

(1952) 10 MAD CK 0021
In the Madras High Court
Case No : O.S. Appeal No. 56 of 1952

B.N. Viswanathan and Another	Vs	APPELLANT
Tiffin's Baryt Asbestos and Paints Ltd. and Others		RESPONDENT

Date of Decision : 16-10-1952

Acts Referred:

Companies Act, 1913 — Section 30, 76, 79, 79(1), 79(2)
Contract Act, 1872 — Section 182
Evidence Act, 1872 — Section 115

Citation : AIR 1953 Mad 520 : (1953) 23 CompCas 29 : (1953) ILR (Mad) 966 : (1953) 66 LW 124 : (1953) 1 MLJ 346

Hon'ble Judges : Rajamannar, C.J; Venkatarama Ayyar, J

Bench : Division Bench

Advocate : K. Raja Aiyar, for the Appellant; G. Radhakrishnan and G. Vasanta Pai, for the Respondent

Final Decision : Dismissed

Judgement

Venkatarama Ayyar, J.—The question that arises for determination in this appeal is the validity of the election of the respondents as

directors of a company called ""Tiffin's Barytes Asbestos and Paints Limited"", at a meeting of the general body held on 26-2-1951. The facts are

not in dispute. The company was incorporated in 1945 and its first directors were five persons named in Article 49. One Veeramani was co-opted

as a director and the strength of the directorate was thus raised to six. At the first annual meeting which was held on 24-6-1946 all the directors

retired as provided in Article 53 and were re-elected. Before the next general body meeting which was held on 27-8-1947 three of the directors

had resigned and a fourth resigned at that meeting with the result that the strength of the directorate became reduced to two. The next general body

meeting was held on 30-12-1948 and thereafter no annual meeting was called. It was in this state of affairs that one of the shareholders Mrs.

Ananthalakshmi Ammal filed Appln. No. 3898 of 1950 u/s 79 (3), Indian Companies Act for a direction that a general body meeting might be

convened by a Commissioner and that an independent chairman might be appointed to preside over the meeting.

On 27-11-1950 Krishnaswami Nayudu J. passed an order that the annual general body meeting be held on 28-1-1951 in accordance with the

articles of association of the company, Ex. P-1. He, however, refused the prayer for the appointment of an independent chairman to preside over

the meeting and against this portion of the order Mrs. Ananthalakshmi Ammal preferred O. S. A. No. 118 of 1950. By the order which was

passed in the said appeal on 11-1-1951 an advocate Mr. Sanjeevi Naidu was appointed as chairman of the meeting with power to scrutinise the

proxies. The company then took out an application, Appln. No. 139 of 1951 for postponing the meeting which had been fixed for 28-1-1951 to a

later date on the ground that the accounts were not ready. On 16-1-1951 Krishnaswami Nayudu J. passed an order directing the meeting to be

held on 18-2-1951.

On that date the Commissioner proceeded to the premises of the Company for the purpose of holding the meeting. Plaintiff 1 moved that the

meeting be adjourned. The register of members, the share transfer books of the company and the proxies were in the possession of Veeramani

who had been functioning as a director and he refused to hand them over to the chairman with the result that it became impossible for the chairman

to proceed with the meeting. He accordingly adjourned it to 26-2-1951 and applied to the Court for directions in the matter. On 22-2-1951

Mack, J. passed an order directing the company to produce all the books at the meeting on 26-2-1951.

On that date the books of the company were produced; the meeting was actually held and at that meeting defendants 2 to 7 were elected as

directors. The plaintiffs then filed Appln. No. 1135 of 1951 for setting aside the election, on various grounds. On 27-3-1951 Krishnaswami

Nayudu J. dismissed this application and referred the petitioners to a suit. The present suit has accordingly been filed by the plaintiffs who are two

share-holders of the company on behalf of themselves and other share-holders of the company for a declaration that the election of defendants 2 to

7 as directors at the meeting held on 26-2-1951 was void on the several grounds set out in the plaint. Balakrishna Ayyar J., who heard the suit

disagreed with the contentions put forward on behalf of the plaintiffs and dismissed the suit with costs. Against that decision the plaintiffs have preferred this appeal.

2. Several contentions were urged by Mr. K. Rajah Ayyar in support of this appeal. It was firstly argued that the power which the general body

has under the articles of the company is only to appoint directors in place of those who retire at the annual meeting; only one director actually

retired at the meeting held on 26-2-1951 and that therefore the election of six directors was beyond the competence of the meeting; that there was

no proper notice that six directors were to be elected at the meeting and that there was not even a resolution to that effect. Hence, it is urged, the

election of defendants 2 to 7 is void. The complaint that there was not clear notice to the members that six directors were going to be elected is

without substance. Ex. P-6 is the notice of the meeting to be held on 18-2-1951 and item 2 therein is as follows: ""To elect directors. Mr. A. S.

Padmanabhan retires at the meeting."" It was argued that read as a whole Ex. P-6 would mean that a director is to be appointed in place of A. S.

Padmanabhan who was to retire and that it would not convey the meaning that six directors were to be elected. We are unable to agree with this

contention. The retirement of A. S. Padmanabhan is stated as a fact and the notice does not state as is usual ""to elect a director in place of

Padmanabhan who retires."" The business to be transacted under item No. 2 is generally to elect directors and not to elect a director. This

objection is, therefore, overruled.

3. A more substantial objection to the validity of the election of the defendants is that the power of the general body is limited to electing a director

in the place of one who retires at the annual meeting under Article 63, that the power to appoint other directors vests under Article 58 exclusively

with the Board of Directors and that in consequence the general body could appoint only one director in the place of A. S. Padmanabhan who

retired at the meeting.

The Articles of the company material for the purpose of this contention are 47, 53 and 58. They are as follows:

Article 47: ""The number of directors inclusive of the Director (Ex-Officio) shall not exceed 10 nor be less than 3. The quorum for a directors"

meeting is 3. The quorum of a committee meeting shall be determined by the directors.

Article 53: ""The directors nominated by the Agents and secretaries shall be Ex-Officio directors of the company and shall not be subject to

retirement by rotation nor shall the clause relating to directors" share qualifications be applicable to him. The first directors of the company

(except the ex- officio directors) shall hold office till the annual general meeting in 1946 when the whole of the directors shall retire from office and

in every subsequent year one-third of the directors for the time being or if their number is not three or a multiple of three, then the number nearest

to one-third shall retire from office. The directors to retire in every year shall be those who have been longest in office since their last election but as

between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by

lot. A retiring director shall be eligible for re-election.

Article 58: ""If there be any vacancy in the directorate or if it is found necessary to increase the directorate so as not to exceed the maximum

number the board may from lime to time fill such vacancies by co-opting others as directors"".

On these articles it is argued for the appellants that the power to appoint directors had been delegated to the board of directors under Article 58

subject only to Article 53 and that the exercise of that power by the general body was in contravention of the articles and was, therefore, void.

Reliance is placed on the decision in -- "Blair Open Hearth Furnace Co. Ltd. v. Reigart", (1913) 108 L T 665. In that case, at an extraordinary

meeting of the company, resolutions were passed increasing the number of directors and electing two additional directors. The company filed a suit

for a declaration that under the articles of the association the general body had no power to appoint the two additional directors, and that the

election of the defendants was, therefore, illegal. Article 82 of the Company's articles provided that the number of directors shall not be less than

two or more than seven. Article 85 provided that at the ordinary meeting every year one director shall retire and the meeting at which any director shall retire shall fill up his place. Article 93 provided

Any casual vacancy in the office of director may at all times be filled up by the board by the appointment of a director. The directors may from time to time appoint additional directors but so that the total number of directors shall not exceed the prescribed maximum.

On a construction of these articles it was held that the company had delegated its power of appointment of directors to the board and that it could

not itself exercise it. The ground for the decision is thus stated by Eve J.:

I think the express power contained in Article 93 excludes the possibility of implying a concurrent power under Article 82 and in my opinion the

company has by its constitution delegated to those of its members who for the moment constitute the board the sole right of appointing additional

directors and that is so whether such additional directors are necessary to make up the number to the maximum, number fixed by the original article

or to any other number which the company may from time to time determine on as the maximum. As a matter of construction, therefore, I think that

the plaintiffs are right and that it was not within the power of the company to do that which it purports to have done at the meeting of the 14th

March and on this ground alone the relief sought on the motion must in my opinion, be granted.

Articles 82, 85 and 93 which were construed in -- "(1913) 108 L T 665 are substantially identical with Articles 47, 53 and 58 in the present case

and the appellants accordingly argued that the reasoning and the decision in -- (1913) 108 L T 665 would directly apply to the instant case.

4. Now it is doubtful how far the decision in -- (1913) 108 L T 665 can still be considered to be good law. Its correctness was doubted in --

"Worcester Corsetry Ltd. v. Witting", (1936) Ch 640 in which the articles were similar to those in -- "(1913) 108 L T 665" (A) with the

difference that the company had also adopted Articles 83 and 85 in table A in the Companies Act of 1908.

5. Article 83 runs as follows: ""The company may from time to time in general meeting increase or reduce the number of directors, and may also

determine in what rotation the increased or reduced number is to go out of

office." Article 85 provided that

The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the

next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

On these articles the question arose whether the appointment of two more directors at an extra-ordinary meeting of the general body was "ultra

vires" of the powers of the general body. Farwell J. held, following the decision in --(1913) 108 L T 665 (A) that the general body had no power

to appoint the additional directors. On appeal this decision was reversed on the ground that in -- (1913) 108 L T 665 (A) there was nothing in the

articles corresponding to Article 83 in table A and that that article conferred on the general body a general power to elect additional directors. In

this view it became unnecessary to pronounce on the correctness of the decision in -- (1913) 108 L T 665 (A). But Lord Hanworth M. R.

remarked ""I am bound to say that I find some little difficulty in seeing that the power must be either in the one or in the other; but be that as it may,

we have to interpret the articles of association as we find them." Lawrence L. J. observed:

This Court is not concerned upon the present occasion to say whether the construction put upon the articles in -- (1913) 108 L T 665 (A) by Eve

J. was right or not; we have here to see what is the true meaning of the articles of the plaintiff company.

In -- AIR 1950 81 (Privy Council) the general body passed a resolution appointing seven new directors in addition to the existing four. The validity

of this resolution was disputed in an action by the shareholders. Articles 109, 111 and 128 of the Company were in substance similar to Articles

82 and 93 which were considered in -- (1913) 108 L T 665 (A). There was also an additional Article No. 126 corresponding to Article 83 in

Table A which had been adopted by the company in -- (1936) Ch 640 (B). The Privy Council held on a construction of the articles that the

election of new directors by the general body was valid. The decision in -- (1913) 108 L T 665 (A) does not appear to have been cited before

the Board but in view of the fact that the articles in -- AIR 1950 81 (Privy Council) are similar to those in -- (1936) Ch 640 (B) and that -- (1913)

103 L T 665 (A) differed from both in not having anything corresponding to Article 83 of Table A in -- (1936) Ch 640 (B) or Art. 126 in -- AIR

1950 81 (Privy Council) it is not possible to hold that -- (1913) 108 L T 665" (A) is opposed to the decision in -- AIR 1950 81 (Privy Council) .

6. In Palmer's Company Precedents (Edn. 16, page 573) it is stated that:

The articles may, however, be so expressed as to relegate the power of appointing new directors to the directors to the exclusion of a general meeting.

and -- (1913) 108 L T 665 (A) is quoted as authority for this position with a note that the correctness of the decision had been doubted in --

"(1936) Ch 640" (B). In Buckley on Companies Acts (Edn. 12) page 885) the position is thus stated:

It has been held that an article in similar form amounts (in the absence of an article corresponding to Article 94 ante) to such a delegation to the

directors of the power of appointing additional directors as to preclude the company in general meeting from appointing such directors"".

The authority quoted again is the decision in -- "(1913) 108 L T 665" (A) but the decision in -- "(1936) Ch 640" (B) is noted against it. Article 94

referred to in the above quotation corresponds to Article 83 in Table A. The position, therefore, is that the decision in--"(1913) 108 L T 665" (A),

is of doubtful authority though it has not been overruled.

7. In this case it has to be noted that the articles of the company provide that

the regulations of table A of Schedule I of the Indian Companies Act of 1913 shall apply to this company except in so far as otherwise provided

for hereunder.

Regulation 83 in table A of Schedule I runs as follows:

Subject to the provisions of Sections 83-A and 83-B of the Indian Companies Act, 1913 the company may from time to time in general meeting

increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

This regulation must, therefore be read as part of the articles of the company. In -- "(1936) Ch 640" (B), it was the existence of this article which

was held to distinguish it from the decision in -- "(1913) 108 L T 665" (A) where there was no such article. In -- AIR 1950 81 (Privy Council)

also there was an article 126 corresponding to Regn. 83 and the power of the general body to elect additional directors was confirmed. The

decision in -- " (1936) Ch 640 and -- AIR 1950 81 (Privy Council) rather than the decision in -- " (1913) 108 L T 665 (A) will apply to the

present case.

8. It was further argued by Mr. Vasantha Pai on behalf of the respondents that even if the power to appoint additional directors is exclusively

vested in the board of directors under Regn. 58 the resolution of the general body appointing defendants 2 to 7 as directors should be upheld

because there was at the time of the meeting no board of directors which could validly function under the article and the general body had inherent

power, which it could then exercise, to appoint directors for enabling the company to function. In support of this contention he cited the decisions

In --"Isle of Weight Rly. Co. v. Tahordin", (1884) 25 Ch D 320 (D); -- "Barron v. Potter", (1914) 1 Ch 895 (E); --"Foster v. Foster", (1916) 1

Ch 532 (F) and -- "Munster v. Cammell Co.", (1882) 21 Ch D 183 (G). In (1884) 25 Ch D 320 (D) the share-holders of a company sent a

requisition for the convening of a general body meeting to remove the directors and to appoint fresh directors in the vacancies. Section 89

corresponding to Article 58 in the present case conferred on the directors the power to fill up vacancies in the directorate. The question was

whether this power could be exercised by the members of the company at its general meeting. In answering it in the affirmative Cotton L. J.

observed:

Then it is said that there is no power in the meeting of share-holders to elect new directors for that u/s 89 the power would be in the remaining

directors. The remaining directors would, no doubt, have that power if there was a quorum left. But suppose the meeting were to remove so many

directors that a quorum was not left, what then follows? It has been argued that in that case) there being no board which could act, there would be

no power of filling up the board so as to enable it to work. In my opinion that is utterly wrong. A power is given by Section 89 to the remaining

directors ""if they think proper so to do, to elect persons to fill up the vacancies"". I do not see how it is possible for a non-existent body to think

proper to fill up vacancies. In such a case a general meeting duly summoned for

the purpose must have power to elect a new board so as not to let the business of the company be at a deadlock.

With this opinion Lindely L. J. agreed. Fry L. J. observed:

In my judgment it is quite impossible to read Section 89 as the only section relating to the filling up of vacancies in the office of directors. That

applies only where there are remaining directors, and those remaining directors think proper to exercise their powers. That does not in my

judgment deprive the general meeting of the power to elect directors, where there are no directors or where the directors do not think fit to

exercise their powers.

In "(1914) 1 Ch 895 (E)" the facts were that the board of directors of a company consisted of two persons, Mr. Potter and Mr. Barroa. Owing to

their differences no meeting of the Board could be held and nothing transacted. Then at an extra-ordinary meeting of the shareholders two

additional directors were appointed. The question was whether this was valid. The articles of the company provided that the number of directors

should be not less than two and not more than ten and that the directors should have the power to appoint additional directors but there was no

article corresponding to Article 83 conferring on the company a power to increase or decrease the number of directors. In this respect the articles

of this company are similar to those in "(1913) 108 L T 665 (A)". It was accordingly contended on the strength of that decision that the general

body had no authority to appoint additional directors. This contention was overruled and it was held that as there was a deadlock in the

administration resulting from the fact that the directors were unwilling to exercise their powers the company had the inherent power to take

necessary steps to ensure the working of the company and to appoint additional directors for the purpose. Warrington J. observed:

The argument against the validity of the appointment is that the articles of association of the company gave to the board of directors the power of

appointing additional directors, that the company has accordingly surrendered the power, and that the directors alone can exercise it. It is true that

the general point was so decided by Eve J. in "(1913) 108 L T 665 (A)" and I am not concerned to say that in ordinary cases where there is a

board ready and unwilling to act it would be competent for the company to

override the power conferred on the directors by the articles except by way of special resolution for the purpose of altering the articles. But the case which I have to deal with is a different one. For practical purposes there is no board of directors at all. The only directors are two persons, one of whom refuses to act with the other and the question is, what is to be done under these circumstances? If directors having certain powers are unable or unwilling to exercise them--are in fact a non-existent body for the purpose--there must be some power in the company to do itself that which under other circumstances would be otherwise done. The directors in the present case being unwilling to appoint additional directors under the power conferred on them by the articles, in my opinion, the company in general meeting has power to make the appointment. The company has passed a resolution for that purpose.

This decision was followed in "(1916) 1 Ch 532 (F)" where the general body had appointed a managing director which power was vested under Article 99 in the board of directors. The Court found that there were only two persons who could be appointed as managing directors and owing to disagreement between them the board had been "reduced to the position that it was unable owing to internal friction and faction to appoint anybody as managing director." Following the decision in "(1914) 1 Ch 695 (E)" the Court held that the question relating to the appointment of the managing director was one with which the general meeting of the company could deal and that having regard to the circumstances recourse must be had to the general meeting and the appointment by the general body must accordingly be upheld.

In "(1882) 21 Ch D 183 (G)" certain vacancies which had occurred in the directorate before the annual general meeting were filled by the directors after that meeting and this appointment was attacked as illegal on the ground that the power of the board to fill vacancies could be exercised only before the next annual meeting and if not so exercised it lapsed and became incapable of exercise thereafter. Article 80 of the company corresponding to Article 53 in the present case provided that the general meeting should have the power to fill vacancies arising by reason of the annual retirement of directors and Article 84 conferred on the board power to fill vacancies. On a construction, of these articles it

was held that the appointment of directors by the general body was valid. The decision by itself, therefore, has no bearing on this point. But the

following observations of Fry J. are relied on in support of the position, that the company has a general and inherent power to appoint directors.

He observed: ""I am far from saying that a general meeting might not have filled up the casual vacancy, although, as I have pointed out Clause 80

only requires the general meeting to fill up the vacancies created by the retirement in rotation but nevertheless the general powers of a general

meeting are so large that I certainly do not mean to determine that if they had been so minded, they might not have filled up the casual vacancy.

In this connection the following observations of Lawrence. L. J. in "(1936) 1 Ch 640 (B)" might also be quoted

The company has an inherent power to nominate and appoint its own directors unless that is in any way restricted by the contract contained in the

articles of association. Unless you can find that that inherent power has been handed over by the company to the directors, I think they retain that

power as a natural result of their having the power to increase their board of directors.

According to Buckley on Companies Act, p. 885, the result of the authorities is that the decision in "(1913) 108 L T 665 (A)" will not apply

if owing to a deadlock or otherwise there is no board capable of making the necessary appointments.

In Palmer's Company Precedents (p. 573) it is stated that the company has the power to appoint additional directors ""where owing to differences

between the directors no board meeting could be held for the purpose"". The principles laid down in the authorities discussed above may be

summed up thus:-- A company has inherent power to take all steps to ensure its proper working and that, of course, includes the power to appoint

directors. It can delegate this power to appoint directors to the board of directors and such delegation will be binding upon it but if there is no

legally constituted board which could function or if there is a board but that is unable, or unwilling to act then the authority delegated to the board

lapses and the members can exercise the right inherent in them of appointing directors.

9. In this view the question arises whether at the time of the annual meeting there was legally in existence a board of directors who could act. The

appellants contend that there was, while the respondents deny it. The facts material for this contention may now be stated. It has already been

mentioned that the first directors of the company were five persons named in Article 49 which number was raised to six by the co-option of

Veeramani under that article, that all of them retired at the annual meeting held on 24-6-1946 and were re-elected. Under Article 53 a third of the

directors had to retire at every annual meeting. Before the next annual meeting which was held on 27-8-1947 three of them had resigned. Of the

remaining three two directors Padmanabhan and Veeramani retired at that meeting and were re-elected. The third director resigned at that meeting

and thus the strength of the directorate became reduced to two. Section 83A, Companies Act is as follows:-- "Every company shall have at least

three directors". Article 47 provides that the number of directors inclusive of the Director (ex-officio) shall not be less than three and that was also

the number prescribed as quorum for a meeting of the directors. Thus after 27-8-1947 there was no board which could act except for the purpose

of filling up vacancies under Article 62. Admittedly no directors were co-opted in 1948 and the position on 30-12-1948 when the last annual

meeting was held was that there were only two directors; both of them, had been elected at the annual meeting held on 28-8-1947 and one of

them had to retire at that meeting. Veeramani retired at "that meeting and was re-elected. Thereafter there was no annual meeting.

10. The plaintiffs contended that on, 30-12-1949 one Dakshinamurthy was co-opted as a director, Ex. P-9, that he resigned on 18-6-1950 Ex.

P-10 and that on 12-8-1950 one Murugappa Chettiar was co-opted in his place, Ex. P-11II and that there were thus three directors,

Padmanabhan, Veeramani and Murugappa Chettiar who could act at the time of the annual meeting in 1951. But if the annual meeting had been

convened in 1949 as it should have been Padmanabhan would have been bound to retire under Article 53. But it is argued on behalf of the

appellants firstly that Article 53 contemplates the existence of at least three directors and it could not apply when their number fell below that

minimum. The decision in -- "In re Moseley and Sons Ltd.", (1939) Ch 719 (H) was quoted in support of this position. There Article 94 provided

that "At every succeeding ordinary general meeting one-third of the directors or if their number is not a multiple of three, then the number nearest to

but not exceeding one-third, shall retire from office". The strength of the directorate became reduced to two and the question was whether either of them ceased to be a director under this article. In holding that neither of them vacated the office Simonds J. observed:

The article in my judgment does not provide for the retirement of a director unless one of two conditions is satisfied: either there must be a number which is one-third of the directors, or there must be a number which is nearest to but does not exceed one-third. Here it is clear that neither of those conditions is satisfied. There are two directors and therefore, you cannot find a number which is one-third. There are two directors and therefore you cannot find a number which is nearest to but does not exceed one-third.

11. It will be seen that this decision was based on the words ""but not exceeding one-third"" and in the absence of similar language in Article 53 it must be held that even one of the two directors should have retired at the meeting.

It is next argued that as no meeting was actually held in 1949 Article 53 would not apply and Padmanabhan would continue to be a director. The respondents contend on the other hand that the directors could not take advantage of their own default and continue in office beyond the period when they would have retired, if they had done their duty and called for a meeting in accordance with Article 29. This contention is supported by the decision in --"In re Consolidated Nickel Mines Ltd.", (1914) 1 Ch 883 "(I); -- M.K. Srinivasan and Others Vs. Watrap S. Subramania Aiyar and Others, ; -- "Kanssen v. Rialto (West End) Ltd.", (1944 Ch 346 (K) and -- "Morris v. Kanssen", (1946) A C 459 (L). These decisions were followed by this Court in -- A. Ananthalakshmi Ammal and Another Vs. The Indian Trades and Investments Ltd. and Another, . It must accordingly be held that Padmanabhan ceased to be a director at the end of year 1949. On the same reasoning it must also be held that Veeramani ceased to be a director by the end of 1950. This conclusion furnishes also the answer to a contention of the appellants that at least Veeramani was in office as director on 26-2-1951, and there could have been an election at the most of only five directors.

12. Then there is the case of Murugappa Chettiar who is put forward as the third director. It is stated that Dakshinamurthy was co-opted on 30-

12-1949 but it does not appear in whose place he was co-opted and as four directors who retire in 1946 and 1947 had all been elected at the annual meeting held on 24-6-1946 their term of office would have expired under Article 53 during the year 1949 and Dakshinamurthy whose co-option must have been in their place could not hold office beyond 1949. At any rate as he resigned on 18-6-1950 his rights do not merit any further consideration. It would follow from this that the co-option of Murugappa Chettiar in the place of Dakshinamurthy on 12-8-1950 must be held to be inoperative because the vacancy in which Dakshinamurthy could have been co-opted had itself come to an end under Article 53. It is unnecessary to refer to the various infirmities in the appointment of Murugappa Chettiar as a director which are referred to in the judgment of Balakrishna Iyer, J. We agree with him that Murugappa Chettiar was never validly co-opted as director, and it was not merely a case of defective appointment as director but of no appointment at all. We must accordingly hold that there was at the time of the annual meeting on 26-2-1951 no director validly in office and on the principle laid down in "(1884) 25 Ch D 320 (D)" and "(1914) 1 Ch 895 (E)" the members had the right to elect the directors at the annual meeting.

13. One other contention relating to this part of the case remains to be considered. It was contended that by the time the annual meeting was held on 26-2-1951 the place of Murugappa Chettiar as a director was no longer vacant and therefore the election of six directors was invalid. The argument of the appellants may thus be stated--the general meeting was convened for 18-2-1951. On that day it was adjourned to 26-2-1951.

Article 43 provides that if at any meeting at which an election is to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place and if at the adjourned meeting the places of the vacating directors are not filled up the vacating directors or such of them as have not had their places filled shall be deemed to have been re-elected at the adjourned meeting. The contention is that under this article the meeting should have been adjourned from 18-2-1951 to 25-2-1951 and if on that date there was no election the vacating directors must be deemed to have been re-elected; therefore on 25-2-1951 Murugappa Chettiar became re-elected

as director. We do not agree with this contention.

Article 43 will apply only when there is a meeting held and as none was held before 26-2-1951 it has no application. Moreover in the view we

have taken that there was no director who was in office on the date of the meeting there is no scope for applying Article 43.

14. It was also urged that Regn. 50 in Table A of Schedule I, Companies Act provides that the election of directors other than those who retire,

that is under Article 53, must be by a special resolution, there was none such in this case and that, therefore, the election is illegal. But under Article

33 of the Articles of the Company, which prevails over Regn. 50 no special resolution is required for election of directors. In the result we hold

that the election of defendants 2 to 7 as directors is valid and not open to any objection.

15. It is next contended that members who were entitled to vote at the meeting had been excluded from exercising their right and that, therefore,

the proceedings are illegal. In Appln. No. 139 of 1951 as part of the order adjourning the meeting originally fixed for 28-1-1951 to 18-2-1952

Krishnaswami Nayudu, J, gave the following directions ."

But I consider that if it is made clear that the register as on 23-11-1950 will be the register that will be taken into consideration for the purpose of

finding out the members who are entitled to vote or to be reckoned in a quorum, the apprehension on behalf of the respondent will disappear. To

this course the Company could have no objection."" (Ex. P-4).

It was in pursuance of this direction that the chairman declined to permit members who were not on the register of the company on 28-11-1950 to

vote at the meeting. The contention of the appellants is that this direction is opposed to Section 79(1)(e) of the Companies Act which provides

any share-holder whose name is entered in the register of share-holders of the company shall enjoy the same rights and be subject to the same

liabilities as all other share-holders of the same class.

Article 46 of the Articles of the Company runs as follows:

No member shall be entitled to vote nor be reckoned in a quorum when his name has not been in the register for a continuous period of two

months immediately preceding the date of the meeting.

The direction made in Ex. P.4 is obviously in accordance with this article. But Section 79(1) provides that the provision contained therein shall

have effect "notwithstanding any provision made in the articles of the company in this behalf" and the contention of the appellants that Article 46 is

illegal must be accepted.

It is contended on behalf of the respondents that the order in Appln. No. 139 of 1951 was made at the instance of the company and that the order

has become final and that, therefore, its validity cannot now be questioned. The appellants reply that the share-holders were not as such parties to

this application and that their rights could not be concluded by an order to which they were not parties. We are inclined to agree with this

contention. But the question is whether this contention is open to the plaintiffs. They were on the register of the company on 28-11-1950 and they

were allowed to exercise their right of voting. Therefore they are not persons adversely affected by the direction contained in Ex. P-4. Their

complaint is that two members Srinivasa Pillai and Narasimham whose names had been placed on the register after 28-11-1950 had sent their

proxies on 25-1-1951 and that those, proxies had been wrongly rejected. Assuming that Srinivasan Pillai and Narasimham had validly been

admitted as members--a point on which Balakrishna Iyer, J. had held against them--it is obvious that when their proxies were rejected they were

the persons who were wronged and that, therefore, they are the only persons who can make a complaint of it and not other shareholders.

In -- "Pulbrook v. Richmond Consolidated Mining Co.", (1878) 9 Ch D 610 (N) the plaintiff who had been elected as a director complained that

he had been excluded by the company from taking part in the management and sued for an injunction. The company contended that the action was

not maintainable except in the name of the company. Overruling this contention Jessel, M. R. held that when the wrong complained against is

individual to the share-holder he was the person who was entitled to maintain the action and observed:

But in a case of an individual wrong, another shareholder cannot on behalf of himself and others, not being the individuals to whom the wrong is

done, maintain an action for that wrong.

That is precisely what the plaintiffs seek to do in this action. They are not

themselves wronged and they seek to sue on behalf of themselves and others.

16. It may also be mentioned that even if the votes of Srinivasam Piilai and Narasimham are counted in favour of the plaintiffs' group and against

defendants 2 to 7 the result of the election would not be affected and on this ground also this objection must be overruled.

17. Another contention pressed on behalf of the appellants is that at the general meeting held on 26-2-1951 two persons Ramachandran, and

Narayanaswami who were not members were allowed to take part in the proceedings and record votes, on the strength of powers of attorney

which they had obtained from two members Mrs. Ananthalakshmi Ammal and Sri N, Sri Ram respectively and that the same was illegal and

vitiating the entire proceedings. It is well settled that the right of a member of company to vote by proxy is not a common law right and that it is

determined solely by its articles which constitute a contract between him and the company.

18. In -- "Harben v. Phillips", (1883) 23 Ch D 14 (O) where the nature of the right which a member possessed to vote by proxy was discussed

Cotton, L. J. observed:

But the whole of Mr. Benjamin's argument really depended on this, that there was a right independently of contract to vote by proxy. I cannot

accede to that.

Bowen, L. J. observed:

that there is no common law right on the part of a member of a corporation to vote by proxy. We know, of course, that in many cases a man may

do through another person what he may lawfully do himself.....But when persons agree to act together in the conduct of a business the way in

which that business is to be carried on must depend in each case on the contract, express or implied which exists between them as to the way of

carrying it on.

19. In -- "Maclaren v. Thompson", (1917) 2 Ch D 41 (P) Astbury, J. observed:

There is no inherent or equitable right in any share-holder to vote by proxy; such right, if it exists, must be found in the contract binding the share-

holders generally, that is, in the company's regulations or constitution and it

then exists only in the form and subject to the limitations therein

appearing." Vide Halsbury's Laws of England, Vol. 8 (2nd edn.) page 61, para. 108. The question then simply is what do the articles say on this

matter? Article 38 is as follows: "On a demand of pool every member present in person or by proxy or by attorney shall have one vote.

Under Section 79(2)(g) of the Companies Act "a proxy must be a member of the company", and Article 44 (65?) in Table A provides "No person

shall be appointed a proxy who is not a shareholder" and these provisions are applicable to the present case there being nothing in the articles of

the company inconsistent therewith. Therefore, there is no doubt that a proxy can validly be given only to a member.

But the respondents argue that Article 38 clearly recognises that a member can be present in person or by proxy or by attorney and that, therefore,

the attorneys form a class distinct from proxies and to them there is no limitation that they should be members, Mr. K. Rajah Ayyar contends on

behalf of the appellants that in law the status of a proxy is only that of an agent, that no distinction can be made between a proxy and an attorney

and that they are synonymous words. He refers to item 48 in Schedule I to the Stamp Act which deals with the powers of attorney not being a

proxy & item no. 52 which deals with proxy and argues that this is a recognition that proxies are only a form of power of attorney. He also relies

on the observations of Lindley, J. in -- "English Scottish & Australian Chartered Bank In re", (1893) 3 Ch 385 (Q) that a "proxy there means some

agent properly appointed" and the decision of Satyanarayana Rao and Chandra Reddi, JJ. in -- S. RM. S.T. Narayana Chettiar and Another Vs.

The Kaleeswarar Mills Ltd. and Others, where it was held that the relationship between a share-holder and a proxy is that of a principal and an

agent. That undoubtedly is so but the question is what do the words "By proxy or by attorney" in Article 38 mean? Clearly they cannot be held to

be synonymous because the words actually used are "By proxy or by attorney", and not "by proxy or attorney". The argument of the appellants

involves the rejection of the words "by attorney" as meaningless surplusage. But it is unnecessary to pursue this matter further because there is a

clear ground on which this contention of the appellants must fail. It appears from the voting list appended to the Commissioner's report that even

excluding the votes cast by the two non-members Narayanaswami & Ramchandran the defendants get 10120, votes as against 4078 obtained by the plaintiffs' group. The result of the election has not been affected by this irregularity and therefore, it cannot be set aside.

20. Objection is next taken to the inclusion of proxies which were deposited on 14 and 15-2-1951. These proxies were cast in favour of the defendants. The contention is that as the meeting was originally fixed for 28-1-1951 as per Ex. P.3 the proxies should have been deposited under Article 68 in table A at least 72 hours before the meeting and therefore, those deposited on the 14th and 15th should be rejected. Article 42 of the company's articles provides that the instrument appointing proxy shall be deposited at the registered office of the company not less than 72 hours in advance of the meeting or the adjourned meeting; else it is invalid.

21. It is argued that this article is opposed to regulation 66 which is obligatory and therefore void. Reliance was also placed on the decision in (1917) 2 Ch 41 affirmed in appeal in (1917) 2 Ch 261 (P) that an adjourned meeting was only a continuation of the original meeting and that proxies which could not be used at the date of the original meeting could not be used at the adjourned meeting. But the short answer to this contention is that though the date of the meeting was originally fixed for 28-1-1951 it was not actually held on that, date by reason of the order dated 16-1-1951. Ex. P-3; that there was no notice even given of that meeting and that the meeting which was held on 18-2-1951 can in no sense be said to be an adjourned meeting.

22. The contention that there had been no valid nomination of defendants 2 to 7 as directors because it was not made seven days before the meeting is again based on the assumption that there was a meeting on 28-1-1951 and that the meeting held on 18-2-1951 is the continuance thereof. There was no meeting on 28-1-1951 and therefore there can be no question of an adjourned meeting on 18-2-1951. It is conceded that the nominations are in time if the date of the meeting is 13-2-1951 and not 28-1-1951.

23. It is finally contended that Sanjeevi Naidu the Commissioner who was appointed to preside over the meeting which was fixed for 18-2-1951 had no authority to adjourn it to 26-2-1951 and that, therefore, the proceedings

of the meeting held on 26-2-1951 are void.

24. In Halsbury's Laws of England, Vol. V, page 359, para. 588 (2nd End.), the law is thus stated: "

Except where empowered by the regulations of the Company, the chairman cannot adjourn the meeting nor dissolve it while any of the business

for which it was called remains untransacted.

In this case Article 35 provides that the chairman may with the consent of the meeting adjourn it from time to time. It is not now disputed that Mr.

Sanjeevi Naidu obtained the consent of the meeting to adjourn it. It is suggested that the order appointing him does not confer upon him power to

adjourn the meeting. But the meeting is to be conducted in accordance with the Articles of Association and the chairman had the authority to

adjourn the meeting under Article 35. Moreover the plaintiffs themselves pressed for adjournment and it is not open to them to make a complaint

of it. In ---"Burt v The British Nation Life Assurance Association", (1859) 45 E R 62 (S), it was held that

a plaintiff who has a right to complain of an act done to a numerous society of which he is a member, is entitled to sue on behalf of himself and all

others similarly interested though no other may wish to sue; so although there are a hundred who wish and are entitled to sue, still, if they sue by a

plaintiff who is personally precluded from suing, the suit cannot proceed although other persons on whose behalf the suit was instituted might

maintain the action as plaintiff.

This principle was applied in this Court by Satyanarayana Rao and Panchapagesa Sastri JJ. in -- B.N. Viswanathan and Another Vs. Tiffin's Baryt

Asbestos and Paints Ltd. and Others, . The plaintiffs having moved for an adjournment of the meeting cannot be heard to object to it. They do not

even state that they have been prejudiced in any manner. This objection also must be overruled. In the result the appeal fails and is dismissed with

costs.