

(1991) 08 RAJ CK 0005
In the Rajasthan High Court
Case No : Company Petition No. 2 of 1990

Chandra Kanta Nanawati and Others

APPELLANT

Vs

I.S. Kavadia and Others

RESPONDENT

Date of Decision : 26-08-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
COMPANIES ACT, 1956 — Section 209, 283, 299, 397, 398

Citation : (1992) 1 WLC 396 : (1991) WLN 394

Hon'ble Judges : Milap Chandra Jain, J

Bench : Single Bench

Judgement

Milap Chandra Jain, J.—The above-noted company petition was filed by 29 petitioners. On the application of P.S. Nanawati and N.S. Chhajer, they were impleaded as Petitioners No. 30 and 31 in it vide order dated May 1,1991. Application under consideration has been moved by them for inspection of the account books and other records of the respondent Company M/s Hindustan Processors Ltd Bhilwara (hereinafter to be called "the Respondent Company") with these allegations.

2. They have been illegally thrown out of management of the Respondent Company by passing illegal resolution on November 22, 1988. Their physical access to the office, factory premises, books of accounts statutory record and other records have been scaled by the respondents. They have formally been removed from the Board of Directors of the Company on December 14, 1988 on wholly flimsy and untenable grounds, namely, they had violated the provisions of Section 299 of the Companies Act (hereinafter to be called "the Act") and had, therefore, automatically ceased to be the Directors of the Company as provided in Section 283 of the Act. Even the notices of the Annual General Meetings of the Company have not been sent to them. They arc not being supplied with copies of the balance sheets. They have been deliberately kept in complete dark by the respondents about the day to day affairs of the Company by the sheer power of their might and they have been successful in illegally keeping them out of the

management of the Respondent Company. They being the Directors of the Company have a statutory right u/s 209 of the Act to have access to all books of accounts and other statutory and relevant records of the Respondent Company. It is also necessary to have inspection of the books of accounts and record of the Respondent Company to support the Company petition.

3. The respondents No. 3, 4 and 11 have filed their joint reply to the said application. The respondent No. 2 has also filed a separate reply. Two preliminary objections have been taken by the respondent No. 2 against the inspection application. Firstly, the applications have ceased to be the Directors of the Company, they are now mere share holders and share holders are not entitled for the inspection of the record and account books of the Company. Secondly, the applications have earlier filed Company Petition No. 4 of 1989 which was dismissed by this Court by its order dated September 28, 1989 (reported in 1990 (69) Company Cases 769), an appeal has been filed against this order, it is pending and no such application for inspection was moved either in the earlier Company Petition or has been moved in the appeal.

4. In both the replies, it has averred as follows. The application themselves ceased to be the Directors of the Company u/s 283 of the Act on account of the violation of the provisions of Section 299(3) of the Act on their part as such they are not entitled to have any access to or to inspect the account books and record of the Respondent Company & unless this dispute is decided in their favour they cannot claim inspection. The notices of the Annual General Meeting are duly sent to them. The Annual accounts & balance sheet could not be prepared as the account books of the period prior to year 1988 are still in possession of the applicants, they are not giving them and a complaint has been filed against them in the court of the Chief Judicial Magistrate (Economic Offences), Rajasthan, Jaipur. The fact regarding vacation of office by the applicants was duly noted at the meeting of the Board dated December 14, 1988, notices to the above effect were also got published in various newspapers and intimation was sent to the applicants and also to the Registrar of the Companies, Rajasthan, Jaipur. The Share holders have no right to have access to or to inspect the account books and statutory record of the Company.

5. In support of his application, the learned Counsel for the applicants contended thus : The petitioners have 55% of share holding and have invested Rs. 22 lacs in the Respondent Company. The very fact that the respondents have opposed the inspection application confirms petitioners' case of mis-management and operation on their part. Inspection would greatly help the applicants to support their company petition by way of showing additional facts before the Court. Admittedly, the applicants P.S. Nanawati and N.S. Chhajer were Managing Director and Executive Director respectively of the Respondent Company till November 23, 1988. The allegation of the respondents that the applicants have automatically ceased to be the Director u/s 283(1)(i) read with Section 299(3) of the Act has categorically been denied and disputed by them, they continue to be

the Directors (ill it is decided by this Court in this case and as such they are entitled for the inspection of the account books and record of the Respondent Company u/s 209(4) of the Act. It is clear from the provisions of Rule 6 Companies (Court) Rules, 1959 (hereinafter to be called the Rules") that the provisions of the CPC apply to the Company petition filed under Sections 397 and 398 of the Act and there is nothing in the Act or the Rules in derogation of the provisions of the Code of Civil Procedure. Rule 9 of the Rules specifically protects the inherent power of the Court. The applicants being parties in the company petition are entitled to invoke the provisions of Order 11, CPC and also inherent power of the Court even assuming for the sake of arguments and not admitting that they have ceased to be the Directors of the Respondent company. He relied upon *Rajdhani Roller Flour Mills (P) Ltd. v. Mangilal Bagri and Ors.* 1991 D L T 650 (DB) : 1991 70 Comp Cas 788.

6. The learned Counsel for the respondents seriously opposed the inspection application. During their arguments, they reiterated the averments made in the replies to the application under consideration. They contended that u/s 209(4) of the Act only directors are entitled for the inspection of the Section 209(4) of the Act only directors and entitled for the inspection of the account books and record of their Company, there is specific omission of the word "share holder" in this provision and as such share holders are not entitled for the inspection. They further contended that the applicants have automatically ceased to be the Directors of the Respondent company u/s 299(3) read with Section 283(i) of the Act and as such they are not entitled for inspection. They relied upon *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, , *Maharani Lalita Rajya Lakshmi M.P. Vs. Indian Motor Co., (Hazariabagh) Ltd. and Others*, and *Maharaj Kumar Mahendra Singh v. Lake Palace Hotels and Motels* 1985 (58) Company Cases 805. They lastly contended that the conduct of the applicants disentitle them from having the desired inspection as they have not as yet handed over the account books and other documents and papers of the Respondent Company relating to the period prior to November 22, 1988.

7. There is great force in the contentions of the learned Counsel for the applicants and the application for the inspection deserves to be allowed. It is stated in the additional pleas of the reply of the Respondent-Company as follows:

It is respectfully submitted that the petitioner ceased to be the Director of the Company and could not, therefore, continue to be the Mg. Director of the Company. The issue about his disqualification as Director and his cessation as Mg. Director of the Company is the subject matter of decision in the main petition and till that issue about his cessation as Director and Mg. Director of the Company is not decided by the Hon'ble Court, the applicant cannot claim access or inspection of the record by claiming himself to be the Mg. director of the Company. This issue is first to be decided, before this application can be allowed in his favour.

Admittedly, the applicants P.S. Nanawati and N.S. Chhajjer were Directors of the

Respondent Company. It is the case of the respondents that they automatically ceased to be the Directors u/s 283(1)(i) on account of disqualification incurred by them u/s 299(3) of the Act. The applications have categorically denied it. There is no material on record in support of the version of the respondents that the applicant P.S. Nanawati is the Proprietor of M/s Nanawati Engineering Co., Bhilwara and the applicant N.S. Chhajer is the partner of M/s Sri Ram Engineering, Bhilwara with whom purchases were being made for the Respondent company and they did not disclose their interest with the said firms in any meeting of the Board of the Respondent Company & thus incurred disability u/s 283(1)(i) read with Section 299(3) of the Act. The fact that they were/are proprietor/partner of the said firm is not even mentioned in the resolution of the Board dated December 14, 1988, Annexure R 11/4. It has also not been mentioned in it as to how they were/are interested in the said firms. This objection has not been taken by the Respondent No. 2 in its reply (running in 106 pages) to the company petition. In the Company Petition very serious allegations have been made against the respondents. Only two of them may be extracted here:

...on the contrary respondent No. 1 by using his IAS position asked the local administration comprising of the Collector and the Supdt. of police to forcibly dispossessed the then management and took physical possession of the factory by muscle power and it was in that process that the respondent no 8 himself came and sent a staff on the site who forcibly broke open the locks and made the respondent no 3 and 4 to get into the factory and the same was confirmed by the Collectors and the SP to the respondent No. 1 that the possession of the factory has been got taken over by the respondent No. 3 & 4.

...But in the case in hand Shri I.S. Kavadia's action go to show the other side of the coin. The story does not end here. The Collector and Superintendent of Police, i.e IAS and IPS were also get involved in putting the stopges of Shri Kavadia by breaking open locks on the factory putting Mr. K.G. Toshniwal & Mr. J.C. Sodhani at the help (sic "hdlm") of affairs in Hindustan Processors Limited and misbehaved with the Managing Director's guests including his wife visiting the factory. They provided security and even went to the process House to see Shri Kavadia's design accomplished and Shri P.S. Nanawati overthrown. Not only this the bank accounts which the Managing Director had freezed were freshly allowed to be opened in the same and operated by Shri K.G. Toshniwal and Shri J.C. Sodhani. So also the Central Excise Authorities are allowing the removal of goods even though the persons doing so are all unauthorised. Despite having been informed on behalf of the Managing Director through their advocate not to operate the bank accounts so also not to allow the removal of the goods at the instance and behest of the respondent No. 3 & 4.

For the disposal of this application for inspection it would be sufficient to say that under the facts and circumstances of the case it cannot be prima facie said that the applications have ceased to be the Directors of the Respondent company and

as such they are not entitled u/s 209(4) of the Act for inspection of the books of accounts, other books and papers of the Respondent Company.

8. There is yet another aspect of the matter. Admittedly, the applicants are parties in the Company petition as petitioner No. 30 and 31. Rules 6 and 9 of the Rules run as under:

6. Practice and Procedure of the Court and provisions of the Code to apply. - Save as provided by the Act or by these rules the practice and procedure of the Court and the provisions of the Code so far as applicable, shall apply to all proceedings under the Act and these rules. The Registrar may decline to accept any document which is presented otherwise than in accordance with these rules or the practice and procedure of the Court.

9. Inherent powers of the Court-Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Court to give such director or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

There is nothing either in the Act or in the Rules prohibiting the inspection of record of a party by his opponent. The omission of word "share-holder" in Section 209(4) of the Act does not prohibit a party in a pending case to inspect the records and documents of a company even if he is not a Director. Under the facts and circumstances of the case, it is a fit case in which inherent power of the Court should be invoked for allowing the applicants (petitioners No. 30 and 31) to inspect the account books and record of the respondent-company M/s Hindustan Processors Ltd., Bhilwara. In *Rajdhani Roller Flour Mills Pvt. Ltd. Vs. Mangilal Bagri and Others*, it has been observed that with regard to the production of documents, inspection of documents and supply of copies, the matter is to be considered in the light of the provision contained in the CPC and the power can be exercised by the Court even u/s 151, CPC. It has further been observed in para 6 as follows:

Counsel for the appellant, in support of his contention, placed reliance on some case law and particularly the decision of Calcutta High Court in *Maharani Lalita Rajya Lakshmi M.P. Vs. Indian Motor Co., (Hazaribagh) Ltd. and Others*. The judgment refers to the provisions regarding right of inspection. Section 209(iv) of the Companies Act permits inspection by the directors of the books of accounts. On the basis of Section 209 it cannot be argued that in order to prove the allegation made under Sections 397 and 398, shareholders have got no right of inspection made u/s 397 and 398, shareholders have got no right of inspection of the books of account and other relevant papers of the company. It is true that detailed provisions have been made with regard to inspection of documents by shareholders and directors but on the basis of such provisions it cannot be argued that at the time of trial under Sections 397, 398 the right of the shareholders is in any way restricted. The Calcutta case, in our opinion, would not apply in the given situation and we express our disagreement with the view

that the right of inspection is limited to the Board of Director u/s 209 and the right is not available to the shareholders for inspection of the books of account of the Company in the course of proceedings u/s 397 and 398 of the Act, it may be mentioned that there are allegations and counter allegations in the petition regarding misuse of the funds of the company in arbitrary manner. It is only with the help of books of accounts that the matter can be investigated and the parties should in such a case be at liberty to look into the books of accounts and substantiate their case.

It has not been held in *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, *Maharani Lalita Rajya Lakshmi M.P. Vs. Indian Motor Co., (Hazaribagh) Ltd. and Others*, and *Maharaj Kumar Mahendra Singh v. Lake Palace Hotels* 1985 58 Comp cas 805, relied upon by the learned Counsel for the respondents, that a share holder as a petitioner in a petition under Sections 397 and 398 read with Section 402 of the Act cannot apply for the inspection to the account books and record as the respondent company and the Court has no jurisdiction to allow such an application.

9. The second preliminary objection has also no force. It is clear from the order dated September 28, 1989 (reported in 1990 69 Comp Cas 769 dismissing the earlier Company petition that it was not dismissed on merit. Failure to move such an inspection application in the earlier company petition or in the special appeal filed against the said order dated September 28, 1989 cannot go to deprive the applicants from inspecting the account books and other record of the Respondent Company if they are otherwise entitled under the Act and the Rules. They do not also require that inspection can be done only once.

10. Consequently, the application of the petitioner No. 30 P.S. Nanawati and No. 31 N.S. Chhajer for the inspection fetch account books and other records and papers of the Respondent-company is allowed. The respondents will allow the applicants P.S. Nanawati and N.S. Chhajer, jointly or severally to inspect the books of accounts and files, documents and papers of the Respondent company M/s Hindustan Processors Ltd., Bhilwara during the office hours & take notes therefrom, in presence of a responsible officer of the respondent company.

11. Before commencement of the inspection, the Respondent-company will page all account-books, files and papers, if not already paged, and prepare their list mentioning the number of pages and the period in respect of which they relate. A copy of this list will be given to the applicants under the receipt. Inspection will commence from 10 A.M. of September 16, 1991.