

14.12.2023
PB
Sl. No.12.

WPA 27910 of 2023

J. L. Enterprises
Vs

Assistant Commissioner of State Tax,
Commercial Taxes, Ballygunge Charge & Ors.

Mr. Vinay Kr. Shraff,
Ms. P. S. Paul,
Mr. Dev Kr. Agarwal,
Ms. Sanchita Dey.

... For the Petitioner.

Mr. A. Ray,
Mr. T. M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal.

.....for the State.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 8th November, 2023, passed by the WBGST authority concerned under Rule 86A of the CGST/WBGST Rules, 2017, by contending that the aforesaid impugned order has been passed contrary to the provision of Rule 86A of the said Rules since none of the criteria for invoking Rule 86 has been fulfilled.

Learned advocate appearing for the petitioner submits that this writ petition should be disposed of at the motion stage without affording any opportunity to the respondents to file affidavit in opposition. In paragraph 15 of the writ petition, petitioner has made

a statement on oath that petitioner had demanded justice, but the same has been denied and that it has got no alternative remedy. As per Rule 20 of the Rules of High Court at Calcutta relating to Article 226 of the Constitution of India, all the writ petitions for a writ in the nature of mandamus shall contain a specific statement as to whether a demand for justice has been made and specify the particular of such demand, including the date and service thereof. A copy of such demand, where the demand is writing shall be set out in the annexure to the writ petition. The aforesaid Rule 20 of the High Court Rules is quoted hereunder:-

“All petitions for a writ in the nature of Mandamus shall contain a statement as to whether a demand for justice has been made and specify the particulars of such demand, including the date and service thereof. A copy of such demand, where the demand is writing shall be set out in the annexures to the writ petition”.

In this case, petitioner has made a specific prayer for mandamus also in prayer (b) and prayer (a) relates to writ of Certiorari and prayer (c) relates to writ of prohibition, prohibiting the respondents from taking any further coercive action against the petitioner and in none of the relief asked for by the petitioner is for quashing of the impugned order at the

motion stage. It is to be recorded that in this writ petition, petitioner has made false statement that it had demanded justice but when Mr. Shraff was asked for to show the details about such demand of justice from the writ petition, he could not produce any document. Petitioner has not only not fulfilled the condition for relief of writ of mandamus as per Rule 20 of the High Court Appellate Side Rules rather it has made incorrect and false statement in this writ petition on oath that it has made demand of justice.

Mr. Siddiqui, learned advocate opposing the writ petition submits that the writ petition should be dismissed for making incorrect statement and also for non-compliance of the aforesaid Rules 20 of the High Court Appellate Side Rules for relief of issuance of writ of mandamus and in support of his contention, he relies on the decision of the Hon'ble Supreme Court in the case of Amrit Lal Vs. Collector, C.E.C. Revenue reported in AIR 1975 SC 538 and particularly paragraph 25 of the said judgment which is quoted as hereunder:-

“In the petition of K. N. Kapur and others, we do not even find an assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognised by this Court in Kamini Kumar Das Vs. State of West Bengal, AIR 1972 SC

2060 at p.2065 that a demand for justice and its refusal must precede the filing of a petition asking for direction or Writ of Mandamus, would also operate against the petitioners.”

Mr. Siddiqui also relies on the decision of the Hon’ble Supreme Court on the similar proposition of law in the case of State of Jharkhand Vs. Shiv Shankar Sharma & Ors. reported in 2022 SCC OnLine SC 1541 and paragraph 13 of the said judgment which is also quoted hereunder:-

“This Court, thus declined to interfere in the matter holding that the petitioner must approach the investigating agencies directly with the incriminating material and then it is for the investigating agencies to decide on the further course of action. Although an apprehension was raised by this Court that it is possible that the efforts of the petitioner to uncover alleged corruption may be obstructed by entrenched interests, yet statutory remedies available to the petitioner must be first exhausted and only thereafter can he approach the High Court. In the present case no such effort has been made by the respondent (i.e., the petitioner in the PIL) to approach the statutory authorities in any manner whatsoever. The fundamental requirement for the issuance of a writ of mandamus is that the petitioner must have sought

such a relief before the appropriate authority and only when it is denied the Court can be approached for a writ a mandamus. This principle cannot be ignored merely because this Court is dealing with a Public Interest Litigation. With regard to the present Public Interest Litigation before us, it is an admitted fact that the respondent has not taken any steps in approaching the statutory authorities or made any effort in the registration of an FIR.”

Considering the facts and circumstances of the case as appears from record and submission of the parties and the false statement made by the petitioner in paragraph 15 of the writ petition and in view of non-fulfilment of condition of Rule 20 of the High Court at Calcutta Rules relating to Article 226 of the Constitution of India and in view of the judgment of the Hon’ble Supreme Court in the case of Amrit Lal Vs. Collector, C.E.C. Revenue (supra) and State of Jharkhand Vs. Shiv Shankar Sharma & Ors. (supra), this writ petition being WPA 27910 of 2023 is dismissed.

(Md. Nizamuddin, J.)

