

(1966) 11 CAL CK 0001
In the Calcutta High Court
Case No : Company Petition No. 50 of 1964

Babulal Madhavji Varma

APPELLANT

Vs

New Standard Coal Co. Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 24-11-1966

Acts Referred:

Companies Act, 1956 — Section 397, 398, 402

Citation : (1967) 37 CompCas 446 : 71 CWN 333

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : E.R. Meyer, T.P. Das, S.B. Mukherjee, A.K. Panja and Archana Sen Gupta, for the Appellant; J.N. Roy, (Special Officer), for the Respondent

Judgement

B.C. Mitra, J.—This is an application for rectification of the register of members of New Standard Coal Company Private Limited (hereafter referred to as the company) by entering on the register the petitioner's name as a member of the company as the holder of 74 shares and for an order deleting the names of the respondents Nos. 3 and 4 as the holders thereof.

2. On October 3, 1963, an order was made on an application under Sections 397, 398 and 402 of the Companies Act, 1956, appointing respondent No. 2 as the special officer of the company with powers to take possession of the colliery belonging to the company and also of the books of account and assets of the company. The board of directors of the company was superseded and its powers were vested in the special officer. Pursuant to this order, respondent No. 2 has taken possession of the company's assets and books and is exercising the powers of the board.

3. On or about January 15, 1964, respondents Nos. 3 and 4 sold and transferred to the petitioner 74 fully paid up equity shares which were jointly held by respondents Nos. 3 and 4 in the capital of the company. On the same date the said respondents made over to the petitioner the original share certificates relating to the said 74 shares along with the transfer deeds executed in favour of

the petitioner. By a letter dated January 15, 1964, respondents Nos. 3 and 4 informed respondent No. 2 about the transfer of the said shares to the petitioner.

4. By a letter dated January 22, 1964, the petitioner's solicitor forwarded to respondent No. 2 share scrips for the said 74 shares along with the relevant transfer deeds executed in favour of the petitioner. Respondent No. 2 was called upon to register the petitioner's name as the holder of the said shares. By a letter dated February 3, 1964, respondent No. 2 declined to register the said shares in the petitioner's name on the ground that he did not get possession of the head office of the company and advised the petitioner to take such steps for registration as the petitioner might think fit. It is this refusal on the part of respondent No. 2 to register the petitioner as a member of the company which has occasioned this application.

5. This application is being opposed by Probhas Kumar Basu, a shareholder of the company, on the ground that the offer of sale of the shares was not communicated to him by respondent No. 2. Respondent No. 2 has affirmed an affidavit on June 22, 1964, in paragraph 6 of which he had stated the facts leading to the service of a notice, relating to the sale of the shares, to be as follows:

"On or about 17th December, 1963, Sri Bidyut Basu and Sri Chirakumar Basu, two of the shareholders who gave notice of their intention to sell the shares, came to me and placed before me a draft notice addressed to the shareholders of the abovenamed company and North Barakar Coal Co. Private Ltd., except the proposed transferor-shareholders intimating them about the notice of intention to transfer the said shares for my approval. I approved the said draft. The said draft notice was handed over to Sri Bidyut Basu for typing out several copies of the said notice. On or about the 18th December, 1964, Sri Bidyut Basu came to my residence with several copies of the said notice for my signature and I asked him to post the same under certificate of posting. In the articles of association, a copy of which was shown to me, I found that there was no specific direction with regard to the mode of service of such notices on the shareholders". In paragraph 7 of the said affidavit respondent No. 2 has stated that on or about December 21, 1964, Bidyut Basu came to his residence and made over to him the original certificates of posting dated December 19, 1964, and further informed respondent No. 2 that through inadvertence the name of one of the shareholders, Probhas Kumar Basu, had been omitted and a copy of the notice was not sent to him individually. It was also pointed out to respondent No. 2 that the address of Sm. Snehalata Basu was incorrectly mentioned in the certificate of posting. Thereupon respondent No. 2 asked the said Bidyut Basu to type two notices and to bring them to respondent No. 2 for signature. The said Bidyut Basu came to him after some time with two typed notices, which respondent No. 2 signed and asked Bidyut Basu to post the same under certificate of posting. On the statements made in this affidavit and having regard to the contentions raised by Mr. B.K. Ghose, learned counsel for the added respondent No. 5, I directed

the special officer to be examined on the question of the service of the said notice on respondent No. 5. Accordingly the special officer gave evidence and) was cross-examined by Mr. B.K. Ghose. In his evidence the special officer stated that the notices were brought on December 21, 1963, and they were dated December 18, 1963. He also stated that on December 21, 1963, he asked Bidyut Basu to type two notices but did not ask Bidyut Basu to have it dated on December 18, 1963. The special officer admitted that there was omission to send the notice to Probhas Kumar Basu in the first instance. But he stated that this omission was pointed out to him by Bidyut Basu whom he asked to type two notices, one for Probhas Kumar Basu and the other for Sm. Snehalata Basu. He signed the notices and asked Bidyut Basu to post the same under certificate of posting. He has further stated that he had to take the help of Bidyut Basu as the only member of his staff at that time, one N. N. Sarkar, was in the Jambad colliery under his orders. Suggestions were made by Mr. Ghose to the witness that the notice was not sent and that the special officer was careless in the matter of sending the notices. The special officer's explanation was that he was certainly not careless, but that he had no knowledge as to who the shareholders of the company were, as he did not have the share register of the company in his custody and possession. It seems to me that the special officer told the truth when he said that there was omission in sending the notice to Probhas Kumar Basu and this omission was pointed out to him by Bidyut Basu, in consequence of which a fresh notice was typed and that he instructed Bidyut Basu to send this notice to Probhas Kumar Basu under certificate of posting. I have no hesitation in accepting the statements of the special officer relating to the despatch of the notice.

6. The contention of Probhas Kumar Basu, the contesting respondent in this application, as made out in the affidavit affirmed by him on June 18, 1965, is that the sale of the shares was contrary to the provisions of the articles of association of the company. It is alleged in paragraph 26 of the said affidavit that no offer of the alleged sale was ever made to him. Again in paragraph 29 of the said affidavit the deponent repeated that respondent No. 2 could not effect the transfer of shares of respondents Nos. 3 and 4 to the petitioner as no offer for sale of the shares was at all made to him. The deponent's grievance, therefore, is that an offer for sale of the shares ought to have been made to him, and this offer not having been made, the application for rectification of the share register should be dismissed.

7. Before proceeding any further it will be useful to refer to the material articles of association of the company. These articles are 30, 31, 32, 35 and 36. "Article 30 provides that no shares are to be transferred to an outsider, so long as the directors and any members, or any persons selected by the directors, are willing to purchase the shares at a fair value. Article 31 provides that a shareholder proposing to transfer shares is to give notice in writing to the company of his desire to transfer the same. Such notice is to specify the sum that the transferor fixes as the fair value and the company is to act as the transferor's agent for

sale of the shares to any member of the company or a person selected by the directors. Article 32 provides that if the company, within 28 days from the receipt of the notice from the transferor, finds a member who is willing to purchase the shares, the transferor shall be bound to transfer the shares to such member upon payment of the price fixed by him or the fair value as the case may be. Article 35 provides that if the company fails within 28 days after being served with the notice of the intention to transfer, to find out a purchaser for the shares, the transferor will be at liberty within three calendar months thereafter to sell the shares comprised in the notice to any person and at any price. The determination of the issues in this application has to be made keeping in view the provisions in the said articles and the rights and obligations of the members of the company created thereunder.

8. Mr. Ellis Meyer appearing in support of this application contended that there was no provision in the articles of the company for a notice from the company to the members of the proposed transfer of shares. He argued that respondent No. 2 was not required under the articles of the company to inform the members by a notice in writing that a member of the company proposed to transfer any shares of the company. The articles discussed above created a bar against the transfer of shares from a member unless certain conditions are fulfilled and such a transferor was required to give a notice to the company of the proposed transfer. But there is nothing in the articles, it was argued, which imposed a duty on the company to give a notice in writing to the members of the company about the proposed transfer. Respondent No. 2, it was argued, was under no obligation to give notice to the members that respondents Nos. 3 and 4 proposed to transfer certain shares of the company.

9. It was next argued that it was true that the members of the company, other than the proposed transferor, were to be given an opportunity to buy the shares proposed to be transferred; but such opportunity, it was argued, was not necessarily required to be given by a notice in writing.

10. In this case, it was next argued, a notice in writing was given by respondent No. 2 to all the members of the company. It was true that the name of Probhas Kumar Basu, the contesting respondent, was left out from the notice which was sent to the members. But, Mr. Meyer argued, respondent No. 2 had taken steps to send the notice to respondent No. 5. Respondent No. 2, on being told that there was omission, had asked respondent No. 4 to prepare a notice for respondent No. 5 and had asked respondent No. 4 to send the notice under certificate of posting. There was no reason, it was argued, why the notice should be suppressed from respondent No. 5, particularly because at that stage there was no dispute between the parties regarding the sale or the purchase of shares. Mr. Meyer further argued that it was admitted by all the respondents, other than respondent No. 5, that the notice was duly received by them ; and there was no reason why this notice should not have been received by respondent No. 5. Furthermore, it was argued, that the grievance made by respondent No. 5 in the

affidavit-in-opposition filed by him was not that no notice was received by him, but that no offer for purchase of shares was made to him.

11. It was next contended by Mr. Meyer that besides the shares held by respondent No. 5 in his individual capacity he was a joint-holder of certain shares with Sm. Durga Rani Basu, Probhas Kumar Basu, Probit Kumar Basu and Amar Kumar Basu. Under Article 128 of the articles of association of the company, in the case of shares jointly held by several persons, a notice may be given to the joint-holder named first in the register, in respect of the shares. It was, therefore, argued that Sm. Durga Rani Basu's name appeared first as a joint-holder of a lot of shares and therefore the notice admittedly was sent to Sm. Durga Rani Basu. It is nobody's case, Mr. Meyer argued, that the notice was not received by Sm. Durga Rani Basu as a joint-holder of the shares of the company. Therefore, it was argued, that although respondent No. 5 may contend that the notice sent by respondent No. 2 under certificate of posting was not received by him, as a joint-holder of the shares, admittedly a notice has been received by Sm. Durga Rani Basu and that is a valid notice to respondent No. 5 regarding the sale of the shares. It was submitted that there was no substance in the complaint of respondent No. 5 that no opportunity was given to him to purchase the shares which have been sold to the petitioner.

12. Mr. T. P. Das appearing in Matter No, 53 of 1964 which was heard along with the present application supported the petitioner and submitted that there was no substance in the grievance made by Mr. Ghose's client.

13. Mr. S. C. Sen appearing in Matter No. 49/64 which was heard along with this application also supported Mr. Meyer and submitted that an order should be made as prayed. In support of this contention he relied upon the observations in Buckley, 13th Edition, page 173, to the effect that, in the absence of restrictions in the articles or by agreement with the company outside the articles, the shareholders may transfer their shares without any consent and the directors have no discretionary power to refuse to register a transfer bona fide made. It was argued that the registration of the name of a purchaser of shares was a ministerial act in the absence of any bar imposed by the articles of the company. In this case, Mr. Sen argued, the transferors had given notice to the special officer of their intention to transfer the shares and the special officer, though not required by the articles of the company, gave the notice to the shareholders of the proposal for sale of the shares. That being so, Mr. Sen argued, the articles of the company were strictly complied with and the registration of the name of the petitioner in the share register of the company was only a ministerial act. In support of this contention reliance was placed by Mr. Sen on a Division Bench judgment of this court in Vidyasagar Cotton Mills Ltd v. Musst. Nazmunnessa Begum [1964] 34 Comp. Cas, 704 : 68 C.W.N. 703. and also a decision of the Punjab High Court in Jarnail Singh Harjit Singh v. Bakshi Singh Sham Singh [1960] 30 Comp. Cas. 192.

14. Mr. B.K. Ghose, learned counsel for respondent No. 5, submitted that this

application ought to be rejected as his client did not receive the notice issued by respondent No. 2 to the shareholders of the company. He argued that respondent No. 5 was deprived of the opportunity of buying the shares which the petitioner had purchased by reason of the failure and omission of respondent No. 2 to serve the said notice. He further contended that the articles of association of the company had not been complied with, and, therefore, the sale of the shares to the petitioner was bad and the petitioner was not entitled to rectification of the share register by insertion of his name in the same.

15. The next contention of Mr. Ghose was that the price fixed by respondents Nos. 3 and 4 was arbitrary as the price fixed for 12 shares of North Burrakar Coal Company Limited was fixed at Rs. 78,000 whereas the receipt dated January 15, 1964, showed that the consideration from the purchasers was Rs. 75,000 only for the 12 shares of North Burrakar Coal Company Limited together with 74 shares of New Standard Coal Company Limited.

16. It was next argued by Mr. Ghose that admittedly, on the evidence of the special officer, the first notice was not sent to respondent No. 5. With regard to the second notice, Mr. Ghose argued, respondent No. 2 only approved the notice which was prepared by respondents Nos. 3 and 4 and put his signature thereto and the letters were posted also by respondent No. 4. Mr. Ghose also commented upon the conduct of respondent No. 2 in entrusting respondent No. 4 with the posting of the letter instead of doing it himself through his own clerk, servant or chaprashi. In support of this contention Mr. Ghose relied upon a Bench decision of this court in Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd. and Others, in which it was held that if a notice of a board meeting was duly issued, it could not be believed that such notices would fail to reach the parties to whom the notices were addressed. But in this case, however, there was serious dispute between the parties and it was for that reason that it was held that the notices were not sent. In the instant case, on the other hand, the notices were sent under the instructions of respondent No. 2 who was an officer of this court and I cannot accept Mr. Ghose's submission that the notice was withheld or suppressed by the special officer in order to deprive the petitioner of the opportunity of buying the shares.

17. In my opinion, the contentions of the learned counsel for the petitioner are well-founded. There is nothing in the articles which requires that a notice should be given by the company to the members of the offer or proposal made by one member to sell the shares held by him. It is true that the articles provide that, so long as a member is willing to purchase a share offered for sale, such share should not be transferred to an outsider, and, therefore, by implication, at any rate, the company is required to bring to the notice of the members the proposal for sale of shares. But the proposal for sale of shares may be brought to the notice or knowledge of the other members by means other than a written notice from the company as it is a private company and is in the nature of a family concern. Besides, even assuming that such a notice is to be sent by the company

to the members, there is nothing in the articles which require that the special officer should send the notice by registered post or special messenger. In this case, however, the special officer did in fact send the notice to the members about the proposal for sale of the shares through respondents Nos. 3 and 4. Respondent No. 2 in his evidence stated that there was omission to send the notice to respondent No. 5, but this omission was corrected by a second notice which was sent to respondent No. 5 under the instructions of respondent No. 2. I see no reason to disbelieve the statement of respondent No. 2 that he signed the notice and instructed respondent No. 4 to send the notice under certificate of posting. The notices to the other members were also similarly sent under certificate of posting and all of them appear to have been received and there is no reason why the notice should not have reached respondent No. 5. Besides, as I have noted earlier, a notice was duly received by Sm. Durga Rani Basu in respect of the joint-holding of some shares as she was the first-named person in the share register of the company. Respondent No. 5, therefore, cannot be heard to urge that he had no knowledge of the proposal for sale of the shares by respondents Nos. 3 and 4.

18. There is, however, a broader question involved in this application. That question is, can an outsider-purchaser of the shares of a company be denied the right to have his name entered in the share register, because the company or the special officer, as in this case, is in default or is negligent in the matter of sending the notices to the shareholders, assuming, however, that the articles required notices to be given to the members and further assuming that there has in fact been negligence or default on the part of the company in giving notices to the other shareholders ? In my opinion, where there has been a bona fide purchase of shares by an outsider for consideration and where there has been compliance with the requirement of the articles of association of the company, the rights of the purchaser of shares to have his name entered in the share register of the company cannot be denied to him. If a member of a company is prejudiced by reason of any default or omission in the matter of service of notice conveying the proposal for sale of the shares, he has other remedies which he may pursue, but he cannot be allowed to resist the right of a bona fide purchaser of shares to have his name entered in the share register of the company. It is true that in this case there is restriction on the transfer of shares to an outsider, but these restrictions are not an absolute bar to the transfer to an outsider. In this case the special officer failed to find out a member or an outsider who was willing to purchase the shares and thereupon the shares were sold to the petitioner. In my view the requirements of the articles have been sufficiently complied with and the rights of the petitioner as a shareholder of the company cannot be questioned, challenged or denied on the ground that there was non-compliance with the articles of association of the company. There will, therefore, be an order in terms of prayers (a) and (b) of the petition. Each party other than respondent No. 2 to pay its own costs. Respondent No. 2 will be entitled to retain the costs of this application as between attorney and client out of the assets of

the company in his hands. Certified for counsel.