(2004) 11 DEL CK 0011

In the Delhi High Court

Case No : FAO 252 of 2004 and C.M. Application 10535 of 2004

Indian Potash Ltd. APPELLANT

Vs

Potash Research Inst. of India and Another RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 151

Citation : AIR 2005 Delhi 226 : (2004) 115 DLT 367

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Sudhir Makkar, for the Appellant; M.L. Sharma, for the Respondent

Judgement

R.S. Sodhi, J.—This appeal is directed against the judgment and order dated 30.4.2004 of the Additional District Judge, Delhi, in Suit No. 310/2003 whereby the learned Judge has declined to appoint a Receiver, on an application moved by the appellant u/s 40 Rule 1 read with Section 151 of the Code of Civil Procedure.

2. Brief facts of the case, as noted by the learned Judge are as under :

""That the plaintiff has filed a suit for declaration and mandatory and permanent injunction. In the suit the plaintiff has prayed for declaration to the effect that purported appointment of defendant No. 2 as life time chairman of the company is illegal contrary to the provisions of memorandum and articles of the society and thus, the same is void and inoperative. The plaintiff has also prayed for a mandatory injunction directing the defendants to place before the general body meeting, the general accounts and financial results of the institute for the last three years. A decree of permanent injunction has also been prayed restraining the defendant No. 2 from representing himself to be a chairman of the institute and from doing anything in relation to the business of PRII in his purported capacity as a chairman of the institute. The plaintiff being prime funding agency for the defendant institute as a genuine and bona fide concern to ensure that the functioning of the institute is oriented towards it aim and objects and that the funds of the institute are not mis utilised for personal gains. The plaintiff states that contrary to the terms of the memorandum and articles of association and rules of the institute, defendant No. 2 has appointed himself as a life time of the institute, defendant no2 has appointed himself as a life time chairman of defendant No. 1 institute. He has refused to enroll eligible members in the society and on the other hand has enrolled as members, persons who are not even remotely concerned with the field of agriculture. The affairs of the defendant No. 1 are being thoroughly mismanaged, the objects of the institute have been given complete go by and the funds of the institute are being mis utilised and mis applied to sub-serve personal gains. Defendant No. 2 is trying to exercise control over the institute in such a manner that same is virtually converted into his personal estate and empire. No regular general body meeting of the institute is being held. Research counsel of the institute has been virtually disbanded and the institute is without a scientist director for number of years. Defendant No. 2 in order to defeat the lawful rights of the plaintiff and by misusing the position as the purported chairman of defendant No. 1 may attempt to manipulate the properties of defendant No. 1 to its detriment. Defendant No. 2 may also attempt to manipulate accounts books and other records of defendant No. 1. In these circumstances, in order to ensure the protection and observation of properties of defendant No. 1 society, to ensure that management of society is carried on in consonance with its declared objects, it is in the interest of justice that an independent person be appointed as a receiver to take charge of the properties account books and other records of defendant No. 1 institute and to manage the affairs of the institute till the disposal of the suit.

The application has been contested by the defendants who in their reply as taken preliminary objections inter alias on the ground that the allegations in the application are wholly baseless. The matter is sub judice. The rights and obligations of the parties are going to determine through judicial process at the instance of the plaintiff. The application is a clear attempt to over reach the court without making even a prima facie case. The plaintiff is assuming certain rights over the control and management of the defendants are being independent and autonomous institute is governed by its own constitution. The plaintiff has not given any specific instance whereby the chairman has acted prejudicial to the interest of the institute or as mis managed it. The chairman though under no obligation of the plaintiff undertakes to carryout the objects of the institute. No property movable or immovable shall be alienated without permission of the court. If the court so desires the accounts which are duly audited, shall be placed before it for perusal and the same apply to all old and present records. The chairman was appointed under the rule by the governing counsel way back in 1990 and representatives of the plaintiff are party to the proceedings. At n point of time earlier to the filing of the present suit, the question now being raised by the plaintiff were ever agitated. The plaintiff is thus stopped from raising the issue now after a period of 14 years. The prayer in the application if granted would amount to suit being decreed without trial when even the pleadings are not complete. No request was ever made by any one seeking enrollment as a member till the filing of the suit. It is further not clear how the plaintiff and in what rights sponsors members or is recommending certain persons. There is a set procedure for enrollment and decision is taken by the governing counsel only and it is not possible that person recommended by plaintiff and straight away be made the members. The institute cannot be run on the dictates of the plaintiff. On merits, it was denied that no regular general body meeting of the institute is being held. Every year accounts of the institute have been duly audited and approved by regular general body meetings. The last such meeting was held on 28/4/2000. This meeting was attended by Sh. P.K.Misra as well as Mr. P.S. Gahlaut, Chairman and managing director of the plaintiff respectively. The accounts of the institute are being maintained properly and have been audited every year. The balance sheet approved by general body is sent to all the members of the governing counsel and required information as per Society Act is also sent every year to the Registrar of Societies without fail. The institute has an account department headed by an admin-accounts officer who are responsible for maintaining proper accounts. Auditor have also found the accounts absolutely in order. Day today work is supervised by the director and Admin-accounts officer of the institute. The plaintiff have neither given any contribution to the institute after 1982 i.e. for the last 18 years nor the chairman and the MD of the plaintiff have made any proposal for taking up any research project. Both of them have been elected to the governed counsel in their independent capacity. They did not even care to attend the meetings leaving aside proposing or funding of any research projects. The only property of the institute is the main building which provides space for office as well as for laboratory for research and few residential buildings. The plaintiff has leveled baseless allegations. The governed counsel has managed the affairs of the institute in most efficient manner. Chairman does not draw any salary nor any compensation is claimed bany other member of the governing counsel. Even though free travel, medical care etc. have been included in the terms of the appointment of the chairman till today no amounts have been claimed by the chairman in the form of TA/DA or medical bills. He as also avoided to attend any international fertilisers conference for which invitations are received almost every year. All this is done to save expenditure so that major portion of funds available can be used for research activities of the institute a such it was submitted that application is liable to be dismissed with cost.''''

3. It is contended by counsel for the appellant that respondent No. 1 is a Society while respondent No. 2 is the Chairman of the Society floated by the appellant, a joint sector company under the administrative control of the Department of Fertilizers, Union Ministry of Chemical and Fertilizers; ninety per cent of whose equity is held by the Government funded State Cooperative Federations and Public Sector Companies to further its objectives of doing research in the field of agriculture and fertilizer. The Society was floated and registered under the Societies Registration Act, 1860 with primary objects as per Memorandum of Association and the rules and regulations.

4. The appellant, being the prime funding agency of the respondent No. 1-society between the years 1977-82, contributed Rs.4.5 crores which was primarily used for construction of building, officers laboratories and residential complex besides purchase of equipments etc. Approximately Rs. 2.5 crores was retained by the 1st respondent-society as corpus which is deposited with public sector undertakings. A further sum of Rs.75 lacs was contributed by the Indo Canadian Agricultural Extension Project and that the annual budget of the respondent No. 1-society was estimated at nearly Rs.45 lacs which was to be met out of the income from interest on deposits. The appellant has a vital concern in the functioning of the Society to furthering the aims and object for which it was created.

5. It is submitted that the 2nd respondent Mr. Sohan Singh, in a meeting held on 4.8.1990, by a resolution of Governing Council, got himself appointed as Chairman of the Society for life. Further, the Governing Council in its meeting held on 26.9.1990 approved that the 2nd respondent in his capacity as Chairman be provided with residential accommodation in the complex free of cost together with electricity, telephone and transport facilities with driver. Shri Sohan Singh was in an influential position in the appellants'' organisation and used his position to get himself appointed as Chairman for life in the 1st respondent-Society floated by the appellant. It is also submitted that the respondent No. 2 has converted the Society into a private fiefdom and is squandering its assets. During 1999-2000, Rs. 3 lacs are shown on the repairs and maintenance of the chairman''s motor vehicle and for 2000-2001 Rs.3,50,000/-. Similarly, high amounts are being incurred on unjustified repairs and maintenance of the building. Counsel for the appellant submitted that it is necessary to preserve the assets of the Society and that a Court Receiver be appointed to take over the movable and immovable assets of the Society so that the same are not dissipated by wanton expenditures. He submits that the appellants who have a vital interest in the Society are being kept at bay by creating life interests in favor of respondent No. 2. Counsel for the respondents, on the other hand, contended that respondent No. 1 is an independent and autonomous body having its own Governing Council which has exclusive rights to manage and control its working. The appellant has no concern with it and, Therefore, no right to seek any Explanation and/or information regarding its working. The appellant cannot claim the appointment of Receiver.

6. Heard counsel for the parties and carefully considered the submissions made by them. It appears to me that the 1st respondent was created by the appellant to further the ends of research and development in the field of agriculture and fertilizer. It was funded by the appellant which itself is a public sector undertaking. I also find that the 2nd respondent who was a senior officer of the appellant, has got himself appointed as Chairman of the 1st respondent for life and has thereafter gone to create a fiefdom for himself. He has been in office since 7.2.1977 while the other members of the Governing Council, which consists of Mr. V.B.L. Mathur, a retired IAS (since 8.11.1987), Mr. T.R. Chadha, (since

30.9.1983) Dr. G.S. Kalkat (since 27.3.1986), Dr. G.S. Sekhon, (since 18.5.2001) and Mr. B.S. Ojha, (since 24.4.2003) have been retained.

7. The affairs of the Society are apparently being managed in such a way so as to restrict entry of the appellant to the Governing Council in a most arbitrary manner. The appointment of the Chairman for life is most startling and a perusal of the list of Executive Members shows that most of them have been members for a very long time leading to the inference that they are manipulating the affairs of the Society for their benefit. To argue that the 1st respondent-Society is an autonomous body and is governed by its Governing Council having its own constitution, cannot come to the rescue as the facts disclose that the corpus of the Society is from none other source than the public money from the coffers of the appellant.

8. In these circumstances, I am of the view that this is a fit case where a Court Receiver should be appointed during the pendency of the suit as has become necessary to preserve, protect and safeguard the assets of the 1st respondent. In this case it is just and convenient that there is a prima facie case in favor of the appellant which calls for taking urgent action especially in view of the conduct the 2nd respondent having got himself appointed as Chairman for life.

9. I appoint Ms. Kanwal Inder, a retired Additional District and Sessions Judge, Delhi, as Court Receiver. The Receiver shall take over all assets, movable and immovable for management of the 1st respondent-Society and submit six monthly accounts in such form as may be directed by the trial court. By way of an interim measure, the Receiver shall be paid a remuneration of Rs.20,000/- (rupees twenty thousand) per month. In addition, the Receiver shall be provided Secretarial assistance and transport facilities. The remuneration amount as also the other expenses of the Receiver shall be borne by the appellant. No order is being made for furnishing security in view of the high office held by Ms. Kanwal Inder and the faith/trust placed in her by this court. A copy of this order be sent to the Receiver forthwith.

10. FAO 252 of 2004 and C.M.Appl. 10535 of 2004 are disposed of. No order as to costs.

