

(1936) 03 AHC CK 0022
In the Allahabad High Court

British India Corporation Ltd. and Others	APPELLANT
Vs	
Robert Menzies	RESPONDENT

Date of Decision : 16-03-1936

Acts Referred:

Companies Clauses Consolidation Act, 1845 — Section 10

Citation : AIR 1936 All 568

Final Decision : Dismissed

Judgement

1. The broad question that arises for consideration in the present application in revision is whether a company Judge has jurisdiction to enforce compliance with the provisions of the Companies Act, though such power is not expressly conferred on the Judge by the provisions-of the Act. In particular the question for decision is whether a company Judge has jurisdiction to order a company tea deliver a copy of the register of the members of the company to a share-holder of the company. There is very little controversy about the facts. The opposite party Robert Menzies is a share-holder of the British India Corporation Ltd. He joined the Corporation in 1920 as a Secretary of the Corporation and in or about March 1930 he was, in addition to his duties as Secretary, appointed to act as a Managing Director also. Mr. Menzies held the position of Secretary and Managing Director of the Corporation till April 1935 when he went on leave to England. During his absence on leave from India the Corporation informed him that his services were no longer required as certain retrenchments were being effected on grounds of economy. Mr. Menzies returned to India in the autumn of 1935 and he then, on 14th November, made an application to the Corporation for a copy of register of the members. Some correspondence followed between Mr. Menzies and the officers of the Corporation as regards the amount of fees to be paid by Mr. Menzies on account of the copy and eventually a sum of Rs. 500 was placed by Mr. Menzies at the disposal of the Corporation so far back as on 27th November 1935.

2. The Corporation, however, did not furnish the copy to Mr. Menzies and put him off by pretexts which can only be characterised as scandalous if not dishonest.

We were informed today that the number of share-holders of the Corporation was 5600 and ordinarily it would have taken a couple of days to prepare a copy of the register of the members. No such copy was, however, furnished to Mr. Menzies till 13th January 1936, and during this interval the repeated reminders from Mr. Menzies fell on deaf ears. The only excuse that was held out by the Corporation for not complying with the mandatory provisions of Section 36 of the Act was that the staff at the disposal of the Corporation was not enough to cope with the current work and also to prepare the copy within a reasonable time. It was said in one of the letters sent by the Corporation that there was only one typist and he was asked to devote his spare time to the preparation of the copy. There was, however, nothing to indicate whether the typist had any spare time at his disposal and whether even the names of half a dozen shareholders were copied from the register of the members.

3. After waiting for considerable time Mr. Menzies did what any one in his position would have done. He sought the protection of the Company Court and filed an application before the District Judge of Cawnpore praying that the Corporation be ordered to supply him a copy of the names and addresses of the shareholders-of the Corporation immediately and also "to deal with them according to law." It may here be mentioned that the petition was filed in the Court of the District Judge as in accordance with the proviso-to Section 3 of the Act the Local Government has, by notification in the Local Official Gazette, empowered the District Judge" of Cawnpore to exercise jurisdiction under the Companies Act. The registered office of the Corporation is within the jurisdiction of the District Court of Cawnpore and, therefore, the petition was filed in the Court of the District Judge on 22nd January 1936. It would be noted that more than two months had by this date elapsed since the request was made by Mr. Menzies for the first time for a copy of register of the members. The learned District Judge fixed 31st of January for the disposal of the petition and notice of the date was given to the opposite parties, viz. the British India Corporation Ltd., through the Managing Director and two gentlemen named Alexander Leslie Carnegie and G.B. Lewis, who are at present the Managing Directors of the Corporation. Notice of the petition was also given to one F. G. Brightman who, we are informed, is discharging the duties of the Secretary of the Corporation.

4. The petition was brief. It recited the fact of a request having been made by Mr. Menzies for a copy of the register of the members being supplied to him and it mentioned the delaying tactics adopted by the opposite parties in complying with what was undoubtedly a reasonable request. In pursuance of their avowed-policy to deny to Mr. Menzies what was undoubtedly his right, viz. to obtain a. copy of the register of the members, the opposite parties succeeded on 31st January in getting an adjournment from the District Judge on the ground that they were not ready with their case. The learned Judge then fixed 11th February 1936 for the hearing of the application and on that date the opposite parties filed a reply to the petition of Mr. Menzies. We are not concerned with that portion of the reply which deals with the question whether Mr. Menzies has a right to claim damages

from the Corporation on account of his alleged wrongful dismissal. So far as the request for a copy being furnished to Mr. Menzies is concerned it was pointed out in the reply that the opposite parties had promised to supply the copy to the petitioner as soon as it was ready, and they had issued orders for the copy to be prepared without delay. This assurance that was held out to the Court was, however, subject to the condition that the Corporation would expedite the preparation of the copy "without prejudice to the office work of the Corporation." It was mentioned in the reply that there was only one available typist in the service of the Corporation and that he was "fully occupied with the office work of the Corporation." The assurance was repeated that the Corporation was doing its best to have the list completed without interfering with the normal work of the Corporation and that there was no intention to delay.

5. We need hardly observe that this was a tissue of lies and we do not desire to conceal our view that we expected something better from the men of the position of Messrs. Carnegie and Lewis. They ought to have realised that there is some such thing as business morality and that the least that could be expected from men of their position was that they would rise to the highest standard of that morality. They are men of education and presumably men with considerable experience in business matters and they ought to have realised that it should not have taken more than two or three days to supply to Mr. Menzies the copy that he asked for. They, however, chose to have the question of the jurisdiction of the District Judge to enforce compliance with the provisions of Section 36 debated and discussed in his Court. The learned Judge held that he had jurisdiction to direct the opposite parties to hand over the copy to the petitioner and accordingly directed the opposite parties to supply the copy to the petitioner within one week from the date of his order, viz. from 13th February 1936. By this time three months had elapsed from the day on which Mr. Menzies had requested for a copy being given to him. The copy was not yet ready. At any rate the Court's order was not complied with and copy was not handed over to Mr. Menzies. The opposite parties then came in revision to this Court and successfully applied for a stay order with the result that the operation of the order of the District Judge was stayed till the decision of the application in revision filed by the opposite parties.

6. The application has been argued at some length today. At the very outset we enquired from the learned Counsel for the applicant whether the copy was now ready and could be handed over to Mr. Menzies. The answer was in the negative. It is clear that if the reasons communicated to Mr. Menzies from time to time for the delay in the preparation of the copy were genuine, one would have expected the copy to be ready by this time. The fact that the opposite parties were not prepared to hand over the copy even now is proof positive of the fact that they intended from the very outset not to let Mr. Menzies have a copy of the register of the members. The question, however, remains and has to be decided whether the order of the District Judge was, as contended by learned Counsel for the applicants, without jurisdiction.

7. It is provided by Section 36(1) of the Act that the register of members of a Company shall be kept at the registered office of the company and shall, except when closed under the provisions of the Act, be open to inspection by any member during business hours, subject to certain restrictions. Clause (2) of Section 36, provides that any of the members of the company or other person may require a copy of the register or any part thereof to be handed over to him on payment of a certain amount on account of copying charges. The penalty for non-compliance with Clauses 1 and 2 of Section 36 is provided for by Clause 3 of the section and as the argument of the learned Counsel for the applicants has turned on the wording of that clause it is necessary to quote the same. It runs as follows:

If any inspection or the copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding Rs. 20 and to a further fine not exceeding Rs. 20 for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty and Court may by order compel an immediate inspection of the register.

8. The argument is that as the only penalty laid down by the Act for refusing to allow inspection or to hand over a copy of the register is the imposition of fine provided for by Section 36(3) and as the Court is not vested with the authority to direct the company to furnish a copy of the register to a person applying for the same, the District Judge had no jurisdiction to pass the order that he did. In this connection particular emphasis is laid on the concluding portion of Clause 3 of Section 36, which provides that "the Court may by order compel an immediate inspection of the register." It is pointed out that though Clause 3 lays down the penalty both for the failure to allow inspection or to furnish a copy of the register and goes on to vest the Court with the jurisdiction to order inspection of the register it is silent as to the powers of the Court to order a copy of the register to be given. It is said that in the absence of a specific provision authorising the Court to order a copy to be given the Court has no jurisdiction to direct a company to supply a copy of the register of the members even though it may have failed to comply with the mandatory provisions of Section 36(1) of the Act. We are wholly unable to agree with this contention. It is distinctly provided by Section 3 that the Courts specified in that section have jurisdiction under the Companies Act. A reference to the Act shows that there are various statutory obligations cast upon companies by the Act and that with respect to most of those obligations penalties have been provided for by the Act. There is however in many cases no specific provision in the Act as regards the authority of the Court to enforce compliance with the provisions that define and regulate these obligations. Nevertheless it seems to us that the Courts referred to in Section 3 of the Act have inherent jurisdiction to compel due observance of the mandatory provisions of the Act. As has been pointed out by the learned District Judge it is a fundamental principle of legal administration that where the law requires something to be done there must be in existence a Court that can directly order

it to be done.

9. It is well understood in all systems of civilized jurisprudence that where there is a right there is a remedy. It is conceded on behalf of the applicant that Mr. Menzies had the right to demand and to be furnished with a copy of the register of the members of the Corporation. But if the argument of the applicant is pressed to its logical consequences it follows that there was no remedy available to Mr. Menzies for the enforcement of this right. It is needless to say that we cannot credit the legislature with an omission of this description. Section 31 of the Act requires every company to maintain a register of members and Section 32 directs an annual list of members to be prepared by companies. Both these sections lay down the penalty for non-compliance with the provisions of those sections, but there is no provision in those sections expressly authorizing the Court to direct the preparation of the register of members and annual list referred to therein. According to the argument of the learned Counsel for the applicant the Court has no jurisdiction to enforce compliance with the provisions of those sections howmuchsoever a company may be in default. To accept this argument would be to render nugatory the provisions of the Act and to deny to the Court, on which the legislature has expressly conferred jurisdiction under the Act, the power of enforcing compliance with the provisions of the Act. This could never have been the intention of the legislature and we therefore hold that the Courts referred to in Section 3 of the Act, have jurisdiction to pass orders for the enforcement of the statutory obligations of a company and for giving redress to a person aggrieved by an illegal omission on the part of a company. Mr. Menzies had undoubtedly the right to get the copy applied for. The Corporation was determined from the very outset to deny him that right. Mr. Menzies could have had no other remedy except to seek the protection of the Court of the District Judge, which Court has the sole jurisdiction in company matters in Cawnpore. The District Judge, therefore, had inherent jurisdiction to direct the copy to be given to Mr. Menzies and his order is not open to any legal objection.

10. Before leaving this part of the case we may observe that the provision in Clause (3) of Section 36 authorising the Court to compel immediate inspection in no way leads to the conclusion that the jurisdiction of the Court to order a copy of the register of members to be given is either expressly or impliedly barred. A reference to Clause (1) of Section 36 shows that the right to inspect the register is subject to certain limitations, e.g., the inspection can be had only during business hours and subject to such reasonable restrictions as the company in a general meeting may impose. The provision as regards immediate inspection being ordered by the Court was presumably inserted in the Act with a view to provide for those contingencies in which the Court, for sufficient reasons, is satisfied that the purpose of the inspection will be frustrated unless immediate inspection is ordered. The view that we take finds support from the decision in *Davies v. Gas Light & Coke Co.* (1909) 1 Ch D 248, and *Davies v. Gas Light & Coke Co.* (1909) 1 Ch D 708. The decision at p. 708 is the decision of the Court of appeal affirming the decision of Warrington, J., which is reported at p. 248.

11. It was held in that case that the right given to a shareholder by Section 10, Companies Clauses Consolidation Act, 1845, to require the company to supply him with a copy of the shareholders' address book is a private right conferred on him by statute by reason of his being a member of the company and not as being a member of the public. It was further held in that case that in the event of the company refusing to supply to a shareholder a copy of the register of the members the proper remedy open to the shareholder is either an injunction to restrain the company from continuing to refuse to supply him or an action of mandamus or for a mandatory injunction directing the company to supply him the required copy. In the case before us it is admitted that Mr. Menzies is a shareholder and a director, and, as such, is a member of the Corporation. He, therefore, had the statutory right to demand and to be supplied with a copy of the register of the members. This right of Mr. Menzies arose out of his proprietary right as a shareholder of the Corporation. He was, therefore, entitled to the protection of that right. This right was infringed by the Corporation refusing to supply him a copy within a reasonable time, and, therefore, he was entitled to a mandatory injunction directing the Corporation to supply him with the required copy. But it is contended on behalf of the Corporation that as, in accordance with the provisions of the Specific Relief Act, a mandatory injunction can only be prayed for in a suit and granted by a decree, the District Judge of Cawnpore had no jurisdiction in a summary proceeding of the nature arising out of the petition filed by Mr. Menzies to grant the mandatory injunction prayed for by him.

12. In our judgment there is no force in this contention. It may be conceded that ordinarily mandatory and perpetual in-junctions can be granted only on a regular suit being filed, but injunctions to ensure compliance with the mandatory provision(c) of the Companies Act can be granted only by the Court having jurisdiction under that Act. It has already been observed that the District Judge of Cawnpore has] jurisdiction under that Act. He was therefore, competent to direct the Corporation by a mandatory injunction to comply with the provisions of Section 36. A regular suit by Mr. Menzies for an injunction in a Court other than the Court of the District Judge could not have been entertained because of the fact that that Court could have had no jurisdiction under the Companies Act. This Court has made rules under the Companies Act both for this Court and the Courts subordinate thereto and it is laid down by Clause (2) of those rules that "where any District Court has been empowered u/s 3...all petitions shall be presented, applications made to, and proceedings taken under the direction of the Judge for the time being of the District Court within whose jurisdiction the registered office of the company may be situated." "We take this rule to indicate that ordinarily proceedings for the enforcement of the provisions of the Companies Act are to be initiated by petition presented to the Court having jurisdiction under the Act.

13. On such a petition being filed the jurisdiction of the Court to give effect to the provisions of the Act comes into play and, as pointed out in the English

decision referred to above, one of the appropriate methods for giving redress to a party aggrieved by the omission of a company to comply with the provisions of the Act is to issue a mandatory injunction. The District Judge of Cawnpore had, therefore, on a petition being filed in his Court, jurisdiction to order the Corporation to supply the copy to Mr. Menzies. For the reasons given above we hold that the learned District Judge had jurisdiction to pass the order sought to be revised. Indeed we consider that the only possible order under the circumstances was the order passed by the District Judge. We accordingly dismiss this application with costs both here and below. The stay order is discharged.