
(1995) 03 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 97 of 1981

Jagjit Rai Maini and Others

APPELLANT

Vs

Punjab Machinery Works (P.) Ltd. and Others

RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Companies Act, 1956 — Section 155
Limitation Act, 1963 — Article 137

Citation : (2001) 103 CompCas 979 : (1995) 110 PLR 484

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : L.M. Suri and Deepak Suri, for the Appellant; Baldev Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—This is a petition u/s 155 of the Companies Act, 1956 (hereinafter referred to as "the Act"), read with rule 9 of the Companies (Court) Rules, 1959, for rectification of the register of members of the respondent-company.

2. The Punjab Machinery Works Private Limited (hereinafter referred to as "the company") was incorporated under the Companies Act, 1913, in the month of September, 1939, as a public company. The company was converted into a private limited company in the month of May, 1978. The authorised capital of the company in the month of September, 1972, was Rs. 2,00,000 comprised of 20,000 shares of Rs. 10 each. The amount of paid up capital was Rs. 1,22,060 comprised of 12,206 shares which were fully paid up. It is alleged that on September 3, 1972, the remaining shares, i.e., 7,794 shares were further allotted to respondents Nos. 2 to 10 and, thus, the paid-up capital of the company became Rs. 2,00,000. The capital of the company was further increased from Rs. 2,00,000 to Rs. 5,00,000 comprising of 50,000 shares of Rs. 10 each in the annual general meeting held on September 29, 1973. Thereafter,

on January 30, 1974, further 4,247 shares were allotted to respondent No. 2 and his family members and to the family members and relations of respondent No. 9. That with the object of securing majority shareholding in the company 7,794 shares were allotted by the board of directors to themselves and their relations without offering those shares to the existing shareholders of the equity shares for allotment on proportionate basis of their holding of the paid-up capital as provided for u/s 81 of the Act; that no notice as contemplated u/s 81(1)(b) of the Act was issued to any of the shareholders and that no special resolution as mentioned in Section 81(1)(a) of the Act was issued before allotment of 7,794 shares or even thereafter. This illegality was pointed out even by the auditors in their audit report which finds mention in the balance-sheet for the financial year ending March 31, 1973. That the allotment of shares was kept a closely guarded secret from the other shareholders and that the board meeting lacked the quorum when the shares were allotted. The allotment of shares was got approved in the annual general meeting of the shareholders held on September 29, 1973, illegally because out of the nine shareholders four shareholders, namely, Shri Gautam Raj Mehra, Shri Hari Rattan Kapur, Smt. Kiran Kapur and Kumari Anita Kapur ; were the allottees of the new shares and they could not approve the allotment of shares to themselves; that till the company had approved the allotment of shares in their favour they could not in law participate in the annual general meeting and that the remaining five members did not constitute the quorum as provided under Article 81 of the articles of association. The increase of authorised capital on September 29, 1973, from Rs. 2,00,000 to Rs. 5,00,000 was illegal, being in breach of Article 13 of the articles of association. The share capital could be increased only by an extraordinary resolution, i.e., special resolution but the same was passed as an ordinary resolution ; that after securing majority illegally, the respondents on January 30, 1974, issued 4,247 shares to the following persons :

Sl. No.

Name

No. of shares

(1)

Shri Roshan Lal Mehra

100

(2)

Shri Ram Das

647

(3)

Smt. Kiran Kapur

500

(4)

Kumari Anita Kapur

1.500

(5)

Smt. Suhag Rani

500

(6)

Shri Gautam Raj Mehra

250

(7)

Shri Shobir Mehra

750

Total

4,247

3. Respondent No. 2 Shri Ram Das Kapur, managing director and respondent No. 9 Shri K.D. Mehra, director allotted the shares in their names or to their relations and in doing so, the provisions of Sections 81 and 299 of the Act read with Article 15 of the articles of association were violated as per the grounds in the case of earlier allotment. The present petition was filed in September, 1981, challenging the aforesaid two actions of the respondents allotting 7,794 and 4,247 shares and increasing the share capital from Rs. 2,00,000 to Rs. 5,00,000.

4. Written statement has been filed. In the written statement filed, apart from denying the allegations made in the petition on the merits, a preliminary objection has been taken that the petition suffers from delay and laches and the transactions of 1972 and 1974 cannot be challenged in September, 1981. On the merits, it was stated that the shares were allotted to the respondents in accordance with law ; that a notice, annexure R-I with the written statement, was issued to all the existing shareholders of the company for taking new shares on the basis of one share for every two shares held and that the petitioner did not indicate his willingness to purchase the shares within the time stipulated and, thus, the allotment was made in accordance with law.

5. Replication was filed controverting the pleas raised in the written statement and reiterating the ones made in the petition.

6. On the basis of the pleadings, the following issues were framed and the

parties led their evidence :

"(1) Whether the petition is barred by limitation ? OPR

(2) Whether the petitioner can challenge the allotment of shares after the respondent-company has changed its status to a private limited company from public limited company ? OPR

(3) Whether the petitioner is estopped from challenging the allotment of shares as stated in paras. 3 and 4 of preliminary objections of written statement ? OPR

(4) Whether the allotments of 7,749 shares and 4,247 shares suffer from any legal infirmity, if so, what is its effect ? OPP

(5) Whether the increase of capital from Rs. 2 lakhs to Rs. 5 lakhs suffers from any legal infirmity ? If so, what is its effect ? OPP

(6) Relief."

7. Counsel for the parties have been heard.

8. Before me, it was urged on behalf of the petitioner that the shares were transferred by the company illegally without issuing any notice to the existing shareholders for allotment of shares on proportionate basis of their holding of the paid-up capital as provided u/s 81 of the Act; that it was incumbent on the company to offer the shares to each shareholder of the company for purchase as per his entitlement and that the transfer made by the company of these shares in favour of a few selected persons was illegal having been done in a secret manner.

9. As against this, the submission of counsel for the respondents is that the shares were allotted in accordance with law and that a notice had been issued to the petitioner and the petitioner had not come forward to purchase the shares within the stipulated time. Other disputed questions of fact have also been raised.

10. Before dealing with the matter on the merits, it would be appropriate to deal with the objection of the respondent regarding limitation.

11. By way of preliminary objection, it was argued that the shares were allotted in the years 1972 and 1974, and the present petition was filed in September, 1981, i.e., after a delay of eight years and the same is barred by limitation. No period of limitation has been prescribed under the Act for filing a petition for rectification of the shares register. Counsel for the respondents relied upon *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, , to contend that the limitation under these circumstances would be three years. The apex court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, , held that Article 137 of the Limitation Act applies to any petition or application filed under any Act. The petition in that case under consideration was u/s 16(3) of the Telegraph Act, 1885, claiming enhanced compensation and it was held that the said petition fell within the scope of Article 137 of the Limitation Act and was

barred by time.

12. Counsel for the respondents further placed strong reliance upon a judgment of the Delhi High Court in *Anil Gupta v. Delhi Cloth and General Mills Co. Ltd.* [1983] 54 Comp Cas 301 where a learned single judge of the Delhi High Court held that Article 137 of the Limitation Act would apply to any petition or application under any Act and the same shall not be confined to applications contemplated by or under the Code of Civil Procedure, 1908. This was a petition u/s 155 of the Act for ordering rectification of the register of members. In that case, the petition had been filed after five years of the allotment of shares. The same was held to be barred by time and it was held as under (page 308) :

"Previously there was some doubt as to whether Article 137 applies to applications under the special Acts. This controversy has been set at rest by the decision of the Supreme Court in the case reported as *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, . That was a case where a petition had been filed u/s 16(5) of the Indian Telegraph Act, 1885. A question arose whether the said petition had been filed within time. The contention of the petitioner was that Article 137 did not apply. Taking note of the changes brought about by the Limitation Act of 1963, the Supreme Court held as follows (page 286 of AIR 1977) :

The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge Bench of this court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.

In the present case the transfers were effected on August 11, 1973, in respect of 1,000 shares, and on September 27, 1974, in respect of 1,500 shares. An application u/s 155 of the Companies Act could be filed within three years of the said transfers. Prima facie it appears that the present petition which was filed on November 23, 1978, is barred by time."

13. In the present case as well, the shares were transferred in the years 1972 and 1974. There is no averment in the petition as to when the petitioner acquired the knowledge of transfer of the shares. Under the circumstances, it would be presumed that he had the knowledge from the date of the allotment of shares. The present petition, under the circumstances, would be barred by limitation.

14. On the merits also, the petitioner cannot succeed as the petition involves disputed questions of fact which can only be gone into by a civil court. A learned single judge of this court in *S. Gurcharan Singh Mohant v. Rattan Sports P. Ltd.*

[1986] 59 Comp Cas 279, dismissed the petition filed u/s 155 of the Act where disputed questions of fact were involved holding (headnote) : "that the proceedings u/s 155 were of a summary nature wherein the court was not expected to go into intricate and disputed questions of fact. The petitioner had to resort to a civil suit to establish his claim".

15. For the reasons recorded above, this petition is dismissed, being barred by limitation as well as because it involves disputed questions of fact which can only be decided by a civil court. No costs.