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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 3rd March, 2020

\+ W.P.(C) 952/2017

REEBOK INDIA LIMITED ..... Petitioner

Through: Mr. Arvind Datar and Mr. Sandeep Sethi, Sr.Advocates with Mr. Ajoy Roy, Ms.Smarika Singh, Mr. Shantanu Tyagi, Mr.Anand Raja and Mr. Niraj Singh, Advocates

Versus

UNION OF INDIA & ANR ..... Respondent

Through: Mr.Ashim Sood, CGSC with Ms.Senu Nizar, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TALWANT SINGH

JUDGMENT

: D.N. PATEL, Chief Justice *(Oral)*

1. This petition has been preferred with the following prayers:-

> *(a) issue an appropriate direction, order or writ in the nature of mandamus quashing / setting aside the Impugned Rule notified by the First Respondent on 27.07.2016 as it is ultra vires the Act and the Constitution;*
>
> *(b) issue an appropriate direction, order or writ in the nature of certiorari quashing / setting aside the Impugned Communication dated 05.10.2016 passed by the Second Respondent;*
>
> *(c) Issue any other appropriate writ, order or directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."*

2. Learned Senior Counsel appearing for the petitioner submits that the impugned order dated 05.10.2016 passed by the respondent deserves to be

quashed and set aside on various grounds. It is also submitted by the learned Senior Counsel for the petitioner that if the impugned order is quashed and set aside on grounds other than the ground pertaining to constitutional validity, the petitioner is not pressing the ground pertaining to constitutional validity, at this stage.

3. Having heard learned counsel for both the sides and looking into the facts and circumstances of the case, it appears that the petitioner had applied for conversion of their company from an Unlimited Liability Company to a Limited Liability Company under Section 18 of the Companies Act, 2013 vide application dated 21.10.2014 (Annexure P-5 to the writ petition).

4. Looking to the impugned order dated 05.10.2016 annexed as Annexure P-2 to the writ petition, which is in the form of E-Mail, no reasons have been assigned for the rejection of the application preferred by this petitioner on 21.10.2014 (Annexure P-5). Thus, the impugned order dated 05.10.2016 is a non-speaking order. However, it appears from the facts of the case that the reasons for rejection are given in paragraphs No. 2 and 4 of the counter affidavit filed by respondent No.1 in this writ petition, which is not permissible in the eyes of law. A non-speaking order cannot be converted into a speaking order by way of an affidavit.

5. It has been held by the Hon'ble Supreme Court in **M.S. Gill's** judgment, which is reported as **(1978) 1 SCC 405** as under:-

> *"**8.** The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention*

to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :

> *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

Orders are not like old wine becoming better as they grow older.

9. *We must, in limine, state that — anticipating our decision on the blanket ban on litigative interference during the process of the election, clamped down by Article 329(b) of the Constitution — we do not propose to enquire into or pronounce upon the factual complex or the lesser legal tangles, but only narrate the necessary circumstances of the case to get a hang of the major issues which we intend adjudicating. Moreover, the scope of any factual investigation in the event of controversion in any petition under Article 226 is ordinarily limited and we have before us an appeal from the High Court dismissing a petition under Article 226 on the score that such a proceeding is constitutionally out of bounds for any court, having regard to the mandatory embargo in Article 329(b). We should not, except in exceptional circumstances, breach the recognised, though not inflexible, boundaries of Article 226 sitting in appeal, even assuming the maintainability of such a petition. Indeed, we should have expected the High Court to have considered the basic jurisdictional issue first, and not last as it did, and avoided sallying forth into a discussion and decision on the merits, self-contradicting its own holding that it had no jurisdiction even to entertain the petition. The learned Judges observed:*

> *"It is true that the submission at Serial No. 3 above in fact relates to the preliminary objection urged on behalf of Respondents 1 and 3 and should normally have been dealt with first but since the contentions of the parties on submission 1 are intermixed with the interpretation of Article 329(b) of the Constitution, we thought it proper to deal with them in the order in which they have been made."*

> *This is hardly convincing alibi for the extensive per incuriam examination of facts and law gratuitously made by the Division Bench of the High Court, thereby generating apprehensions in the appellant's mind that not only is his petition not maintainable but he has been damned by damaging findings on the merits. We make it unmistakably plain that the election court hearing the dispute on the same subject under Section 98 of the RP Act, 1951 (for short, the Act) shall not be moved by expressions of opinion on the merits made by the Delhi High Court while dismissing the writ petition. An obiter binds none, not even the author, and obliteration of findings rendered in supererogation must allay the appellant's apprehensions. This Court is in a better position than the High Court, being competent, under certain circumstances, to declare the law by virtue of its position under Article 141. But, absent such authority or duty, the High Court should have abstained from its generosity. Lest there should be any confusion about possible slants inferred from our synoptic statements, we clarify that nothing projected in this judgment is intended to be an expression of our opinion, even indirectly. The facts have been set out only to serve as a peg to hang three primary constitutional issues which we will formulate a little later."*
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> *(emphasis supplied)*

6. In view of the aforesaid decision, the reasons supplied in the counter affidavit are of no help to the respondents and the non-speaking order dated 05.10.2016 remains a non-speaking order, even if, the reasons have been given in the counter affidavit filed by the respondent in this writ petition. Thus, the impugned order dated 05.10.2016 deserves to be quashed and set aside. Moreover, it further appears from the facts of the case that the application in question was preferred by the petitioner on 21.10.2014 (Annexure P-5). The amendment of Rule 37 has been brought in force w.e.f. 27.7.2016 (Annexure P-1). This aspect was also required to be appreciated by the respondent authority while considering the issue in question.

7. We, therefore, allow this writ petition and quash the impugned order dated 05.10.2016 on the ground that it is not a speaking order as no reasons have been given by the concerned respondent authority. We, therefore, direct the concerned respondent authority to decide the application of the petitioner dated 21.10.2014 afresh, in accordance with law, rules, regulations and Government policies applicable to the facts of the case, after giving adequate opportunity of being heard to the petitioner as early as possible and preferably within a period of eight weeks from the date of receipt of the copy of the order of this court.

8. Accordingly, this writ petition is disposed of.

CHIEF JUSTICE

TALWANT SINGH, J.

MARCH 03, 2020
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