
(1929) 11 AHC CK 0002
In the Allahabad High Court

Dehra Dun Mussoorie Electric Tramway Co. Ltd. Hansraj
Gupta and Others

APPELLANT

Vs

Official Liquidators

RESPONDENT

Date of Decision : 20-11-1929

Acts Referred:

Companies Act, 1956 — Section 105

Citation : 126 Ind. Cas. 819

Hon'ble Judges : Young, J; Mukerji, J

Bench : Division Bench

Judgement

1. This is an application on behalf of the legal representatives of one Lala Raghu Mal to have their names removed from the list of contributories.

2. This application has been made as the result of our judgment delivered on 14th May, 1929. It appears that Lala Raghu Mal subscribed for a number of shares. Later on, on 12th August, 1922, he was induced to subscribe for a large number of further shares (10,000 ordinary shares at Rs. 10 each and 250 preference shares at Rs. 100 each). On the same day he made applications for shares, the Managing Agent of the Company handed over to him a draft letter, which the Company was to send, later on, in confirmation of the arrangement, in view of which Lala Raghu Mal subscribed for the additional shares. On 13th September, 1923, the Company confirmed the arrangement, by three letters, copies of which are to be found in the affidavit filed with the petition, under paras. 7 and 8. By virtue of the letters written by the Company the representatives) of Lala Raghu Mal claimed before us a large sum of money on the ground that the Company had committed breaches of contracts and the claimants were entitled to a large amount of damages. We held that the agreements were void, being in contravention of Section 105, Companies Act. The applicants, thereupon, now say that if the agreements, on the basis of which they had claimed, are invalid, such must be the case with the purchase of shares. They, therefore, ask that their names should be removed from the list of

contributories.

3. On behalf of the Official Liquidators two points have been raised. One is that the application is barred by time and the second is that on the merits, applicants are not entitled to succeed.

4. A learned Counsel appeared from the Calcutta High Court, together with a Counsel of this Court on behalf of the applicants, and we have heard him and the learned Counsel for the Official Liquidators. The points to be decided are: (1) whether the application is within time and (2) whether the allotment of shares was illegal, being based on a void contract and whether, therefore, the names of the applicants should be removed from the list of contributories.

5. On the first point of limitation, the learned Counsel for the Official Liquidators argued that the applicant's names were ordered to be brought on the list of contributories so early as on 14th July, 1927, and that, therefore, they could not come up to the Court, for removal of their names after the expiry of 20 days of that date, under Rule 58 of the rules framed by this Court under the Companies Act. Mr. Banerji, who has appeared on behalf of the applicants, argued that no notice was ever issued to or served on his clients as required by Rule 57 of the rules framed by the Court and that, therefore, limitation has not even begun to run against his clients. He further argued that it was always open to the Court to rectify errors in the list of contributories and that this is contemplated by Rule 54 itself.

6. We need not decide whether the Court has got or not, power to rectify the list of contributories at any time. We shall assume that it has got that power. But the question is whether a party has a right to move the Court to rectify an alleged error, if that party, has allowed the time given to him by the rules, to make the application pass by.

7. The Rules 54 to 58 of the Company rules framed by this Court, bear on the question. Unfortunately, they are not very clear, though they have been taken mainly from the English rules. The modification made in the English rules has created a certain amount of difficulty. Putting, however, the same construction, as the learned Counsel for the applicants wants, it would appear that the Official Liquidator is charged by Rule 54 to frame a list of contributories. Having done so, he has to obtain from the Court appointment of a date for settlement of the list, A notice is to be given by the Official Liquidator to each and every person whom he has proposed to bring on the list of contributories, of the date so fixed by the Court. On the date fixed, the Court is to settle the list of contributories; see Rule 55. Then, Rule 57 says that when the list has been settled, the Official Liquidator is to give a new and fresh notice to every person who has been finally placed on the list of contributories telling them that if they wanted to have their names removed from the list they must apply within 30 days of the delivery of the notice to them. Rule 58 says that no application shall be heard if it is beyond 30 days, unless the Court finds reason to extend the time. The contention of Mr.

Banerji is that this second notice required by Rule 57 was never issued to his clients and that, therefore, his clients application is within time. Doctor Katju's objection to the interpretation put by Mr. Banerji is that the rules, if their interpretation were adopted, would allow two opportunities to the same party to contest the action of the Official Liquidator in placing them on the list. The rules are open to this objection. It may be that the idea was that the procedure, obtaining in England, of allowing the Official Liquidator to finally settle the list of contributories should be modified by letting the Company Judge do it with the assistance of the Official Liquidator. After the list has been settled, a notice is to go to all those who have been brought on the list, as finally settled. As a notice is also to be issued before the list is finally settled, each proposed contributory, thus, gets two chances to appear before the Court.

8. What has happened in this particular case is that the applicants appeared at the first chance, viz., on 7th January, 1927. They did not object to their name being entered in the list of contributories. They only asked that the entry in the list, of their names, should be postponed. The application contained several other prayers. It was heard and ultimately decided on 19th July, 1927, and the prayer for the postponement of the entry of the names of the appellants in the list of contributories was refused, 19th July, 1927, then, is the latest date, on which the applicants' names were, it may be said, ordered to be entered in the list of contributories. The question now is whether the applicants should have had a second notice under Rule 57. We do not think that they were entitled to any further notice. They appeared by Counsel and their case was heard at length. They never objected to the entry of their names. All they wanted was that there should be postponement in the entry, till a certain date. In the circumstances, we are of opinion, that no issue of further notice, of the order of 19th July, 1927, was necessary. This is conclusive against the applicants, unless they may apply for a review of judgment. Mr. Banerji for the applicants has clearly told us, that his application is not one for a review of judgment. Section 202, Companies Act, lays down that rehearings of any order or decisions made or given in the matter of the winding-up of a Company maybe had in the same manner and subject to the same conditions in which they may be had from any order or decision in the same Court in cases within its ordinary jurisdiction. That being the rule, we do not think that we shall be justified in exercising, in favour of the applicants any powers that we may possess, in the shape of inherent jurisdiction to rectify the errors in the list of contributories. The result is, the application is incompetent being too late.

9. As we have heard the case on the merits as well, we would like to decide it on the merits also. The learned Counsel for the applicants has taken his stand on the Contract Act and has argued thus: The applications for shares given on 12th August, 1922, were given because Lala Raghu Mal expected that the Company would give him certain contracts on which Lala Raghu Mal would make some profits. This Court held that the agreement on the part of the Company to give Lala Raghu Mal these contracts and some benefits in the matter of contracts

already given to others amounted to an illegal agreement, as contravening the spirit of Section 105, Companies Act, and could not be enforced. As the consideration for subscribing for the shares failed, the contract of taking shares also failed. The names of the applicants are, therefore, on the list of contributories, on the basis of an illegal contract. The names should, therefore, be removed.

10. On the face of it, the argument looks attractive and plausible, but when closely examined, it will be found to be full of fallacies. The contract of purchase of shares was a completed contract when Lala Raghu Mal signed the applications and the applications were accepted by the Company and shares were allotted to Lala Raghu Mal. The consideration for Lala Raghu Mal's applications was the allotment of the shares to him and his eligibility to receive dividends if and when the Company declared them. The sale by the Company of the shares had for its consideration Lala Raghu Mal's money. Thus the contract to purchase and sell the shares, in itself was a perfectly valid contract.

11. But, it is said, Lala Raghu Mal would never have entered into the contract if he had known that the other contract, into which he was to enter, viz., the contract of supply of goods to the Company on certain advantageous terms was likely to be a bad contract in law. This may be so, and is perhaps so, but it cannot be said, that this other contract was a consideration "or object" of the contract to purchase and sell shares. u/s 23, Contract Act, the "consideration" or "object" of an agreement is lawful unless it is of a kind described in the section. We have already pointed out that the "consideration" or "object" of the contract of purchasing shares had nothing illegal in them, The other contract, as to supply of goods was not a consideration or object of the contract of purchase of shares. It may have supplied the motive for the purchase of shares, but "motive" is essentially different from both consideration and object. We shall come back to the question of "motive" presently. Let us for the present, find out whether the contract for supply of goods was a consideration or object of the agreement to subscribe for shares. Lala Raghu Mal subscribed for the shares because he thought that by doing so, he would be able to induce the Company to give him a contract for selling goods to it on advantageous terms. It is certainly not the case that Lala Raghu Mal was to sign the applications for the shares only after he had got the contracts. This had to be conceded clearly by Mr. Banerji, who admitted that he could not argue that the giving of the contract for supply of goods was a "condition precedent"--to borrow an English expression to--the subscription for the shares. The contract for supply of goods was to be given from time to time and this period, during which contracts were to be given, was likely to last for several years. It was agreed that if the tramway was laid from Rajpur to Mussoorie hills, even in that case, Lala Raghu Mal would have a right to supply the necessary goods. From no point of view whatsoever can it be said that Lala Raghu Mal agreed to subscribe for the shares only if he, beforehand, got the contracts and the benefits which he hoped to get from the contracts. Thus the contract for the supply of goods was neither an object nor a consideration for the

contract to purchase the shares. The utmost that can be said, therefore, is that the agreement for the supply of goods constituted a "motive" or perhaps "the motive" for Lala Raghu Mal's purchasing the additional shares worth one lakh and 25 thousand rupees.

12. "Motive", however, can never be enquired into in considering the validity or otherwise of a contract. The word "motive" does not find a place in the Contract Act. In England, it has been held that motive is no consideration for a contract. Anson in his "Law of Contract" (Edition 16,1923) at page 102, deals with the subject. He quotes the case of *Thomas v. Thomas* (1877) 2 Q.B. 358 and points out that it was held that the desire on the part of the executors to carry out the wishes of the deceased would not amount to a consideration. Then he quotes the following from a judgment:

Motive is not the same thing as consideration. Consideration means something of value in the eye of law moving from the plaintiff.

13. It seems clear to us that whatever might have been the subject in view (motive) of Lala Raghu Mal in subscribing for the shares, it was a matter entirely for him and had nothing to do with the legal aspects of the otherwise perfectly valid contracts of purchase of shares. In view of the Indian Law, therefore, the applicants are not entitled to succeed.

14. The case has been considered in view of the English Law and English precedents and there is an abundant authority to show that in the circumstances of this case the applicants are not entitled to succeed.

15. In the language of the English Law, the agreement between Lala Raghu Mal and the Company that the, latter shall place orders for certain goods with the former and would give him certain commissions on orders already placed elsewhere was only a "collateral agreement" and did not constitute a "condition precedent" to Lala Raghu Mai subscribing for the shares. This, we think, is perfectly plain. We have already stated that Mr. Banerji, the learned Counsel for the applicants, had to concede that the agreement for supply of goods was not a condition precedent to the contract for purchasing shares. The two agreements, therefore, were collateral to each other and one did not constitute the consideration or object (to quote again words of the Indian Act) of the other.

16. Coming to authorities, we shall quote only three, but before we do so, we may mention that the text-book writers all take the same view. Palmer in his *Company Law* (Edition 12, 1894) at page 115 puts the law in. the following language:

A distinction of a very material kind exists between an application with a condition precedent annexed, and an application with a collateral agreement or condition subsequent. In the latter case, the applicant on allotment becomes a shareholder in proesenti absolutely, with only a right to enforce (if valid) the collateral agreement or condition subsequent against the Company.

18. He quotes several cases, two of which we propose to examine. Buckley in his "Company] Acts" (Edition 10, 1924) at page 60 says:

If the condition be not precedent, but collateral or subsequent, and the contract be executed by allotment, notice and registration, the allottee is bound.

19. Out of the cases, on which these statements of law, in the text-books are based, we propose to examine three. One is *In re Richmond Hill Hotel Co., Elkington's case* (1867) 2 Ch. A. 511 : 365 Cri. L.J. 593 : 15 W & 65 : 16 L.T. 301. In this case, the shares of a certain Hotel were for sale. Messrs. Elkington were manufacturers of plates and cutlery. One of the promoters of Company agreed and the agreement was subsequently confirmed by the Company that Messrs. Elkington were to subscribe for 150 shares of ₹10 each on payment of only ₹50 per share, that they were to have a right to supply plates and cutlery to the value of ₹3,000 and that until all the goods which they agreed to supply had been supplied and until they had received full payments in cash, they would not be called upon to pay any further calls. Messrs Elkington paid ₹2 to the share, but received no orders and the Company went into liquidation. The question arose whether the Elkingtons could be placed on the list of contributories. Vice-Chancellor Wood, held that they must not be put on the list of contributories. The decision was reversed and their liability was held established. The learned Lord Chief Justice who decided the case pointed out that Messrs. Elkington agreed to become members and share-holders in proesenti with a collateral agreement as to what should be the effect of their so becoming share-holders. He pointed out that Messrs. Elkington were already on the list of share-holders, they were in a position to sell the shares, they would have got the dividends, if any had been declared, and were thus for all purposes de facto share holders of the Company. The agreement that certain goods were to be purchased was held to be a collateral agreement. In the case before us *Lala Raghu Mal* became a share-holder as early as 12th August, 1922, and possessed all the rights and privileges of share-holders. Indeed, till the year 1929 he and after him, his legal representative s professed to enforce all the rights that he acquired by virtue of being share holders. In the claim made against the Company (disallowed by us) they asserted the fact that they had become shareholders in view of the collateral advantages they were to get. It is too late in the day to say that they were never share-holders and their names should not have found a place in the list of members.

20. In the case of "*In re General Provident Assurance Co., Bridger's case*" the person who objected to be brought on the list of contributories was one of the local agents of the Company ordered to be wound-up and his business was to canvass for shares. In order to be able better to induce persons to take shares in the Company, he himself took some shares, it being agreed that he would not pay for the shares except in a particular way, namely, out of the commission to be earned by him. Their Lordships affirming the decision of the Vice-Chancellor said (at page 308 Page of (1867) 16 L.T.Ed 308 blockquote>Bridger was to

become a share-holder in proesenti in order that the world might see him a share-holder and that he might go about saying that he was one. His application for shares was made in the usual form undertaking to accept the shares applied for and authorize the Director to enter his name on the register for the number of shares so allotted.... There may have been an agreement that his calls were to be paid only in a particular way, but he agreed to be a share-holder in proesenti and cannot be heard to say that he was not a share holder because he had entered into that collateral agreement.

21. In the case just cited, while the motive of Bridger was that he would be able to induce people all the better, by himself becoming a member of the Company, and, incidentally thereby would be able to earn more commission for himself. In the case before us, the motive of Lal Raghu Mal was to be able to earn more profits by the agreement to have the monopoly of supplying goods to the Company. The fact that it was agreed that the subscription should be paid either by deductions tout of moneys payable to Lala Raghu Mal for goods supplied or in cash was entirely a collateral agreement. If that agreement failed it did not mean that the factor of Lala Raghu Mal's becoming a share-holder disappeared and his liability to contract ceased.

22. The third case which we would consider is *In re Paraguassu Steam Tram Road Co., v. Black & Co.*'s case (1870) 8 Ch. 254 : 42 L.J. Ch. 404 : 28 L.T. 50 : 21 W.R. 249. The facts as given in the head-note are as follows:

A contractor agreed with a Company to supply them with steam engines at a fixed price and to take shares in the Company, payment of the calls on which should not be enforced until at least two engines should have been paid for and the contractor might set against the calls the money due to him. The contractor took shares accordingly and made two engines far the Company, which were not taken by the Company or paid for. The Company was afterwards ordered to be wound-up by the Court and a call was made by the liquidator.

23. The contractor's liability was upheld. The case mainly turned on the question whether the contractor could set off against his liability, the money that he was entitled to claim against the Company. The case is only incidentally an authority on the question before us. Lord Selbourne L.C., said (1870) 8 ChEd.258> I should have thought, until I heard this argument, that it was much too late for any one to suggest that in a question with creditors, a registered share-holder could possibly be taken off the list on the ground of anything contained in such an important agreement as that of 20th October. That is not the contract between himself and the Company under which he is constituted a share-holder, but it is the collateral and preliminary contract, though no doubt made in the expectation of his becoming a share-holder in consequence of the arrangement then made.

24. His Lordship's words are clearly applicable to the facts of the present case. The contract by which Lala Raghu Mal became a share-holder was not the

agreement constituted by the three letters of 13th September, 1922, but by his applications of 12th August, 1922, which were subsequently accepted by the Company and on receipt of which shares were allotted to him. That is the contract which is to be now enforced against Lala Raghu Mal's legal representatives. The fact that the contract was entered into "in the expectation of" (to quote Lord Selbourne's language):

Some ulterior gain, would not affect the contract itself, which is in every way a valid one. Lord Selbourne further pointed out that it was settled law that although a contract might be avoided before the winding-up proceeding started, it could not be avoided after the winding-up order." (Page 259 Page of (1870) 8 Ch.--[Ed.] of the report).

25. We need not multiply authorities, but it seems to us to be settled law that the contract to take shares cannot be vitiated because a collateral contract happens to be unenforceable by law.

26. In the result, the applicants' prayer must be rejected and it is hereby rejected. They must pay the Official Liquidator's costs which should be assessed as if the present application were a miscellaneous application under the ordinary jurisdiction of the High Court, the valuation being Rs. 1,25,000 and interest at nine per cent. per annum. A week to certify the fee.