
(1959) 08 MAD CK 0012

In the Madras High Court

Case No : Appln. No's. 1176 to 1178 of 1959

K.R.S. Narayana Iyengar and Others

APPELLANT

Vs

T.A. Mani and Others

RESPONDENT

Date of Decision : 26-08-1959

Acts Referred:

Companies Act, 1913 — Section 153(C), 153(C)(1), 153(D)
companies Act, 1956 — Section 235, 235, 236, 236, 237

Citation : AIR 1960 Mad 338

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Judgement

(1). This is an application preferred under the new Ss. 397 and 398 of the Indian companies Act, 1956 corresponding to S. 210 of the English

companies Act of 1948. The case law both under the English and Indian Sections of the Companies Act is very sparse.

(2) Sri Rangaraja Talkies (Private) Limited has been incorporated under the Indian Companies Act, 1913, and is now governed by the Indian

Companies Act, 1956. Its registered office is at Ammamandapam Road, Srirangam. It owns a theatre known as Sri Rangaraja Talkies. It is stated

to be screening second class pictures, for profit. Out of 74 shares of Rs. 500/- each, petitioners 1 to 4 own 8 shares and the 5th petitioner has

subsequent to the filing of this petition sold his 2 shares to the first respondent. Respondent 1 to 4 own 62 shares.

(3) The first respondent was elected as Director on or about 31-3-1952 and as Managing Director on 6-8-1952. Respondents 2 and 3 were

elected as Directors of the Company on 7-12-1952.

(4) By 1954 the petitioners 1 to 4 on the one hand and respondents on the other

hand fell out and the management reached an impasse.

(5) Thereupon these petitioners filed O. S. No. 451 of 1954 on the file of the District Munsif's Court, Tiruchirapalli, for a declaration that the first

respondent T. A. Mani had been validly removed from the office of the Managing Director and for an injunction restraining the first respondent

from interfering with the management and administration thereof on the ground that a meeting was convened on 31-10-1954 (in the absence of T.

A. Mani) and a resolution was passed removing him from the office of the Managing Director and one K. Narasimha Ayyangar was appointed as

Managing Director and making other allegations which have been repudiated in the present application and the earlier applications 678 to 681 of

1959 in this Court.

(6) The first respondent filed a written statement in O. S. No. 451 of 1954 questioning the validity of the alleged meeting and contending that under

the Articles of Association he (first respondent) alone could convene the meeting of the company and that he had convened a meeting to take place

on 21-11-1954 and that the alleged resolution said to have been passed by the applicants removing him from the office of Managing director was

invalid etc.

(7) The petitioners thereupon realising that they were not likely to succeed in the suit entered into a compromise in the following terms:

The parties to the suit have compromised the matter in the following terms and pray the Court may be pleased to record this compromise and

dismiss the suit without costs.

(1) The first defendant agrees to pay Rs. 6000/- to the plaintiffs for the price of their shares in the capital of the company Sri Rangaraja Talkies.

The first defendant further agrees to discharge the debt due to the Srirangam Janopakara Bank Limited.

(2) The first defendant will pay Rs. 6000/- on or before 16-4-1955 to the Janopakara Bank Limited., Srirangam, in partial discharge of the decree

in O. S. No. 46 of 1952 on the file of the Sub Court, Tiruchirapalli.

(3) The first defendant will pay Rs. 250/- every month to the Janopakara Bank Ltd., commencing from 25-5-1955 in discharge of the said decree

debt and thereafter till the share value of the plaintiffs namely Rs. 6000/- is paid out in full.

(4) On such payment as set out in paragraphs 2 and 3 plaintiffs agree to transfer their share holding to the first defendant.

(5) Till such payments are made the first defendant will be the Managing Director of the Company and will not be liable to be removed. The

plaintiffs will continue to be Directors.

(6) In case the first defendant commits default in payment of any one instalment on the due date, the first defendant may be removed from the

Managing Directorship and he will be liable to render an account of the collections made by him. In that event the sum of Rs. 6000/- paid by him

shall be treated as a loan by him to the company and the accounts will be adjusted accordingly.

(7) The plaintiffs will not deal with their shares contrary to this agreement and the first defendant will not deal with the property of the company to

the prejudice of the plaintiffs till the shares are transferred to him.

(8) The suit may be dismissed as settled out of Court"".

(8) But hardly had the ink on the compromise become dry and notwithstanding the admitted fact that the first respondent has discharged the debt

due to the Janopakara Bank Limited, Srirangam, the applicants before me have started giving trouble saying that the terms of the compromise have

not been kept up and that the compromise has become non est. Therefore, the two parties have taken their grievances to two different forums. The

respondents have filed a suit O. S. 85 of 1959 on the file of the Sub Court, Tiruchirapalli, for specific performance of the compromise and for

directing the applicants to transfer the shares to T. A. Mani as agreed to by them. The applicants have filed this application under Sections 397 and

398 of the Indian Companies Act, 1956, Chapter VI of Part VI, ""Prevention of oppression and mismanagement"".

(9) In spite of opportunities given by this Court, it is found that the management of this company has entered into an impasse by reason of the fact

that both sides accuse each other of various infractions under the Indian Companies Act and the only solution for ending this impasse in regard to

this going solvent concern is for the minority sharers being purchased by the majority sharers, thereby restoring unanimity and harmony in the

management.

(10) Sections 397 and 398 of the Indian Companies Act 1956, deal with the

powers of the Court and of the Central Government to deal with cases of oppression of the minority or mismanagement. They reproduce, with some changes, sections 153(C) and 153(D) of the old Act introduced by Act LII of 1051. They are intended to avoid winding up, if possible, and keep the company going while at the same time relieving the minority shareholders from acts of oppression and mismanagement. The provisions were introduced as per recommendation of the Company Law Committee in paras 198 to 202 of their report. The provisions preceding the part on winding up, would seem to indicate that it was considered desirable that all steps short of winding up should be possible of being taken before the winding up is resorted to. Sections 235 to 251 provide for investigation of the affairs of the company where they are mismanaged and remedies are provided for rectifying the same. Sections 235 to 240 relate to powers of the inspector and to the procedure to be adopted in the investigation. Section 241 provides for Inspector's report. The affairs may disclose (a) criminal offence on the part of the management (prosecution provided by section 242); (b) a cause of civil action for damages or recovery of moneys misapplied or misused (proceedings to recover damages provided by Section 244); and (c) a cause for winding up, (section 243). Chapter VI is intended to meet the circumstances in which the above remedies would be inapplicable and in which the affairs of a company are carried on in a manner which does not justify the application of any of the above remedies, but is, nevertheless, oppressive to a section of the share-holders or prejudicial to the interest of the company. The reason for this is that in many cases, the winding up of the company would not benefit the minority shareholders, since the breakup value of the assets might be small or the only available purchaser might be that very majority whose oppression had driven the minority to seek redress. It will be noted that a petition under this section may be presented either by a member of the company or by the Central Government under S. 243. In the case of a petition by a member, it may be presented by him only if he is one of the minority being oppressed". (Vide Magnus and Estrin). Section 243 provides for the Central Government acting on an Inspector's report under S. 241, filing a petition for winding up or a petition u/s 397 or 398 or it can file both the petitions. Section 397 provides for a remedy for the

oppression of minority on the lines of S. 210 of the English Act and S. 398 provides for remedy in cases of mismanagement of a company's affairs in a manner prejudicial to the interests of the company. The similar provisions in the English Act were enacted on the basis of the recommendations of the Cohen Committee. Sub-section (2) of S. 397 gives wide discretion to the Court as to the order to be made in the circumstances. The detailed provisions in the English section as to the various modes in which an order can be made are omitted in this Section presumably because the Court's discretion in passing any order it likes is intended to be left unfettered and kept as wide as possible. Section 398 corresponds to S. 153(C)(1)(a) of the old Act.

The previous section dealt with a case of oppression of minority. This section deals with a case where the company as a whole is affected by the manner of conduct of its affairs. Section 402 deals with the powers of Court on application under S. 397 or 398. Under S. 404 the Court has also power to make alterations in the Memorandum of Articles of Association. (See Sri T. R. Srinivasa Iyengar The Companies Act 1956 page 314).

(11) The circumstances under which the provisions in Ss. 397 and 398 came to be enacted are set out in the Company Law Committee's Report.

These provisions are largely derived from S. 210 of the English Companies Act 1948. Before that section was enacted in England in 1948 as a result of the recommendation of the Cohen's Committee, the only effective remedy against oppression of which the minority shareholders could avail themselves, if they succeeded in proving their case, was a winding up order under the "just and equitable" clause of section 168 of the English Companies Act of 1929 (corresponding to section 162(5) of our former Act). But this remedy was however very often worse than the disease.

For, in practice, it generally meant that the business of the company in liquidation would have passed into the hands of the majority shareholders who would ordinarily be the only available purchasers of such a business.

As a result of winding up proceedings all that would, therefore, happen would be that the business would be taken over by the majority against

whose conduct the minority had sought to obtain redress, without the latter being compensated in any way for their interest in it. The Cohen

Committee therefore discussing the subject at considerable length on pages 30

and 95 of its report made recommendations which have been embodied in S. 210 and sub-section (2) of S. 225 of the English Companies Act, 1948. Our Company Law Committee carefully examined the scope of these sections and enlarged the same and the result of their recommendations is enacted as sections 397 and 398 of the present Act.

(12) The net recommendation made by the Company Law Committee was:

We therefore suggest that the Court shall have, in addition (to winding up), the power to impose upon the parties to a dispute whatever settlement

the Court considers just and equitable. This discretion must be unfettered, for it is impossible to lay down a general guide to the solution of what

are essentially individual cases. We do not think that the Court can be expected in every case to find and impose a solution; but our proposal will

give the Court a jurisdiction which it at present lacks, and thereby at least empower it to impose a solution in those cases where one exists. Our

specific recommendations will be found on page 95.

(13) Buckley on the Companies Acts, 13th Edition, at page 422-423 has the following to say:

If, on the other hand, the oppressed minority consider that to wind up the company would not relieve them, they may petition the Court for an

order under this Section 210. If they can satisfy the Court that they are being oppressed and that they would be unfairly prejudiced by a winding

up, the court may impose a solution on the disputants. The section gives a wide discretion to the Court as to the manner in which this power may

be exercised, and even includes provision for the purchase of shares by other members or by the company.

Apparently no order has ever been made under this section (S. 210) by the High Court in England otherwise than by consent. In the case of a

purchase by the Company of any of its shares and a consequent reduction of its capital, the Court presumably take care to see that the interests of

creditors are not prejudicially affected and might for this purpose adopt a procedure analogous to that indicated by S. 67.

The "oppression" complained of must be suffered by the petitioners in their character as members, and not, for example, in their character as

directors. The conduct complained of should at least involve a visible departure from the standards of fair dealing and a violation of the conditions

of fair play on which every shareholder who entrusts his money is entitled to rely. The affairs of a company may be "conducted in a manner oppressive to some part of the members" even if the oppressing majority have quo

members suffered the same or even a greater prejudice.

The section 210 is aimed at putting an end to a "continuing state of affairs; not at compensating the petitioners for a wrong which is no longer a

continuing wrong. The petition ought to state in clear terms in the prayer the general nature of the relief sought. It is rarely wise or even possible to

rely solely on the statutory affidavit under Winding-up Rule 30". (See also discussion in K. Venkoba Rao Commentaries on the Companies Act

(1957) Vol. II and III Page 567 and following citing Re: Hawken S. A. Ltd. (1950) 2 All ER 408, Re: Antigen laboratories Ltd. (1951) 1 All ER

110; Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others, ; Re Hannelta Ltd. (1953) 216 ITR 639; Vishnu Pratap

and Others Vs. Sm. Revati Devi and Others, ; K. M. Ghosh, Indian company Law Tenth Edition Part I. P. 730 and following; N. C. Chatterjee

and N. Krishnamurti, Company Law page 599 and following).

(14) Mr. L. C. B. Gower in his Modern Company Law. Second Edition, at page 541 points out how u/s 210 of the English Companies Act any

member (as contradistinguished from Qua director to whom it does not apply) who complains that the affairs of the company are being conducted

in a manner oppressive to some of the members (including himself) may petition the Court which, if satisfied that the facts would justify a winding-

up order but that this would unduly prejudice that part of the members, may make such order as it thinks fit. The order may regulate the conduct of

the company's affairs in future, may order the purchase of some members' share by others, or by the company itself with a consequent reduction

of capital or may otherwise bring the matters complained of to an end. The Cohen's Report makes it clear that it was the intention that the court

should have power to impose upon the parties whatever settlement the Court considers just and equitable.

While recognizing that the Court could not be expected in every case to find and impose a solution, it was thought that its discretion must be

unfettered, for it is impossible to lay down a general guide to the solution of what are essentially individual cases. But unfortunately, as Gower

emphasises, our High Court procedure is ill-adapted for the exercise of the inquisitorial and salvationist role thus imposed upon the Judges.

Nevertheless the remedy is of undoubted value and has already been extensively and effectively invoked as a threat to induce those in control to

behave reasonably towards all interests; as a weapon in the shareholder's armoury it will probably always prove more potent when brandished in

terrorem than when actually used to strike. But though the Court may make such an order as it thinks fit, the nature of the relief is conditioned by

the words "'with a view to bringing to an end the matters complained of. The words "or otherwise" are not however to be construed ejusdem

generis with those preceding it (Re Hannetta Ltd; Re Edgware Manufacturer's Ltd., cited in Mangum and Estrin Companies--Law and Practice

Third Edition (1957) p. 221 and 222).

(15) There are as yet few English decisions on this S. 210. The Scottish and South African cases referred to below are the principal sources of

elucidation. The equivalent south African section is 111 of the South African Companies Act. In Marshall v. Marshall (Poty) Ltd., (1954) 3 SA

571 an order was made because one of three directors and shareholders in a private company had justifiably lost confidence in one of the others,

who had behaved with obvious impropriety, but whose removal was blocked by the second. In Taylore v. Welkon Theatres Ltd., (1954) 3 SA

339, it was held similarly, as in the Scottish case of Elder v. Elder and Watson Ltd., 1952 SC 49 that the section was designed to put an end to a

continuing state of affairs and the oppression must be in the affairs of the company and not the independent conduct of some other company or

individual and not to give monetary compensation for a wrong no longer continuing and the society can be ordered to purchase the minority shares

at a fair value.

In Irvin and Johnson, Ltd. v. Oelofse Fisheries Ltd., (1954) 1 SA 231 it was held that an order could only be made if it could effectively enable the

company to survive. In 1952 SC 49 (Ibid), Lord Cooper laid down a useful working rule about the meaning of oppression in this context, saying

that the essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standards of fair

dealing, and a violation of the conditions of fair play on which every shareholder

who entrusts his money to a company is entitled to rely. More

succinctly it has been stated that the complaining shareholder must be under a burden which is unjust or harsh or tyrannical. A persistent and

persisting course of unjust conduct must be shown.

In the only United Kingdom case in which this section has been successfully invoked, *Mayer v. Scottish Textile and Manufacturing Co.*, 1954 SC

381, it was held that if the allegations on which the petition was filed could be sustained, the society would be ordered to purchase the minority's

shares at a fair value.

(15-A) Bearing these principles in mind, if we examine the facts of this case, the only just and equitable solution which can be imposed in the

context of this case is to ask the respondents to buy up the shares of the petitioners. The reliefs asked for, which would practically tantamount to

ruining this company and the interests of the majority shareholders and achieve for minority shareholders what they would not have achieved either

in the civil suits or by winding up, cannot be granted. But in regard to buying up, this solution need not be imposed by me, because there is a suit

already pending in the Sub Court, Tiruchirapalli, for that purpose and as a matter of fact the respondents are ready and willing to pay even more

than what they have stipulated for to buy up the shares of the petitioners. But so emboldened have the applicants become by their obstructive

tactics of harassing the respondents, that they are now claiming right to buy up the majority shareholders. In short it has become a case of not the

dog wagging the tail but the tail wagging the dog.

(16) This petition and the ancillary petitions totally devoid of merits are dismissed with costs.

(17) Petitions dismissed.