(2002) 08 DEL CK 0164

In the Delhi High Court

Case No : CW No. 5167 of 2002 and CM 8803 of 2002

Malvika Apparels and Another APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:
Companies Act, 1956 — Section 169, 169(6), 186

Citation : (2002) 112 CompCas 335 : (2003) 42 SCL 85

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : A. Maitri, for the Appellant; G.L. Rawal and Kuljit Rawal, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—The petitioner has filed this writ petition for quashing of the notice dated 2.8.2002 issued by respondent No. 2 on the ground that it does not conform to Section 169 of Companies Act and does not cover the agenda for which the extraordinary general body meeting was called.

2. Grievance of the petitioner is that the petitioners had sent a requisition u/s 169 of the Companies Act (hereinafter referred to as the Act), requiring certain issues, which are listed in para 27. The same is reproduced as under:

(1) Issue pertaining to the BG/EMC Refunds pending since several years be settled immediately:

-- "Resolved that the outstanding BG/EMC cases pending with the AEPC and the Textile Ministry be cleared within 1 month. The BG/EMC collected is in violation of the Garment Export Entitlement Policy and the same must be refunded in full to the garment exporter failing which an alternative scheme on the lines of Samadhan be prepared wherein 100% relief may be given where the performance is 50% and where the performance is below 50% a pro rate relief too be given."

(2) Issues pertaining the registration cum membership fees which have been increased 2-3 folds:

--- "Resolved that the registration-cum-membership fee reduced for the year 2002 and onwards as follows. Regd. Member existing fees Rs. 600 proposed to be reduced to Rs. 2500 and for Member Export existing fees which is Rs. 7000 be reduced to Rs. 2500 as it was previously."

(3) Issues pertaining the Quota transfer Fee of 5 paise per garment to be withdrawn with immediate effect:

--- "Resolved that the quota transfer fee @ p.05 paise for piece imposed as per circular 02/2A dated 1/1/02 be withdrawn immediately."

(4) Single Membership to be introduced:

"Resolved that since all then rules and regulations are applicable to all the members both registered Exporter and Member Exporter Therefore there should be only one type of membership and such members will be called a ''Member Exporter''. Those exporters turnover exceeds Rs. lacks shall automatically be deemed to have become ''Member Exporter'' without having to apply and all these members should have equal rights in all respect."

(5) Issues pertaining to flagging of Exports by Apparel Export Promotion Council:

-- "Resolved that the system of Flagging be stopped with immediate effect since the object of the Council is for Promotion of Exports and this system of flagging goes against its principle objectives."

3. Learned counsel for the petitioner submits that the action of the apparel Export Promotion Council i.e. AEPC in not listing these items in the agenda of the extraordinary General Meeting scheduled for 29.8.2002, was arbitrary and illegal. When this petition had first come up for admission before the Bench on 20.8.2002, learned counsel for the parties were required to address the court on whether the petitioner could not avail the alternative efficacious remedy u/s 186 of the Companies Act.

4. I have heard learned counsel for the parties. Mr. A. Maitri, counsel for the petitioner, submits that Section 186 of the Companies Act would not operate as a bar firstly because the petitioners being requisitionist u/s 169, they would not be covered under the provisions of Section 186 of the Companies Act. Secondly he submits that it is only when it is impracticable to hold a meeting that Section 186 can be invoked. The Company Law Board then assumes the position of the Board of Directors. He submits that once the meeting has been requisitioned u/s 169, the provisions of Section 186 of the Companies Act will not be available and there would be a bar u/s 169(6). Counsel submits that the respondents are

evading the discussion on the issues, which are vital and burning issues. The voice of a sizeable number of the exporters is sought to be scuttled in a high handed manner.

5. Mr. G.L. Rawal, learned senior counsel for respondent No. 2 submits that the petitioner has the available remedy u/s 186 of the Companies Act. The provisions of Section 186 permits "any member'' and there is no bar. Secondly simply because the member is requisitionist u/s 169, he does not cease to be a member. The provisions of Section 186 will still be available. There is merit in this submission.

6. On the question of the justification for declining the issues, which were sought to be raised in the agenda, Mr. Rawal submits that it is a handful of persons, who are bent upon frustrating the working of the AEPC. He has taken me through the 5 issues, which have been reproduced earlier. He submits that as far as issue relating to the refund of bank guarantee, earnest money deposit is concerned, the Executive Committee of AEPC has already made a representation and has passed a Resolution for sending the same to the Ministry of Textile for an early disposal of the pending refund cases of bank guarantee and EMD. Counsel states that AEPC shall vigorously pursue the same on the administrative side. As regards issue No. 2, relating to registration of membership, this falls within the domain of AEPC. He submits that this item has already been included in the agenda of EGM. Issue No. 3 relating to the quota transfer fee, has been accepted and the said quota fee stands withdrawn. As regards issue No. 4 and 5, he submits that these fall strictly within the domain of the Central Government, which has formulated the garment policy under the Import Export regulations. He submits that AEPC would not have the jurisdiction to either consider or pass a Resolution, which is contrary to the provisions of the garment policy. However, if the members have any suggestions, the same can be considered by the Executive Committee on the administrative side and a representation made to the Government for suitable amendments. Similar is the position with regard to the system of flagging required to be stopped. This is being done as a part of the garment policy formulated by the Government. The respondents in my view have adequately explained and justified the non-inclusion of the issues as desired by the petitioner.

Learned counsel for the respondent further submitted that in any case Annual General Meeting is scheduled to be held any time between September to December this year and it would be open for the members to send any requisition to be considered in accordance with law for the Annual General Meeting and such issues as are within the ambit, functioning and power of AEPC can be discussed.

In view of the foregoing, I find that the petitioner has an alternate remedy and consequently the issues, which are sought to be raised are really those, which would impinge upon the statutory provisions of the garment policy and there is considerable merit in the argument of the learned counsel for the respondent that any such change or deviation in the policy as desired can be considered on the administrative side by the Executive Committee and representation made to the Government in that regard.

Writ petition is accordingly dismissed.

