

16th November,
2023
(AK)
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W.P.A. 23787 of 2023

Aloke Chatterjee and Another
Vs.
Union of India and another

Mr. Reetobrata Kr. Mitra
Mr. Rudrajit Sarkar
Mr. Tamoghna Saha

...for the petitioners.

Mr. S.K. Tiwari
Mr. Jayesh Choradia

...for the respondents.

1. Learned counsel for the petitioners contends that a report purportedly furnished by the respondent authorities under Section 208 of the Companies Act, 2013, thereby incriminating the petitioners on certain allegations, has not yet been furnished to the petitioners, thereby rendering the purported investigation against the petitioners a farce.

2. It is argued although the petitioners categorically replied to a notice under Section 206(5) of the 2013 Act, the said substantial response was ignored by the respondent authorities and no hearing was given to the petitioners on such count.

3. A pre-condition of an investigation within the contemplation of Section 210 of the 2013 Act, it is argued, is that the principles of natural justice and the procedure delineated under the said Act are to be

precisely adhered to, which have not been done in the present case.

4. Learned counsel for the petitioners cites two judgments on such count which will be dealt with presently.

5. Learned counsel for the respondent authorities denies the contentions of the petitioners and argues that the investigation is at the stage when, under Section 217 of the 2013 Act, certain interrogatories and documents have been asked for by the respondents.

6. To stall the proceedings, at this belated stage, the petitioners are setting up the defence as indicated above. Several other similar matters are also sought to be stalled by the petitioners, it is submitte.

7. The first judgment cited by the petitioners is that of a Division Bench of the Bombay High Court in *Parmeshwar Das Agarwal vs. Additional Director (Investigation)*.

8. In the said judgment, the Division Bench laid down the principle incorporated in the relevant provisions of the Companies Act, 2013.

9. It was observed that the principle is that there has to be an opinion formed which may be subjective, but the existence of circumstances relevant to the interference as to the *sine qua non* for action must be demonstrable.

10. It was observed that in such light if one peruses the powers conferred under the 2013 Act, they are also identical. By Section 206, there is a power to conduct inspection and enquiry by Section 207, both of which have to be exercised by the Registrar.

11. The court went on to observe that the Central Government must form an opinion which must be that it is necessary to investigate into the affairs of a Company.

12. The Central Government can act on the receipt of a report of the Registrar or inspector under Section 208 or on intimation of a special resolution passed by a company that its affairs are to be investigated or in public interest. Thus, there is discretion to order an investigation into the affairs of the company.

13. A perusal of the said judgment, however, does not indicate anything to support the contention of the petitioners that a copy of the report under Section 208 has mandatorily to be handed over to the petitioners at the stage of investigation.

14. The other judgment of a coordinate Bench of this court dated November 18, 2022 passed in *Shree Radhe Tea Plantation Private Limited and another vs. Registrar of Companies, West Bengal and others* also deals with the provisions of Sections 206, 207 and 210 of the 2013 Act.

15. The learned Single Judge observed that a careful perusal of the provisions relating to inspection, inquiry

and investigation of the companies under Sections 206-210 of the 2013 Act indicates that the sequential steps required to be taken by the ROC must be followed before it submits the report in writing to the Central Government for further investigation into the affairs of the company if necessary.

16. The learned Single Judge also went on to hold that the stage of filing a report comes only after inspection of books of accounts or conducting inquiry under Sections 206 and 207 of the Act.

17. The learned Single Judge, *inter-alia*, observed that to the extent of the steps taken by the respondents including the order under Section 206(4) therein was concerned, the summons issued thereafter, the hearing given to the petitioners and the acceptance of the petitioners' response, there was little doubt that the respondents must follow the step-wise compliance of Sections 206-210 of the Act.

18. However, although the petitioners seek to argue that the said observations indicate that a hearing was required to be given to the petitioners, the learned Single Judge while passing the said judgment, was considering the provisions of a notice under Section 206(4), which contemplates information or explanation to be sought from the alleged recalcitrant company and its officials.

19. As opposed to sub-section (4), sub-Section (5) of Section 206 does not contemplate or envisage any opportunity of explanation which might require a hearing or an opportunity of explanation to be given to the petitioners.

20. Sub-Section (5) merely envisages that the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector acquainted by it for the purpose.

21. Although the petitioners might have given a response in writing to such notice, no such response is contemplated or even required under the law at all.

22. The only duty of the petitioners was to furnish or provide inspection of the books of accounts of the company or class of companies on the intimation of the Central Government.

23. Hence, we cannot read into the said innocuous provision of furnishing documents or giving inspection a right of hearing of the petitioners.

24. In fact, if in every pre-investigation inquiry, rights of hearing have to be incorporated on an overly inflated conception of *audi alteram partem*, no investigation would reach its logical culmination at any point of time and it would provide a handle to companies which are subject to

such inquiry/investigation, to stall the proceedings indefinitely.

25. In the present case, the ROC has furnished a report, initiating an investigation which is already ongoing and is at the stage of documents having been required to be furnished within the contemplation of Section 217 of the 2013 Act by the respondent authorities.

26. In the event the petitioners are to take any contention as regards non-furnishing of any report or for that matter any other relevant document relating to the investigation, the appropriate stage for the same is the criminal trial which would or has been initiated under Section 200 of the Code of Criminal Procedure, on the complaint which has already been lodged by the respondent authorities.

27. However, at this stage, there is no occasion or legal right of the petitioners to insist upon furnishing of a copy of the report filed by the ROC under Section 208.

28. The said document, along with other documents may at best be necessary at the stage of criminal trial when it will be open to the petitioners to ask before the appropriate judicial forum for copies or inspection of such documents to enable them to contest the case properly.

29. However, at this stage there is no scope of interference with the investigation.

30. Accordingly, WPA 23787 of 2023 is dismissed without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)