

(2002) 08 MAD CK 0192

Madras High Court**Case No:** Company Petition No. 112 of 1996 and Company Application No. 524 of 1996

M. Meyyappan

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision: Aug. 21, 2002**Acts Referred:**

- Companies Act, 1956 - Section 233(11), 233B, 233B(1), 633(2)

Citation: (2002) 112 CompCas 450**Hon'ble Judges:** P. Sathasivam, J**Bench:** Single Bench**Advocate:** T.K. Bhaskaran, for the Appellant; S.R. Sundaram, for the Respondent**Final Decision:** Allowed

Judgement

P. Sathasivam, J.

This petition is filed u/s 633(2) of the Companies Act, 1956, read with rule 11A of the Companies (Court) Rules, 1959, seeking an order to relieve the petitioner of his liability in relation to the offence u/s 233B read with the Cost Audit (Report) Rules, 1968.

2. The case of the petitioner is briefly stated hereunder :

According to the petitioner, he is the managing director of M/s. Kwaliti Spinning Mills Limited (hereinafter referred to as "company"). The company was incorporated as a private limited company on June 26, 1958, and has become a public limited company by virtue of the provisions of section 43A(2) of the Companies Act, 1956, with effect from December 30, 1989. u/s 233B of the Companies Act, it is provided for an audit of cost accounts in certain cases. The Central Government in exercise of their powers given u/s 233B(4) read with Section 27(1) and 642(1)(b) of the Companies Act, framed the Cost Audit (Report) Rules, 1968. As per the provisions from the Companies Act and the Rules, the company has to furnish the records within 90 days from the end of the financial year to the auditor and the auditor will

have further 90 days to submit his report to the Company Law Board and to the company. The Rules provide for penalties to the company and the cost auditor. If default is made by the company in furnishing the records to the auditor and render assistance to him to enable him to file report, the company and every officer who is in default shall be punishable with fine which may extend to Rs. 500. If the cost auditor commits defaults in furnishing his report to the Company Law Board and to the company, the auditor will be punishable with fine which may extend to Rs. 500. The Central Government by notification dated March 25, 1993, made u/s 233B(1) of the Act required the company to appoint a cost auditor and submit the cost audit report. The said letter was received by the company on May 3, 1993. The company by letter dated August 31, 1994, informed the Central Government that a cost auditor was appointed and complied with the requirements of the law. The company by letter dated January 3, 1995, informed the Central Government that the financial year of the company ending with December 31, 1994, has been extended to March 31, 1995, in accordance with the provisions of the Companies Act and the Registrar of Companies was also informed of the change of the financial year. The financial year of the company is ending with March 31, 1995. Thus the company is required to submit the cost audit report u/s 233B of the Act read with Cost Audit (Report) Rules, 1968, within 120 days by the cost auditor appointed by the company with the prior approval of the Central Government.

3. It is further stated that there was some difficulty on the part of the company to give all the records to the cost auditor due to labour problem in the company resulting in stoppage of the work and fall in production. The company received a letter dated May 30, 1995, from the cost auditor requesting the company to seek for extension of time by two months for submission of cost audit report. Pursuant to the said letter, the company sought for extension of time up to August 31, 1995. The cost auditor also by his letter dated July 10, 1995, sought for extension of time up to August 31, 1995. Though the letter is written as an abundant caution, the company has submitted its records to the cost auditor and the cost auditor has also finalised his report on October 9, 1995, and he has submitted his report to the Company Law Board on October 21, 1995. It is alleged that there was a delay of 24 days in filing the report by the cost auditor before the Company Law Board. In such a circumstance, the petitioner received a show-cause notice dated May 17, 1996, whereunder the company required to submit its explanation as to the cost audit report for the year ending December 31, 1993, and December 31, 1994, the same was replied by the company in its letter dated May 24, 1996. The cost audit report has already been filed before the Company Law Board in accordance with law. The delay is inexplicable and the extension of time sought for by the company with the Central Government is not considered and no reply has been received with regard to the extension of time sought for by the company. The petitioner, as a managing director of the company has acted honestly and diligently in complying with the provisions of the Act and Rules. In spite of it, if the prosecution is initiated, it will

cause irreparable injury and hardship, hence the present petition before this court.

4. Pursuant to the notice, the respondent Registrar of Companies has filed a counter-affidavit disputing various averments made by the petitioner. It is stated that the time-limit for rendition of report prescribed under rule 4 is only 120 days. The petitioner company's request dated June 30, 1995, and the cost auditor's request dated July 10, 1995, for extension of time for submitting the cost audit report have been declined by the Central Government, consequently no extension of time has been allowed to the company. As the reply is not satisfactory and convincing, the respondent officer has preferred a complaint u/s 233B(11) before the Judicial Magistrate Court I, Pollachi on June 5, 1996. After filing of the complaint, this petition is not maintainable and the remedy is that the petitioner should prefer a petition u/s 633(1) before the Judicial Magistrate, Pollachi, where the complaint is filed and pending.

5. In the light of the above pleadings, I have heard learned counsel for the petitioner as well as learned senior Central Government standing counsel.

6. The only point for consideration is, whether the petitioner has made out a case for interference by this court u/s 633(2) of the Companies Act and relieve the petitioner from his liability in relation to the offence u/s 233B of the Act read with the Cost Audit (Report) Rules.

7. There is no dispute that u/s 233B of the Act it is provided for an audit of cost accounts in certain cases. It is also not disputed that the Central Government by virtue of their powers given under the Companies Act framed the Cost Audit (Report) Rules, 1968. The provisions, namely Section 233B of the Act and the Rules make it clear that if in the opinion of the Central Government it is necessary so to do in relation to any company to include in its books of account the particulars referred to in Section 209(1)(d) of the Act, the Central Government may by order direct that an audit of cost accounts of the company shall be conducted in such a manner, as specified in the order by an auditor, who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959. The auditor shall be appointed by the board with the prior approval of the Central Government. All these statutory provisions are not disputed.

8. It is further seen that as per the above-referred provisions, the company has to furnish records within 90 days from the end of the financial year to the auditor and the auditor will have further 90 days time to submit his report to the Company Law Board and to the company. The Rules provide for penalties to the company and the cost auditor. It is stated that there was a delay of 24 days in filing the report by the cost auditor before the Company Law Board. Pursuant to the show-cause notice calling upon the petitioner to submit his explanation as to why the cost audit report for the years ending December 31, 1993, and December 31, 1994, has not been submitted in time, the petitioner submitted his explanation that the cost audit

report has already been filed before the Company Law Board and in respect of delay of 24 days in filing the cost audit report by the cost auditor, it is stated that the delay is due to labour problem in their company. It is also stated that they filed an appropriate representation for extension of time with the Central Government and the same has- not been considered and no reply has been received. Though in the counter affidavit it is stated that the Central Government declined the request of the petitioner-company as well as the auditor, the fact remains that no order has been passed by the Central Government.

9. Now, I shall consider whether the petitioner, as a managing director of the company has acted honestly and diligently in complying with the Companies Act and Rules. In the petition the petitioner has specifically averred that he has acted honestly and diligently (vide para. 15). Learned counsel for the petitioner has brought to my notice the main reason for not submitting the report within the prescribed time is due to labour unrest. It is seen that by letter dated October" 24, 1994, the company has informed the Assistant Commissioner of Labour (Conciliation-I), Coimbatore, stating that the workers of their mill have gone on illegal strike from 11.25 a.m. on October 21, 1994, without giving any statutory notice. Again on January 25, 1995, the company has written in their letter to the very same Officer informing that the workers of their mill were on illegal strike from October 21, 1994, resumed duty with effect from 3.25 p.m. on January 25, 1995, unconditionally. The said communication to the Labour Officer proves that there was a labour problem for a particular period.

10. It is also brought to my notice the letter of the cost accountant dated May 30, 1995, addressed to the company wherein he has requested the company to apply to the Company Law Board for an extension of two months time for submission of cost records for the year ended March 31, 1995, to the cost auditor. The letter dated June 3, 1995, addressed to the Director (Cost), Ministry of Law, Justice and Company Affairs, New Delhi, shows that after highlighting the last date for submission of the records and report, they informed that during the relevant years there had been intermittent labour problem in the unit and the complete work stoppage due to labour problem and strike for nearly a period of four months, which upset their programmes and there was a fall in production and dislocation of working. They also informed that audit of their accounts is just being taken and would be completed by August 15, 1995. As such they would be able to place before the cost auditor the cost records only by end of August, 1995. By saying so, they requested the Director (Cost) to grant two months period, i.e., up to August 31, 1995, for placing their cost records before the cost auditor for auditing. I have already referred to the request made by the cost accountant. For second time, i.e., on July 10, 1995, the cost accountant wrote another letter to the Director (Cost), Department of Company Affairs, informing that as soon as he receives the cost records he will arrange to complete the cost audit work and submit his cost audit report without delay. All these documents find place at pages Nos. 9, 12, 14, 15 and

17 of the typed set filed along with the company petition. These documents clearly show that the petitioner acted honestly and diligently and the delay in submitting the cost records is beyond his control.

11. In this regard, it is relevant to refer to Sub-section (2) of Section 633 of the Act, which reads as under :

"Section 633(2) : Where any such officer has reason to apprehend that any proceedings will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under subsection (1)."

12. Though it is contended by the learned senior Central Government standing counsel that this court is not the appropriate authority, in the light of the said provision, I am unable to accept the said contention. As a matter of fact, if any notice is received for negligence, breach of duty, miscompliance or breach of trust and any application is made before this court, this court has the same power and decide as if it had been a court before which a proceeding against the Officer for negligence, default, breach of duty and breach of compliance has been brought under Sub-section (1). No doubt, the same has to be considered only after notice to the Registrar of Companies and after affording an opportunity to him. In the light of the said provision, I am satisfied that the petitioner had acted honestly and diligently and properly explained the delay of 24 days in submitted the cost report to the Company Law Board.

13. Learned counsel for the petitioner has relied on the following decisions in support of his claim that by virtue of the above-referred provisions this court in a appropriate case relieve the person concerned from the prosecution :

(1) In the case of [In Re: Muktsar Electric Supply Co. Ltd. \(In Liquidation\)](#), ;

(2) [In Re: East India Hotels Ltd.](#), ;

(3) G. M. Mohan v. Registrar of Companies [1984] 56 Comp Cas 265 (Karn) ; and

(4) [P. Vaman Rao Vs. Secretary to Government and Another](#), .

14. Almost in similar circumstances and while considering Section 633(2) of the Act, the courts have granted the relief as claimed. After going through the factual details in those cases and the statutory provisions referred to therein, I am in respectful agreement with the conclusion arrived at therein and I am of the view that these decisions are applicable to our case.

15. Therefore, in the circumstances made out in this case, this court u/s 633(2) of the Act directs the Registrar of Companies to forebear from prosecuting the petitioner

for the offence mentioned in the show-cause notice. Accordingly, the company petition is allowed. No costs. Consequently, connected company application is closed.