

(2012) 02 AHC CK 0116
In the Allahabad High Court
Case No : Company Appeal No. 02 of 2009

Daljeet Puri (Smt.) and Another	Vs	APPELLANT
Abha Puri (Smt.) and Others		RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Companies Act, 1956 — Section 10F, 262, 397, 397(1), 398
Constitution of India, 1950 — Article 25

Citation : (2012) 3 ADJ 147

Hon'ble Judges : Ritu Raj Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon'ble Pradeep Kant, J.—The present company appeal arises from the judgment and order dated 22.5.2009 of the Company Law Board, Principal Bench, New Delhi in Company Petition No. 33 of 2008 (Smt. Abha Puri and others v. Amethi Hume Pipes Pvt. Ltd. And others) which was filed under Sections 397/398 of the Companies Act, 1956 ("the Act") seeking cancellation of the allotment of 1340 additional shares to the Appellants (wife and son of Sri Ajeet Singh Puri who is not a party to the instant appeal) having the effect of converting the majority shareholding of the Respondents (Petitioners therein) into minority and for a declaration that the appointment of the Appellants (Respondents 3-4 therein) as directors null and void and restoration of their own directorship. The Company Law Board disposed of the petition accordingly and held that the appellants including Sri Ajeet Singh Puri acted in a highly oppressive manner towards the Respondents and declared the impugned appointment of the Appellants as directors null and void and removal of the instant Respondents 1 and 2 as directors null and void and further restored shareholding as it prevailed before 31.3.2007.

2. The Company Law Board hence ordered rectification of the register of members and refund of the consideration paid for the cancelled shares and

protected Sri Ajeet Singh Puri (respondent No. 2 therein) from being excluded from the management of the company and discharge functions as he was doing before 31.3.2007. The Board also stipulated that bank accounts be operated jointly by either of the Respondents and the 2nd respondent therein (Sri Ajeet Singh Puri) so as to prevent allegations of siphoning of funds and provided for five days" notice alongwith the agenda to be circulated amongst the other two directors by the person whosoever convenes board meeting. The Company Law Board also observed that since post of Managing Director never existed in the company, Sri Ajeet Singh Puri shall cease to be the Managing Director.

3. To state the facts briefly. Amethi Hume Pipes Private Limited was incorporated in the year 1982. The Respondents 3-4 and Sri Ajeet Singh Puri are brothers being the sons of Sri Dayal Singh Puri. The company was promoted by their father. The signatories to the Memorandum was the father, Sri Ajeet Singh Puri and Respondent Nos. 1 and 2. Before the allotment of the shares impugned therein, the Respondents group held 2100 equity shares out of 3600 equity shares subscribed and paid-up. Sri Ajeet Singh Puri group held 1000 shares. The balance 500 shares continued to remain in the name of their late father. The Board of Directors of the company consisted of Respondent Nos. 1-2 and Sri Ajeet Singh Puri being whole-time directors of the company drawing remuneration. It was alleged before the Company Law Board that with a view to gain majority in the Board, Sri Ajeet Singh Puri had allegedly appointed the Appellants (his wife and son) as directors on March 31, 2007 and that 1340 shares were allotted to them to gain majority in the shareholding. Various other allegations were made against the conduct of Sri Ajeet Singh Puri allegedly detrimental to the affairs of the company.

4. The Appellants assailed the impugned order on various grounds. Sri Prashant Chandra, learned Senior Advocate canvassed before us that the Company Law Board failed to appreciate the true import of Section 397 of the Act and exercised jurisdiction at the instance of a petition which prima facie did not make out any case. He also contested the finding of facts arrived at by the Company Law Board to be arbitrary and perverse while justifying allotment of 1340 shares to the Appellants and their appointment as directors, legal and valid.

5. The Respondents, on the other hand, strenuously contested the instant appeal. Sri J.N. Mathur, learned senior counsel urged dismissal of the appeal in limine. He submitted that the appeal is an attempt to undo the findings of facts recorded by the Board on the basis of evidence and in fact the whole conduct of the Appellants was only to gain majority in the company and to oust the Respondents from the management of the company. Learned senior counsel stated that the whole conduct of the appellants being oppressive, the Company Law Board was well justified in interfering in a petition under Sections 397/398 of the Act. Placing reliance on *Tea Brokers (P) Ltd. v. Hemendra Prasad Barooah*, (1998) 5 CompLJ 463, it was contended that if a member, who holds the majority of shares in a company, is reduced to the position of minority shareholder in the

company, by an act of the company or by its Board of Directors mala fide, the said act must be considered to be an act of oppression to the said member against which remedy lies u/s 397 of the Act.

6. Tea Brokers (P) Ltd. (supra) was a case of a minority shareholder who on becoming the Managing Director of the company, issued further share capital in his favour in order to gain control of management of the company. Barooah and his friends and relations were majority shareholders of the respondent company having 67% of the total issued capital of the company. Barooah personally held 300 equity shares out of 1155 shares issued by the company. He was at all material times a Director of the company. His case was that he was wrongfully and illegally ousted from the management of the company. One Khaund, who initially started as an employee of the company had 110 shares in the company and belonged to the minority group. Khaund was appointed as the Managing Director of the company. Barooah's grievance was that Khaund took advantage of his position as Managing Director and acted in a manner detrimental and prejudicial to the interests of the company and in a manner conducive to his own interest. Khaund had hatched a plan with other Directors to convert petitioner Barooah into a minority and to obtain full and exclusive control and management of the affairs of the company. In a petition filed under Sections 397 and 398 of the Companies Act, 1956, acts of Khaund were found to be by way of "oppression and mismanagement" within the meaning of Sections 397 and 398 of the Companies Act. Allotment of 100 equity shares by the company to Khaund at a meeting of the Board of Directors that was said to have been held on 14.1.1971 was held to be illegal. Without using the phrase "proper-purpose doctrine" the principle enunciated therein was applied by the Court. The following observations of Justice A.N. Sen are reproduced:

It is well settled that the Directors may exercise their powers bona fide and in the interest of the company. If the Directors exercise their powers of allotment of shares bona fide and in the interest of the company, the said exercise of powers must be held to be proper and valid and the said exercise of powers may not be questioned and will not be invalidated merely because they have any subsidiary additional motive, even though this be to promote their advantage. An exercise of power by the Directors in the matter of allotment of shares, if made mala fide and in their own interest and not in the interest of the company, will be invalid even though the allotment may result incidentally in some benefit to the company.

7. It was further held that if a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its Board of Directors mala fide, the said act must ordinarily be considered to be an act of oppression to the said member. The member who holds the majority of shares in the company is entitled by virtue of his majority to control, manage and run the affairs of the company. This is a benefit or advantage which the member enjoys and is entitled to enjoy in

accordance with the provisions of company law in the matter of administration of the affairs of the company by electing his own men to the Board of Directors of the company.

8. The Supreme Court in *Dale and Carrington Invt. (P) Ltd. and Another Vs. P.K. Prathapan and Others*, following the decision in *Tea Brokers (P) Ltd. (supra)* and approving *inter alia Piercy v. S. Mills & Co. Ltd.*, (1918-19) All ER Rep 313, where Directors, who controlled merely a minority of the voting power in the company allotted shares to themselves and their friends not for the general benefit of the company, but merely with the intention of thereby acquiring a majority of the voting power and of thus being able to defeat the wishes of the existing minority of shareholders. It was held that, even assuming that the Directors were right in considering that the majority's wishes were not in the best interests of the company, the allotments were invalid and ought to be declared void.

9. The Supreme Court while summing up in *Dale & Carrington Invt. (P) Ltd. (supra)* outlined that the exercise by Directors of fiduciary powers for purposes other than those for which they were conferred is invalid. The Apex Court also observed that although the power of issuing shares is given to Directors primarily for the purpose of enabling them to raise capital when required for the purpose of the company, this was not the object of the Directors in this case. Further observation of the Court at page 234 is as below:

29. In the present case we are concerned with the propriety of issue of additional share capital by the Managing Director in his own favour. The facts of the case do not pose any difficulty particularly for the reason that the Managing Director has neither placed on record anything to justify issue of further share capital nor has it been shown that proper procedure was followed in allotting the additional share capital. Conclusion is inevitable that neither was the allotment of additional shares in favour of Ramanujam bona fide nor was it in the interest of the company nor was a proper and legal procedure followed to make the allotment. The motive for the allotment was mala fide, the only motive being to gain control of the company. Therefore, in our view, the entire allotment of shares to Ramanujam has to be set aside.

30. Even the Company Law Board found that the allotment of additional shares by Ramanujam to himself was an act of oppression on his part. The Company Law Board drew this conclusion solely for the reason that no offer had been made to the majority shareholders regarding issue of further share capital. The High Court accepted the finding of oppression. However, it placed it on a much broader base by taking into consideration various other factors. The High Court's finding is based on a much stronger footing. In fact, the High Court has gone on to conclude that Ramanujam has played a fraud on the minority shareholders by manipulating the allotment of shares in his favour. We find no reason to differ with the finding of the High Court.

10. The Appellants, however, placing reliance on the judgment of the Apex Court

in Hanuman Prasad Bagri and Others Vs. Bagress Cereals Pvt. Ltd. and Others, , laid stress on the scope of Section 397 of the Act as identified by the Apex Court that an order could be made on an application made under sub-section (1) of Section 397 if the Court is of the opinion "(1) that the Company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members; (2) that the facts would justify the making of a winding-up order on the ground that it was just and equitable that the Company should be wound up; and (3) that the winding-up order would unfairly prejudice the applicants."

11. Learned senior counsel Sri Prashant Chandra elucidating further stated on the basis of the decision of the Gujarat High Court in Laxmi Film Laboratory and Studios P. Ltd., In re, 56 Comp. Cas 110, to show that unwise, inefficient or careless conduct of a director in performance of his duties cannot give rise to a claim for relief u/s 397 of the Act. The person claiming oppression must show that he has been constrained to submit to a conduct, which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder. Reliance was also placed on Girdhar Gopal Gupta and Others Vs. Aar Gee Board Mills Pvt. Ltd. and Others, , to argue that conversion of majority shares to minority shares by allotment of shares to the family members of Director of one group could amount to oppression only where conduct of the parties suggest that the shareholders of the other group were not aware of the allotment.

12. The submission of the learned senior counsel for the Appellants is that the Company Law Board failed to consider material facts. The share application money to the tune of Rs. 31,000/- was deposited which even reflected in the balance sheet as on 31.3.2006 and 310 shares were allotted to Appellant No. 2 from the said amount and that Appellant No. 1 had given unsecured loans to the Company to the tune of Rs. 1,40,691/- out of which shares of Rs. 1.3 lakhs were allotted to her i.e. 1030 shares. He submitted that it was highly improbable for the Company Law Board to disbelieve the audited balance sheets as 31.3.2006 and thus not to give any finding on this aspect and wrongly proceed to hold that the application money was available only to the tune of Rs. 31,000/- and as such shares of 1.34 lakhs could not have been allotted. Also, it was contended that the Company Law Board failed to consider the fact that Form-32 for the appointment of Directors which is submitted after the Annual General Meeting alongwith the annual returns and thus the finding given otherwise in the instant case is not correct.

13. It was contended before the Company Law Board that no meeting, in fact, took place on 31.3.2007 and thus, additional shareholding could not have been issued nor could additional directors been appointed and further that there being no casual vacancy in the Board of Directors, there was no occasion to invoke Section 262 of the Act to appoint additional directors. The relevant contention is quoted below:

... With a view to gain majority on the board, he purportedly appointed the 3rd and 4th respondents as directors in an allegedly held board meeting on 31.3.2007. Similarly, in the same alleged meeting, he had purportedly allotted 1030 shares to the 3rd respondent and 310 shares to the 4th respondent. By these allotments the 2nd respondents' group came to hold 2340 shares against 2100 shares held by the petitions' group. In other words, a majority has been converted into a minority. In fact, no board meeting was held on that day and even if it had been held, no notice for this meeting was given to either of the petitioner directors. Since the petitioner directors were not present, neither the appointment nor the allotment of shares could have been made with only one director present. In terms of Article 25, directors are to be appointed only in a general meeting, that too, on the principle of proportionate representation by the system of single transferable vote. Only in case of a casual vacancy, the said can be filled up in terms of Section 262. There was no casual vacancy in the board to invoke the provisions of Section 262 of the Act. Further, even for raising the share capital, no jurisdiction was given and that itself would show that the motive for allotment of shares was only to gain majority in shareholding...

14. It was also submitted before the Company Law Board that in another general meeting allegedly held on 18.12.2007, the Respondent Nos. 1-2 were removed from directorship by Sri Ajeet Singh Puri. The Company Law Board finding such an action to have been taken only to concentrate managerial powers within himself and considering the fact that the company being family company where Respondents' group was actively involved from last 25 years made the impugned order and restored the directorship of Respondents 1 and 2.

15. We have perused the impugned order. Also, we have heard the parties at length and considered the submissions advanced.

16. The scope of the power of the High Court in appeal u/s 10-F of the Act has been outlined by the Apex Court in *Dale & Carrington Invt. (P) Ltd. (supra)*, at page 236. Setting aside the judgment of the High Court, it has been held by the Apex Court that the findings of fact arrived at by the Company Law Board could not be gone into by the High Court in appeal, the appeal being permissible only on question of law. The relevant observation is as below:

35. We have now to deal with the question of scope of appeal filed u/s 10-F of the Companies Act by Prathapan in the High Court.

36. Section 10-F refers to an appeal being filed on a question of law. The learned counsel for the appellant argued that the High Court could not disturb the findings of fact arrived at by the Company Law Board. It was further argued that the High Court has recorded its own finding on certain issues which the High Court could not go into and, therefore, the judgment of the High Court is liable to be set aside. We do not agree with the sub-mission made by the learned counsel for the appellants. It is settled law that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is

permissible only on the question of law. The perversity of the finding itself becomes a question of law. In the present case we have demonstrated that the judgment of the Company Law Board was given in a very cursory and cavalier manner. The Board has not gone into real issues which were germane for the decision of the controversy involved in the case. The High Court has rightly gone into the depth of the matter. As already stated, the controversy in the case revolved around alleged allotment of additional shares in favour of Ramanujam and whether the allotment of additional shares was an act of oppression on his part. On the issue of oppression the finding of the Company Law Board was in favour of Prathapan i.e. his impugned act was held to be an act of oppression. The said finding has been maintained by the High Court although it has given stronger reasons for the same.

37. We find no merit in the argument that the High Court exceeded its jurisdiction u/s 10-F of the Companies Act while deciding the appeal.

17. This position has also been reiterated in *Shri V.S. Krishnan and Others Vs. Westfort Hi-tech Hospital Ltd. and Others*, , at page 373:

16. It is clear that Section 10-F permits an appeal to the High Court from an order of the Company Law Board only on a question of law i.e. the Company Law Board is the final authority on facts unless such findings are perverse, based on no evidence or are otherwise arbitrary. Therefore, the jurisdiction of the appellate Court u/s 10-F is restricted to the question as to whether on the facts as noticed by the Company Law Board and as placed before it, an inference could reasonably be arrived at that such conduct was against probity and good conduct or was mala fide or for a collateral purpose or was burdensome, harsh or wrongful. The only other basis on which the appellate Court would interfere u/s 10-F was if such conclusion was (a) against law or (b) arose from consideration of irrelevant material or (c) omission to construe (sic consider) relevant materials.

18. What is "perverse" has been subject-matter of deliberation in a number of decisions of the Supreme Court and various other Courts. Reference can be made to *Gaya Din v. Hanuman Prasad*, (2001) 1 SCC 501, the Supreme Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

19. In *Parry's (Calcutta) Employee's Union Vs. Parry and Co. Ltd. and Others*, , the Calcutta High Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In *M.S. Narayanagouda Vs. Girijamma and Another*, , the Court observed that any order made in conscious violation of pleading and law is a perverse order. In *Moffett v. Gough*, ILR (1878) 1 331, the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In *Godfrey v. Godfrey*, 106 NW 814, the Court defined "perverse" as turned the wrong way, not right;

distorted from the right; turned away or deviating from what is right, proper, correct, etc.

20. It was in the meeting of the Board of Directors shown to have been held on 31.3.2007 that the impugned allotment of shares and appointment of additional directors was made. A copy of the minutes of the said meeting dated 31.3.2007 is placed on record and can be found in Annexure - 3 to the to the memo of instant appeal. It shows that Sri Ajeet Singh Puri, Chairman and Smt. Abha Puri and Smt. Pradeep Puri, Directors were present at the meeting. Sri Ajeet Singh Puri was unanimously appointed the Chairman of the meeting. The proceedings were held as it was found that there was quorum. By Resolution No. 4, the Board considered the request of Smt. Daljeet Puri and Sri Karan Puri (appellants in this appeal) for allotment of equity shares. It was informed that their amount for allotment of equity shares is already with the company for quite some time. The Board after consideration passed the following resolution:

Resolved that Smt. Daljeet Puri and Sri Karan Puri be and are hereby allotted the equity shares of the company as stated before their names below :

Smt. Daljeet Puri - 1030

Shri Karan Puri - 310

21. The minutes of the meeting dated 31.3.2007 further show that the matter relating to appointment of additional directors was also considered. Under Item No. 5 it is recorded that the Board felt necessity of a Director on the Board and passed a resolution stating that "Smt. Daljeet Puri be and is hereby appointed Director of the Company with effect from the date of the Board Meeting and Sri Ajeet Singh Puri is authorized to file the return of appointment before the Registrar of Companies". Under Item No. 6, it was recorded that the Board felt the necessity of one more director and the Board thereupon resolved that "Shri Karan Puri be and is hereby appointed as the Director of the Company with the effect from the date of this Board meeting and Sri Ajeet Singh Puri is authorized to file the return of appointment before the Registrar of Companies". There being no other business, the meeting ended with a vote of thanks to the Chairman.

22. It is clear from the said minutes that allotment of shares to Smt. Daljeet Puri and Sri Karan Puri was made on the basis of the fact that the amount for allotment of equity shares was already with the company for quite some time. In face of such a clear record, it is not open to the Appellants to contend that the allotment of shares was made out of the amount of unsecured loans given by the Appellants. To be clear, the contention of the Appellants that the share application money which was deposited to the tune of Rs. 31,000/- was being reflected in the balance sheet as on 31.3.2006 and 310 shares were allotted to Appellant No. 2 from the said amount and further that Appellant No. 1 had given unsecured loans to the company to the tune of Rs. 1,40,691/- out of which shares of Rs. 1.34 lakhs were allotted to her i.e. 1030 shares. The finding recorded by the Company Law Board that the application money for the

allotment of shares was Rs. 31000/- only and therefore the impugned allotment of 1340 shares could not have been made to the Appellants. Further, the minutes are not explicit with regard to the reasons why it was felt necessary to induct additional directors. Therefore, the inference may be legitimately drawn that the impugned appointment of two additional directors was made only for ulterior purposes. In view of the other circumstances, the finding of the Company Law Board cannot be considered to be perverse and cannot be interfered with by this Court in appeal. We do not find any reason to label the findings arrived at by the Board as perverse or arbitrary.

23. The scope of Sections 397 and 398 of the Act has been considered upon in extenso by the Courts. The Supreme Court considering (a) Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others, , (b) M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, , (c) Dale and Carrington Invt. (P) Ltd. and Another Vs. P.K. Prathapan and Others, , (d) Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. and Others, , (e) Kamal Kumar Dutta and Another Vs. Ruby General Hospital Ltd. and Others, in Shri V.S. Krishnan and Others Vs. Westfort Hi-tech Hospital Ltd. and Others, , clarified the expression "oppression". The relevant at page 372 is as below: From the above decisions, it is clear that oppression would be made out:

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-a-vis the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board u/s 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact.

24. The above discussion will clearly lead to the conclusion that the impugned allotment of shares to the Appellants and the impugned appointment of the two additional directors as aforesaid and removal of the Respondents 1 and 2 from directorship is oppressive to them. We agree with the findings of the Company

Law Board for the reasons recorded that with a view to bring to an end the matters complained of, it is necessary that the matter be disposed in the terms formulated by the Company Law Board. We also think on the given facts and circumstances of the case that to wind up the company would unfairly prejudice the members of the company and that it was just and equitable that the company should not be wound up. There are no facts pleaded and brought to the notice of the Court by the parties, which would justify the making up of winding up order on that ground. For the reasons given above, we find no merit in the appeal and dismiss it with costs.