
(2004) 01 DEL CK 0002

In the Delhi High Court

Case No : C.W.P. No. 73 of 2004 and C.M. No. 142 of 2004

U.K. Raina

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Citation : (2004) 50 SCL 667

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Anurag Chopra, for the Appellant; Maninder Acharya, for the Respondent

Judgement

Manmohan Sarin, J.—The petitioner by this writ petition seeks to challenge the General Circular No. 35/2003, dated 11-12-2003 issued by respondent No. 1 in terms of which a clarification was issued that a company which is not required under law to employ a whole-time secretary but nevertheless employed a whole-time secretary, such a company is not required to obtain compliance certificate, from the company secretary in practice. The effect of the clarification is that company employing a full-time company secretary is not required to obtain a compliance certificate from a company secretary in practice. Learned counsel submits that the aforesaid clarification militates against the proviso to Section 383A of the Companies Act, 1956 [hereinafter referred to as the Act, for short]. It is contended that there is no power to give legitimacy to a certificate given by a company secretary in employment when the proviso stipulates issuance of such certificate by a company secretary in practice. Learned counsel for the respondent submits that the intent of the statute is to have a company secretary in employment or in practice to issue the compliance certificate. For companies with paid up capital of over Rs. 2 crores employment of a whole-time company secretary is mandatory while those who are having paid up capital of more than Rs. 10 lakhs but less than Rs. 2 crores the employment of a whole-time company secretary is optional. In such cases when a whole-time company secretary is

employed the insistence on issuance of a compliance certificate only by a company secretary who is in practice is a surplusage and serves no purpose. It is this anomaly which is sought to be corrected by the Circular. Learned counsel for the respondent submits that this does not militate against the statutory provision. She further submits that the proviso does not cater to a case of a company having paid up capital of more than Rs. 10 lakhs but less than Rs. 2 crores employing a full-time company secretary. Prima facie, it appears to me that while the respondents have sought to correct an anomaly and the Circular is in larger public interest, however, what is in question is whether the respondents can do that by issuance of a general Circular which has the effect of modifying the proviso to Section 383A. Another option the respondents may consider is grant of a general exemption by issuing the requisite notification u/s 637A of the Act. Learned counsel for the respondent seeks time to obtain instructions. Let her do so before the next date.