
(1983) 12 DEL CK 0005

In the Delhi High Court

Case No : C.A. No. 557 of 1982 in C.P. No. 45 of 1971

Ganesh Flour Mills Co. Ltd.

APPELLANT

Vs

T.P. Khaitan

RESPONDENT

Date of Decision : 06-12-1983

Acts Referred:

Citation : (1986) 60 CompCas 28 : (1984) 25 DLT 120 : (1984) ILR Delhi 688

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Advocate : P.C. Khanna and Krishan Kumar, for the Appellant;

Judgement

D.R. Khanna, J.—Technically speaking, this petition moved u/s 403 of the Companies Act, 1956, by one Ganesh Flour Mills Co. Ltd., has become infructuous inasmuch as the relief sought for cannot any longer be granted. That relief claimed was that the Company Law Board should be restrained from proceeding with appeals Nos. 1 to 12 of 1982 filed before it u/s 111 of the Companies Act with regard to the transfer of certain shares. The Company Law Board has already disposed of those appeals and allowed them on July 13, 1983. Thereby the appellants before the Board, who were the transferees of certain shares, were made entitled to be registered as shareholders on the basis of those transfers. The opposition by the company to their transfer was negatived. The company then filed a writ petition against that decision of the Company Law Board, assailing the same on various grounds, but without success. The writ was dismissed on November 22, 1983.

2. There is thus no further relief which can be granted to the company under the present application. Mr. Khanna, however, appearing for the company, has attempted to bring out a cobweb of problems which are likely to arise as a result of the order of the Company Law Board. According to him, the motive behind the transfer of shares is not their acquisition simpliciter but to capture the company and take over its management. This, it is urged, would be prejudicial to the public interest or the interest of the company's affairs.

3. Since the controversy has been raised by Mr. Khanna, it would be helpful here to mention the background. Ganesh Flour Mills Co. Ltd. is having two vegetable ghee factories, one at Delhi and the other at Kanpur. It has some other units also, manufacturing solvent extraction, breakfast items, etc. The company, however, went into serious doldrums, and there were heavy losses, with the result that the Delhi vegetable ghee factory was closed in March, 1971. A petition was then moved under sections 397 and 398 of the Companies Act before this court. During the course of that petition, a committee of management presided over by an ex-judge of the Punjab and Haryana High Court, namely, Mr. Justice Jindra Lal, was appointed, which took over the affairs of the company. Some efforts were made to rehabilitate it, but without success. The result was that the Kanpur vegetable ghee factory also had to be closed.

4. Since the public demand for vegetable ghee was increasing, the Government stepped in on November 3, 1972, under the Industries (Development and Regulation) Act. Certain authorised persons under that Act took over the management of the company from the earlier board of management and actively made efforts to rehabilitate it. According to Mr. Khanna, substantial funds were made available by the government bodies, with the result that the two vegetable ghee factories have started working and various liabilities discharged. Still there are, however, stated to be liabilities worth about rupees 6 crores, one-half of which are due to the Income Tax Department. Other substantial liabilities are due to the Morarka group on the basis of debentures worth rupees 95 lakhs which were issued in or about 1968, and which were pledged with the Morark as. Considerable interest has already accrued on them. Mr. Khanna, however, states that he has mentioned these liabilities not as a matter of admission, but as a narrative of the difficult financial position through which the company has been passing.

5. The company continues to be under the management of persons authorised under the Industrial (Development and Regulation) Act, and it is this body which Mr. Khanna is at present representing. The maximum period for which the notification under that enactment can remain operative is said to be 17 years. However, Mr. Khanna states that there is every likelihood of the company being nationalised shortly. The Central Government, it is stated, has allowed increase in production capacity of vegetable factories, and large amounts for that purpose are being invested. In this manner, the company, it is stated, would definitely take a turn for the better.

6. What has result in the present litigation is the purchase of a number of shares of this company by one Mr. Khaitan who happens to be the managing director of the Amrit Vanaspati Company Ltd. and certain employees of that company. The shares so purchased total about 7,750. This purchase was effected in 1976. Out of them, 1,047 shares have already been registered in the names of the transferees, while the remaining have still to be registered. The company is resisting their registration. It is alleged that by these purchases, the Khaitan

group would start owning about 6% shares in this company, and would thus be able to have substantial say in the management. Since the Khaitan group is also interested in a rival business known as Amrit Vanaspati Co., there is every likelihood of the affairs of the present company being run to its detriment and to the benefit of Amrit Vanaspati Company.

7. Against the denial of registration of the remaining shares, the transferees moved an appeal before the Company Law Board u/s 111 of the Companies Act. They, at the same time, applied u/s 155 of the Companies Act before the company court. The company, however, opposed the continuance of the two proceedings at the same time. Before the Company Law Board, opposition was raised to the maintainability of the appeals there, with the result that those appeals were disallowed on the simple ground that the petitions u/s 155 before the company court were pending. When the proceedings u/s 155 were later taken up, the company again raised objections to their being held on the ground that the proper remedy appeared to be to file appeals before the Company Law Board. The transferees were then permitted by Kirpal J. On November 9, 1981, to withdraw those petitions u/s 155 leaving them free to move appeals before the Company Law Board afresh. It was also observed that a sympathetic view could be taken to the limitation aspect because of the said circumstances.

8. It was then that the appeals were again filed before the Company Law Board which have now been allowed, and the company's writ petition against that allowance has been dismissed. The company, however, it seems, is not getting reconciled to the situation, and continues to thwart the registration of the transfer of shares. I am afraid, this cannot be allowed. The transferees have validly purchased the shares of the company in open market, and this is an incident of any public limited company that its shares are open to transfer to any person who may like to purchase them. A public company cannot be treated for good as the vested hold of the persons who once happened to be the shareholders.

9. As regards the contention that the Khaitan group is likely to take over the management of the company, it is not disputed that the shares so purchased by them would not be more than 6%. That should not alarm the rest of the 94% shareholders, and they can always assert their rights in case any acts detrimental to or prejudicial to the affairs of the company are attempted to be enacted. Moreover, Mr. Krishan Kumar, appearing for the transferees, has made no secret that these transferees are not too keen to retain the shares, and that if the company or anybody wants to purchase those shares at the present market value, they are ready to transfer them. They deny any motivation to capture the present company.

10. The Company Court cannot look on patronizingly at the tendency displayed by managements of the companies or their shareholders to set at naught the too well-recognised concept of transferability of shares inherent in the Company Law and accepted all over the world. A public company cannot be relegated to the

position of a personal or family affair. If they want to enjoy that privilege, they are at liberty to operate individually and form firms. In that case, there is no question of their availing of the benefit of limited liability appurtenant to a limited company. If however, recourse to incorporation of a company is resorted to, then the personal or family interest becomes foreign and wholly irrelevant. The position has then to be singularly looked at from the angle of rights and duties of a shareholder. The shareholding of such person, whether large or small, is always subject to the incidence of transfer. No curbs or fetters can be entertained or imposed in order to protect the vested interest or to perpetrate the hold of individuals or families over the affairs.

11. Similarly, the distinction between a private limited company and a public limited company is marked and real. In the case of the former, a family or other private group can confine the shareholdings to themselves or render their transfer subject to their approval. In the case of a public limited company, however, when the public at large is invited to subscribe to the shares, and the benefit thereof is availed of by the company, it cannot still claim to retain the complexion of being the bastion or domain of a limited group where any intrusion by outsiders in the form of acquisition of shares is resisted and monopolistic vested defenses set up. The basic character of a public limited company that any member of the public is entitled to subscribe to its shares remains, and must be upheld to the exclusion of any individuals or group interests. The approach in this matter has not to be allowed to be swayed by likes and dislikes of individuals or other considerations. That would be like placing momentary strains of expediency on the too well recognised concepts of a public limited company. It is futile to say that the sponsors of the company must in perpetuity continue to have a hold. Rather it is more the investment of the public money in the form of shares which ushers in the growth and development of the company. For the managerial capacities, the persons concerned are duly paid their emoluments, and they are not essentially removed or themselves leave on mere change in the share structure of the company. Moreover, those who continue to retain the shares still have a say in its affairs and profits commensurate with their holdings.

12. The result, Therefore, is that the application is dismissed.