

(1957) 04 BOM CK 0014

In the Bombay High Court

Case No : Civil Application No's. 353 and 354 of 1957

Chintaman Jagannath Kathikar

APPELLANT

Vs

Gandhi Sewa Samaj Ltd. and Another

RESPONDENT

Date of Decision : 10-04-1957

Acts Referred:

Companies Act, 1913 — Section 3

Companies Act, 1956 — Section 10, 10(1), 10(2), 155, 645

General Clauses Act, 1897 — Section 24

Citation : AIR 1958 Bom 209 : (1958) 60 BOMLR 67 : (1958) 28 CompCas 99

Hon'ble Judges : Mudholkar, J

Bench : Single Bench

Advocate : A.S. Bobde, for the Appellant; S.W. Dhabe, for the Respondent

Judgement

1. This order will also govern Civil Application No. 354 of 1957. Both these applications have been made u/s 155 of the Indian Companies Act (No. 1 of 1956) and the relief claimed in these applications is for the issue of a direction to the non-applicants to produce certain records and registers in the Court and require them to effect a transfer of certain shares in the Register of the Members of the Company.

2. A preliminary objection is raised by Shri Dhabe, on behalf of the non-applicants to the effect that this Court has no jurisdiction to entertain these applications.

3. Section 10 of the Indian Companies Act, 1956, deals with the jurisdiction of Courts in the matter of applications made under that Act. Under Clause (a) of Sub-section (1) of Section 10, the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate shall be the Court having jurisdiction in regard to the matters arising under the Companies Act. There is however an exception to this. That exception is contained in Sub-section (2) of Section 10 of the Act. Under that sub-section, the Central Government can by notification empower any District Court to exercise

all or any of the jurisdiction conferred by this Act upon the Court, except in regard to certain matters.

It is common ground that there is no restriction on the conferral of the power on any District Court with regard to matters falling u/s 155 of the Act. While it is admitted that no notification has so far been issued by the Central Government conferring jurisdiction upon the District Court at Nagpur in regard to any of the matters arising under the Companies Act, it is said that by a notification issued on 17th August 1925, by the then Government of the Central Provinces and Berar, jurisdiction was conferred upon the District Court at Nagpur, in regard to all matters arising under the Companies Act, 1913. This notification, according to Shri Dhabe, still continues to be in force and that therefore it is the District Court at Nagpur which can entertain these applications and not the High Court. In support of his argument the learned counsel relied upon Section 645 of the Indian Companies Act of 1956. That provision runs as follows:

"Saving of orders, rules, etc. in force at commencement of Act.

Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law; but any such order, rule, regulation, appointment, Conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued, or done under or in pursuance of this Act".

According to Shri Bobde, this provision does not help the non-applicants inasmuch as it makes no reference to a notification. In my opinion, an omission to make any reference to a notification does not stand in the way of the non-applicants. A notification is merely a way or a manner of publishing an order made by an authority competent to make it. What Sub-section (2) of Section 10 requires and what the corresponding provision, that is, Section 3 of the Indian Companies Act of 1913, required was an order of an appropriate authority which was published in the official gazette. Therefore, any order made u/s 3 of the Indian Companies Act of 1913, could be deemed to have been continued by Section 645, provided the other conditions of Section 646 were fulfilled. Section 645 provides that an order made under the old law shall continue to be in force if it was in force at the commencement of the Act of 1956, and that too, only in so far as that order could have been made under the present Act, that is, the Act of 1956.

4. Now, whatever may have been the position under the Act of 1913, it is clear that the order of the kind made by the Local Government u/s 3 of the Act of

1913 could not have been made by any authority except the Central Government under the Act of 1956. Since that is the position, I am of opinion that the notification on which reliance is placed by Shri Dhabe cannot be deemed to be in force after the commencement of the Companies Act of 1956.

5. A reference was also made to Section 24 of the General Clauses Act. That provision is in certain respects wider than Section 645 of the Indian Companies Act; but it is a general provision and must give way to the special provision which has been made in regard to the same matter by a special law, that is, the Indian Companies Act, 1956. In the circumstances, therefore, I overrule the preliminary objection and hold that this Court alone has jurisdiction to entertain the applications. The applications will now be heard on merits.

6. It may be mentioned that an application has also been made on behalf of the applicant in each of these two applications, for the issue of a temporary injunction against the non-applicants restraining them from holding a meeting of the shareholders till the decision of these applications. Shri Dhabe states that no such meeting was intended to be held till the 8th of June and he assures the Court that no meeting will now be held till the applications are decided by this Court. Accepting this assurance, I do not think it necessary to issue a temporary injunction. The applications will accordingly be heard in the ordinary course.

7. Objection overruled.