powers under the Indian Constitution and it is not for the courts to either legislate or convert bills/acts into rules or to disburse amounts to certain hospitals or for certain causes, howsoever genuine they may be.

8. Further, the judgment in Mafatlal Industries Ltd. and Others (supra) has no application to the facts of the present case as it pertains to certain categories of refund only and it is not the case of the petitioner that the said judgment has been violated by the respondents in any manner whatsoever. The Central Excise and Salt Act, 1944 was amended in 1991 to enable the Central Government to create a Consumer Welfare Fund (CWF) where the money which is not refundable to the manufacturers, etc. is being credited. Likewise, after the advent of GST laws, Consumer Welfare Fund has been setup under section 57 of the CGST Act, 2017. The Consumer Welfare Fund Rules were framed and notified in the Gazette of India in 1992, which have been incorporated in Consumer Welfare Fund Rule 97 of the CGST Rules, 2017. Guidelines for seeking financial assistance from Consumer Welfare Fund were framed based on the report of a Working Group set-up in 1993, which was subsequently revised twice, in 2007 and 2014. Financial assistance from CWF is given to various Institutions including Universities, Voluntary Consumer Organization (VCOs) and States to promote and protect the welfare and interests of the consumers, create consumer awareness and strengthen consumer movement in the country. Consequently, it is not as if the Government is not cognizant of the issues relating to utilization of the Consumer welfare Funds.

9. The Petitioner, nonetheless, has his own ideas and perspective. The petitioner would like the unutilized and unclaimed amounts lying with Cooperative Banks, Insurance Companies etc being given a similar treatment. Petitioner has adverted to the Consumer Protection Act 1986 and Consumer Protection Rule, 1987 and the Guidelines provisioning for Consumer Protection Councils. It is urged that with the said Councils should be given the complete control over the unutilized and unclaimed funds. This, according to him, can be achieved by amending the Consumer protection Act with a view to re-constitute and re-construct the Councils under the Act so as to enable them with wider powers and control. Petitioner also suggests introducing a fresh legislation- 'Consumer Welfare Fund Act.' Firstly, we are unable to comprehend the basis for Petitioner's assumption that the funds in the hands of the institutions and the Government department are in jeopardy. Secondly, in our view, Banks, Insurances Companies, Post offices etc are all regulated and governed by their own set of rules. The Reserve bank of India and the provisions under the Banking Regulation Act would govern the bank and likewise IRDA would have the control

over the Insurance Companies and that would take care of the unclaimed amounts of the policy holders. Further, the apprehension of misuse of unclaimed and unpaid refund as well as amounts lying with the respondents is totally misconceived as the said sums are duly accounted for in the account books of respondents and the said accounts are subject to audit.

10. We do not see how Petitioner's viewpoint should be all-pervading and such institutions and departments should be forced to be compliant with his suggestions and ideas. The Petitioner has collated certain facts and figures to impress upon us that enormous amounts of Funds are lying in credit with several departments and wings of the Government. But, all these contentions remain Petitioner's ipse dixit and nothing actionable is there in law. Howsoever convincing and credible may the Petitioner appear, for the court to issue a mandamus to the Respondents, fundamental question is of Right and corresponding Duty of the Respondent. Petitioner has failed to demonstrate that justice demands the performance of a duty by the Respondents that they have indeed failed to do and this cardinal requirement has not been fulfilled.

11. It is also not understood as to how the court can direct refund to customers/ consumers as sought in prayer (c) of the petition, when the amounts admittedly belong to unidentifiable customers/consumers.

12. Lastly, we may add that the missing 'cause of action' has been given a colour of nobility by making a prayer for allowing the Consumer Protection Council to donate on behalf of the Consumers an amount of Rupees 5 crores to Safdarjung Hospital to fight the Covid-19 Pandemic. This attempt to garner sympathy from a court of law, however sincere it may be, cannot infuse the legal strength that is required for us to issue notice. The preferential treatment sought for the Safdarjung Hospital may not be founded on any bias, as indisputably the said Institution is presently doing great service to the nation, but we have no criteria to make a distinction for any one hospital. Significantly, the utilization of the funds is not a function that the courts are equipped to decide.

13. We would also like to note that the Petitioner had earlier approached this court by way of a similar petition being W.P (C) No. 1624 of 2019. Apparently, the said petition was also half-baked, lacking content and structure, prompting the court to turn down the same. Nevertheless, while rejecting the petition vide order dated 2nd December 2019, the court granted the Petitioner the liberty to approach the court again after putting its act together. This second opportunity has now been availed by way of the present petition which is likewise deficient in substance and is also entirely without a valid cause of action that is necessary to meet the threshold for the Court to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India. In view of aforesaid, present writ petition being bereft of merit is dismissed.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

