

(1933) 02 AHC CK 0007
In the Allahabad High Court
In Re: Indian State Bank Ltd.

Date of Decision : 27-02-1933

Acts Referred:

Companies Act, 1956 — Section 196

Citation : AIR 1933 All 366 : (1933) ILR (All) 496

Judgement

1. A compulsory order for the winding up of the Indian States Bank, Ltd., was passed by this Court. An official liquidator was appointed. The official liquidator on 2nd and 9th December 1932 applied under S, 196, Companies Act, to the Court stating that in his opinion fraud has been committed by the persons named in his applications in relation to the company since its formation, and asked that the persons so named should be publicly examined. Appended to the application was a schedule in which appeared a statement of the facts against each of the persons named in the application, from which the official liquidator asked the Court to infer that fraud had been committed by them; for example, as regards one of them Kunwar Gopi Nath Singh, it was said:

This man was one of the partners of Vidyarthi Tandon & Co., who were the managing agents of the Indian States Bank, Ltd., and was one of the signatories to the Memorandum and Articles of Association. He was one of the first directors of the company and as such made the first allotment of shares, which was fraudulent. He himself did not pay anything for his shares. On the other hand, he fraudulently charged to the company large sums of money in various ways without any right or justification. He was also privy and party to many other fraudulent acts of Vidyarthi Tandon & Co., and his partners B.S. Vithyarthi and A. 13. Tandon which will be the subject-matter of his examination.

2. Similar allegations were made in the schedule against each of the persons sought to be publicly examined. On that application which was ex parte, the Judge in charge of company matters passed orders for the public examination of those mentioned. The Court was subsequently moved by counsel on behalf of certain of these persons to set aside the ex parte order on the ground that the application of the official liquidator did not give the Court jurisdiction to make the order, as the charges of fraud in the application were not made with

sufficient particularity. The learned Company Judge referred; this matter to a Bench. The point referred to this Bench necessitates consideration of Section 196, Companies Act. Section 196(1) is as follows:

When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

3. It is contended by counsel for the officers of the company sought to be publicly examined that where a charge of fraud is made, it is a charge of a criminal nature and the person to-be examined is entitled to have notice of the charge or charges in the same way as he would have notice under the Indian Penal Code. He prays in aid Sub-section (6), Section 196, which enacts that if the person examined is

in the opinion of the Court exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit,

and he quotes as an authority two leading cases on the construction of a similar section in the Companies Winding Up Act (1890) in England, namely, *Ex Parte Barnes* (1896) AC 146 and *In Re Civil Naval. Military Outfitters* (1899) Ch 215. These provisions of the Companies Winding Up Act (1890) together with the Companies Act of 1908 in England have been consolidated in the Companies Act of 1929. The equivalent section of the latter Act is 216. While of course, this Court on questions arising under the Companies Act will pay the greatest respect to the decisions of the Courts in England, it is to be noted that the terms of Section 196 of the Indian Act are different from the terms of Section 216, English Act, and further the whole scheme of the English Act, in so far as the official receiver or liquidator in England is concerned, differs very materially from the provisions in the Indian Act as to the duties of an official liquidator when a compulsory order has been made in India.

4. Sections 195 and 196 of the Indian Act are the only sections which provide for an investigation by a liquidator into the conduct of the officers of the company before liquidation. In England, on the other hand, Section 181 of the Act of 1929 gives the official known as the official receiver powers which are not given to the liquidator in India by the Indian Companies Act. Section 181 of the 1929 Act is the same as Section 147 of the Act of 1908 which was in force in England when

the Indian Act was passed. By Section 181 of the English Act the official receiver is entitled to have a statement of the affairs of the company verified by affidavit submitted to him by the officers of the company to be wound up. He is also entitled by Rule 50(2) made under the Act to hold personal interviews with the officers of the company for the purpose of investigation of the company's affairs, and the duty of every such person is to attend at the official receiver's office and give the official receiver all the information that he may require. It is thus seen that in England the official receiver is entitled to have the fullest information before the equivalent sections in the English Act to Sections 195 and 196 of the Indian Act, may be brought into use. A further difference to be noted is that in Section 216 of the English Act of 1929, it is enacted that the official receiver in order to give the Court jurisdiction to make an order for public examination; has to submit a "further report stating that in his opinion a fraud has been committed." In England he has already by this time made a preliminary report after the investigation indicated in Section 181. The Indian Legislature however has seen fit not to give the official liquidator the powers of investigation alluded to and struck out from Section 196 the provision as to the further report. It is thus seen that the English decisions on the English Act on this point cannot be held to be binding upon this Court. We have however come to a decision on the construction of Section 196 very similar to that arrived at by the English Courts in *ex parte Barnes* (1896) A.C. 146 and in *re Civil and Naval Outfitters* (1899) Ch. 215.

5. We have to consider the provisions of the Indian Act alone. It has been contended by counsel for the officers of the company that Section 195 of the Indian Act gives ample power for preliminary investigation. An examination u/s 195 has by the practice of this Court been a private examination. The Allahabad High Court Rules allow the rules of the English Court to be used where there is no rule made for this Court, provided of course that the rules in England are made under a section similar to a section of the Indian Act. The English rules provide for an examination similar to that u/s 195 to be held in Chambers, and therefore a similar examination under that section in this country is also held in Chambers. We are of opinion however that the provisions u/s 195 give the official liquidator the powers of an official receiver in the Courts in England; for instance, a person summoned u/s 195 "may demand his expenses." In India expense may be a large sum, as the officers of the company in liquidation may have a long distance to travel before arriving in Allahabad. No investigation u/s 195 would therefore be possible if the officers of the company had so exhausted the funds of the company as to leave nothing in the hands of the liquidator. Section 196 on the face of it gives jurisdiction to a Court to make an order for public examination immediately the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any director or other officer of the company. It is however under the same section the duty of the Court to consider the application. It appears to us to be clear that such consideration must be a judicial consideration based upon information supplied in

the application. The Court before it passes an order for public examination, which is a serious matter, must be satisfied that some facts are given in the application which entitle the Court to find that there is a prima facie case of fraud against the the particular person named. The wording of the Act, which is that the Court may

direct that any person shall attend before the Court...and be publicly examined.

does not in our opinion justify the Court, on a general allegation of fraud in the management of the company, in making an order for the public examination of "any person" not directly implicated in the application of the official liquidator. Justice demands that the person against whom there is an allegation of fraud should be clearly named and some facts stated in the application to show that a prima facie case exists against that person. Once the official liquidator has made out any prima facie case of fraud against an officer, the examination is not to be confined to the particular fraud mentioned in the application. It must be remembered that Section 196 is a section designed for a thorough investigation of the affairs of the company and the actions of the officers. It is further to be noted that the only objection which an officer of the company can make to an order of the Court passed ex parte against him for his public examination is one of jurisdiction. He is not entitled at that stage to endeavour to show that the charge of fraud is incorrect. He may, of course, do so on his public examination, if he can, and, if he does, under Sub-section (6), Section 196 the Court may award him costs.

6. We are satisfied therefore that while the Court must consider judicially the application of the official liquidator u/s 196, and only pass an order on being satisfied that there is reasonable ground for the allegation of fraud upon facts stated in the application, there is no necessity to specify the charge of fraud with the same particularity as would be necessary in a criminal charge under the Indian Penal Code. We are of opinion that the particularity as would be necessary in a dater in his application as against each of the officers are amply sufficient to comply with the provisions of Section 196. It is impossible generally to lay down in each particular case what should be the contents of an application under this section. Each application depends on the facts in the particular case. The objections are disallowed with costs.