
(1963) 01 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 85 of 1962

Arjansingh Bir Singh

APPELLANT

Vs

Panipat Woollen and General Mills Co. Ltd. and Others

RESPONDENT

Date of Decision : 11-01-1963

Acts Referred:

Companies Act, 1956 — Section 111, 111(3), 111(5), 155(1)

Citation : AIR 1963 P&H 341 : (1963) 33 CompCas 534 : (1963) 1 ILR (P&H) 749

Hon'ble Judges : S.B. Capoor, J

Bench : Single Bench

Advocate : F.C. Mittal and G.P. Jain, for the Appellant; D.R. Nanda and D.N. Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a petition u/s 155 of the Companies Act, 1956 (Act No. 1 of 1956), hereinafter to be referred to as the Act. The petitioner is Arjan Singh, who is a shareholder in the Panipat Woollen and General Mills Company Ltd. (respondent No. 1 to the petition), hereinafter to be referred to as the company, and holds 1000 fully paid up shares of the face value of Rs. 10,000/- in it. Sita Ram, respondent No. 2, formerly held shares of the face value of Rs. 40,000/- in this company but in November 1958 he transferred his entire holding in the company. It is alleged in the petition that sometime in November 1960 Sita Ram had purchased 10 shares in the company of the face value of Rs. 100/- from Darshan Lal, respondent No. 3. An application was made by him for the transfer of these shares and the relevant share certificate was also presented to the company. The matter of transfer of these shares was considered by the Board of Directors of the company in their meeting held on the 12th March, 1961, but they rejected the application for transfer. Thereupon, Sita Ram filed an appeal under the provisions of Section 111 of the Act with the Secretary, Ministry of Finance, Central Government, Department of Company Law Administration, New Delhi.

The Deputy Secretary to the Government of India in the Department of Company Law Administration, by his order dated the 13th July, 1962, accepted the appeal and directed the company to register the transfer of the aforesaid shares in the name of Sita Ram within a period of 10 days from the date of receipt of the order. Messrs. Indian Industries Company, which are the Managing Agents of the company, implemented the order of the Deputy Secretary on the 28th July, 1962.

2. The present petition is directed against the transfer of shares so made in pursuance of the order dated the 13th July, 1962. It is alleged that the transfer entries were effected by the Managing Agents without referring the matter to the Board of Directors and on that account the transfer of shares is characterised as illegal. It is further alleged that Sita Ram was an undesirable person and during the period he was connected with the company he had troubled it and its managing agency firm in various ways.

3. On behalf of the company, Shri Mahavir Gupta, Deputy Managing Partner of the Managing Agents (Indian Industries Company) has put in a written statement. It is admitted that the Board of Directors of the company, which considered the question of transfer of the shares on the 12th March, 1961, did not sanction it because they considered that it was not in the best interests of the company to admit Sita Ram as a member of it. It is further stated that Shri Mahavir Gupta as a partner of the Managing Agents effected the transfer of 10 shares from the name of Darshan Lal to Sita Ram with a view to avoid the penalty provision of law. The reference obviously is to Sub-section (9) of Section 111 of the Act, which is as follows:

"If default is made in giving effect to the order of the Central Government within the period specified in Sub-section (5) or to a direction of that Government given under the proviso to Sub-section (5), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day after the first during which the default continues".

4. Finally, it is stated that as the transfer of the shares was effected by a partner of the Managing Agents without express authority from the Board of Directors, the company would have no objection to remove the name of Sita Ram from the register of members in pursuance of the order of this Court in the present petition. It is clear, therefore, that in effect respondent No. 1 is supporting the petition. Darshan Lal, the transferor, who was cited as respondent No. 3, was proceeded against ex parte, and the only contesting respondent is Sita Ram. According to the written statement furnished by him, the rejection of the registration of the transfer by the Board of Directors was mala fide, arbitrary and capricious. The validity of the order of the Central Government dated the 13th July, 1962, is stressed, and it is pointed out that this order has already been implemented by the company and that the petitioner has no locus standi to challenge it. In particular, it is urged that in view of this order of the Central Government the petition is not maintainable u/s 155 of the Act. A detailed reply

is given on the merits also. The issues framed are as follows:

- (1) Whether the petitioner has locus standi to file the petition?
- (2) Whether the petition u/s 155 of the Act, 1956, is maintainable in view of the orders of the Central Government u/s 111 of the Act?
- (3) Was the transfer of 10 shares in favour of respondent No. 2 made by the Managing Partner of the Managing Agents of the respondent company; and if so, is this transfer valid?
- (4) Whether the company has valid reason for excluding respondent No. 2 from being registered share-holder of the company?
- (5) Whether Sita Ram was excluded by the directors mala fide and for the collateral purposes?
- (6) Relief.

5. The parties desired that the first two issues, on which no evidence was required, may be disposed of first, and this prayer was accepted by the order dated the 9th November, 1962.

6. Issue No. 1. The objection, so far as this issue is concerned, appears to be that the petitioner can have no possible grievance if the name of Sita Ram, is entered in the register of members of the company. Under Sub-section (1) of Section 155 of the Act, however, it is not only the person aggrieved who can move the Court to rectify the register of members but also "any member of the company". It is indisputable that the petitioner is a member of the company and is in fact its director also. As such he has locus standi to file the petition.

7. Issue No. 2. The finding on the above issue would not help the petitioner if issue No. 2 is answered against him and after hearing the arguments of the learned counsel for the parties, I am of the view that issue No. 2 must be answered in the negative.

8. Section 155 of the Act is, more or less, similar to 38 of the Indian Companies Act, 1913 (Act No. 7 of 1913). Section 111 of the Act is, however, a new provision. Under the latter section, so far as it is relevant to this case, if the company refuses to register or omits to register any transfer of any share in it, the transferor or transferee may appeal to the Central Government, which, after giving a reasonable opportunity to the parties to make their representations, shall, by order, direct either that the transfer or transmission shall be registered by the company or that it need not be registered by it; and in the former case, the company shall give effect to the decision within ten days of the receipt of the order (sub-section 5). Sub-section (9), which has already been reproduced above, was inserted in this section by the Companies (Amendment) Act, 1960. u/s 155 (so far as material to this case), if the name of any person is without sufficient cause entered in the register of members of a company, the person aggrieved, or any member of the company, or the company, may apply to the

Court for rectification of the register. Under Sub-section (2), the Court may either reject the application or order rectification of the register. Under Sub-section (3), the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, and generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification. Now, there is no specific indication in the Act itself as to whether Section 155 controls Section 111 or whether these are alternative remedies, one of which only may be pursued to the exclusion of the other.

9. The contention advanced by Mr. F. C. Mittal, on behalf of the petitioner, is that whether or not any appeal has been filed or decided by the Central Government u/s 111, the Court u/s 155 has the overriding power to rectify the register of members. The authorities relied upon by him in this connection are *Sadashiv Shankar Dandige Vs. The Gandhi Sewa Samaj Ltd. and Another*, *In re, In Re: Coronation Tea Co. Ltd.*, and *Mt. Nazmunnessa Begum, Administratrix Vs. Vidyasagar Cotton Mills Ltd.*, . The two latter cases merely follow the case first cited. In that case the respondent-company refused to register the transfer of certain shares in favour of the two applicants, who then moved the Central Government u/s 111 and an order was made by the Central Government directing the respondent-Company to effect registration in their book of transfers. The company did not comply with that order & accordingly the petitioners moved the Court u/s 155 of the Act. The learned Judge, allowing the petitions, held that Section 155 was not dependent upon Section 111, but on the contrary, it appears that Section 155 was the controlling section and gives the Court an overriding power notwithstanding any previous order of the Central Government. It is observed that it would be meaningless to give the Court a general power to decide any question including any question relating to the title of a person as was given by Section 155(3) and then indirectly cut off that power by giving the Central Government the same power to decide the same question in appeal first.

It has to be noted that this decision of the Bombay Court was before the Amending Act of 1960, whereby Sub-section (9) was inserted in Section 111. Under that section, as it stood before the amendment, no penalty was provided if the company chose to ignore the order of the Central Government made on appeal, and, accordingly, in order to secure effective relief in such a case, it was necessary for the party aggrieved to move the Court u/s 155.

10. The two cases of the Calcutta Court cited by Mr. Mittal were decided by the same learned Judge. In neither of these cases had any order been passed by the Central Government on appeal u/s 111 of the Act. The objection made in *In Re: Coronation Tea Co. Ltd.*, was that unless a person was a member of the company, he could not make an application u/s 155 of the Act and his remedies were u/s 111. The learned Judge observed that that argument was obviously untenable as u/s 155, any person aggrieved may apply to the Court for

rectification of the register, and the case, *Sadashiv Shankar Dandige Vs. The Gandhi Sewa Samaj Ltd. and Another*, was referred to merely to support the conclusion that Sub-section (3) of Section 111 did not in any way abridge the powers of the Court.

In the next case *Mt. Nazmunnessa Begum, Administratrix Vs. Vidyasagar Cotton Mills Ltd.*, the question was a similar one, whether a person, who had purchased shares but his purchase had not been approved by the Board of Directors, could make an application u/s 155. It was urged by the company that his only remedy was by way of an appeal u/s 111, and this argument was again repelled by the learned Judge following his previous decision as also the case *Sadashiv Shankar Dandige Vs. The Gandhi Sewa Samaj Ltd. and Another*. The learned Judge quite rightly observed that it was not incumbent upon the party to prefer an appeal provided by Section 111 and that it may very well choose to come directly to the Court.

11. It is thus clear that in the two Calcutta cases the question which falls for decision under issue No. 2 in the present case, that is, whether the petition u/s 155 is maintainable in view of the orders of the Central Government u/s 111 of the Act, did not arise. Very serious consequences would ensue if the view urged by Mr. Mittal is allowed to prevail. For instance, suppose that the Central Government (as in the present case) makes an order directing the company to register the transfer. This has to be done within 10 days of the receipt of the order, and in case of breach, heavy penal consequences are incurred under Sub-section (9) by the company and every officer of the company who is in default. Suppose again that the company complies with the order of the Central Government beyond the period of 10 days and is thus in default, but it makes an application u/s 155 of the Act praying for deletion of the name of that member from the register of its members, this could lead to the possibility of a conflict in the order passed by a Court and by the Central Government on appeal, and there is no indication in the Act as to which would prevail. The Court is not given any right to sit in appeal or revision over the appellate order of the Central Government made under Sub-section (5) of Section 111 directing the transfer to be registered.

12. I am of the view that full effect is to be given to the phrase "without sufficient cause" as occurring in Sub-clause (i) of Clause (a) of Sub-section (1) of Section 155, that is an application for deletion from the register of the name of the member already entered on it is to be made only if such name is entered in the register "without sufficient cause". Now if the Central Government, in its appellate order under Sub-section (5) of Section 111, directs that the name of the transferee be registered by the company in its register of members, and the company complies with that direction, it cannot possibly be said that the entry of the name in the register is "without sufficient cause" and in such circumstances the petition would not be maintainable u/s 155, of the Act.

13. As against the above view, Mr. Mittat submitted two arguments, the first a

general one and the second directed particularly to the facts of this case. The first was that under Sub-section (5) of Section 111, the Central Government may either direct that the transfer shall be registered by the company or that it need not be registered by it, and Mr. Mittal contended that in a case in which the order was that the transfer need not be registered by the company, it would not be open to the person aggrieved to move the Court u/s 155 unless it be held that that section gives the Court overriding powers notwithstanding any previous order of the Central Government. It is to be noted, however, that the words used in Sub-section (5) are in this context not mandatory; it lays down that the Central Government may direct that the transfer "need not be registered by the company" and not that the transfer shall not be registered by the company, and hence the exclusion of the powers of the Court u/s 155 in such cases cannot be inferred and redress would be available u/s 155(1)(b). However, it is unnecessary to express any firm opinion on this question, which is not before me.

14. Then it is argued that under the Articles of Association of the Company (copy Annexure "A") vide Arts. 33 to 38, it is the function of the Board of Directors to register the transfer of shares, while in the present case the transfer was registered by the Deputy Managing Partner of the Managing Agency Firm. I do not see how this circumstance can affect the issue. Under Clause (3) of Section 2 of the Act, the term "officer" includes, inter alia, the managing agent and where the managing agent is a firm, any partner in the firm. Under Clause (31) of Section 2, the term "officer who is in default" in relation to any provision referred to in Section 5, has the meaning specified in that section. Section 5 lays down that

"for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means any officer of the company who is knowingly guilty of the default, non-compliance etc."

The order of the Deputy Secretary to the Government of India was received by the company on the 18th July, 1962, and compliance had to be effected within ten days. The Deputy Managing Partner in the Managing Agency Firm, who had knowledge of this order, complied with it within the time laid down by the statute, as he was bound to do, other-wise he would have been in default under Sub-section (9) of Section 111. The function of the Directors to approve or not of the transfer of the shares had come to an end as soon as the Central Government made its order dated the 13th July, 1962. In these circumstances, it would be futile to argue that the entry of respondent No. 2's name in the register of members, as made in compliance with the order of the Central Government, was "without sufficient cause", and hence the necessary condition for the maintainability of the petition u/s 155 of the Act was wanting.

15. Mr. D. N. Awasthy, on behalf of the contesting respondent, pointed out that some support for the view, that the remedies by way of appeal to the Central

Government provided by Sub-section (3) of Section 111 and that u/s 155 of the Act are alternative remedies, is provided by the judgment of the Supreme Court in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, At p. 397 of the report (Com Cas): (at p. 1676 of AIR), there is the observation in the majority judgment to the effect that the authority of the Central Government entertaining an appeal u/s 111(3) being an alternative remedy to an aggrieved party to a petition u/s 155, the investiture of authority is in the exercise of the judicial power of the State. The question before their Lordships of the Supreme Court was whether the Central Government hearing an appeal u/s 111(3) of the Act is acting in the exercise of the judicial powers or administrative powers of the State, and they had no occasion to consider whether Section 155 confers overriding powers on the Court as against the appellate authority of the Central Government under Sub-section (3) of Section 111. However, since the Central Government hearing an appeal u/s 111(3) is also exercising judicial function, it is not feasible to hold that under the Act a position could arise in which there could be a conflict between the orders made by two authorities acting judicially, the Central Government under Sub-section (5) of Section 111 any the Court u/s 155. Since Section 155 does not purport to confer overriding powers on the Court, it should be held that the two sections provide alternative remedies. In that sense, the case relied upon by Mr. Awasthy does help him.

16. For the reasons given above, I answer issue No. 2 in the negative and as a result the petition is dismissed. As the legal question was one of first impression, I make no order as to costs.