(1999) 02 KL CK 0043

In the High Court Of Kerala

Case No : O.P. No. 25273 of 1998

Mohammed Rafeek APPELLANT

Vs

Securities and Exchange Board of India and Others RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269SS
Securities and Exchange Board of India Act, 1992 — Section 20

Citation : (1999) 98 CompCas 802

Hon'ble Judges : P. Shanmugham, J

Bench : Single Bench

Advocate : C.K. Karunakaran and P.K. Vijayamohan, for the Appellant; P.V. Lohithakshan, Satish M. for respondent No. 1, U.K. Ramakrishnan and P.K. Ravindranatha Menon and George K. George, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugham, J.—The petitioner is a shareholder of the second respondent-company. This original petition is filed under Article 226 of the Constitution of India for a direction to the company to allot rights shares and a direction to the first respondent to perform its statutory duty.

2. The petitioner in pursuance of an offer of the second respondent-company applied for 144 equity shares and paid Rs. 21,600 being the application money in Indian Overseas Bank on December 6, 1997. The company rejected the application and refunded the amount by their letter dated February 7, 1998. By a subsequent communication dated March 6, 1998, petitioner was informed of the reason for rejection, viz., that the offer was made by effecting payment in cash in violation of Section 269SS of the Income Tax Act, 1961. A complaint made before the first respondent Board was rejected confirming the decision of the company. The original petition is filed at this stage.

3. I have heard counsel and considered the matter carefully. It is found that the

company in their letter offer dated October 16, 1997, had clearly mentioned under the general instructions para, that any application effected in cash amounting to Rs. 20,000 will be refunded. Similar applications appear to have been rejected. The general instructions para, is in consonance with Section 269SS of the Income Tax Act. The Supreme Court dealing with disallowance as expenditure u/s 40A(3) held that it will include expenditure for purchasing of stock-in-trade in Attar Singh Gurmukh Singh v. ITO, (1991) 191 ITR 667 (SC) . Their Lordships observed as follows (page 673) :

"It will be clear from the provisions of Section 40A(3) and Rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions (see Mudiam Oil Co. and Others Vs. Income Tax Officer and Others,). If the payment is made by a crossed cheque drawn on a bank or a crossed bank draft, then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was out of the income from disclosed sources. In interpreting a taxing statute, the court cannot be oblivious of the proliferation of black money which is under circulation in our country. Any restraint intended to curb the chances and opportunities to use or create black money should not be regarded as curtailing the freedom of trade or business.

The payments made for purchases would also be covered by the word ''expenditure'' and such payments can be disallowed if they are made in cash in the sums exceeding the amount specified u/s 40A(3). We have earlier observed that Rule 6DD has to be read along with Section 40A(3). The rule also contemplates payments made for stock-in-trade and raw materials."

4. Secondly, I do not find any statutory violation of the company rules or by the first respondent in reference to failure to allot shares. The remedy must lie within the framework of the Companies Act and by way of a civil suit. An allotment of share is a contract and any breach of it can be raised in a civil suit (vide Pandian Graphites (India) Ltd. Vs. Lovvuri Lakshmi and Another, and Poonamchand Kothari Vs. Rajasthan Tube Manufacturing Co. Ltd. and Others, . In Guide to the Companies Act by A. Ramaiya, 14th edition, 1998, page 779 in reference to the allotment of shares it is stated as follows :

"Irregular allotment not dispute under Consumer Protection Act.--Failure on the part of a company to give to the shareholder his proportion of the rights shares does not constitute a consumer wrong and, therefore, no consumer action lies against it either under the Consumer Protection Act, 1986, or MRTP Act, 1969. The action in this case was u/s 12B of the MRTP Act, 1969, for compensation for denial of rights shares. The remedy lies within the framework of the Companies Act and also by way of a civil suit. Harish Sood v. Videocon International Ltd. [1996] 8 SCL 28 (MRTPC)."

5. The first respondent''s jurisdiction is limited to that of guidance and in any event if the petitioner is aggrieved by the first respondent''s order, there is a

provision for appeal u/s 20 of the Securities and Exchange Board of India (SEBI) Act, 1992.

6. For these reasons, no grounds are made out to grant the relief and the original petition is dismissed. The civil court or the appellate authority, if moved, will dispose it of on the merits uninfluenced by any of the obser vations contained in this judgment.

