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**(1995) 03 KAR CK 0021**

**In the Karnataka High Court**

**Case No :** Writ Petns. No''s. 6162 to 6178 of 1988

Karnataka Theatres Ltd. — APPELLANT

Vs

S. Venkatesan and another, etc. etc. — RESPONDENT

**Date of Decision :** 20-03-1995

**Acts Referred:**
Companies Act, 1913 — Section 111, 111 (4)
Constitution of India, 1950 — Article 15

**Citation :** AIR 1996 Kar 18 : (1995) 3 KarLJ 267

**Hon'ble Judges :** S. Rajendra Babu, J

**Bench :** Single Bench

**Advocate :** S.G. Sunderswamy and Sri Naganand, for the Appellant; M/s. Jayaram and Jayaram, T.K. Sheshadri and K.A. Ariga, for the Respondent

## Judgement

1. These petitions are directed against an order made by the Company Law Board (hereinafter referred to as ''CLB'') in Appeals filed before it u/s 111 of the Companies Act, 1956 (for short the Act) against the decision of the Board of Directors of the petitioner-Company (hereinafter referred to as BOD of ''Company'') declining to register certain shares of the Company said to have been acquired by the first respondent in each of these cases.

2. Before the CLB the petitioner contended that the Appeals filed by first respondent in each of these cases before it were barred by limitation, as the same were not filed within a period of two months from the date of receipt of the petitioner''s letter regarding refusal to transfer shares. On this aspect of the matter, the Board classified the Appeals into three categories :

(i) that there are certain Appeals in which there was no delay at all;

(ii) certain Appeals in which there was delay; and

(iii) certain other Appeals have been forwarded to the Board within the prescribed time, but reached the Board a little late.

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On an overall consideration of the matter it held that in order to avoid undue hardship to the appellants before it, the CLB was inclined to condone the ''short delay''.

3. Attacking this finding, the learned Counsel for the petitioner urged that there is no specific provision for condonation of delay in the matter of an Appeal filed u/s 111 of the Act on any ground including one of hardship. Elaborating his submission, the learned Counsel for the petitioner stated that Section 111 provides for power to refuse registration and also the Appeal that could be filed against such refusal. The decision as to refusal of registration of transfer of any share should be communicated within two months from the date of delivery of intimation of such refusal and if there is any default in complying with the aforesaid provision, the Company and every Officer of the Company would be punishable with fine, which may extend to Rs. 50/- per day during the period of default continues. He invited my attention to Section 111(4) thereof. It provides that in case an Appeal is filed against such refusal to transfer the shares, the same should be made within a period of two months from the date of receipt of the notice of refusal. In the present case it is submitted that at the relevant time there was no provision made in the Rules framed by the Central Government for the conduct of the business of the CLB empowering them to condone the delay. It is also submitted that u/s 637 of the Act there should be a specific delegation of powers to the CLB by the Central Government to exercise such powers. Neither Section 111 nor Section 637B are subject-matter of delegation. Rules fram ed u/s 642 do not provide for condonation of such delay. It is therefore submitted that there is no scope for condon ing the delay a! ail in the case of the Appeals which are filed beyond the time fixed in Section 111(4) of the Act. He further con tended relying upon a decision of this Court in Lingamma Vs. State of Karnataka, that when there is no specific power conferred upon an Authority functioning under a special statute no in inherent power is available for condonation of delay, however hard the circumstances in a given case may be.

4. The learned Counsel for the first respondent in each of these cases submitted that this is a case where CLB had exercised its powers squarely u/s 637B of the Act, which opens within a non-obstinate clause and has overriding effect on all other provisions of the Act and that the power that is exercised by the CLB is that of the Central Government itself in the matter of entertaining an Appeal and therefore that provision would be attracted. He explained that Section 637B of the Act though refers to an application includes an Appeal and for that purpose relied upon a decision in AIR 1932 165 (Privy Council) He further submitted that there is only one case in which there is one day''s delay, that is Appeal No. 6/SR/86(M. Naveen Kumar v. Jaganjiva Hegde) and all Appeals were filed in time or communication in that regard had already been despatched by the party within the time prescribed under law and in that context relied upon a decision of this Court in W.A. No. 1335/88, disposed of on 9-1-1991, wherein this Court held that what is required in the relevant provision is to make an Appeal and not actual presentation of an Appeal. The moment the party concerned despatches

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such an Appeal by post, it must be deemed that such an Appeal has been made. Based on that principle enunciated by this Court, the learned Counsel contended that in these cases there is no difficulty at all in coming to the conclusion that Appeals had been made within that time.

5. Since at least in one of the cases I have to decide that question as to whether an Appeal is in time or not, I need not embark upon a discussion on the aspect as to when an appeal is said to have been filed. I would rest content by referring to the provisions of the Act to find out in cases of time barred Appeals whether any delay in filing them could be condoned.

6. Section 111(4) of the Act enables a transferee who has purchased shares and applies for registration and on intimation of refusal by a Company can prefer an Appeal as provided therein within a period of two months thereof. Such an Appeal will have to be filed before the Central Government. At the relevant time the Central Government delegated the power u/s 111 to be exercised by the CLB subsequently. Hence, in these circumstances Appeals were filed before CLB. Thus, all the powers which vested with the Central Government in the matter of an Appeal u/s 111 of the Act could be exercised by the CLB in that regard. Therefore, if power u/s 637B was available to Central Government, the same power was available to the CLB as well. In that view of the matter, I think there is no substance in the contention urged on behalf of the petitioner that in these cases Section 637B could not be applied. Condonation of delay in Section 637B is with reference to an application. An Appeal could be filed by a memorandum or a petition or an application or in any other manner. If an application could be understood in a generic sense as a prayer made to an Authority for some relief to set aside an order of another Authority and such an application is under the Statute, would amount to an Appeal. The Privy Council considered this very question as to whether an application could be understood as an Appeal in AIR 1932 165 (Privy Council) and stated that in the absence of definition of an appeal or an application, there cannot be a doubt that an application would include an appeal asking the Appellate Court to set aside an order made by any Authority and therefore the ordinary connotation of the expression application would include an Appeal. Hence, I am of the view that Section 637B squarely applies to the proceedings before the CLB. If that provision is applicable, the exercise of discretion by the Board in that regard cannot be interferred with by this Court because it has given certain cogent reasons such as the shortness of delay and advancing cause of justice by removing hardship that may arise, if delay is not condoned. I do not think that such an order could be interferred with in a proceeding under Article 226 of the Constitution. Hence, I reject the first contention advanced on behalf of the petitioner.

7. The next contention urged on behalf of the petitioner is one touching upon the merits of the matter.

8. It is the contention of the petitioner that one Ratnavarma Padival had been making attempts to corner the shares and was offering exorbitant price thereto

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and therefore the Company considered after obtaining legal advice that it was not in the interest of the Company to allow the transfer of shares; that as long as reasons had been assigned by the Authority concerned and those reasons are germane to the refusal of the transfer of the shares and such exercise of power is bona fide, it would not at all be open to the CLB to interfere with such a matter and in this context relied upon the following decisions:

(1) 1895 All ERR 2021 (Re The Coalport China Company (John Rose and Co.) Limited;

(2)1918 All ERR1263 (Weinberger v. Inglis);

(3) 1942 All ER 542 (Re Smith & Fawcett, Ltd.);

(4) 1963 All ER 940 (Charles Forte Investments, Ltd. v. Amanda);

that it was not at all open to the CLB to substitute its views to that of the BODs of ''Company'' who had ample authority under the Articles of Association to refuse to transfer the shares and such power as long as exercised by them in a proper manner could not be interfered with by any Authority; that the CLB had misdirected itself in wrongly casting the burden upon the petitioner that it should prove that its decision was valid, while it should have placed such onus upon the transferee; that a commercial reality is within the knowledge of the BODs and not of the CLB; that in this context referred to the object behind Article, 15 of the Articles of Association, which restrict the extent of holding of shares in the Company and also referred to Section 182 of the Act; that the CLB could not have ignored the material placed by them in the matter of non-suitability or desirability of not transferring the shares in favour of the first respondent in each of these cases though not disclosed in the Resolution, which was not within its purview at the time, when it decided the matter.

9. The learned Counsel for the first respondent in each of these cases submitted that in the light of the decision of the Supreme Court in (1990) 67 Com Cas 518 , (Luxmi Tea Company Ltd. v. Pradip Kumar Sarkar) it is no longer open to any party to contend that in the matter of transfer of shares of a Public Limited Company the Board of Directors could refuse to transfer the shares unless such power is traced either under the Act or under any particular provision in Articles of Association; that in the present case, the only provision that could be pointed out was Article 20 of Table A to Companies Act, 1913 as it was applicable to the Company in question when it was incorporated; that in a case where shares had been fully paid up, the question is only one of want of suitability of the person and no other question would arise in such a case; that in a case where lien is held in respect of shares it is open to the Company to refuse to register the shares; that except in these two circumstances, in no other circumstances it is open to the BODs ''Company'' to refuse to transfer the shares. He also explained the scope of powers of the CLB to refuse to transfer the shares by reference to Bajaj Auto Ltd. Vs. N.K. Firodia and Another etc., and W. P. No. 776/78 and connected matters, disposed off by the Madras High Court, wherein the situation

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was almost identical. He further brought to my notice certain observations made by the Court in W.A. No. 1335/88 particularly in the context of the contention advanced on behalf .of the petitioner (hat one Ratnavarma Padival wanted to corner all the shares and the transferees are merely holding those shares benami on his behalf or on his associates. He also pointed out that the only material before the BODs of ''Company'' on the relevant date when they refused to transfer the shares was that certain shares had been sold at an exorbitant price, but he countered the same by pointing out that there was enough material to show that the Company itself has sold certain shares at Rs. 1,000/- while the shares transferred was only of the value of Rs. 950/- and thus contended that the interference by the CLB in this regard was perfectly in order.

10. The CLB in this case after referring to Article 20 of Table A of Companies Act, 1913 held that the petitioner had not made out a case to establish that the first respondent in each of these cases are undesirable persons warranting refusal of registration of transfer of shares in their name. They noticed that the reason given in the letter of refusal is that the consideration of transfer is high. They went through the legal opinion placed before them also. They were of the opinion that the high consideration paid for the transfer is not justifiable ground for refusing to register the shares. They referred to the forfeited shares having been issued by the Company at a high price of Rs. 1,000/- per share and also its earlier decision in Appeal No. 9/77 that it is not for the Company or its management to sit in judgment as to in the shares of which Company and in what price an investor should invest his funds. The Company should not feel aggrieved because of any particular amount being mentioned as consideration in the instruction of transfer since such consideration amount is of no significance in so far as the finances or the paid-up capital of the Company are concerned. They took the view that there was no material to hold that the first respondent in each of these cases was acting at the instance of the said Ratnavarma Padival. That the emphasis in such matters is on the. personal objections to the transferee and not to the transferor on the ground that the transferee is the nominee of someone whom they consider objectionable. They also referred to certain legal proceedings between Ratnavarma Padival and others against the Company and the same was found to be irrelevant to the case on hand. They took note of the scope of Article 15 of the Articles of Association that no member can hold shares exceeding 1/10th of the total number of shares and the contention of the Counsel for the Company was on the assumption that the shares were not held for and on behalf of the said Padival. On that basis they rejected the stand of the Company and allowed the Appeals.

11. The parameters of the powers of a Company in the matter of transfer of shares is available in Bajaj Auto Ltd. Vs. N.K. Firodia and Another etc., The Supreme Court noticed that if the articles permit the Directors to decline to register transfer of shares without stating the reasons, the Court would not draw unfavourable inferences against the Directors because they did not give reasons. On the other hand, the Court would assume in such cases that the Directors

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acted reasonably and bona fide and those who allege to the contrary would have to prove and establish the same by evidence. Where however the Directors gave reasons the Court would consider whether they were legitimate and whether the Directors proceeded on a right or wrong principle.

12. Further, I may refer to another decision of the Supreme Court in Laxmi Tea Company Ltd. v. Pradip Kumar Sarkar (1990) 67 Com Cas 518, wherein the entire scope of the provisions relating to transfer of shares in a Public Limited Company has been considered by the Supreme Court. It was noticed therein that a shareholder has a right to transfer his share correspondingly in the absence of any impediment in this behalf. The transferee of a share can get the transfer effected and that right of the transferee cannot be defeated by the Company or by its Directors except in pursuance of power vested in them in this behalf, which is specifically provided for -- it may be residuary, but it should be provided for and traceable to some provision either in the Act or in the Articles of Association of the Company. The registration of a transferred share cannot be refused arbitrarily or for any collateral purpose and can be refused only for a bona fide reason in the interest of the company and the general interest of the shareholders. If neither a specific nor residuary power of refusal has been so provided, such power cannot be exercised on the basis of the so-called undeclared inherent power to refuse registration. In view of the declaration of law made by the Supreme Court in these cases it is not necessary to refer to the decisions relied upon by the learned Counsel for the petitioner in any detail.

13. In the present case the reasons given by the BODs is that the shares had been sold at a high price and therefore it would not be in the interest of the Company to allow the transfer. Possibly what lurked in their minds was that Ratnavarma Padival had been behind the sales but that was not spelt out in any of the resolutions. All that was stated in the resolutions was in view of the legal opinion tendered it would not be appropriate to transfer the shares and the legal opinion tendered had been considered in detail by the CLB that the transaction could not be considered to be genuine in view of the high price paid for the shares. It was not at all stated that the high price for the shares were given by Ratnavarma Padival for and on behalf of the transferees and transferees were holding the same benami. That was not the case put forth by them at the time when the BODs passed the Resolutions. Therefore, in the present case when reasons are set out by the Company for refusal to transfer the shares, the question of placing further material before the CLB may not arise because reasons had already been disclosed by them. If reasons had not been disclosed, perhaps the CLB would have called upon them to disclose the reasons or company itself could have disclosed the reasons. However, the material sought to be placed before the CLB has also been considered by the CLB. The learned Counsel for the petitioner contended that the valuation given by the Chartered Accountant on 3-10-1987 should be taken note of. However the said valuation was not and could have been in contemplation of the Company as it decided refusal to grant registration long prior to the date of the said valuation. The CLB

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felt, the mere circumstance that the shares are likely to be held benami would not itself be a circumstance to refuse to transfer the shares. That view finds support in the decision of this Court in W. A. No. 1335/88.

14. The CLB took note of the following circumstances:

(1) Shares were fully paid up.

(2) The price paid by the transferees was not higher than the price paid in respect of certain forfeited shares.

(3) The payment of higher price was not to the detriment of the Company.

(4) No material was placed that the transfer of shares had taken place at the instance of Padival.

(5) Even if it were held that they were held benami, it could not allow the transaction.

None of these reasons could be said to be not based on material on records, it is based on irrelevant material or has any relevant material eschewed from consideration. In that view of the matter, I do not think the learned counsel for the petitioner can contend that the view taken by the CLB in this regard is in any way is incorrect.

15. The contention advanced on behalf of the petitioner that the CLB could not have decided the matter sitting in the arm chair of the BODs of ''Company'' since commercial reality is not within their knowledge, but that of the Company. I do not think this argument has any substance because the CLB considered the scope of Article 20 and was of the view that unless it could have held that except in case of matters personal to the transferees, on no other ground could they have refused to transfer the shares, particularly when there are fully paid up shares. However, learned Counsel for the petitioner wanted me to read Article 20 in a different manner. He wanted me to split the Article into two categories:

The Directors may decline to register:

(a) any transfer of shares, not being fully paid shares, to a person to whom they do not approve.

or

(b) any transfer of shares on which the Company has a lien.

Contention of this nature is futile. Even on the basis of the argument of the learned Counsel, the language of Article 20, the Company could not have refused to register transfer of shares, firstly that the shares are fully paid up and Company has no lien. Thus neither first para nor second para is applicable as argued by the learned Counsel for the petitioner. In view of the law declared by the Supreme Court in Luxmi Tea Company Ltd. 1990 (67) Com Cas 518 and Bajaj Auto Ltd. Vs. N.K. Firodia and Another etc., cases, the Company could not

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exercise any power other than available under Articles or Act. Neither the Act nor Articles give any power which is residuary in character. Even assuming that there is residuary power, when the Company find reasons for its refusal to register transfer of shares, that reason alone will have to be examined as good or bad. That is exactly what the CLB has done in this case. Hence, I find no merit in any of the contentions of the learned counsel for the petitioner.

16. The other submission raised is that a proceeding arising under Companies Act is pending for rectification of registers and hence this matter could not be decided. I do not think I can put off consideration of this matter for in no proceeding arising under Companies Act can correctness of the order of CLB be examined. If that is so, it would be proper to decide this matter now.

17. Thus, I find no substance in these petitions. Petitions are therefore dismissed. Rule discharged.

18. In the circumstances, the Company will have to comply with the order of the CLB within a period of two weeks from today.

19. Petitions dismissed.

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