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**(1976) 11 KL CK 0007**

**In the High Court Of Kerala**

**Case No : B.C.P. No's. 2 to 13 and 15 to 17 of 1975**

Joseph Michael and Others

APPELLANT

Vs

South Indian Bank Ltd. and Others

RESPONDENT

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**Date of Decision : 01-11-1976**

**Acts Referred:**

Banking Regulation Act, 1949 — Section 12(2)  
Companies Act, 1956 — Section 111, 111(1), 155

**Citation :** (1978) 48 CompCas 686 : (1977) 1 ILR (Ker) 97

**Hon'ble Judges :** G. Viswanatha Iyer, J

**Bench :** Single Bench

**Advocate :** Mani J. Meenattoor, for the Appellant; P.A. Francis and T.G. Rajendran, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Viswanatha Iyer, J.—These petitions were heard together and are considered and disposed of by this common order as the question involved in all these cases is the same, namely, the legality of the decision of the respondent-bank in refusing registration of the transfers of shares of the banking company ,to the respective petitioners. The reason given for refusal is the same in all the cases. The facts in B.C.P. No. 2/75 are stated hereunder and the facts in the other cases are not mentioned since it will be practically a duplication of the facts in B.C.P. No. 2/75 with only minor changes in the number of shares transferred to the respective petitioners therein. The authorised share capital of the respondent-banking company is Rs. 50,00,000 divided into 50,000 equity shares of Rs. 100 each. The issued and subscribed share capital of the company is Rs. 36,47,700 consisting of 36,477 equity shares of Rs. 100 each on which Rs. 50 per share has been called up. The 2nd respondent held 210 equity shares in the company. The petitioner purchased the said shares on January 22, 1975, for a consideration of Rs. 10,000 and forwarded the share transfer deed duly executed by the transferor and the transferee together with the share certificates relating to the said shares to the company for registering the transfer and entering the name of

the petitioner in the register of members of the company as the holder of the said 210 shares. The company informed the petitioner by letter dated 18th March, 1975, that the board of directors of the company in exercise of their powers under regulation 42 of the articles of association of the company read with Section 111(1) of the Companies Act have refused the application of the petitioner for the transfer of the shares. The petitioner alleges that the board of directors with the ulterior object of preventing the petitioner from partaking at the next annual general meeting of the company to be held on or before 30th of June, 1975, and in the election of the directors of the meeting have capriciously and in bad faith refused to register the transfer of the said shares to the petitioner. The petitioner is a businessman owning movable and immovable properties worth a few lakhs of rupees and he can easily raise the necessary funds to pay the balance amount due on the shares as and when calls are made. The petitioner has not in any way acted against the interest of the company and the company's interest will not in any manner be prejudicially affected by admitting the petitioner to the membership of the company. The company ought to have registered the transfer. But the board of directors have mala fide refused to register the transfer and thereby committed default and unnecessary delay in entering in the register of members of the company the fact that the petitioner has become a member of the company and that the 2nd respondent has ceased to be a member of the company in respect of the said 210 shares. It is further alleged that the petitioner reasonably apprehends that the directors have refused registration with the ulterior object of compelling the shareholders to transfer their shares in favour of the relations of the directors at a low price. Though regulation 42 of the articles of association provides thus:

"The directors may decline to register any transfer of shares on which the company has a lien and, in case of shares not fully paid up, may refuse to register the transfer to a person of whom they do not approve. The directors may in their absolute discretion and without assigning any reason refuse to register the transfer of any shares to any person whom, it will, in their opinion, be not desirable in the interests of the company to admit to membership. The directors shall not be bound to give any reason for such refusal. "

the company has been regularly registering all transfers of its shares from its incorporation. The refusal of the registration of transfer in this case is not bona fide or in the interests of the company and, therefore, this petition is filed u/s 155 of the Companies Act for an order directing the company to rectify the register by entering on the register the fact that the 2nd respondent has ceased to be a member and the petitioner has become a member of the company.

2. This petition is opposed by the 1st respondent-banking company. It is contended that this petition u/s 155 of the Companies Act is not maintainable in view of the fact that there is no " default" or "unnecessary delay " within the meaning of Section 155(1)(b) of the Companies Act in entering in the register the fact of the petitioner becoming a member of the company. The board of

directors in exercise of their discretion under Article 42 of the articles of association consciously refused the registration of the transfer as the proposed transfer was found to be not in the nature of genuine investment but an attempt at cornering the shares of the bank and to circumvent the provisions contained in Section 12(2) of the Banking Regulation Act, 1949, and in contravention of the policy of the Reserve Bank of India and as such it is not desirable in the interests of the company to admit the proposed transferee to membership. The board of directors of the company have exercised their discretion bona fide and in the best interests of the company and it is not competent for the petitioner to challenge this refusal in a petition u/s 155 of the Companies Act. Including the application of the present petitioner there were 20 applications in all, the applicants forming a group for cornering of shares in the company and for controlling the affairs of the company in their own way and against the interests of the company. This was thought to be an unhealthy trend as regards the development of a joint venture undertaking, and the Reserve Bank in their circular dated 13th January, 1970, had directed to obtain the acknowledgment or sanction of the Reserve Bank before effecting the transfers which are intended to have a controlling interest in the company or which are not in the nature of genuine investments. The 20 applications of the group including that of the petitioner were to transfer 1,603 shares with a paid-up amount of Rs. 80,150 forming 4.5% of the total paid-up capital of the company. Section 12 of the Banking Regulation Act prescribes that no person holding shares in a banking company shall exercise voting rights in excess of 1% of the total voting rights of all the shareholders of the company. Four members of the same family have purchased 1,067 shares for a total value of Rs. 53,350. On enquiries, it was found that the transfers of the shares in favour of the petitioner and those in his group are not for the purpose of genuine investments, but only an attempt to corner the shares of the company and to have a controlling interest in the company in violation of the provisions contained in Section 12(2) of the Banking Regulation Act. So, the board of directors forming an honest opinion that in the interests of the company it was not desirable to admit the proposed transferees to membership refused the registration. A case of conscious refusal of the registration cannot be a ground for invoking the remedy of rectification u/s 155 of the Companies Act and the remedy of an appeal to the Central Government u/s 111 of the Companies Act has not been availed of. The petitioner has no locus standi to come to this court u/s 155 of the Act. It was further alleged that one of the transferees in the group filed a suit before the Trichur Munsiffs Court against the refusal and made an attempt to stay the annual general meeting of the company which was due to be held on 16th June, 1975, but the same was dismissed by the munsiff's court stating that the remedy of the aggrieved person is to file an appeal u/s 111 to the Central Government and not a suit. The counter-affidavit concludes with "the contention that the petition is unsustainable on the merits as well.

3. The counsel for the respondent urged before me that if this court finds that

the petition u/s 155 of the Act is maintainable his client should be allowed to let in further evidence to prove that the refusal of the registration of transfer was bona fide and in the best interests of the company. The petitions are pending for more than one year. Further, when the company has given the reasons for refusal of registration the court has only to see whether the reasons are either wrong in principle or mala fide and the burden to prove either or both is on the petitioner. So, in the nature of the case, I do not think that there is any need to post the case for further evidence again.

4. Before I proceed to discuss the merits of the respective contentions it is necessary to keep in mind the provisions of the Companies Act relating to the transfer of shares and the procedure to be followed for the registration of that transfer. When a share is transferred an application for registration of the transfer has to be made u/s 110 of the Act to the company. Section 111 provides that the company may refuse to register the transfer if the articles of association of the company empowers it. If it is refused that fact has to be intimated within two months to the transferee and the transferor. Default in this matter is punishable with fine. On such refusal an appeal is provided for to the Central Government u/s 111(3) within two months of the intimation of refusal. The Central Government after causing a reasonable notice to be given to the company and also to the transferor and the transferee and giving them a reasonable opportunity to make their representation, if any, direct either that the transfer shall be registered or need not be registered. Sub-section (5A) enables the Central Government to call upon the company to disclose the reasons for the refusal and to draw adverse presumption if reasons are not disclosed. If on appeal registration of transfer is allowed, the company is required within a specified time to give effect to the decision. Section 155 provides that a person aggrieved by the " default" or " unnecessary delay " on the part of the company in entering on the register the fact of any person having become a member may apply to the court for directing the rectification. On such an application the court may also decide any question relating to the title of any person who is a party to the application to have his name entered in the register and general power is given to decide any question which it is necessary or expedient to decide in connection with the application for registration. The argument of the respondent's counsel is that when a specific remedy is given to appeal, Section 155 of the Act does not apply and he further pointed out that the expression " default" used in Section 155 does not take within it a conscious refusal u/s 111. According to him default is culpable neglect of some duty. In support of this he referred to the decision of the Calcutta High Court in Nazamunnessa Begum v. Vidya Sugar Cotton Mills Ltd. 1963 33 CompCas 36 . At page 42, it is observed thus:

" But an application is also sustainable when " default" is made by the company. ""Default" to my mind is not " refusal". I may quote with respect the meaning given to this word by Bowen L. J. in In re Young and Harston's Contract 1886 31 Ch D 168 , which is as follows:

" Default is a purely relative term, just like negligence. It means nothing more, nothing less, than not doing what is reasonable under the circumstances--not doing something which you ought to do, having regard to the relations which you occupy towards the other persons interested in the transaction." "

Reference was also made to the meaning of the word " default" in Siroud's Judicial Dictionary, volume I, page 757 and also Oxford Universal Dictionary, volume I, page 505. The complaint of the petitioner here is that the company has failed to do what is reasonable under the circumstances and the refusal is a default as well. If the petitioners establish that the action of the company is unreasonable it will amount to a default and the court can exercise the power u/s 155 of the Act. So there is no substance in this contention of the respondent.

5. Then the respondent's counsel contended that where there is a remedy by way of an appeal a petition for rectification u/s 155 is impliedly prohibited. Remedy by way of an appeal may be a speedy remedy. Section 111 gives a speedy remedy of an appeal in a case which should not normally come to court. But the power of the court to order rectification u/s 155 remains unaffected. Sub-section (3) of Section 111 provides that a party may appeal to the Central Government. It is not incumbent upon the party to prefer this appeal and it may very well choose to come directly to court. In *Sadashiv Shankar Dandige v. Gandhi Sewa Samaj Ltd.* [1958] 28 Comp Cas 137 (Bom), it was observed that Section 155 is the controlling section and gives the court an overriding power notwithstanding any previous order of the Central Government. u/s 155(3) the court is given a general power to decide any question including any question relating to the title of the person who asked for registration of transfer. It will be meaningless if Section 111 is interpreted to indirectly cut off that power by giving the Central Government the same power to decide the same question in appeal first. This decision was followed in *In re Coronation Tea Co. Ltd.* 1962 32 Comp Cas 568 and *Nazamunnessa Begum v. Vidya Sugar Cotton Mills Ltd.* 1963 33 Comp Cas 36 . I respectfully concur in the principles stated in these decisions and hold that the remedy of an appeal u/s 111 is not a bar to the court exercising its power u/s 155 of the Act.

6. The next question is whether the facts of this case make out a case of " default " within the meaning of Section 155. The company has given the reason for its refusal to register the transfers. The reason is given thus in exhibit R-1. It is stated that the transfers are found to be not in the nature of genuine investment but an attempt at cornering the shares of the bank and to circumvent the provisions contained in Section 12(2) of the Banking Regulation Act and in contravention of the policy of the Reserve Bank of India and hence it is not desirable in the interests of the company to register the transfers. The petitioners have in their affidavits stated that only Rs. 50 per share has been called up. Each share is of the value of Rs. 100. Considering the balance-sheet for the previous year and reserve fund of the company the break-up value of the shares will easily be about Rs. 100 per share. The petitioner purchased the

shares at Rs. 50 each. That shows it is a case of a genuine investment only. So, prima facie, these transfers are not anything other than genuine investments. That being so, it is not clear why the company takes up the stand that these transfers are an attempt at cornering of shares. The company has issued so far 36,477 equity shares. The petitioner has bought only 210 shares which is not even quarter per cent. of the shares so far issued. Even going by the sum total of all the shares whose transfer is sought to be registered they come to only 1,603 which is about 4% of the total number of shares. This will not amount to a cornering of shares. "Cornering" is an expression which is not defined anywhere in the Act. So, we have to understand its meaning. "Cornering" is understood in economics to mean a virtual monopoly of a company's stock for sale. In security markets the buyers of the stock have, therefore, to pay exorbitant prices for them. It also means an operation by which the whole of a stock or commodity is bought up so that the buyers may re-sell at their own price. It is also understood to mean to get control of by forming a corner. It is not necessary to dilate on this because the purchase of 210 shares or for that matter, taking all the petitioners together, the purchase of 1,603 shares out of 36,477 shares does not amount to any cornering of shares to get control over the affairs of the company.

7. Then the question is whether the provisions contained in Section 12(2) of the Banking Regulation Act are in any way circumvented. That subsection read as follows:

"No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights on poll in excess of one per cent. of the total voting rights of all the shareholders of the banking company."

This does not in any way affect the transfers of shares or the registration of such transfers. It only means that a person holding shares will not get voting rights in excess of one per cent. of the total voting rights of the shareholders of the company. This has no relation to any group and even assuming that a group of shareholders may get more than one per cent. of the voting rights, that is not prohibited by Section 12(2) of the Banking Regulation Act.

8. Lastly, the question is whether the registration of transfer claimed in these cases in any way violates the policy of the Reserve Bank. In support of this contention the respondent-company relies on a circular issued by the Reserve Bank on 13th of January, 1970, and a copy of which is produced in this case. The same is marked exhibit R-3 by me. That only requires the company to furnish full particulars of the proposed transfers if the bank receives an application for transfer of shares which would make the holding of the proposed transferee equivalent to 1% and over of the total paid-up capital of the bank. A declaration that the proposed transferee is not likely to acquire either singly or as a group a controlling interest in the bank is also required to be furnished. If the bank suspects on the basis of the information available with it that the transfer of shares appears to be not in the nature of a genuine investment but an attempt at cornering of shares with a view to acquire a controlling interest in the bank, the

matter must be reported to the Reserve Bank and the bank must await an acknowledgment from the Reserve Bank before effecting the said transfer. There is no case for the respondent that the total number of shares covered by these petitions will constitute a controlling interest in the bank. To get a controlling interest 51% of the voting right is required. Even if the sum total of all the shares covered by these petitions is taken together this situation is not reached. The circular of the Reserve Bank does not prohibit any transfer and registration of the transfer. Being the apex bank of the Government in respect of financial matters, it only requires an intimation of the transfer of shares which may lead to a controlling of the bank and that is why sweeping powers are given to the Reserve Bank under the Banking Regulation Act. There is nothing wrong in the Reserve Bank issuing such circular for information. But that does not in any way prohibit the transfer of any shares.

9. Thus, all the reasons given by the company to refuse the registration of transfer do not stand scrutiny. The further question, therefore, is whether the power under regulation 42 of the articles of association of the company gives unrestricted powers to the board of directors to refuse registration. This will depend on the terms of that article and what is meant by an absolute discretion to the board of directors. In almost all public companies an article similar to Article 42 is to be found. As a matter of fact, it is one of the standard articles of association prescribed under the Companies Act itself. The intention of providing such an article in the articles of association of a company is not to effect the general transfer-ability of the shares. Its purpose is to arm the directors of the company with power to be exercised in special and exceptional cases where the transfer of shares in certain isolated instances is found to be undesirable in the interests of the company. The question has come up for consideration in various High Courts and also by the Supreme Court. In *Bajaj Auto Ltd. Vs. N.K. Firodia and Another* etc., this power given to the board of directors under the articles of association of a company was the subject-matter of consideration. At page 324, paragraph 13, the Supreme Court observed thus 1971 41 Comp Cas 1:

" Discretion does not mean a bare affirmation or negation of a proposal. Discretion implies just and proper consideration of the proposal in the facts and circumstances of the case. In the exercise of that discretion the directors will act for the paramount interest of the company and for the general interest of the shareholders because the directors are in a fiduciary position both towards the company and towards every shareholder. The directors are, therefore, required to act bona fide and not arbitrarily and not for any collateral motive."

The Supreme Court further observed that the court will assume that the directors acted reasonably and bona fide and those who alleged to the contrary would have to prove and establish the same by evidence. Where, however, the directors state reasons the court would consider whether they were legitimate and whether the directors proceeded on a right or wrong principle. Illustrative cases where a registration of transfer has been refused have been also discussed in

that judgment. The directors have no right to force a particular shareholder to continue as a shareholder and not to allow him to transfer shares at all because that would be an abuse of their power. But, where the transferee would be a quarrelsome person or he would be an unreasonable person or he would be acting in the interests of a rival company, the directors have power to refuse registration of shares inasmuch as it will be contrary to the interests of the company if the proposed transferee should be a member thereof. A case where registration of transfer was refused on the ground that there would be an increase in the expenditure if the body of shareholders increased numerically, and individuals who were neither related to the founder's family or connected with the finance of the company would become members of the proposed transfer was held to be an abuse of power. In almost all cases the refusal of registration on the ground of a personal objection to the transferee has been upheld. Where the proposed transferee is either involved or there is a personal animosity between the directors and the proposed transferee or the transferee would harass the management, exercise of the discretion to refuse has been held to be a legitimate exercise of the power. An apprehension that the transfer is an attempt at cornering of shares when on facts there is no scope for it, is no reason to refuse registration. In this case on the facts stated above, there is no personal disqualification to the transferees. They are not alleged to be persons who will not act in the interests of the company. The number of shares in all the petitions put together will be only round about 4% of the voting right of the total number of shareholders of the company. To understand these transactions as an attempt to corner the shares is, to say the least, an abuse of the power of refusal to register. Section 12(2) of the Banking Regulation Act does not in any way restrict the transfer of shares or their registration. The policy of the Reserve Bank is also not against the transfer of the shares. As stated earlier, the circular only required information to be furnished to the Reserve Bank of the transfer of shares which may amount to an attempt to have a controlling interest in the bank. To say that the policy of the Reserve Bank is to discourage transfers which may amount to have a controlling interest in the bank is one thing. But, to make use of that policy as a cloak to refuse registration in any case where on the facts there is no scope for having any controlling interest is an abuse of the power. The directors have acted on a wrong principle or their motives seem to be oblique. There has not been a just and legal consideration of the application for registration of the shares. No paramount interest of the company or the general interests of the shareholders is seen affected by these proposed transfers. That being so, the refusal to register in all these cases seems to be an improper exercise of the discretion contained in Article 42 of the articles of association of the company.

10. Therefore, I hold that there has not been any proper exercise of the discretion vested in the board of directors. Their refusal to register the transfers is invalid. The company is directed to give effect to all the transfers of shares by registering that the transferees who are the petitioners in all the petitions have



become members of the company. The claim for damages is dismissed. Thus the petitions are allowed as directed above. In the nature of this case I make no order as to costs.