

(1955) 08 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Miscellaneous Petition No's. 1, 3 to 8 and 10 of 1954

In Re: General Assurance Society Ltd., Ajmer and Others

Date of Decision : 05-08-1955

Acts Referred:

Companies Act, 1913 — Section 3, 3(3)
Rajasthan High Court Ordinance, 1949 — Section 17
Rajasthan States (Laws) Act, 1951 — Section 6

Citation : AIR 1956 Raj 61 : (1955) RLW 401

Hon'ble Judges : Ranawat, J;Bapna, J

Bench : Division Bench

Advocate : C.B. Bhargava, K.L. Gauba, B.P. Agarwal, J.P. Jain, R.C. Sharma and C.C. Kasliwal, for the Appellant;

Judgement

Bapna, J.—In these 8 cases a reference has been made by the learned Single Judge.

2. The Indian Companies Act was applied to Rajasthan with certain modifications by the Rajasthan Adaptation of Central Laws Ordinance (No. 4 of 1950 promulgated on 24th January, 1950) and Section 3 of the Act was modified so as to substitute Government of United State of Rajasthan for Central Government under the proviso to Sub-section (1) of Section 3 of the Act.

On 9-8-1950, the Government of Rajasthan in exercise of the powers conferred by the modified proviso to Sub-section (1) of Section 3 of the Act issued a notification empowering the District Courts (District Judges) in Rajasthan to exercise all the jurisdiction conferred by the Indian Companies Act, upon the Court.

3. On 1-4-1951, the Part B States Laws Act came into force and the Indian Companies Act (No, 7 of 1913) was applied in its entirety subject to certain amendments. One of such amendments was insertion of Section 2 (b) by which the companies registered under any law in a Part B State corresponding to the Indian Companies Act immediately before the commencement of the Part B States Laws Act, 1951, were to be deemed for the purposes of the Act to be

companies incorporated and registered under the Act. Certain other modifications were made which are not relevant for the purpose of this case.

4. By Section 6 of the Part B States Laws Act the Rajasthan Law relating to companies was repealed and the second proviso in Section 6 provided that in spite of the repeal anything done or any action taken (including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation form, bye-law or scheme framed, certificate obtained, patent, permit or licence granted or registration effected) under any such repealed law shall be deemed to have been done or taken under the corresponding provision of the Act or Ordinance as now extended to that State and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under the said Act or Ordinance.

5. The eight petitions relate to different matters and may be briefly described here :

Petition No. 3 of 1954 : The General Assurance Society Ltd. of Ajmer filed this petition on 1-5-1954, u/s 162 of the Companies Act for winding up the Rajasthan Agricultural Livestock & General Insurance Co. Ltd., Jaipur, on the ground that the company was unable to pay its debts.

Petition No. 4 of 1954 : This petition was made by the Shekhawati Agencies Ltd., Jaipur, on 14-6-54 u/s 153 and Section 153A of the Indian Companies Act for sanction of a scheme by which the assets and liabilities of the Shekhawati Agencies Ltd. were sought to be transferred to Rajasthan Stores Ltd. on certain terms and conditions.

Petition No. 5 of 1954 : The Greater Rajasthan Investment Trust Ltd., Jaipur, applied on 14-6-54 under Sections 153 and 153A of the Indian Companies Act to transfer their assets and liabilities to the Rajasthan Stores Ltd, under certain terms and conditions.

Petition No. 6 of 1954 : The Bullion Exchange Ltd. and Gold and Silver Merchants Association Ltd., Jaipur, applied on 4-9-1954, for amalgamation so as to form a new company, namely, the Bullion Association Ltd., Jaipur, under Sections 153 and 153A of the Indian Companies Act.

Petition No. 7 of 1954 : This petition was presented on 10-9-1954, by Shri Purna Chandra Kesliwal for winding up of the Bharat Precious Metal Industries Ltd., Jaipur, u/s 162 of Indian Companies Act for failure to pay its debts.

Petition No. 8 of 1954 : This petition was presented by Ram Kumar on 22-11-1954, u/s 162 of the Indian Companies Act for winding up of the Bharat Electrical and Industrial Corporation Ltd., Alwar, on the allegations of gross mismanagement and irregularities by the Chairman and Directors of the Corporation under Clause (6) of Section 1"62 of the Act.

Petition No. 10 of 1954 : In this petition which was presented on 26-3-1954, the

Kejriwal Commercial Corporation Ltd., Churi Ajitgarh (West Bengal) requested for sanction for transferring the registered office of the Corporation to Churi Ajitgarh in West Bengal.

Petition No. 1 of 1955 : This is a petition by Rani Ajit Kanwar Ba for winding up of the Man Radio and Electricals Ltd., u/s 162 of the Companies Act.

6. While proceedings were being taken in this Court on the aforesaid applications, the Deputy Registrar on 18-1-1955, came across notification of 9-8-1950 and reported that the District Judges having been empowered by the Government to exercise powers under the Indian Companies Act, all these cases were not triable in this Court. The matter came before the learned Single Judge and he has referred the following questions to a Division Bench;

1. Whether after the coming into force of the present Companies Act, the notification No. F.1 (28) Judicial/50 dated the 9th August; 1950, published in the Rajasthan Gazette Part I dated the 19th of August, 1950, page 359, is still in force and the District Courts have powers to entertain applications under the Indian Companies Act, 1913.

2. If the District Courts have such powers can this Court also entertain applications under the said Act.

3. If this Court is not authorised to entertain applications under the Companies Act by virtue of the aforesaid Notification can it proceed with these applications by virtue of Sub-section (3) of Section 3 of the Indian Companies Act.

7. We have heard counsel for the parties and the learned Government Advocate and our answers to the questions are as follows :

Question No. (1) : The second proviso to Section 6 of the Part B States (Laws) Act specially preserves the delegation of powers made under the corresponding previous law in force in a Part B State. The corresponding law was the same Indian Companies Act but as modified by the Rajasthan Adaptation of Central Laws Ordinance.

It was argued by learned counsel for the petitioners that while the proviso to Sub-section (1) of Section 3 empowered only the Central Government to empower the District Courts, the adapted Companies Act in Rajasthan conferred that power on the Government of Rajasthan, and, therefore, the authority exercising power under the Rajasthan Act did not correspond to the authority in the Indian Companies Act.

This argument has no substance for by the very nature of things the Rajasthan Act could not provide for the power to be exercised by the Central Government. The adapted Companies Act was, however, the corresponding Law and Section 3 was the corresponding provision of the Act and whosoever authority exercised power according to the provisions of that Act was the corresponding authority with reference to Section 3 of the Indian Act. The delegation of the power made

by the Rajasthan Government was thus preserved by the second proviso to Section 6 of the Part B States (Laws) Act.

8. An ingenious argument was raised by Mr. Gauba on behalf of petitioner in Petition No. 1 of 1955 that the Rajasthan Adaptation of Central Laws Ordinance adapted the Central Act without any modification of Section 3, and, therefore, the notification of 9-8-1950, was ultra vires. There is no doubt that in the Schedule there is no mention of any modification of Section 3, but in Section 5, Clause (iv), containing the general modifications in respect of all Acts adapted, it is provided that the references to Provincial Government or any other Government in the adapted Act will be deemed to be references to the Government of the United State of Rajasthan.

This general adaptation modified Section 3, and the "Central Government" was to be read as the "Government of the United State of Rajasthan". The notification of 9-8-1950, was therefore, intra vires. Our answer to the first question is, therefore, in the affirmative.

9. Question No. (2) : It has been observed in -- British India Corporation Ltd. Vs. Shanti Narain, that when power is conferred on the District Court under the proviso to Sub-section (1) of Section 3 of the Indian Companies Act that District Court has the exclusive jurisdiction to deal with the matters. The Full Bench of the Travancore-Cochin High Court in a recent case of the -- "Canara Bank Ltd., Cochin Branch v. Official Liquidator", 1949-4 DLR (TC) 105, observed that the High Court did not lose its jurisdiction in company matters even when a notification is issued by the appropriate Government empowering a District Court to be the Court.

We agree with the opinion expressed in the "Canara Bank Ltd. v. Official Liquidator", though for different reasons. The scheme of Section 3 is that the High Court is declared in the first instance to be the court having jurisdiction under the Act in respect of all matters mentioned in the Act. The proviso authorises the Central Government to empower any District Court to exercise all or any of the jurisdiction conferred upon the Court by the Act. The words in the proviso that in the case of conferment of powers

"such District Court shall as regards the jurisdiction so conferred be the court in respect of all companies having their registered offices in the district"

do not expressly exclude the jurisdiction of the High Court in company matters. Craies on Statute Law (Fifth Edn.), observes at page 116 after reference to the judgment of Tindal, C. J. in -- "Albon v. Pyke", (1842) 4 MG 421

"the general rule undoubtedly is that the Jurisdiction of Superior Courts is not taken away except by express words or necessary implication". The words "such District Court shall be the Court" do not mean that it would be the exclusive court. The definite article "the" before "Court" has no more significance than pointing to the Court authorised to deal with company matters. What is intended

seems to be that the District Court in such cases should in ordinary course be approached, and on the principle that in case of co-ordinate jurisdiction the litigant should first approach the lowest court of competent jurisdiction, the High Court will not entertain a petition in respect of which a District Court has jurisdiction.

10. Sub-section (3) which provides that nothing in the section shall invalidate a proceeding by reason of its being taken in a wrong Court, indicates that by conferment of the powers on the District Court the jurisdiction of the High Court is not ousted, because Sub-section (3) of Section 3 of the Indian Companies Act only applies where there is no inherent want of jurisdiction in the wrong Court.

Validity of the proceedings would only be saved if the proceedings are taken in an inappropriate court but not in a court which suffers from an inherent want of jurisdiction. See note on page 530 Halsbury's Laws of England Third Edn. If the conferment of powers on a District Court under the proviso to sub-section (1) was to result in the conferment of exclusive jurisdiction to the District Court, sub-section (3) will only have a restricted application.

It may be pointed out that Sub-section (3) cannot be said to be applicable only in the case of duality of jurisdiction referred to in Sub-section (2) for, in that case, Sub-section (3) would have appeared as a proviso to Sub-section (2) and not as an independent sub-section. It can very well be understood to apply in cases covered by Sub-section (1) and its applicability would be more consistent if the jurisdiction of the High Court does not cease by conferment of powers on the District Court.

11. Our answer to the second question is, therefore, that on conferment of powers on the District Court the applications under the Companies Act in respect of matters in which the District Court is authorised to act are to be entertained by the District Court and under the Companies Act in respect of matters in which the District Court is authorised to act are to be entertained by the District Court and although the High Court would undoubtedly possess the power to be exercised by the Court under the Act it will not entertain applications in respect of matters which can be dealt with by the District, Court.

12. Question No. (3) : As observed above the High Court does not suffer from Inherent want of jurisdiction even when a District Court is authorised to exercise jurisdiction under the Act. The High Court can, therefore, proceed with the applications before it by virtue of Sub-section (3) of Section 3 of the Act. On a view that the appropriate court is the court of District Judge the petitions are to be transferred to the Court of District Judge having jurisdiction. See Palmer's Company Precedents Part II, 3rd Edn. page 16.

But it may be pointed out that u/s 17 of the Rajasthan High Court Ordinance the High Court is empowered to remove and to try and determine as a Court of extraordinary Original jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence when the High Court may think

proper to do so either on the agreement of the parties to that effect, or for purposes of justice the reasons for so doing being recorded on the proceedings of the High Court.

Even, therefore, if it be assumed for the sake of discussion that the High Court has no original jurisdiction, Section 17, authorises transfer of any case to itself falling within the jurisdiction of any subordinate court. The word "suit" in Section 17 has a wide meaning and would include all civil proceedings pending in the subordinate courts. It would be a mere formality to transfer the cases to a District Court and thereafter to retransfer them to the High Court should the High Court think it proper to try the cases Itself.

Our answer to Question No. (3), therefore, is that the High Court has power to proceed with the applications presented before it but it may transfer any of the cases to the subordinate court on the broad view that the matter should be dealt with by the lowest court of competent jurisdiction and it would be in the discretion of the learned Single Judge either to carry on with the proceedings in this Court or to transfer any of them to the District Court having jurisdiction.