(2001) 05 DEL CK 0190

In the Delhi High Court

Case No : C.W.P. No''s. 3393 and 4789 of 2000

Shri Rakesh Singh APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Companies Act, 1956 — Section 224, 227, 233B
Cost and Works Accountants Act, 1959 — Section 21

Citation : (2002) 110 CompCas 624

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Dr. A.K. Mishra and Mr. H.B. Mishra, for the Appellant; Mr. Jayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—As the facts and the issues involved are similar in nature I proceed to dispose of both the writ petitions by this common judgment/ order.

2. The petitioner herein is a Fellow Member of the Institute of Cost and Works Accountants of India. He was appointed as Cost Auditor of respondent No. 3 by respondent No. 2 for the periods 1995-96 and even thereafter. The respondent No. 3 by a letter dated 15.12.1999 submitted the name of the petitioner for appointment as Cost Auditor of respondent No. 3 in the prescribed form for approval of the Central Government in terms of section 233B of the Companies Act. The respondents No. 1 & 2 however, by an order dated 4.4.2000 informed the respondent No. 3 that the appointment of petitioner as Cost Auditor could not be approved. The respondent No. 3 Therefore, was called upon to submit a fresh proposal proposing the name of some other Cost Auditor in place of the petitioner. Being aggrieved by the aforesaid order the present petition has been preferred by the petitioner seeking for quashing of the aforesaid letter dated 4.4.2000 issued on behalf of respondents 1 & 2 with a further relief seeking a

direction to the said respondents 1 & 2 to give approval to the appointment in terms of the request of respondent No. 3.

3. The respondents No. 1 & 2 have filed their counter affidavit contending inter alias that a complaint has been filed by the Government of India (Department of Company Affairs) against the petitioner before the Institute of Cost and Works Accountants India, Calcutta in December, 1998 u/s 21 of the Costs and Works Accountants Act, 1959, in connection with his professional misconduct during his appointment as Cost Auditor of M/s. Continental Paper Ltd. The allegation is that the petitioner had failed to submit the audit report of the said company inspire of specific instructions from the Government to do so. The said complaint is pending disposal and in that view of the matter particularly in view of the professional misconduct committed by the petitioner no approval was granted to the proposal of respondent No. 3.

4. Counsel appearing for the petitioner, during the course of his submissions submitted that the said impugned order is arbitrary and devoid of any reason and Therefore, it is required to be set aside. He drew my attention also to the provisions of section 224 and section 233B of the Companies Act and on the basis thereof submitted that no discretion is vested in the Central Government to refuse to give approval to the proposal of the company namely - respondent No. 3 in respect of appointment of the Cost Accountant. According to him the provisions of section 224 of the Companies Act are applicable to the facts and circumstances of the case and in terms of the aforesaid provision there is a mandate on the Central Government to act upon positively on the proposal sent by the company to the Central Government and Therefore, in the instant case the decision of the respondents 1 & 2 of not giving approval to the proposal of the company is bad in law and is liable to be set aside.

5. Counsel appearing for the respondent however, refuted the aforesaid allegations and submitted that the relevant provision which is applicable to the facts and circumstances of the case is section 233B of the Companies Act and Therefore, while judging the validity of the impugned order the only relevant provision which is required to be looked into is the provision of section 233B of the Companies Act. He also submitted that when a power of approval is vested in the Central Government it also encompasses within its ambit a power to disapprove and a discretion is vested on the Central Government to refuse to give the approval on reasonable and valid grounds. He submitted that the grounds on which the said approval was not given is spelt out from the counter affidavit filed by respondents 1 & 2 and according to him the said grounds are valid grounds for not according to the proposal of respondent No. 3.

6. In the light of the aforesaid submissions I have perused the records placed before me. Counsel appearing for the petitioner drew my attention to the proposal submitted by respondent No. 3 for appointment of the petitioner as Cost Auditor for the period ending on 31.3.1999 & 31.3.2000. He particularly, referred to clause 7 of form 23-C which was sent on behalf of respondent No. 3

recommending the name of the petitioner and seeking approval of his name as the Cost Accountant of respondent No. 3. In aforesaid clause 7 as against the query as to whether the Cost Auditor is subjected to any disqualification u/s 233B of the Companies act, the company namely the respondent No. 3 has specifically indicated that no disqualification has been earned by the petitioner as a Cost Auditor. Relying on the same he submitted that under the provisions of section 224 of the Companies Act the petitioner should have been appointed as the Cost Auditor of the Company. He also submitted that the word used in the said provisions of section 224 is ''shall'' and Therefore, it is mandatory for the Central Government to accord approval to the proposal of respondent No. 3 as it is.

7. I have considered the said provision of section 224 which relates to the procedure for appointment of Auditors. Such auditors are appointed by respondent No. 3 either in its annual general meeting or by its Board of Directors as the case may be. Provisions of section 233B on the other hand deal with the power of the Central Government to direct external audit of a particular company by the Cost Accountants. A conjoint reading of the aforesaid two provisions would make it crystal clear that unlike the audit of financial accounts of the company which is required to be conducted annually by appointing an Auditor in terms of section 224 of the Companies Act audit of cost accounts is not a regular annual feature. When the Central Government in its discretion directs Cost Audit of a company by a Cost Accountant then the provisions of section 233 become applicable. It is explicit from the wording of the provisions of section 233B that the audit of cost accounts is to be in addition to the audit of financial accounts by a statutory auditor appointed u/s 224 or 224(a) as the case may be. The said provision of section 233B provides that pursuant to the directions of the Central Government when issued in this behalf a Cost Auditor is to be appointed by the Board of Directors of the company with the prior approval of the Central Government. Such a Cost Auditor appointed u/s 233B shall have the same powers and duties in relation to the audit of cost accounts as are provided to the statutory auditors u/s 227 of the Companies Act. It is specifically laid down that such Cost Auditor is to be appointed with the prior approval of the Central Government. Such a power definitely envisages not only a power of approval but in an appropriate case even the power to disapprove. When the statute provides that the power is to be exercised by the Central Government, the said power must be exercised by the statutory authority who is empowered to exercise the said power in a manner which is not arbitrary or unreasonable, after taking into consideration all the relevant factors. While doing so if it is found by the said authority that no approval could be granted as sought for, it would have also the power to disapprove the proposal which is inherent in the empowerment itself. In the present case when a proposal was sent by respondent No. 3 for appointment of the petitioner as its Cost Accountant in terms of section 233B neither the provisions of section 224 of the Companies Act were attracted nor the Central Government was statutorily bound to accord its approval to the said proposal.

8. In my consideration opinion a discretion definitely vested on the Central Government to examine the records and to satisfy itself whether the said proposal satisfies all the requirements and meets the norms and in case there is any impediment in appointing such a person as a Cost Accountant the Central Government had the discretion and also the power to reject or to disapprove the proposal of respondent No. 3. The said power of disapproval is inherent on the Central Government, if on the facts and circumstances of a particular case it is of the opinion that no such approval could be granted because of the given circumstances. In the present case the proposal was not approved on the ground which is specifically stated in the counter affidavit by respondents 1 & 2. The ground indicated is that a complaint has been filed by Government (Department of Company Affairs) against the petitioner before the Institute of Cost and Works Accountants India u/s 21 of the Cost and Works Accountants Act, 1959 as the petitioner had failed to submit the audit report of the said company in spite of specific instructions of the Government to do so. As of today the aforesaid complaint is pending for disposal and Therefore, the action of the respondents in refusing to approve the proposal of respondent No. 3 could not be said to be arbitrary or unreasonable. Besides, the said proposal was for the period ending on 31.3.1999 & 31.3.2000. The proposal was not approved and Therefore, in the meantime fresh proposal must have been sent and Cost Accountant in terms of section 233B must have been appointed by respondent No. 3. Accordingly, I find no merit in these petitions and the same stand dismissed.

