

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 719 OF 2020

SUMAN KUMAR

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

O R D E R

In view of the counter affidavit filed by respondent no. 1 - Union of India and also for the reasons set out below, we do not find any good ground and reason to accept the prayers made in the present writ petition.

The first prayer is the challenge to the amended Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 *vide* notification dated 03.01.2020. By the amendment, every private company which has a paid up share capital of Rs.10 crores or more is required to have a whole-time company secretary. The earlier / un-amended provision, with effect from 31.03.2014, provided for a threshold of paid up capital of Rs.5 crores or more.

The figure, it is obvious, has been increased to nullify the effect of inflation. The increase is hardly arbitrary or irrational. Besides, enhancement has to be read with the desire to improve ease of doing business and reduce compliance expenditure. It is not the function of the courts to sit in judgment over

matters of economic policy, which must necessarily be left to the expert bodies.¹ In matters requiring technical, commercial, administrative, expert knowledge, etc., the courts should ordinarily exercise caution and judicial restraint.² Unless it is demonstrated that the element of discretion/deliberation in increase in the paid-up share capital of companies to Rs. 10 crores for appointment of full-time company secretaries is *ex facie* arbitrary, capricious, or whimsical, and bearing no nexus with the object or the purpose sought to be achieved, such aspects cannot be held unconstitutional and/or violative of Article 14 of the Constitution of India.

The second and third prayers, which relate to the guidelines for enforcement of corporate governance and formation of a High Power Committee to look into lapses leading to closure of more than 6 lakh companies, in our opinion, are far-fetched and do not merit detailed consideration.

The counter-affidavit filed by respondent no. 1 - Union of India indicates the steps taken by the Government to de-register paper companies, shell companies and others that have indulged in wrongful activities. The Companies Act, 2013 contains various provisions to deal with cases of fraud etc. Further, the Serious Fraud Investigation Office (SFIO) has been established to take appropriate action in such cases, and there are stringent penalty

¹ *Peerless General Finance and Investment Co. Ltd. v. RBI*, (1992) 2 SCC 343.

² *Govt. of A.P. v. N. Subbarayudu*, (2008) 14 SCC 702; *State of Punjab v. Amar Nath Goyal*, (2005) 6 SCC 754; *Transport & Dock Workers Union v. Mumbai Port Trust*, (2011) 2 SCC 575; and *Essar Steel Ltd. v. Union of India*, (2016) 11 SCC 1.

provisions. No relief can be sought by or on behalf of these defaulting companies, as that would mean approaching this Court with unclean hands, given that these companies were non-compliant with the provisions of the Companies Act, 2013.

At this stage, the petitioner - Suman Kumar, who appears in person and has been heard, raises a grievance regarding non-issue/non-compliance of E-FORM INC-22A (ACTIVE) on mismatch etc. We make no comment in this regard. The petitioner - Suman Kumar, if advised, may make a representation or file appropriate proceedings, which proceedings, if filed, will be decided in accordance with law.

Recording the aforesaid, the writ petition is dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
AUGUST 11, 2023.

ITEM NO.48

COURT NO.3

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No. 719/2020

SUMAN KUMAR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 65192/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 65191/2020 - STAY APPLICATION)

Date : 11-08-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Shashank Deo Sudhi, Adv.
Mr. Shreyas Jain, Adv.
Ms. Prachi Jain, Adv.
Mr. Mani Bhushan Sinha, Adv.
Mr. Pranab Prakash, AOR

For Respondent(s)
Mr. Tushar Mehta, SG (N/P)
Mr. Balbir Singh, A.S.G.
Mr. Rajan Kumar Chourasia, Adv.
Mr. Kanu Agrawal, Adv.
Mrs. Shraddha Deshmukh, Adv.
Mr. Shyam Gopal, Adv.
Mr. Chinmayee Chandra, Adv.
Mr. Ankur Talwar, Adv.
Mr. Sachin Sharma, Adv.
Mr. Arvind Kumar Sharma, AOR

Mr. Sangram Patnaik, Adv.
Mr. Vardhman Kaushik, AOR

UPON hearing the counsel the Court made the following
O R D E R

The writ petition is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(signed order is placed on the file)