
(1977) 11 DEL CK 0007

In the Delhi High Court

Case No : C.A. No. 631 of 1977 in C.P. No. 32 of 1976

B.R. Kundra and Others

APPELLANT

Vs

Motion Pictures Association and Others (No. 2)

RESPONDENT

Date of Decision : 01-11-1977

Acts Referred:

Citation : (1978) 48 CompCas 564 : (1978) ILR Delhi 249(2)

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : K.K. Mehra, for the Appellant; Bk. Shiv Sharan Singh and B.N. Kirpal, for the Respondent

Judgement

Dalip K. Kapur, J.—This application has brought to light an unfortunate development regarding the management of the respondent-company, which has taken place during the pendency of the main petition, C. P. No. 32 of 1976, which itself is a petition under sections 397 and 398 of the Companies Act, 1956. The respondent-company is an association, registered under the Companies Act, whose members are motion pictures distributors, producers and exhibitors. The entire motion picture industry in this part of the country, viz., the exhibiting of films, the running of cinemas and the arrangements between producers, exhibitors and distributors is carried on under the auspices of this association. There are about a thousand members of the association, who elect a board of directors described as an executive committee consisting of 18 members, who, under the articles of the company, themselves elect office bearers such as president, vice-president, secretary, joint secretary, etc., from amongst themselves. This election is to be held at the first executive committee meeting after the annual general meeting.

2. At the hearing of this application, I have been referred to a number of articles dealing with the way in which the executive committee has to be elected and how the office-bearers have to be elected. An analysis of the rules shows that there are many defects in the same, but they cannot be dealt with at this stage.

The present application shows that the annual general meeting was held for the current year on 27th August, 1977, and the results were announced on 29th August, 1977. On the very next day, a meeting of the executive committee was held at 10.00 a.m. when some office-bearers were elected. Yet another meeting of the executive committee was held on 31st August, 1977, and a different set of office-bearers was elected in addition to the office bearers ; some sub-committees have also to be appointed for the purposes of the working of the association and it is alleged that the personnel of the two sets of sub-committees is also different. The case set out in the application is that because there are two warring groups among the executive committee members and there are two sets of office-bearers, there is a complete deadlock in the running of the association. As a matter of fact, there is also a court observer who is also attending both the sets of meetings ; he is Mr. A. L. Joshi, advocate. It is stated in the application that the meeting of the 30th August, 1977, is not a valid one for certain reasons and the second meeting is a valid one. For reasons I will just set out, I am not going to decide this aspect, because I am not the competent court for deciding disputes of this type. The up-shot of the allegations in the application is that the working of the association is suffering and a huge loss is being caused to the members because of the quarrels among the members of the executive committee. An order is sought for superseding the executive committee and a prayer is made that the court should appoint its own nominee to run the company so that the day-to-day functioning is not dislocated.

3. Replies have been filed to this application by the two sets of directors. One set is represented by Mr. Hari Shanker, advocate. In the reply of that group, it is claimed that the first meeting is invalid and illegal and the second meeting is a valid one. This reply is supported by the affidavit of Shri Jagariti Lal Bhasin who deposes to be the honorary general secretary of the respondent-company. The other reply filed on behalf of the respondent-association is supported by the affidavit of Shri Dinker Rai Desai, honorary general secretary of the respondent-association. In this affidavit, it is claimed that this group has the support of about eleven persons in the executive committee and the remaining members form a minority group. I find that although Shri Dinker Rai Desai is honorary general secretary as per affidavit, actually in the resolution attached to this affidavit, it seems that Shri Joginder Singh is also the honorary general secretary. There, Therefore, seem to be three honorary general secretaries of the company, namely, Shri Jagariti Lal Bhasin, Shri Dinker Rai Desai and Shri Joginder Singh. The rules only contemplate one honorary general secretary. In the reply, it is stated that the meeting of 30th August, 1977, is a valid meeting and the meeting of 31st August, 1977, is invalid. It is further stated that the petitioner has no locus standi to move the application and the application appears to have been moved by the minority group who are also the petitioners in the main case.

4. I have heard the counsel for the parties and I am at a loss to understand what the court should do in this matter. On the one hand, the main petition was

moved in 1976 and is concerned with the situation that existed at a time which was even before the annual general meeting of 1976. The first question for consideration is whether I should exercise any jurisdiction u/s 403 of the Companies Act, 1956, in relation to an event which has occurred during the pendency of the petition under Sections 397 and 398 of the Companies Act, 1956, but which situation has not existed at all at the time the petition was filed. I suggested to learned counsel for the parties that as this was a new development, this could not be adjudicated upon during these proceedings. On this objection, the learned counsel stated that it is not possible to file another petition under Sections 397 and 398 of the Companies Act, 1956, and, as the question of the way in which this company is to be managed is sub judice, I should either take some steps to prevent a complete deadlock in the running of the company or leave the company to its own fate. Reference has also been made to my order passed in C.A. No. 334/76, on 30th August, 1976, when an injunction was claimed to restrain the holding of the annual general meeting for 1976. At that time, I had observed that though the meeting was being allowed to be held, the court reserved the right to supersede the board and also reserved the right to appoint two additional members as nominees. I think, on a fair view of this matter, that the court has power under Sections 402 and 403 of the Companies Act, 1956, to enable the regulation of the management of the company during the pendency of a petition under Sections 397 and 398 of the Act. Indeed, it is the duty of the court to protect the interest of the company during the hearing of the petition. It would be a calamity if the working of the company was to collapse merely because the court refused to resolve a matter like the present. Therefore, the circumstances compel me to take some action on the present application.

5. It has been brought to my notice that a suit has been instituted by some of the members regarding the election of the office bearers and the same is actually before a court and is likely to be settled very shortly. It may be that in that suit the first meeting of the executive committee is held valid or it may be that the meeting of 31st August, 1977, is held to be the first meeting or it may be that both meetings are held to be invalid. If any of these results occur the identity of the office bearers will be fully established. If, on the other hand, it is held that neither meeting is valid, then, a fresh election of office bearers can be ordered by this court. The problem now is : What should be done before the decision of the civil court is reached ? What should this court do in the matter of regulation of the affairs of the company ?

6. It has been urged by Bk. Shiv Charan Singh who appears for the association on behalf of one set of office bearers that the persons elected as office bearers and sub-committee members on 30th August, 1977, were elected by the majority of the executive committee members and hence this is a proper election. It is also said that the court observer, Mr. Joshi, was also present. It is, Therefore, stated that this is a perfectly valid election and no one should be disturbed. On the other hand, it is urged on behalf of the other group

represented by Mr. Hari Shanker that as the first election was invalid, the second election is valid and, Therefore, even though the minority group elected the office bearers, that is the proper board. Some attempt was made by me to get a compromise formula from the various parties, but this is not possible. I am, Therefore, compelled to pass some order to prevent a multiplicity of office bearers and a multiplicity of subcommittees. The question cannot be left in the melting pot, and particularly, I notice that an injunction has been passed by the civil court freezing the operation of the respondent-company's bank account. This is likely to have disastrous results. At the same time, there are contracts between the exhibitors, producers and distributors which involve large sums of money and which are normally dealt with by this association by way of arbitration and so on. Also, new films and even old films have to be registered with the association and membership of the association is a must before any film can be exhibited. In fact, one of the features of the association is that without being a member of the same no person can enter into a contract for exhibiting or distributing films. In fact, the respondent-association can be described as a trade union of motion picture producers, exhibitors and distributors with whom no outsider can deal. This being so, some interim arrangement has to be made to ensure the working of the association.

7. I now turn to determine what order should be passed to bring about the working of the company in an orderly fashion without disturbing, as far as possible, the results of the elections already held.

8. The first step that I have contemplated is the complete removal of the board and the appointment of an administrative board to run the company. As 18 persons have been validly appointed to the executive committee, I see no reason why these persons should be superseded. The real quarrel between them is the identity of the office bearers and not their election as executive committee members. Therefore, I have decided that all the 18 elected members should be permitted to continue as executive committee members and I refuse the prayer for supersession of the board. At the same time, the association has a paid secretary who is fully aware of the functions of the association and has considerable experience. As he is supposed to perform numerous functions under the articles, he can also be permitted to continue.

9. Under the articles, it is provided that till office bearers have been elected, the previous office bearers shall continue to function till their successors are appointed. It has been urged by Mr. Kirpal for the respondent-company that under this rule, the previous office holders may be allowed to function. This again depends on whether there has been a valid election of new office holders or not. On the one hand, if there has been a valid election, then the previous office bearers cannot function and if there has been no fresh elections, then the proper course would be to order elections to be held. In the circumstances, I would come to the conclusion that the association must function without office bearers till one or the other election has been upheld by the civil court. For the

purpose of its meetings, the executive committee may elect a chairman for the meeting. As far as calling of meetings is concerned, they can be called by the secretary upon the request of any three members as provided by article 38. This means that all the members of the executive committee will have to act together in future without there being a president, vice president, honorary secretary or joint secretary. At the next executive committee meeting, one person out of the whole committee will be appointed as interim treasurer because a treasurer may be necessary for the purpose of signing cheques and for other purposes.

10. In article 45, it is provided that committees, sub-committees or ad hoc committees may be appointed for particular purposes. I have seen the minutes of some previous meetings and find that these sub-committees consist of persons other than executive committee members. In order to facilitate formation of these sub-committees, I think that at the next executive committee meeting, new sub-committees should be appointed in respect of every subject that is required by the bye-laws. As there are two groups, or apparently two groups in the executive committee, I think a direction to facilitate the appointment of a sub-committee should be indicated here and now. Each member of the executive committee should nominate one person to every sub-committee. The result would be that every sub-committee would consist of the same number of members as there are executive committee members. Each one of the present executive committee members would nominate one other person, either himself or some other member of the association, to be a member of a sub-committee. All those subcommittees would then carry on the work of the association that might be assigned to them. In case it is found that this would increase the size of the sub-committee to a very large extent, a further direction may be sought from this court to have specific directions in the case of an individual subcommittee.

11. I find that in addition to the 18 elected members of the executive committee, there have to be two additional members as indicated by the order passed by myself in 1976 and as further specified in the order passed by Anand J. directing two members to be elected from among the minority. I am told that only one member has been elected and another member has still to be appointed. A further direction regarding this member will be given at a later stage. These two members will also have similar powers of nominating members to the various sub-committees. This question will, however, be subject to future directions.

12. The result of this order which is wholly interim in nature would be that the executive committee would function without office bearers for the time being. As most of the executive powers under the articles are to be exercised by the paid secretary, I do not see much difficulty in enabling this association to run without office bearers for the time being. In case there is any difficulty in carrying into effect any rule, a further direction may be sought from the court. The application is decided accordingly, but noting that the orders are interim and on further application by any party may be altered or changed as may be in the interest of

the association. No order as to costs.