
(1980) 09 KAR CK 0047
In the Karnataka High Court
Case No : Company Petition No. 21 of 1977

Harish Ratilal Shah

APPELLANT

Vs

Vikrant Tyres Ltd.

RESPONDENT

Date of Decision : 26-09-1980

Acts Referred:

Companies Act, 1956 — Section 155, 73

Citation : (1981) 51 CompCas 616

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Judgement

Chandrakantaraj Urs, J.—This is a petition under s. 155 of the Companies Act, 1956, praying for a direction to the respondent Vikrant Tyres Ltd., Mysore, to rectify the register of members of the company by deleting the name of the petitioner in respect of 50 shares of the face value of Rs. 10 each as the allotment of those shares was ab initio void as not being in conformity with s. 73 of the Companies Act 1956 (hereinafter referred to as "the Act"). The petitioner, further, has sought for a direction that the initial subscription paid by him towards the allotment of shares in the sum of Rs. 125 may be returned to him with interest at 12 per cent. per annum from the date of tender till realisation.

2. The respondent-company, without conceding the correctness of the claim of the petitioner, has brought to the notice of the court that on account of further calls made on the petitioner in respect of those 50 shares and the petitioner having failed to answer the calls on the shares, the shares others have been forfeited by a resolution passed by the board on 4th July, 1977. In other words, by supervening circumstances, the petitioner's name is deleted with effect from that date and his name in respect of the shares in question no longer appear in the register of members of the company.

3. No, doubt, Sri. N. Gopalakrishna Shetty has argued that supervening circumstances are without regard to the stay order passed by this court at an earlier stage and, therefore, this court should not consider this aspect. This may

be so. I do not want to express any opinion about it. If the petitioner is aggrieved by the forfeiture made, he can seek remedy under other provisions of the Act. But, as on this date as his name does not appear in the register of members, it is unnecessary for this court to investigate and decide the question as to why his name came to be deleted for other reasons. In the result, the petition is liable to be rejected on this account.

4. There is yet another reason why this court should be reluctant to exercise its discretion and jurisdiction under s. 155 of the Act. This was one of the petitions filed along with a batch of petitions. At this time the petitioners were heard initially, a suggestion was made by me that the petitioners could negotiate with the company and have the shares allotted to them by paying the balance of amount due on the various calls or reduce their shareholding by asking the company to appropriate the full value of such number of shares as fully subscribed. Pursuant to the negotiations all other petitioners have reached settlement with the company except this petitioner. In such circumstances, this petition, in my opinion, is more a vexatious and a motivated one and not with a genuine intention of having his name deleted from the register of members of the company on any technical or legal ground.

5. Therefore, in these circumstances, in public interest as well as in the interest of the company which is a going concern, it is not inappropriate for this court to reject the prayer of the petitioner under s. 155 of the Act, more so when the name of the petitioner no longer remains in the register of members of the company in so far as it relates to the shares in question.

6. The petition is, therefore, rejected. There will be no order as to costs.

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