

(2012) 03 KAR CK 0123
In the Karnataka High Court
Case No : Company Appeal No. 3 of 2012

J.R. Srinivas

APPELLANT

Vs

Sree Gururaja Enterprises P. Ltd. and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Citation : (2012) 171 CompCas 363

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : K.G. Ragavan, for Lexplexus and C.M. Poonacha, for the Appellant;
Udaya Holla, for Madhukar M. Deshpande, for the Respondent

Judgement

N. Kumar J.

1. This appeal is preferred by the order passed by the Company Law Board, Chennai Bench on February 24, 2012. The appellant filed a Company Petition No. 9 of 2012 seeking certain reliefs. In the company petition itself, several interim reliefs were also sought for. However, the appellant also filed Company Application No. 45 of 2012. In the said company application, the appellant sought for advancement of hearing of Company Petition No. 9 of 2012 from March 28, 2012 to the February 17, 2012 and to grant an order of status quo of the composition of board of directors and the shareholding of the first respondent-company receiver pending disposal of Company Petition No. 9 of 2012.

2. The respondents filed detailed objections opposing the said prayer:

The appellant also filed one more application C.A. No. 48 of 2012 seeking a direction to the respondents not to give effect to the resolution passed in the extraordinary general meeting stated to have been held on February 21, 2012 of the first respondent-company pending disposal of Company Petition No. 9 of 2012. The respondents have not filed any objections to the said application.

3. After anticipating the date of hearing, it appears that, on both the applications, the parties were heard. Then, the Company Law Board proceeded to pass the following order:

The petitioner has been removed as a director in the extraordinary general meeting held on February 21, 2012. Till the matter is finally heard the following orders are passed:

The convening of the extraordinary general meetings on February 21, 2012, shall be subject to the final outcome of the company petition. The respondents shall keep the petitioner informed of the proceedings of the board will be serving notes and minutes on the petitioner within 43 hours of the meeting by registered post acknowledgment due, and submit statement of accounts of the company to the Bench on fortnightly basis, parties at liberty to suggest the names of the valuer

4. Aggrieved by the same, the appellant is before this court.

5. Learned counsel for the appellant assailing the impugned order contends that, in the application filed by them, they have clearly set out what their case is, what is the injustice done to them by the respondents and what is the relief to which they are entitled to and they have sought for certain reliefs.

6. The Company Law Board without proper application of mind and without properly appreciating the case of the appellant has proceeded to pass the aforesaid order, which is ex facie illegal. It is devoid of the reasons and therefore, it is a nullity and liable to be set aside.

7. Per contra, learned senior counsel appearing for the respondents submit that the Tribunal at the instance of the appellant anticipated the case and passed an order on the application, which, in the facts of the case is just and proper and do not call for any interference. He submitted that, in fact, the respondents had no time to file objections to the other application which was also taken into consideration.

8. The apex court in case of *The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others*, , dealing with how a judicial order is to be passed has held as under (page 744) :

40. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and

judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind". (Vide State of Orissa Vs. Dhaniram Luhar, and State of Rajasthan Vs. Sohan Lal and Others, .

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum...

42. Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.

9. The order passed by the Tribunal is contrary to the aforesaid law declared by the apex court. In the order, the case of the parties is not set out. No reasons are assigned in support of the impugned order passed. Infact, the order read as a whole shows total non-application of mind. In these circumstances, this order cannot be sustained. Accordingly, it is set aside.

10. However, the Tribunal is directed to afford sufficient opportunity to the respondents to file objections to the applications filed by the appellant. Hear both the parties, set out the case in brief and apply its mind to the facts of the case and other material on record, keeping in mind the law laid down by the apex court and then pass an order on merits. Both the parties are directed to appear without fail on March 28, 2012, to which date now the case is adjourned. On that date, the respondents shall file its objections. The respondents shall file the objections to the application on the above said date after serving a copy to the appellant earlier and thereafter the Tribunal shall hear the parties and pass appropriate orders within three weeks from the said order.

11. Learned senior counsel appearing for both the parties submit that the direction issued in the impugned order that the parties are at liberty to suggest the names of the valuer is acceptable to both of them and they would suggest the name of the valuer. That portion of the order is not set aside. Accordingly, this appeal is disposed of.