
(2002) 07 AP CK 0108
In the Andhra Pradesh High Court
Case No : WA No. 969 of 2002

K. Sreenivasa Rao

APPELLANT

Vs

Regional Director, Securities and Exchange Board of India
and Others

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Companies Act, 1956 — Section 111A
Constitution of India, 1950 — Article 12, 226

Citation : (2002) 5 ALD 100 : (2002) 4 ALT 565 : (2003) 116 CompCas 238

Hon'ble Judges : Ar. Lakshmanan, C.J.; Ghulam Mohammed, J

Bench : Division Bench

Advocate : Y. Jagan Mohan, for the Appellant; P.V.S.S. Rama Rao and R. Shankara Narayana, for S. Renuka, for the Respondent

Final Decision : Dismissed

Judgement

Dr. AR. Lakshmanan, C.J.—Heard Sri Y. Jagan Mohan, learned Counsel for the appellant - writ petitioner and Sri P.V.V.S. Rao and Sri P. Shankaranarayanan learned Counsel for the respondents.

2. This writ appeal is directed against the order passed by the learned single Judge in WP No. 21241 of 2001 dated 25-4-2002. The writ petition was filed by one K. Sreenivasa Rao against the Regional Director, Securities and Exchange Board of India, Mumbai, Regional Director, Securities and Exchange Board of India, Chennai and six others who are doing business and are residents of Secunderabad. The writ petition was filed by the appellant with the following prayer:

"To issue writ, order or direction more in the nature of writ of mandamus, declaring the transfer of 9.76 lakh shares belonging to petitioner in favour of the respondents 4 to 8 as illegal, untenable and void for being violative of Regulation 10 of Substantial Acquisition of Shares and Takeovers, Regulations, 1997 and consequently direct for the restoration of the shares to the petitioner's family."

3. The writ petition was contested by the respondents 4 to 8 and also by the respondents 1 and 2. It was argued on behalf of the respondents 3 to 8 that the petitioner did not make any representation or moved any proceedings before the respondents 1 and 2 complaining about the so called violations. On the other hand, respondents 1 and 2 on their own accord have taken all possible measures to verify as to whether the transfer of shares is in accordance with the provisions of the Regulations and on being satisfied with the explanation submitted by respondents 3 to 8, respondents 1 and 2 did not proceed further. The very same argument was reiterated by Sri P.V.S.S. Rama Rao, learned Counsel appearing on behalf of respondents 1 and 2 before us. He would submit that the issuance of a writ of mandamus would arise only if the statutory authorities have failed to discharge their duties and in the facts and circumstances of the case, it cannot be said that the respondents 1 and 2 have failed to discharge their duties.

4. Sri Shankaranarayanan, learned senior Counsel appearing for the respondents 3 to 8 submitted that the writ petition itself is not maintainable. According to him, if there was any violation of procedure as regards the transfer of shares, the course open to the petitioner was to initiate proceedings u/s 111-A of the Companies Act Further, having filed CP No. 78 of 2000 before the Company Law Board, the petitioner ought to have worked out his remedies in that Forum and that he cannot seek the relief of issuance of a writ of mandamus. He would further urge that Regulation 10 of the regulations does not apply to the transaction in question inasmuch as the transfer was in favour of promoters.

5. The learned single Judge on an elaborate consideration on the submissions made by the respective parties and on consideration of the provisions of Section 111-A of the Companies Act held that the appellant writ petitioner did not choose to take recourse to the remedy available which is not only alternative but also effective and that the petitioner filed CP No. 78 of 2000 before the Company Law Board under Sections 397 and 398 of the Companies Act complaining of oppression and claiming necessary reliefs and that the complaint was with reference to the transfer of shares in question. However, on 25-9-2001, the appellant has withdrawn the same. The learned judge has observed that it is difficult to imagine as to how the dispute can be resolved in a writ petition under Article 226 of the Constitution of India. The learned Judge dismissed the writ petition on the ground of delay and laches. Delay and laches is one of the recognised grounds for refusal of the discretionary relief. The learned Judge also observed that there is no averment in the affidavit that the petitioner and his family members have not received the consideration contemplated under the Memorandum of Understanding and the relief claimed is one sided and if it is granted, it would result in a situation wherein the petitioner and his family members will be entitled to retain the consideration and that at the same time they will be restored their shares and that this is a circumstance which throws light on the conduct of the petitioner and that the certainty is a factor which needs to be taken into account. The learned Judge held that the appellant writ petitioner has not made out any case for grant of relief claimed in the writ

petition and accordingly dismissed the writ petition.

6. Being aggrieved with the order of the learned single Judge, the writ petitioner preferred the present writ appeal reiterating the grounds raised in the writ petition. Sri Jaganmohan, learned Counsel for the appellant would submit that the learned single Judge failed to notice that the transfer of shares viz., 9,76,000 shares amounting to 22% under Memorandum of Understanding dated 27-9-1996 are untenable and unsustainable in view of the provisions of Regulation 4 of 1994 regulations and Regulation 3 and the proviso whereunder a mandatory declaration of intention to acquire as contemplated under Regulations 6, 7, 8 and 9 becomes condition precedent. The learned Counsel contends that this aspect was misconceived by the learned single Judge and thereby the judgment rendered becomes untenable in the facts and circumstances of the case. He has reiterated the other grounds raised in the writ petition at the time of hearing.

7. Per contra, the learned Counsel for the SEBI reiterated the submissions on the question of maintainability and also submitted that if the petitioner approaches respondents 1 and 2, they would deal with the issue in question in accordance with law.

8. The learned Counsel for the respondents submitted that the writ petition and the writ appeal suffer from the ground of delay and laches and that the filing of the writ petition is an abuse of process of law. The learned Counsel after inviting our attention to the chronological events and to the averments made in the counter affidavit, submitted that the writ petition has been filed against the private persons and not against the State or local authority and therefore, it is not maintainable. According to him, the writ petitioner seeks rectification of the register of members of a company and the same cannot be ordered in a writ petition as a separate machinery is provided for the same under the Companies Act.

9. The learned Counsel for the contesting respondents in our opinion is right in his submission that by filing the present writ petition, the writ petitioner appellant indirectly requests this Court to interpret the terms and conditions of an agreement entered into between the petitioner and the respondents 4 to 8 and therefore, this Court would certainly refuse to interpret the terms and conditions arising under a contract between two private individuals. Since the prayer sought for by the petitioner involves enquiry into the disputed questions of fact, this Court will not be inclined to embark upon such an enquiry. It is seen from the chronological events submitted by the contesting respondents that the writ petitioner has been resorting to litigations ever since certain disputes arose between the petitioner and the respondents 4 to 8. The petitioner's group has been approaching various courts for same or similar relief and has also been indulging in litigation through the relatives of the petitioner. The dates and events submitted by the contesting respondents would clearly go to show that the present writ appeal is nothing but an abuse of process of law. The learned

Counsel would therefore contend that the writ petition and the present writ appeal are not maintainable.

10. The petitioner appellant is also guilty of laches and delay and therefore, the writ appeal is liable to be dismissed on this ground alone. Our attention has been drawn to the averments/submissions made in the counter affidavit which are not disputed by filing a reply affidavit. The admitted facts are as under:

11. The petitioner belongs to a group known as "Katta group" and the respondents 4 to 8 belong to "Haridas group". They jointly promoted several companies and the 3rd respondent is one such company. The 3rd respondent went in for a public issue in the year 1994. In or around 1996, certain differences arose between the petitioner's group and the respondents' group. It is not in dispute that the respondents' group held majority shares in the company and therefore, the petitioner could not disturb the respondents by way of any democratic process known to Company Law. Therefore, it is submitted that the petitioner resorted to some extraneous methods and the petitioner group proposed certain terms of settlement between the petitioner's group and the respondents' group. The terms were finalised and the terms related to the transfer of business interest in the respondents' group companies and the partnership firms and a consolidated consideration was arrived at. The respondents agreed to pay more than what the petitioner's group was entitled to only with an intent to purchase peace and put a quietus to an unnecessary and unwarranted litigation.

12. According to the respondents, they kept up the schedule of payment as prescribed by the Memorandum of Understanding and the petitioner's group divested their interest, title, claim and rights into and upon 9,76,000 shares in the third respondent company. The petitioner's group however managed to postpone or stall the transfer of shares by not providing requisite share transfer deeds for transferring all the said shares. This breach created an impasse but the respondents 4 to 8 however decided to continue to make payments. The petitioner's group sold the 9,76,000 shares in the 3rd respondent company but only 9,02,700 shares could be transferred in accordance with law during March and May, 1997. The respondents have complied with all the formalities contemplated under the SEBI Regulations, 1997. It is also pointed out that the transfer between the petitioner's group and the respondents' group is one between the promoters and as such the said transfer would not fall under the restriction clauses in the said regulations.

13. The petitioner's group submitted their resignation from the Board of Directors of the 3rd respondent company and other group of companies in accordance with the terms and conditions of the agreement entered into between the parties. The petitioner's group did not raise any objection either with regard to the transfer of shares or with regard to the re-constitution of the Board of Directors until the year 2000. The petitioner's group decided to put spokes into the functioning of the 3rd respondent company and with this end in view,

nominated for election of one of their group members as Director of the 3rd respondent company in the Annual General Body Meeting held on 27-12-1999. The petitioner's group however, did not participate in the meeting even with their limited shareholding which they did not transfer and the resolution was defeated at the meeting.

14. Even after such conduct, the respondents paid a sum of Rs. 20 lakhs on the balance payment and purchase the shares in the other group company subject to the condition that the petitioner's group reconciled the accounts. The petitioner's group at some point of time demanded compound interest in respect of the delayed payment and when confronted with the fact that there was no provision for payment of compound interest, agreed to receive simple interest but once again rewrote the entire accounts and adjusted all payments made on account of principal towards interest. The said adjustment was contrary to the terms of the agreement and also contrary to the payments made and receipts already issued by the petitioner's group.

15. At the time of hearing, it was submitted that the respondents have paid a sum of Rs. 5.17 crores to the petitioner's group till December, 1999 towards the purchase of shares in group companies. In view of the illegal demands made by the petitioner's group, the respondents could not make further payments. The petitioner instigated one of the relatives to approach SEBI and filed a complaint that the transfer of shares was in violation of the Takeover Regulations. The petitioner's group filed CP No. 78 of 2000 before me Law Board, New Delhi regarding the affairs of the 3rd respondent company and the gravamen of charge was the transfer of shares. The petitioner's group had also filed two more company petitions before the Company Law Board in respect of the group companies. The petitioner failed to obtain any interim order before the Company Law Board and the petitioner therefore ensured that the Writ Petition No. 19131 of 2000 was filed before this Court by the petitioner's relative in respect of transfer of these shares. The petitioner's group filed another Writ Petition No. 20641 of 2000 for alleged violation of Section 314 of the Companies Act. Thus petitioner has so far filed three petitions before this Court and all the three petitions have been dismissed by the Company Judge by an order dated 14-6-2002.

16. The petitioner's group have filed even criminal complaints against the respondents and have also implicated the Chartered Accountants who acted as intermediaries between the respondents. The police authorities after investigation found the complaint to be not maintainable but the petitioner's group have proceeded with the same as a private complaint.

17. The learned Counsel for the respondents invites our attention all the above facts only to show that the petitioner's group has been resorting to the litigations ever since the dispute arose in accounting and has been approaching various Courts for the very same relief. The petitioner withdrew CP No. 78 of 2000 before the Company Law Board on 26-9-2001 and has filed the present writ

petition on 8-10-2001.

18. We are of the view that the present petition is nothing but an abuse of process of law.

19. A legal objection was taken in regard to arraying the Regional Directors of SEBI, Mumbai and Chennai respectively as the first and second respondents. It was submitted by Sri Shankaranarayanan that the said respondents were impleaded only to give a colour that the statutory authorities are also involved in the matter. We have already referred to the prayer in the writ petition. No relief was sought for against the respondents 1 and 2 and also it would be clear that the petitioner did not at any point of time approach or request or demand the respondents 1 and 2 to do something or not to do something. The writ petition relates to the agreement between the petitioner and the respondents 4 to 8 as they will not fall under the categories under Article 12 of the Constitution of India.

20. We shall now come to the prayer in the writ petition. The prayer in the writ petition is for rectification for registers maintained by the 3rd respondent company. In this regard, it is useful to extract Section 111-A of the Companies Act which deals with the rectification of the registers of members and specific jurisdiction is vested with the Company Law Board.

111-A(1) In this Section, unless the context otherwise requires, "company" of Section 111 of this Act.

(2) Subject to the provisions of this section, the shares of debentures and any interest therein of a company shall be freely transferable :

Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Company Law Board and it shall direct such company to register the transfer of shares.

(3) The Company Law Board may, on an application made by a depository, company participant or investor or the Securities and Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act 1992 (15 of 1992) or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.

(4) The Company Law Board while acting Sub-section (3) may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of Sub-sections (5), (7), (9), (10) and (12) of Section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.

21. The petitioners group having approached Company Law Board for a much larger relief including the transfer of shares and having withdrawn the same, cannot approach this Court for a similar relief. The writ petition is therefore not maintainable as there is an effective alternative remedy available. The respondents have not violated any provisions of SEBI Regulations and the learned Judge also considered the same in the impugned order. The petitioner is also guilty of the delay and laches since the transfer of shares took place in 1997. Even according to the petitioner, nothing was done till 2000. The petitioner is not entitled to the reliefs claimed and the learned Judge rightly dismissed writ petition as it is not maintainable.

22. At the time of hearing, our attention was also drawn to the grounds of appeal Nos. 17, 25, 32 and 46 which read as under:

17. The learned single Judge with due respect did not understand the scope and ambit of the mandatory provisions of the regulations and specially with regard to the transfer of shares beyond 10% under the 1994 regulations and thereafter 15%.

25. The learned single Judge missed the wood for trees, by accepting the oral submissions of respondents herein, and even on this ground alone the judgment of the learned single Judge is liable to be set aside.

32. The learned single Judge is had gone carefully through Section 111-A of the Companies Act and specially sub-clause 3 of Section 111-A would have noticed that the matters mentioned therein are totally different from the complaint of the appellant herein and thus the learned single Judge opining that Section 111-A is available to the appellant petitioner is untenable, misconceived and is devoid of legal sanction.

46. The learned single Judge realized that he heard the applicant's Counsel for 2 1/2 hours and therefore openly expressed the view that he should dispose of the writ petition itself and the appellant submits that this aspect has resulted in miscarriage of justice.

23. The learned Counsel for the respondents submitted that the appellant's Counsel has eminently put motives against the learned single Judge who disposed of the Writ Petition No. 21241 of 2001. This was brought to the notice of Sri Jagan Mohan, learned Counsel for the appellant who immediately responded and expressed apology and made a request to this Court to delete the said ground Nos. 17, 25, 32 and 46 and he filed an affidavit which is reproduced hereunder:

I, Y. Jagan Mohan, S/o late Y.S.V. Ramana Murthy, aged about 49 years, occ: Advocate, R/o Chikkadpally, Hyderabad do hereby sincerely and solemnly affirm and state on oath as follows:

I am the Counsel for appellant herein and as such take the responsibility for drafting the grounds for Appeal.

At the outset, I tender my sincere and profound apologies to this Hon''ble Court for the grounds raised by me as ground Nos. 17, 25, 32 and 46. I also tender my sincere and profound regret for the language used in the grounds referred above. I submit that I have immense faith and respect to the Hon''ble Court on par with a God, I therefore assure and undertake to never commit a similar mistake casting any allegation against any Judge of this Court. I shall be ever so grateful for this Hon''ble Court to accept my sincere regrets and accordingly pardon my language on grounds 17, 25, 32 and 46.

24. In view of the apology tendered by the learned Counsel in his affidavit, we deleted the grounds 17, 25, 32 and 46 from the grounds of appeal by our order dated 8-7-2002.

25. The writ petitioner after receiving a sum of Rs. 5.17 crores has filed the present writ petition unnecessarily to drag the respondents to this Court. In the circumstances, we have no hesitation in dismissing the writ appeal. Since the writ petitioner has unnecessary dragged the respondents by filing the writ petition, we are of the opinion that it is a fit case for awarding exemplary costs. But we refrain from awarding such costs by taking a lenient view giving the opportunity to the appellant writ petitioner not to indulge in such frivolous and vexatious litigation in future. The writ appeal fails and is dismissed.