
(2005) 07 DEL CK 0054

In the Delhi High Court

Case No : CP 58 of 1979

G.S. Mayawala and Others

APPELLANT

Vs

Motion Picture Association

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Companies (Amendment) Act, 1956 — Section 155, 166, 210, 274, 397

Companies Act, 1913 — Section 25

Constitution of India, 1950 — Article 19

Citation : (2006) 132 CompCas 388 : (2005) 122 DLT 185 : (2005) 83 DRJ 361

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; Mala Goel, for the Respondent

Judgement

A.K. Sikri, J.—M/s Motion Picture Association, Delhi (hereinafter referred to as 'the company') was incorporated u/s 25 of the Companies Act, 1913. It has no share capital. The main objective of the company is to promote, aid, help, encourage and develop the production, distribution and exhibition of the Indian film or motion pictures industry in all possible ways and also to provide for the members a place of meeting and discussion of the common problems of the industry. There are many members of the company who are normally doing the business of distribution which include distributors and exhibitors of cinematograph films. Three such members, namely, Mr. G.S. Mayawala, Mr. R.P. Bhasin and Mr. Rajesh Khanna filed this petition in the year 1979 under Sections 397, 398 and 155 of the Companies Act, 1956 (for short 'the Act'). As is clear from the aforesaid provisions under which the petition was filed, there were allegations of oppression and mismanagement by the majority members on the so-called minority, namely, the petitioners and also certain disputes about membership of some persons. The prayers which were made in the petition read as under:

1. That the erring members of the Motion Pictures Association/the erring office

bearers/Directors of the Respondent No. 1 namely Joginder Singh, Narain Dass, B.N. Gupta, M.B. Mathur and Dinkar R. Desai, respondent 2 to 6 respectively perpetrators of all mismanagement, misappropriation and oppression be disqualified debarred and expelled for a period of at least 5 years from the membership and from holding any office or membership of the Executive committee of the Respondent No. 1.

2. The respondent company may be restrained from in any manner amending or tampering with the Articles of the Association and with any rules, bye-laws or regulations of the Association and more particularly in admitting temporary provisional members. The amendment of Articles effected by Shri Joginder singh and B.R. Kundra in their individual capacity and as ordered by the Court vide order dated 20.2.78 may be set at naught and that the Articles be amended after having representations from all members of the Association as such. The amended election rules as circulated on 24.5.78 and 6.8.80 may be held invalid in the facts and circumstances shown above.

3. Free and fair elections of the Respondent company for the year ending 1978 and the year ending 31.3.80 be directed to be held under the supervision and control of the Hon''ble Court after the present Executive Committee of the respondent No. 1 which was illegally elected at its Annual General Meeting held on 28.2.79 and 30.8.80 is superseded.

4. This Hon''ble Court may further be pleased to appoint an interim Board to manage the affairs of the company will the elections prayed for are held.

5. Proper and effective representation on the Board of Directors be given to the Minority members in an adequate manner so as to safeguard the interest of the Minority members.

6. Any other relief may also be given as may be deemed fit and proper in the circumstances of the case.

2. It is not necessary to go into the various allegations made in the petition. The reason is that because of various orders passed by this court from time to time in this petition, most of the grievances have been redressed. The only grievance which survives relates to Article 24 of the Articles of Association (for short 'the Association'). Even this is not the grievance of the original petitioners. It is pursued by Mr. KMS Khan, one of the members of the Company. Order dated 30th September, 1997 was passed taking note of this limited controversy which remains to be resolved. Arguments were heard on this aspect. Mr. Khan appeared in person whereas on behalf of the company, the case was argued by Ms. Mala Goel.

Before we come to the controversy involved, a brief historical description of the events would be necessary.

3. As is clear from the prayer clause reproduced above, the original petitioners, inter alia, wanted amendments in the Articles of Association, although Article 24

was not specifically included in the prayer clause. During the pendency of the proceedings amendments were made in some of these articles and this court passed order dated 6th September, 1993 allowing amendments in some of the articles except 19,24 and 63 and it was stated that this aspect would be considered later on. Thereafter, vide order dated 28th February, 1995 Article 19 concerning annual subscription payable by the members to the Association was allowed to be amended. By subsequent order dated 6th March, 1995 Article 63, which contains resolution of disputes among the members through arbitration, was also amended and the proposed amendment to Article 24 only remained for consideration. The original Article 24 reads as under:

"At every Annual General Meeting all the Office Bearers and the remaining nine sitting Members of the Executive Committee elected at the previous Annual General Meeting shall retire from office. The retiring Office Bearers and retiring Members of the Executive Committee shall be eligible for re-election in the Annual General Meeting in which they retire."

4. The proposed Article 24 for amendment is as under:

" At every Annual General Meeting which is to be called strictly in accordance with Section 166 read with Section 210 i.e. within six months from the close of each financial year, all Office Bearers and Members of the Executive Committee elected at the previous Annual General Meeting shall retire. The retiring Office Bearers and retiring Members of the Executive Committee shall be eligible for re-election in the Annual General Meeting in which they retire if eligible otherwise. However any Office Bar/Members of the Executive Committee who has been on the Executive Committee for two consecutive years in any capacity whatever shall not be eligible for re-contest for one year i.e. there shall be a gap of one year after every two consecutive years in the Executive Committee."

5. According to the company, the proposed amended Article has been rejected by more than 75% members present in the EGM, who are in favor of retaining the existing Article 24, which was convened by the orders of this court and, Therefore, the Article as proposed be not allowed to be amended. The basis for this submission is following:

Vide order dated 7th March, 1995 this court appointed Mr. Justice J.D. Jain, a retired Judge of this court to chair the Extraordinary General Meeting (EGM) to be held on 29th April, 1995. The agenda of the EGM was to consider other Articles besides amendment of Article 24. The notice for the said EGM was issued. The voters" list was prepared to which objections were invited by the Chairman. Mr. K.M.S. Khan raised the objection that authorisation of certain persons was not valid on the ground that their authority was specifically for earlier AGM and not for this specific EGM. Disposing of the objection of Mr. Khan, the Chairman directed that separate voters" list be prepared for such disputed authorities and separate voters" list for undisputed authorities. Consequently, two voters" lists were prepared i.e. disputed voters" list and undisputed voters"

list. At the meeting amendment to other Articles was decided unanimously by show of hands as given in the report of the Chairman. Finally, Article 24 both existing and proposed amended were put forward before the house. More than 85% of the members present voted in favor of the existing article 24 by raising their hands. However, few persons demanded the voting by secret ballot to decide the question of amendment in Article 24. The Chairman directed holding of the poll by secret ballot. As per his orders, ballot papers of two colours were prepared i.e. Red ballot papers for disputed voters which were to be casted separately in separate ballot box and the white ballot papers which were for undisputed voters were to be casted in separate ballot box. The Chairman before start of casting of votes explained to voters that they should put 'X' cross mark in that column out of the two which they wanted to be passed i.e. existing Article 24 or proposed amended Article 24. Total 157 ballot papers were issued and casted. Out of these 92 were issued and casted on white ballot paper (undisputed) and 65 were issued and casted on red ballot papers (disputed). In the undisputed ballot totalling No. 92, 76 in favor of existing voted Article 24 to remain as it is and 16 voted for proposed amendment in Article 24. Thus more than 75% of the voters did not want any amendment in Article 24 of Motion Picture association. Among the 65 disputed votes casted on red ballot papers, 58 votes were in favor of the existing Article 24 and 7 votes in favor of proposed amendment, of Article 24. Again this lot also more than 89% were in favor of existing Article 24 and did not want amendment. It is stated that out of the total 157 votes whether in the undisputed lot or in the disputed lot, majority i.e. more than 75%, voted and were in favor of existing Article 24 to continue as it is. It is submitted that any amendment in the existing Article required at least 75% votes polled and situation being otherwise question of amendment in Article 24 does not arise. The company also submits that even otherwise the proposed amendment in Article 24 is repugnant to the Section 274 of the Act. The proposed amendment puts additional ground of disqualification which is not provided in Section 274 of the Act.

6. Mr. Khan, on the other hand, submits that amendment in Article 24 is needed in view of the chequered history of series of litigations arising out of the elections held by the company from time to time which was subject matter of various suits and even company petitions filed earlier under Sections 397 and 398 of the Act. He gave details of the said litigations and also referred to two judgments passed in earlier company petitions in the case of B.R. Kundra and Ors. v. Motion Pictures Association, Delhi and Ors. reported as (1978) 48 Comp.Cas.536 and in the case of Motion Pictures Association, In re. v. G.S. Mayawala and Ors. reported as (1984) 55 Comp. Cas.375. In B.R. Kundra (supra), the court observed as under:

"The company, though registered as such under the Act, is essentially an association set up to promote and develop production, distribution and exhibition of motion pictures in the territory known in the film trade as the Delhi-U.P. Circuit. The membership of the company is confined to those carrying on, within

the said territory, the business of production, distribution and exhibition of motion pictures. By and large, the scheme of the articles of association of the company and the various bye-laws, rules and regulations of the company is such that it is not possible for any person to carry on the aforesaid business within the said territory without being a member of the company, and without the picture being registered with the company. There are salutary provisions in the articles, bye-laws, rules and regulations to regulate the conduct of business by the members, the adjudication of disputes between members inter se and there are a number of provisions which make it impossible for a person to deal in a picture in relation to which there is an outstanding claim by another member unless the claim is satisfied. Having regard to the various provisions, the non-registration of a picture by the company and the expulsion by it or any member virtually incapacitates the member to carry on the aforesaid trade in the said territory. The relevant rules and regulations provide for arbitration by an arbitrator, to be nominated by the company from among its members.

I have heard learned counsel for the parties at considerable length on the various questions that arise for consideration in these applications. While there are a number of questions, both of fact and of law, which are in controversy between the parties the basic hypothesis on which the petitioner justifies relief is, by and large, undisputed. It is not in dispute that the present management of the company has over the years been in the control of the management of the company, either by themselves or through their associates, either because of their popularity with the majority of the members of the company, as contended on behalf of the company, or on account of the influence they wield and the patronage at their disposal on account of the levers of power that they have held over the years and the machinations by which they have been able to perpetuate their hold on the company, as claimed on behalf of the petitioner. It is also undisputed that during the last many years there has been discontent among a section of the membership of the company, although the parties are at variance as to the real strength of the dissidents. It is also not in dispute that allegations of oppression of the minority and of mismanagement have not been made for the first time in the present proceedings and this court had occasion to consider such allegations even earlier when certain remedial directions were made by Rangarajan, J. in respect of the convening of a general meeting of the company, the appointment of observers and certain other matters. While there is considerable controversy on the question whether the petitioner has the support of a large number of members of the company, which the petitioner claims, and as to whether the petitioner and his supporters have been subjected to any vindictive action by the management with a view to pressurise them into submission or to otherwise prejudicially affect their interests and to even put their membership of the company into jeopardy, prima facie, there is ground to believe that in the historical background of the dispute, the discontent among a section of the membership and the rather acrimonious course that the conflict between the two groups has taken, the apprehension that the minority, which

has taken cudgels against the majority, which is said to be in the control of the management, is likely to be subjected to vindictive action, cannot be altogether brushed aside either as unwarranted or unreasonable and, in the situation that has emerged, there is a possibility that the management of the company may be conducted in a manner that may be prejudicial to the interests of the minority and Therefore, to that extent, prejudicial to the interests of the company. Such a possibility would ordinarily justify protective measure by court in proceedings of the present nature but this is more so where the membership of the company, unlike the membership of the other companies, does not involve merely the return on capital or the right to participate in the management of the affairs of the company, but may even prejudicially affect the very right of a member to carry on the trade within a certain territory. In the position that emerges there are certain imperatives, the claim of none of which could be ignored. In the first instance, is the need to maintain the democratic right of the majority of the members to manage the affairs of the company within the limits laid down by law and the articles of association and the subsidiary rules, regulations and bye-laws of the company. In the second instance, there is the need to protect the minority from any possible onslaught from the majority so that their vital interests are safeguarded and their right to carry on their trade is not allowed to be put in jeopardy, except in accordance with the articles of association, the rules and regulations and consistent with principles of justice, equity and fairplay. Thirdly, there is the imperative that this court would moderate relief in such a way that the company, which has been doing useful work in regulating the relations between different members of the company in relation to their trading activity, is not unnecessarily denigrated or be subjected to unnecessary judicial interference or in any manner exposed to ridicule. Lastly, it is necessary to ensure that the necessary protection to the minority against any oppressive acts of the majority, should not be allowed to be misused to the detriment of the company or its membership."

7. In the case of Motion Pictures Association, (supra), it was observed as under:

"Motion Pictures Association is a company u/s 25 of the Companies Act, controlling distribution and exhibition of Hindi Films (mostly) in the Northern region. The management and the working of the company are the subject-matter of innumerable proceedings in this court and subordinate courts for the last over ten years. These litigations broadly concern the complaints of mismanagement and oppression by a group of persons which is deeply entrenched in the executive committee and the sub-committee of the company. The story of Motion Pictures Association has a touch of Hitchcock Mystery. If it lacks fitness or if there are any loose ends, that is because it is a local version of the original film (Bombay "Fillum" as is described by cine critics).

The company is unique in the sense that by itself it does not carry out any commercial or business venture but indirectly control business of crores of rupees every year. Its articles of association are so framed that every member is

required to register a picture with the company. Every distributor and exhibitor is also required to register himself with the company. The members are prohibited from entering into any contract for distribution and exhibition of the films to non-members. The articles also provide for resolving of disputes between the members in regard to their claims. A member who deals with the non-member or who does not pay dues of other members is liable to be removed from the membership. During the course of hearing of these matters before me and particularly in the chamber discussions, the role of black money was also openly discussed. The underlying theme of the repeated complaints in this court is that these apparently simple provisions are grossly abused by a group of people for personal ends and oppression of other members for over a decade. The powers are so formidable that the company can completely throw a member out of cinematographic business which no other company can do. This action is in restraint of trade and denial of fundamental right under Article 19 of the Constitution."

8. He, thus, submitted that decision of the EGM for retaining original Article 24 should not prevail and this court had ample power to issue necessary directions for amending Article 24, as proposed, in exercise of its power under Sections 402 and 403 of the Act in a petition filed under Sections 397 and 398 of the Act and such an order could even be in conflict with the provisions of the Act. For this proposition, he relied upon the following judgments:

(i) Dr. V. Sebastian and Ors. v. City Hospital P. Ltd. and Ors. (1985) 57 Comp.Cas.453.

(ii) Debi Jhora Tea Co. Ltd. v. Barendra Krishna Bhowmick and Ors. (1980) 50 Comp. Cas. 771.

(iii) Bennet Coleman and Co. v. Union of India and Ors. (1977) 47 Comp. Cas. 92.

9. He submitted that the ratio of the aforesaid cases was to the effect that there can be no limitation on the court's power while acting under Sections 397, 398 and 402 of the Act. Instead of winding up a company, the court has been vested with ample power to continue the corporate existence of a company by passing such orders as it thinks fit in order to achieve the objective by removing any member or members of a company or to prevent the company's affairs from being conducted in a manner prejudicial to the public interest. The court u/s 398 and section 402 of the Act has the power to supplant the entire corporate management. Under these provisions, the court can give appropriate directions which are contrary to the provisions of the articles of the company or the provisions of the Act. On a reading of section 402(a) and section 402(g), there can be no doubt that the intention of the Legislature was to confer wide and ample powers upon the court for the regulation of the conduct of the company's affairs and to provide for any other matter which the court thinks just and equitable to provide for, in the interests of the corporate body and the general public.

10. His submission was that in order to remedy the evil which was perpetuated, it was necessary to carry out proposed amendment in the existing Article 24 as such an amendment was putting restrictions on the retiring office bearers/retiring members of the executive committee from re-election and it was necessary to provide a gap of one year after every two consecutive years.

11. I have considered the arguments of both the parties.

12. The existing Article 24, which the majority wants to retain, makes retiring office bearers and/or retiring members of the executive committee eligible for re-election in the Annual General Meeting in which they retire. However, the proposed amendment in Article 24 provides that if a particular office bearer/member has continued in the office for two consecutive years in any capacity whatever, he shall not be eligible to re-contest for one year i.e. there shall be a gap of one year after every two consecutive two years in the executive committee.

13. Whether the so-called mala fide projected by Mr. Khan in the election process and control of the association/company by few persons can be cured by the amendment as proposed by him? I have my doubts. It is obvious that in an election nobody can win unless he has the support of majority with him. The elections are to be conducted in a democratic manner. Every member has right to vote and to vote in a particular manner. If a candidate is able to muster the support of majority members and with such support he is able to get himself elected again and again/every time, it is his right to seek elections and get elected in this manner. Even if a person is to be debarred by carrying out proposed amendment to Article 24, such a person can always field another candidate belonging to his group and of his choice and can get him elected. Therefore, merely by prescribing that there has to be a gap of one year after a person gets elected as office bearer/executive member for a consecutive period of two year, the alleged defect cannot be remedied. We have not come across Articles of Association of any company where such an embargo on re-election is contained as reflected in the proposed amendment. There is no such prohibition in any political elections as well. In fact the entire argument of Mr. Khan proceeds on the presumption that if a person is elected again and again he will indulge in oppression of the minority and mismanagement of the company/association. Even if it is presumed that there is history of such oppressions/mismanagement, remedy lies in giving directions of other nature when suitable petition under Sections 397 and 398 of the Act is filed and precisely this has been done in earlier petitions filed to which Mr. Khan referred to. Right of majority to get elected is different from their oppressive conduct. If the oppression and mismanagement is to be removed it may not be achieved by prescribing such kind of restriction as contained in the proposed Article 24. It would be of interest to note that in his affidavit dated 25th October, 2004 filed by Mr. Khan, he has stated that Mr. G.S. Mayawala (the original petitioner) and his henchmen came in majority in 1990-91 when Mr. Mayawala was elected as Hony. General Secretary

for the first time and came in full control of the Association. He has alleged that after seizing the power by gaining majority, Mr. Mayawala had started indulging in acts which are much worst than his predecessors and committed various acts of mismanagement. As far as allegations of mismanagement against Mr. Mayawala are concerned, the remedy of Mr. Khan or other aggrieved against those acts is to file appropriate petition u/s 397 of the Act. What is of interest to note is that with those allegations Mr. Khan himself states that previously there was some other group who was in majority and was getting re-elected and from 1990-91, it is Mr. Mayawala who has the backing of majority members and it is he who has been elected as Hony. General Secretary thereafter although he is the original petitioner who had filed this petition alleging oppression and mismanagement at the hands of the then office bearers. This would show that it is not one particular person or group who has enjoyed the majority support for all times to come and the power pendulum has been shifting. It is for the members to lay down the rules of the game i.e. the manner in which elections of office bearers and executive members are to be conducted, including the eligibility conditions etc. More than 75 members have decided to retain Article 24 in its present form and they do not want any amendment therein.

14. No doubt u/s 402 of the Act, the court has the power to issue necessary directions in ensuring smooth functioning of the company and also to ensure that there is no oppression of the minority and no mismanagement by the majority. However, in this petition when we are not concerned with any other allegations of oppression and mismanagement and the scope is limited to issue whether Article 24 is to be amended or not and as I am of the opinion that amendment to Article 24 as proposed, by Mr. Khan (when 75% members do not want this amendment) and such amendment is not going to serve the purpose sought to be achieved by Mr. Khan, it is not a fit case where direction should be issued to the company to amend Article 24 on the lines suggested by him. The company, Therefore, shall be entitled to retain Article 24 in its present form.

15. As no other issue survives, this petition is disposed of. All pending applications shall also stand disposed of.

16. There shall, however, be no orders as to costs.