

(2003) 09 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 816 of 1996

Apple Valley Resort

APPELLANT

Vs

H.P. State Electricity Board and Another

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1
Companies Act, 1956 — Section 291
Constitution of India, 1950 — Article 226

Citation : (2004) 118 CompCas 328 : (2003) 3 ShimLC 205

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : R.L. Sood and Ashwani Kaundal, for the Appellant; Sharwan Dogra, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—Whether in the absence of a specific authorisation a director can bring an action for and on behalf of a company ?--is the primary question arising for determination in the present case.

2. The present writ petition has been directed by the petitioner-company through one Shri Arun Sharma, claiming to be its director, seeking the issuance of the following writ, order or directions to the respondents :

(i) the respondents be directed to refund a sum of Rs. 75,383 along with interest at the rate of 19.25 per cent, per annum with quarterly rests for value received ;

(ii) To quash the illegal demand raised by the respondents in its bill bearing No. 223085 dated November 30, 1995, whereby a sum of Rs. 5,27,024 in respect of SOP and Rs. 9,589 in respect of E/D have been demanded from the petitioner-company with further directions to the respondents not to claim or raise any bill against the petitioner-company on account of the alleged slow reading of metering equipment as per the alleged inspection conducted by the executive

engineer (F/S) in February, 1993 ;

(iii) the respondents may be directed to refund the instalments already paid by the petitioner-company from December, 1995, till April, 1996 ; and

(iv) the respondents may be directed not to interfere with or disconnect in any manner the electric supply to the unit of the petitioner-company at village Mohal in District Kullu on the basis of illegal demand raised by them as detailed in para, (ii) above.

3. It has been pleaded in para. 1 of the writ petition as under :

"That the petitioner-company is a private limited company incorporated under the Companies Act, 1956. The petitioner-company is running its business of hotelry on the national highway in village Mohal, Tehsil and District Kullu. The directors of the petitioner-company are Indians. On the facts and circumstances enumerated hereinbelow, the petitioner-company has been grossly wronged by the highly illegal and arbitrary acts of omission and commission of the respondent-electricity board and, therefore, it is entitled to file and maintain the present writ petition."

4. The petition has been signed by one Shir Arun Sharma. The affidavit in support of the petition has also been sworn in by the said Arun Sharma. Such affidavit reads :

"Affidavit of Shri Arun Sharma, son of Shri Madan Lal Sharma, aged 33 years by occupation businessman C/o. M/s. Apple Valley Resorts Pvt. Ltd., Mohal Kullu, District Kullu, H.P., in support of civil writ petition.

I, Arun Sharma, the above-named deponent do hereby solemnly affirm and declare on oath that the accompanying writ petition has been drafted at my instance and under my instructions. The contents of paras. 1 to 13 of the same are stated to be true and correct on the basis of official record of the company and contents of paras. 14 and 15 of the same are stated to be true and correct on the basis of legal advice received from our counsel which in turn is relied upon. No part of the same is false and nothing relevant to the present query has been concealed therefrom.

2. I, further declare on oath that the contents of para. 1 of the above affidavit are true and correct to my personal knowledge. No part of the same is false and nothing relevant to the present query has been concealed therefrom.

Signed and verified at Shimla on this the 21st day of May, 1996.

Sd/- Deponent"

5. Be it stated at the very outset that there is nothing either in the pleadings or otherwise to show that Shri Arun Sharma is a director of the petitioner-company and that he had been authorised and is competent to bring the present petition for and on behalf of the company.

6. Section 291 of the Companies Act, 1956, provides :

"291. General powers of board.--(I) Subject to the provisions of this Act, the board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do ;

Provided that the board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting :

Provided further that in exercising any such power or doing any such act or thing, the board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the board which would have been valid if that regulation had not been made."

7. A bare reading of the above provisions shows that except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meetings, in all other cases the board of directors are entitled to exercise all its powers. Individual directors have only such powers as are vested in them by the memorandum and articles.

8. It was contended by learned counsel for the petitioner-company that under Order 29, rule 1 of the Code of Civil Procedure, the pleadings can be signed and verified on behalf of the corporation/company by the secretary or by any directors or other principal officer of the corporation/company, who is able to depose to the facts of the case. According to learned counsel, since Shri Arun Sharma is the director of the petitioner-company, he was authorised to sign and verify the petition on behalf of the petitioner-company and no separate resolution of the petitioner-company was necessary authorising him to institute the present petition. In support of his contention, learned counsel has placed reliance on the decision of the hon"ble Supreme Court in United Bank of India v. Naresh Kumar [1997] 90 Comp Cas 329 ; AIR 1997 SC 3.

9. Order 29, rule 1 of the Code of Civil Procedure, provides :

"1. Subscription and verification of pleading.--In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

10. In United Bank of India's case [1997] 90 Comp Cas 329; AIR 1997 SC 3, out of many issues framed in the suit filed by the bank for the recovery of Rs. 1,40,553.91, issue No. 1 was to the effect--whether the plaint was duly signed

and verified by a competent person ? The trial court found this issue against the bank. In appeal, the Additional District Judge, upheld the findings of the trial court on the issue. The second appeal preferred by the bank before the Punjab and Haryana High Court was dismissed in limine. In further appeal before the hon"ble Supreme Court the findings on the issue were reversed and it was held that the pleadings had been signed by a duly authorised person within the meaning of Order 29, rule 1 of the Code of Civil Procedure.

11. The question whether a director of the company, in the absence of a specific authorisation could initiate an action for and on behalf of the company, also came up before the Delhi High Court in *Rajghria Paper Mills Ltd. Vs. The General Manager, Indian Security Press and Another*, In this case, the plaintiff-company had filed a suit through its director for the issuance of a permanent injunction for restraining the defendants therein from enforcing the bank guarantee and from receiving any amount thereunder, and for a decree of Rs. 9,34,036.83 with interest and costs. One of the issues framed (being issue No. 3) was--whether the plaint has been signed, verified and presented by a duly authorised person ? If not, its effect ?

12. On behalf of the plaintiff-company reliance was placed on the provisions contained in Order 29, rule 1 of the Code of Civil Procedure, and the decision of the hon"ble Supreme Court in the case of *United Bank of India [1997] 90 Comp Cas 329 ; AIR 1997 SC 3*.

13. A learned single judge of the Delhi High Court distinguished the decision of the hon"ble Supreme Court by observing as under (page 244 of AIR 2000 Delhi):

"As is manifest from para. No. 8 of the report, the only question which arose for consideration before the Supreme Court in the SLP filed by the bank was whether the plaint was duly signed and verified by a competent person. It was in the said background that SLP was allowed holding that L.K. Rohatgi must have been authorised to sign the plaint and in any case the bank had ratified the action of L.K. Rohatgi in signing the plaint and, thereafter, he had continued with the suit. In my view, in the facts and circumstances of this case, the plaintiff cannot derive any advantage from the above decision in the matter of the said K.L. Rajgarhia being authorised to file the present suit on behalf of the plaintiff-company."

14. Following an earlier decision in *Nibro Ltd. Vs. National Insurance Co. Ltd.*, it was held that unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute the suit on behalf of the company and that though the plaint was signed and verified properly, the suit was not instituted by a duly authorised person on behalf of the plaintiff-company.

15. In *Nibro Ltd. v. National Insurance Co. Ltd. [1991] 70 Comp Cas 388 ; Nibro Ltd. Vs. National Insurance Co. Ltd.*, , a suit was filed by the plaintiff-company for recovery of Rs. 7,40,606.65. The plaint was signed and verified by one Sri G. Jhajharia, who claimed himself to be the director and principal officer of the

plaintiff-company authorised to sign the plaint and institute the suit. The defendant-insurance company challenged the authority of the said Shri G. Jhajharia to be competent to sign the plaint and institute the suit, engage counsel and do all necessary acts for the due prosecution of the case. One of the issues framed was--whether the suit had been instituted on behalf of the plaintiff-company by an authorised person and plaint signed and verified by a competent person ?

16. Answering the issue in the negative, a learned single judge of the Delhi High Court dealing with the scope and ambit of Order 29, rule 1 and Order 3, rule 1 of the CPC as well as section 291 of the Companies Act, 1956, held (page 401 of 70 Comp Cas) :

"It is well-settled that u/s 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting in all other cases the board of directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the memorandum and articles. It is true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects policy and finances of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be conferred by the board of directors only by passing a resolution in that regard."

17. It was further observed as under (page 401) :

"The plaintiff has not placed on record any resolution passed by the company authorising Shri G. Jhajharia to institute the suit. Shri G. Jhajharia did not come forward to make a statement that he was in a position to depose to the facts of the case. In the plaint signed by him, he claims to be a principal officer and director, but there is no evidence on record to indicate that he had the authority to institute the suit. The memorandum and articles of association of the plaintiff-company are also not placed on record. Even after the suit was instituted by Shri G. Jhajharia, no resolution was passed by the company ratifying this action. No such decision of the board of directors is placed on record in the present case. The plaintiff has examined Shri Ashok Kumar Jhajharia. He has placed on record exhibit PW 2/1 which is the resolution of the board of directors reappointing Shri G. Jhajharia as the director but this resolution does not empower Shri G. Jhajharia as a director to institute the present suit. Shri Ashok Kumar Jhajharia has stated that he was handling day-to-day management of the plaintiff-company including the insurance part of it. He, however, does not state that Mr. G. Jhajharia was handling day-to-day management or was in charge of the insurance claim."

18. In the present case, as stated above, there are neither pleadings nor any

other evidence to show that Shri Arun Sharma, through whom the present petition has been filed, is a director of the petitioner-company and has the authority to institute the present petition.

19. In *Oberoi Hotels (India) Pvt. Ltd. v. Observer Publications (P.) Ltd.* (Civil Suit No. 469 of 1955 decided on November 26, 1968), also, the Delhi High Court had the occasion of dealing with a similar question and it was held as under :

"Learned counsel for the plaintiff lastly argued that Shri Ram Lal Chaudhary had stated that he had authority to file the suit as a principal officer of the plaintiff-company even apart from the resolution marked A. He did not say so. But how does that help ? The authority of a principal officer of a company in relation to suits filed on behalf of limited companies does not extend beyond what is laid down in Order 29, of the Code of Civil Procedure. That provision does not entitle the principal officer of a company to file a suit on its behalf for that the authority has to be found either in the articles of association of the company or in the resolution of its board of directors. In the articles of association of several companies provision is generally made authorising their managing directors and other officers to file and defend suits on their behalf. Similarly, the board of directors of a company can authorise the institution of a suit on behalf of the company by a resolution. In the case of some companies the articles empower the managing directors or directors to appoint general attorneys and general managers and give them authority to institute suits on behalf of the company. But in the absence of any proof in regard to any such power having been conferred on Sri Ram Lal Chaudhary it is not possible to accept his statement that he was authorised to file the suit as the principal officer of the plaintiff hotel.

I, therefore, hold that although the plaint has been signed and verified by a person duly authorised to do so on behalf of the plaintiff-company, it has not been provided that the suit has been instituted by any such person. The issue is consequently decided against the plaintiff."

20. Similarly, in *South India Insurance Company Ltd. v. Globe Motors*, (Civil Suit No. 68 of 1969 decided on April 19, 1974), it was held by the Delhi High Court that a company being a corporate body or a juristic person has to act through some body and that person has to be specifically authorised to institute the suit.

21. Dealing with the scope and ambit of Order 29, Rule 1, Code of Civil Procedure, the Lahore High Court in *Notified Area Committee, Okara v. Kidar Nath* AIR 1935 Lah 345 has held :

"Similarly, Order 29, rule 1 of the Civil Procedure Code, also does not help the appellant. It merely defines the person who is authorised to sign or verify the pleadings on behalf of the corporation (in this case the committee). It, therefore, comes into operation only after the proceedings have been validly started and cannot be utilised to authorise an unauthorised person to institute suits on behalf of the corporation."

22. The above view was followed by the High Court of Jammu and Kashmir in Seth Kirpal Chand v. Traders Bank Ltd. AIR 1954 J&K 45. While dealing with the question that though there is no original authorisation, a subsequent ratification could render it legitimate. It was held (page 47) :

"Here the initiative to institute the suit could be properly transferred to the manager under article 105 of the articles of association, and, therefore, the subsequent ratification of the act of the agent by the principal could cure the original defect."

23. Again, in University of Kashmir v. Ghulam Nabi Mir AIR 1978 NOC 114 (J&K), it was held that signing the verification of the plaint is different from filing the suit by a competent person.

24. The High Court of Punjab and Haryana in Food Corporation of India Vs. Baldev Kaur and Others, where an application under Order 9, rule 13 of the Code of Civil Procedure, for setting aside an ex parte decree was made by the district manager of the Food Corporation of India, taking note of the provisions contained in Order 29, Rule 1 of the Code of Civil Procedure, held that such provisions nowhere empower such an officer to conduct the case on behalf of the corporation and that only limited power to sign and verify the pleadings has been conferred upon the officer.

25. An analysis of the above-referred to decisions shows that there is no manner of doubt that Order 29, Rule 1 of the Code of Civil Procedure, only authorises the persons mentioned therein to sign and verify the pleadings on behalf of a corporation/company. It does not authorise such persons to institute an action on behalf of a corporation/company.

26. The irresistible conclusion is that Section 291 of the Companies Act, 1956, provides that except where express provisions is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting, in all other cases the board of directors are entitled to exercise all its powers. Individual directors have only such powers as are vested in them by the memorandum and articles.

27. In the absence of a specific resolution of the board of directors authorising Shri Arun Sharma to institute the present petition for and on behalf of the petitioner-company or the power conferred on the director by the memorandum and articles of association, the present petition cannot be said to have been laid by a duly authorised and competent person for and on behalf of the petitioner-company. The same is bad and liable to be dismissed on this short ground alone.

28. A contention was raised on behalf of the petitioner-company that this court ought not unsuit the petitioner-company on account of technicalities.

29. It may be stated that the question of authority to institute an action on behalf of a company is not a technical matter. It has far-reaching effects and it often affects policy and finances of the company. Therefore, unless a power to

institute an action is specifically conferred on a particular director, he would have no authority to bring an action on behalf of the company. The power to institute an action on behalf of the company can be conferred on a director or any other officer of the company only by the board of directors by way of a resolution in that regard.

30. For the foregoing reasons the present petition fails and the same is accordingly dismissed. No orders as to costs.