
(1980) 07 CAL CK 0015
In the Calcutta High Court
Case No : Company Petition No. 660 of 1979

B.K. Holdings (P.) Ltd.

APPELLANT

Vs

Prem Chand Jute Mills and Others

RESPONDENT

Date of Decision : 16-07-1980

Acts Referred:

Companies Act, 1956 — Section 155

Securities Contracts (Regulation) Act, 1956 — Section 13, 14, 15, 16, 16(1)

Citation : (1983) 53 CompCas 367 : 84 CWN 876

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : Dipankar Gupta and P.C. Sen, for the Appellant; R.C. Nag, for the Respondent

Final Decision : Dismissed

Judgement

T. K. Basu, J.—This is an application u/s 155 of the Companies Act, 1956, for rectification of the share register of respondent No. 1. The application arises under the following circumstances.

2. The petitioner, B. K. (Holdings) Pvt. Ltd. some time in the month of August, 1979, purchased 1,855 ordinary fully paid-up shares of Rs. 100 each in the respondent-company from respondents Nos. 2 to 7 for valuable consideration. According to the petitioner, it became the lawful owner of the said shares and was entitled to have the shares registered in the name of the petitioner. According to the petition itself the said shares are not quoted or dealt with on any recognised stock exchange in India.

3. One of the specimen agreements for sale is annexed to the affidavit of Amar Nath Roy filed on behalf of the company and affirmed on the 8th January, 1980. The material portion for our purpose is Clause 3, which provides as follows :

" The purchaser shall pay to the seller the agreed price for the said shares at the rate of Rs. 100 (one hundred) per share as follows :

(a) A/c. payee bank draft in favour of the seller for 50% amount of the agreed price will be handed over by the purchaser to Shri Arun Krishna Roy against delivery of blank transfer deeds duly signed by the seller.

(b) The balance 50% amount of the agreed price will be paid within nine months from the date hereof..... "

4. After the purchase of the said shares the petitioner duly lodged them with the respondent-company for registration of its name as the owner thereof. The respondent-company, however, sent a communication stating that it was unable to register the said shares in the name of the petitioner-company and returned the share certificates and the transfer deeds. The communication was also stated to be a notice under Article 43 of the articles of association of the respondent-company. Hence, the present application praying that the share register of the respondent-company be rectified by inserting therein the name of the petitioner in place and stead of the respondents Nos. 2 to 7 in respect of the said 1,855 fully paid-up ordinary shares, particulars whereof have been stated in Sch. " A " to the petition.

5. In order to appreciate the respective contentions of Mr. Dipankar Gupta who appeared for the petitioner-company and Mr. R. C. Nag who appeared for the respondent-company it will be useful to set out certain provisions of the Securities Contracts (Regulation) Act, 1956, (hereinafter referred to as " the Act ").

6. The preamble of the Act is as follows :

" An Act to prevent undesirable transactions in securities by regulating the business of dealing therein, by prohibiting options and by providing for certain other matters connected therewith. "

7. Section 2(h) of the Act defines " Securities" as follows :

"(h) "Securities" include-

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate ;,..... "

8. Section 2(i) defines " Spot delivery contract" as follows :

""Spot delivery contract" means a contract which provides for the actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality. "

9. Section 13 of the Act, which is very material for our purpose, provides as follows:

"13. Contracts in notified areas illegal in certain circumstances.--If the Central Government is satisfied, having regard to the nature of the volume of transactions in securities in any State or area that it is necessary so to do, it may, by notification in the Official Gazette declare this section to apply to such State or area, and thereupon every contract in such State or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange in such State or area or through or with such member shall be illegal. "

10. It may be mentioned here that it was not disputed that Calcutta, where the present contract for the sale of shares which is the subject-matter of the present petition was entered into, is a " notified area " for the purpose of Section 13 of the Act.

11. Sections 16 and 17 of the Act which are equally material for our purpose read as follows :

"16. Power to prohibit contracts in certain cases.--(1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of Sub-section (1) entered into after the date of the notification issued thereunder shall be illegal. "

" 17. Licensing of dealers in securities in certain areas.--(1) Subject to the provisions of Sub-section (3) and to the other provisions contained in this Act, no person shall carry on or purport to carry on whether on his own behalf or on behalf of any other person, the business of dealing in securities in any State or area to which section 13 has not been declared to apply and to which the Central Government may, by notification in the Official Gazette, declare this section to apply, except under the authority of a licence granted by the Central Government in this behalf..... "

12. Admittedly a notification dated 27th June, 1969 has been published by the Central Govt. being S.O. No. 2561 ([1969] 39 Comp Cas 155). The said notification reads as follows :

" In exercise of the powers conferred by Sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Central Government, being of opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declares that no person, in the territory to which the said Act extends, shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of securities other than spot delivery contract or contract for cash or hand delivery or special

delivery in any securities as is permissible under the said Act, and the rules, bye-laws and regulations of a recognised stock exchange :..... "

13. The only other section which is relevant for our purpose is Sub-section (1) of Section 18 of the Act which provides as follows :

"18. Exclusion of spot delivery contracts from Sections 13, 14, 15 and 17.--(1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts..... "

14. Mr. R.C. Nag, appearing for the respondent-company, seeks to defend the action of the company in refusing to register the shares primarily on the ground that the transfer of these shares were illegal as offending Sections 13 and 16 of the Act. Mr. Nag argued that since the provisions of both Sections 13 and 15 are prohibitory and negative and there is a penal clause, it must be held to be mandatory.

15. Mr. Dipankar Gupta, who appeared for the applicant-company, did not seriously dispute the contention of Mr. Nag that the contract for the transfer of the shares which are the subject-matter of this application is not a "spot delivery contract " within the meaning of the Act. This is obviously because the payment of 50% of the purchase price was to be made nine months after the date of the transfer. Consequently, the exemption afforded by Section 18 of the Act is not available to the petitioner in the present case.

16. Mr. Dipankar Gupta, who appeared for the petitioner-company drew my attention to the definition of " marketable securities " as contained in Section 2(h) of the Act. Shortly put, Mr. Gupta's contention was that the prohibition contained in Sections 13 and 16 of the Act, which have been set out here-in-above apply only to those securities which are quoted in the stock exchange. In other words, it is only in respect of those transactions in shares or securities which are quoted in the stock exchange that the inter- diets contained in Sections 13 and 16 of the Act would apply. Admittedly, the shares of the company in respect of which rectification is sought for in the share register are not quoted in the stock exchange. According to Mr. Gupta the expression " spot delivery contracts " as defined in the Act and as referred to in Section 18 thereof also means spot delivery contracts in respect of the shares or securities which are quoted in the stock exchange.

17. Mr. Nag sought to repel this contention of Mr. Gupta by submitting that to attribute the meaning that Mr. Gupta invites me to do to the expression " marketable securities " would be to unduly narrow down its scope and ambit. He drew my attention to the compact edition of the Oxford English Dictionary, Vol. 1, p. 1728 (inner page 174), which gives the meaning of the expression " marketable". The meaning is as follows :

"" 1. Capable of being marketed that may or can be bought or "sold ; suitable for the market; that finds a ready market; that is in demand, saleable.

2. Of or pertaining to buying or selling ; concerned with trade ; of price, value, that may be obtained in buying or selling."

18. Similarly, the word " market" is given, inter alia, the following meaning :

The meeting or congregating together of people for the purchase or sale of provisions, livestock, publicly exposed at a fixed time and place; the occasion or time deterring which such goods are exposed for sale; also, the company of people at such a meeting."

19. My attention was also drawn to a "Dictionary of Economics and Commerce by J. L. Hanson, p. 271, where the following meaning is given to the word " market " :

" The function of a market is to enable an exchange of goods or services to take place, as means by which buyers and sellers are brought into contact with one another. It may denote a particular place where commodities are bought and sold as with the open-air markets held in market towns or the highly organised markets such as those for cotton at Manchester and Liverpool or for wool and many other commodities in London. In a wider sense, however, a market can signify any area in which buyers and sellers are in contract with one another and this area may in fact comprise the whole world. Prices in a free market are determined by the combined actions of buyers and sellers."

20. Reference was also made to the meaning of the word " speculation " in the Dictionary of Economic Terms by Alan Gilpin, 4th Edn., p. 208.

21. In my view to accept the contention of Mr. Dipankar Gupta on this aspect of the case would be to ascribe too narrow a meaning to the expression "marketable securities". As will be evident from the dictionary meaning set out above the expression "marketable" has been equated with "saleable". In other words, whatever is capable of being bought and sold in a market is marketable. I see no warrant whatsoever for limiting the expression " marketable securities " only to those securities which are quoted in the stock exchange. This argument of Mr. Gupta, therefore, fails.

22. Mr. Nag, appearing for the respondent-company, drew my attention to Section 23 of the Act, which provides for the various penalties for contravention of the provisions of the Act, including Sections 15 and 16 thereof. According to Mr. Nag, since the statute contains certain prohibitory clause and also penal provisions for the violation thereof, these prohibitions should be held to be mandatory and not merely directory. In support of this proposition, Mr. Nag drew my attention to a decision of the Supreme Court in the case of Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, . In that decision, in considering Section 108 of the Companies Act, 1956, it was held that negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory. Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statutory provision imperative. The words " shall not

register " are mandatory in character. The mandatory character is strengthened by the negative form of the language. It cannot be said that the provisions contained in Section 108 are directory because non-compliance with the section is not declared an offence. Section 629A of the Act prescribes the penalty where no specific penalty is provided elsewhere in the Act. It is a question of construction in each case whether the Legislature intended to prohibit the doing of the act, altogether, or merely to make the person who did it liable to pay the penalty. The provisions contained in Section 108 are mandatory.

23. At p. 192 of the report Ray C.J. observed as follows:

" If anything is against law, though it is not prohibited by the statute but only a penalty is annexed, the agreement is void. In every case where a statute inflicts a penalty for doing an act, though the act be not prohibited yet the thing is unlawful, because it is not intended that a statute would inflict a penalty for a lawful act."

24. Mr. P. C. Sen, who followed Mr. Gupta, drew my attention to an unreported decision of this court in the case of Samarendra Nath Sen Gupta v. Khayrebari Tea Company Ltd., being Appeal From Original Order No. 590 of 1978. In that case, a Division Bench of this court had an occasion to consider the notification u/s 16(1) of the Act, which I have set out above. M. M. Dutt J., who delivered the judgment of the Bench, observed, inter alia, as follows :

" The other contention as to the invalidity of the contract in question for the transfer of the disputed shares is based on the said Government notification made u/s 16(1) of the Securities Contracts (Regulation) Act, 1956. The said notification, inter alia, states that no person shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery in any securities as is permissible under the said Act, and the rules, bye-laws and regulations of a recognised stock exchange. Prima facie it appears from the said notification that a contract for cash delivery of securities does" not require the permission of the Central Government before it is entered into. It also appears that the contract in question is a contract for cash delivery of disputed shares and so the question of prior permission of the Central Government does not arise. In the circumstances, we are also of the view that the contract cannot be held to be void in view of the said Government notification."

25. With great respect, I find it rather difficult to understand the expression " contract for cash delivery " as used by the learned judge who delivered the judgment on behalf of the Division Bench. As will be noticed from the notification dated the 27th June, 1969, which was the basis of the above judgment and which I have set out hereinabove, the expression used is " contracts for cash or hand delivery or special delivery apart from spot delivery contracts". Therefore, it is clear that the notification contemplates four distinct types of contracts, viz., (i)

spot delivery contracts, (ii) contracts for cash, (iii) contracts for hand, and (iv) contracts for special delivery. There is no such category, as far as I can see, of contracts for cash delivery (an expression used by the Division Bench). In any event, in my view, the Division Bench, on the particular facts of that case, came to the conclusion that the contract in question did not come within the mischief of the above-mentioned notification. I do not see how this decision is of any assistance to the petitioner in the present case.

26. It remains for me to deal with two decisions which were relied on by each party. Mr. Dipankar Gupta for the petitioner relied on a decision of the Bombay High Court in the case of *Norman J. Hamilton v. Umedbhai S. Paid* [1979] 49 Comp Cas 1. In that decision, Mrs. Sujata V. Manohar J., held that the expression "marketable securities" as used in the Act with which we are concerned did not apply to the shares of a private limited company. The learned judge applied the well-known principle of interpretation of statutes, viz., *noscitur a sociis* which means "the meaning of a word is to be judged by the company it keeps". According to the judgment, it is legitimate to construe words in an Act with reference to the words found immediately connected with it. As a matter of ordinary construction, where several words are followed by a general expression which is as much* applicable to the first and other words as to the last, that expression is not limited to the last but applies to all. Applying those principles it was held that the definition of "securities" would be limited to marketable securities. The words "other marketable securities of a like nature" are words of a general nature which would apply to all the preceding words, viz., "shares, scrips, stocks, bonds and debentures". The word "marketable" implies a certain case in selling. The definition of "securities" would, therefore, exclude from its purview those which are not freely marketable, such as shares in a private limited company. Though it may be possible to sell the shares of a private limited company in an individual case after complying with the conditions provided under the articles of association of the company concerned, these shares are not marketable securities as contemplated under the Act. The learned judge goes on to examine the scheme of the Act and the mischief that was sought to be avoided and comes to the conclusion that it was primarily enacted to deal with contracts which were negotiated through the stock exchange.

27. It will further be apparent from the statement of objects and reasons to the Act, to which reference was made by both the parties as a legitimate aid to interpretation, that the Act also applies to transactions outside the stock exchange.

28. In my view, as correctly pointed out by Mr. Nag, this decision is merely an authority for the proposition that the Act does not apply to a contract for sale of shares of a private limited company. As pointed out by Mr. Nag, the shares of a private limited company are not marketable in the sense that before they can be sold to outsiders, they have to be offered to an existing member of the private limited company. That being so, the shares of a private limited company stand as

a class apart from other shares of a public limited company. We, in the present case, are concerned with a public limited company. As such, this decision is of no assistance to the petitioner in the present case. In any case, the learned judge has held that what is easily saleable is " marketable ".

29. Lastly, Mr. Nag relied on a decision of this court in the case of Turner Morrison & Co. v. Shalimar Tar Products (1935) Ltd. [1980] 50 Comp Cas 296. In that case which is also u/s 155 of the Companies Act, 1956, where the legality of transactions in the light of Section 13 of the Act was involved, R. Bhattacharya J., at p. 333 observed as follows :

" Section 18(1) of the Act says that nothing contained in Sections 13, 14, 15 and 17 shall apply to spot delivery contracts. I have already mentioned what spot delivery is according to the Act. Admittedly, in the present case, the transaction dealing with the disputed sale of shares is not a case of spot delivery contract. The evidence does not disclose that Mr. Mukherjee's contention with regard to the issue No. 6 is that when the contract involved in the present case relating to the sale of the shares was not entered into between the members of a recognised stock exchange or through or with any such member, the sales of shares involved in this case were illegal and void. In the instant case the shares in respondents Nos. 1, 2 and 3 were not negotiated through the members of any recognised stock exchange as required u/s 13 of the Securities Contracts (Regulation) Act. Had there been any such sale, there would have been an occasion for publicity or at least there might have been an opportunity of getting a fair market price. On the other hand the shares were sold surreptitiously without letting any outsider know about the sale. However, the fact is proved that Section 13 of the Securities Contracts (Regulation) Act, 1956, has been deliberately violated to effect the fraudulent sale of the shares. There can be no doubt, therefore, that all the sales of the shares in question were illegal and void and the sales were ineffective. Issue No. 6 is, therefore, answered in favour of the petitioner-company."

30. The facts of the case before me are identical on this point with the facts of the above decision by R. Bhattacharya J. With respect I follow the above decision and I hold that the transaction in the present case is in clear contravention of Section 13 of the Act, as admittedly, it was not transacted by a member of the stock exchange. I also hold that the transaction in question is in contravention of Section 16 of the Act. It would, therefore, follow that the company was entirely within its rights in refusing to register the transfer on the ground that the transaction was illegal.

31. Mr. Nag relied on certain authorities for the proposition that the company was under an obligation to register only legal and valid transfers. This proposition was not disputed by Mr. Gupta.

32. This disposes of all the contentions raised by the parties.

33. In the result, this application fails and is dismissed with costs.