

(1967) 08 BOM CK 0004

In the Bombay High Court

Case No : Company Application No. 27 of 1967 in Company Petition No. 102 of 1967 in Petition No. 17 of 1967

Lalchand Mengraj and Others

APPELLANT

Vs

Shree Ram Mills Ltd. and Others

RESPONDENT

Date of Decision : 24-08-1967

Acts Referred:

Companies Act, 1956 — Section 256, 256(1), 256(2), 256(3), 256(4)

Citation : (1968) 38 CompCas 606

Hon'ble Judges : J.R. Vimadalal, J

Bench : Single Bench

Advocate : J.C. Bhatt, for the Appellant; P.P. Khambatta and others, for the Respondent

Judgement

1. This is an interim application pending the disposal of an application u/s 403 of the Companies Act, 1956, which is itself for an interim order on a substantive petition by the petitioners under sections 397 and 398 of the said Act.

2. The facts necessary for the purpose of this application are that the shares in the 1st respondent-company are held by two groups, namely, the Bhogilal group and his associates who hold the majority of as much as about 69 per cent. of the paid up capital of the company which stands at present at the figure of Rs. 99,60,000, and the Menghraj group and his associates who constitute the minority group holding the remaining shares. The three petitioners and the 8th respondent belong to the said minority group of shareholders, the respondents Nos. 2 to 5 to the majority group of shareholders. It may be mentioned that the 3rd petitioner and the 8th respondent were, at the material time, directors of the 1st respondent-company along with respondents Nos. 1 to 7 and though it is a matter in controversy between the parties whether the 3rd petitioner still continues to be a director of that company, it is an admitted position that respondents Nos. 1 to 8 are even now the directors of the said company. It is the case of the petitioners that though respondents Nos. 6 and 7 do not belong to

the majority group of shareholders, they are supporting them in excluding the minority group of shareholders from the control and management of the company. The annual general meeting of the shareholders of the 1st respondent-company for the year ending 31st December, 1966, was to be held on the 2nd of June, 1967, and at that meeting the 3rd petitioner was due to retire as a director by rotation, but, being eligible for reappointment, he offered himself for re-election as such. The appointment of a director in place of the 3rd petitioner, who, however, offered himself for reappointment was, in fact, one of the items on the agenda (item No. 3) of the said meeting. It is the case of the petitioners that, in view of the threatening attitude of the majority group and their attempts to exclude the minority group from having any voice in the control and management of the last respondent-company, the petitioners apprehended that the majority group of shareholders of the company would defeat the resolution for the reappointment of the 3rd petitioner as a director of the said company at the said meeting. The petitioners filed a petition before the Companies Tribunal at New Delhi, which has now been abolished, for reliefs under sections 397 and 398 of the Companies Act on the ground that the affairs of the 1st respondent company were being conducted in a manner prejudicial to the interests of the said company, and in a manner oppressive to the minority group of shareholders who were represented on the board of directors by the 3rd petitioner and the 8th respondent, as already stated above. The petitioners' case is that gross improprieties in the conduct of the affairs of the 1st respondent-company, in the form of clandestinely retaining the profits earned in foreign countries for their own benefit, altering and fabricating contracts with a view to benefit certain relatives of the majority group of shareholders, and certain fraudulent dealings with a firm named Chunilal and Co. in respect of cotton waste, have been committed by respondents Nos. 2, 3, and 5 which compelled the petitioners to present a substantive petition under sections 397 and 398 of the Companies Act.

3. In the said petition the petitioners have prayed for the removal of respondents Nos. 2 to 5 as directors and respondents No. 3 as managing director of the said company, for a permanent injunction restraining them from functioning as such, for the appointment of an administrator or special officer with all powers of the board of directors for a period of five years for managing the affairs of the company, and for other ancillary as well as interlocutory reliefs.

4. Having filed the said petition, the petitioners made an application for interim relief u/s 403 of the said Act on the 1st of June, 1967, just a day prior to the annual general meeting at which the question of the reappointment of the 3rd petitioner as a director was to come up as item No. 3 on the agenda of the said meeting. On that application, the Companies Tribunal, while camping at Bombay, made an order on the 1st of June, 1967, the material portion of which is as follows :

"In view of the serious allegations made regarding the alleged breach of the foreign exchange regulations, we direct that the rule in this application should

also be served on the Reserve Bank of India, head office, at Bombay, and a copy of the application as well as affidavit supporting it should be served on the said bank. We also direct, in view of the necessity of preserving the status quo pending the hearing of this application, that the respondent-company and other respondents be restrained by an ad interim injunction from allowing the consideration of item No. 3 of the agenda of the annual general meeting of the shareholders of the company to be held on Friday 2nd June, 1967. But it will be open to the company and the other respondents to allow the said item to be adjourned pending further orders of the Tribunal in this application."

5. By the said order, the Companies Tribunal also appointed joint receivers of all books of account, records, files, vouchers and papers of the 1st respondent-company and granted liberty to the parties to apply, directing that the rule issued by them on the said application u/s 403 would be heard by them at New Delhi on the 28th of June, 1967. A copy of the said order is annexed and marked "A" to the affidavit in support of the present application.

6. On the 2nd of June, 1967, the annual general meeting of the 1st respondent-company was held, but the same was adjourned to the 8th of June, 1967, in view of the said order of the Companies Tribunal dated the 1st of June, 1967. On the 3rd of June, 1967, respondents Nos. 1 to 7 made an urgent application to the Companies Tribunal for varying the said order dated the 1st of June, 1967, and the Companies Tribunal, by their order of 3rd June, 1967, modified their earlier order of 1st June, 1967, in regard to the custody of books, papers, etc., by the joint receivers, as well as for inspection, but stated in clear terms in the concluding portion of the said order : "The rest of the interim order passed by us June, 1967, shall stand". A copy of the said order dated the 3rd of June, 1967, has been annexed to the affidavit in support of the present application and marked "B".

7. At the adjourned annual general meeting of the 1st respondent-company which was held on the 8th of June, 1967, item No. 3 on the agenda which related to the reappointment of the 3rd petitioner as a director was not considered in view of the injunction granted by the Companies Tribunal on the 1st of June, 1967, which was continued by their order of the 3rd of June, 1967. By their letter dated the 10th of July, 1967, addressed by Messrs. Mulla and Mulla, Cragie, Blunt and Caroe on behalf of the 1st respondent-company to the 3rd petitioner, the latter was however informed that, according to the legal opinion on obtained by the said company, her 3rd petitioner could not act as a director of the said company after the date of the adjourned meeting of the 8th of June, 1967, and that intimation of that fact was being sent to the Registrar of Companies. An intimation to that effect was, in fact, sent by the 1st respondent-company to the Registrar of Companies in the prescribed form of return on the 10th of July, 1967, itself. The petitioners have thereafter made the present application by way of a judge's summons to this court, in view of the abolition of the Companies Tribunal as from the 1st day of July, 1967. By this summons, the petitioners have

prayed for an injunction restraining respondents Nos. 1 to 7 from preventing the 3rd petitioner from exercising his rights as a director of the 1st respondent-company for an order directing the 1st respondent-company to withdraw or cancel the intimation given by them to the Registrar of Companies, and, if necessary, for the appointment of the 3rd petitioner as a director of the 1st respondent-company.

8. It will be convenient at this stage to refer to the provisions of section 256 of the Companies Act, 1956. The material portion of sub-section (1) of that section provides that, at each annual general meeting, one-third of the directors for the time being must retire, sub-section (2) thereof provides that the directors to retire by rotation at every annual general meeting would be those who have been longest in office, sub-section (3) provides that, at the annual general meeting at which a director retires by rotation, the company may fill up the vacancy either by appointing the retiring director or some other person as director, and the material portion of sub-section (4), which is very important for the purpose of deciding the present application, reads as follows :

"(4)(a) If the place of the retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(b) If at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been reappointed at the adjourned meeting, unless -

(i) at that meeting or at the previous meeting a resolution for the reappointment of such director has been put to the meeting and lost."

9. The whole case of respondents Nos. 1 to 7 in regard to the present application turns on the construction which they seek to place upon the statutory provisions referred to above. According to respondents Nos. 1 to 7, only one adjournment is provided for by statute in respect of an annual general meeting, and, at such adjourned meeting, the director who is to retire by rotation must be held to have retired, unless he is re-elected, or the conditions of sub-section (4)(b) of section 256 are satisfied, and he must be deemed to have been reappointed as a director at the adjourned meeting. It is the case of respondents Nos. 1 to 7 that, in view of the interim order passed by the Companies Tribunal on the 1st of June, 1967, which was continued by their order dated the 3rd of June, 1967, the provisions of sub-section (4)(b) of section 256 are not attracted, and, under the circumstances, the 3rd petitioner has ceased to be a director of the 1st respondent-company.

10. It is common ground that it is not the petitioners' case on the present application that the 3rd petitioner has not retired by rotation at the adjourned

meeting of the 8th of June, 1967. The petitioner's case is that if the company had further adjourned the annual general meeting, as, according to them, the company was entitled to do, the 3rd petitioner would not have retired by rotation in view of the order passed by the Companies Tribunal on the 1st of June, 1967, by which the status quo in the matter was to be preserved, pending adjournment of the annual general meeting. The petitioners' case further is that since there was, in fact, no such further adjournment of the annual general meeting, the 3rd petitioner retired by rotation. As it is common ground that the 3rd petitioner has retired by rotation, either on 8th June, 1967, as respondents Nos. 1 to 7 contend, or on 9th June, 1967, as the petitioners contend, the question as to whether the Tribunal's order of the 1st of June, 1967, should be construed as an order directing the 1st respondent-company and the other respondents to continue the 3rd petitioner as a director, does not arise. What the petitioners contend is that the annual general meeting of the 2nd of June, 1967, stood statutorily adjourned by reason of the provisions of sub-section (4)(a) of section 256, to the 9th of June, 1967, and though respondents Nos. 1 to 7 purported to adjourn it to the 8th of June, 1967, since on the 9th of June, 1967, to which date the annual general meeting stood statutorily adjourned, (1) the vacancy of the 3rd petitioner was not filled up, (2) it was not expressly resolved that the vacancy of the 3rd petitioner was not to be filled up, and (3) no resolution for the reappointment of the 3rd petitioner has been put to the meeting and lost, the 3rd petitioner must be "deemed to have been reappointed" on the 9th of June, 1967, by virtue of the provisions of sub-section (4)(b) of section 256 of the Companies Act.

11. In support of his contention on the point, Mr. Bhatt for the petitioners has relied strongly on the English decision in the case of *Grundt v. Great Boulder Proprietary Mines Ltd.* [1948] Ch. 145; [1948] 18 Comp. Cas. 236. Before I deal with the said case, it may be pointed out that, till the decision in *Grundt's* case [1948] Ch. 145; [1948] 18 Comp. Cas. 236 was given, there was no provision in English law similar to the one that is to be found in sub-section (4)(b)(i) of section 256 of our companies Act. Article 102 of the company concerned in the said case provided :

"If at any general meeting at which an election of directors ought to take place the place of any director retiring by rotation is not filled up, he shall, if willing, continue in office until the ordinary meeting in the next year, and so on from year to year until his place is filled up, unless it shall be determined at any such meeting on due notice to reduce the number of directors in office."

12. Mr. Bhatt has pointed out in the course of his argument that the said article was similar to the provisions of sub-section (4) of section 256 of our Act with this material difference that the condition in sub-section (4)(b)(i) to the effect that a resolution for the reappointment of the retiring director must not have been put to the meeting and lost, is not contained therein. The facts of *Grundt's* case [1948] Ch. 145 [1948] 18 Comp. Cas. 236 were that, at the annual general

meeting of the said company in the year 1947, the plaintiff was the director retiring by rotation, had he was proposed for re-election, but the resolution for his reappointment was declared to be lost. No other person was then proposed for election as a director in the plaintiff's vacancy, and no resolution was passed to reduce the number of directors in office. The learned trial judge dismissed the action, holding that since the number of directors, even after the retirement of the plaintiff, was not reduced to less than the minimum required, it could not be said that there were circumstances present which created a position in which an election of directors "ought" to have taken place within the terms of article 102 of the said company. The plaintiff having appealed, it was held (at pages 150-151) :

"..... that the word "ought" was not necessarily of imperative significance and was certainly not synonymous with the word "must" and would cover the case of an ordinary general meeting at which directors retire by rotation, since, at such a meeting, election of directors would be proper, correct or naturally expected."

13. The learned judges then proceeded to consider the other argument advanced on behalf of the defendant-respondents in the said appeal, namely, that, as a matter of construction, an article in the form of article 102 cannot, in common sense, operate, when the company intimates by express adverse vote that it does not desire the retiring director to continue as a director. In support of that contention, reliance was sought to be placed by the learned counsel for the respondents in Grundt's case [1948] Ch. 145 [1948] 18 Comp. Cas. 236 on the case of Robert Batcheller and Sons Ltd. v. Batcheller [1945] Ch. 169; [1945] 15 Comp. Cas. 113, which was strongly relied upon also by Mr. Nariman for respondents Nos. 2 to 5 before me. Articles of association in Robert Bachelor's case [1945] Ch. 169; [1945] 15 Comp. Cas. 113 provided that if the places of retiring directors were not filled up, the retiring directors should be deemed to be re-elected. What happened in Robert Batcheller's case [1945] Ch. 169; [1945] 15 Comp. Cas. 113 was that two retiring directors were not re-elected, but chairman, ignoring the consideration of the item which provided for filling up of the said vacancies, declared that they were re-elected under the said article 93. The shareholders, however, then purported to elect two new directors to fill the said vacancies. In an action brought by the company for a declaration that the two new directors had been duly elected, it was held that, as notice to the shareholders was not in proper form, the purported election of the two new directors was invalid, but that, as article 93 only operated when the known circumstances of a particular case were such as "sensibly and legitimately" to admit of its application, and to apply it notwithstanding that the shareholder had refused to re-elect them amounted to "a complete absurdity" and the claim of the retiring directors to have been re-elected was therefore "repugnant to common-sense", and failed (at pages 176-177). On the strength of the said decision, it was sought to be contended by the learned counsel for the respondents in Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236 that a provision of the nature of article 102 in the said case could not be applied, where

it would lead to the absurdity of continuing as directors those whom the company had expressly rejected at the annual general meeting at which they stood for re-election. That argument based on absurdity was rejected by the court. Rejecting that argument, Cohen L.J. stated (at page 155) :

"I do not think that on grounds of that kind we are justified in disregarding what seems to me the plain meaning of English language even though in a particular case it does appear to produce an inequitable result."

14. Cohen L.J. then went on to observe (at page 157) that he was not satisfied that it was necessarily an absurdity, for it might well be that persons responsible for the adoption of the article deliberately took the view that, having regard to the small number of directors to whom the business was being entrusted, there should be no reduction of the number in charge without the attention of the shareholders being specifically drawn to the same. To the same effect are the observations of Lord Greene M.R., who added (at page 158) :

""Absurdity" I cannot help thinking, like public policy, is a very unruly horse, because there may very well be considerations which would be well understood by the persons concerned to work a particular document in question, which do not readily present themselves to the mind of a judge."

15. The appeal was, therefore, allowed, and it was held that the plaintiff must succeed and be entitled to the declaration that he claimed to the effect that he continued in office as a director of the said company, notwithstanding the express resolution of the company rejecting his re-election at the annual general meeting in question. Relying on the decision in Grundt's case [1948] Ch. 145; [1948] Comp. Cas. 236 Mr. Bhatt for the petitioners has sought to contend before me that I must ignore the argument advanced on behalf of respondents Nos. 1 to 7 which was based on the alleged impossibility created by the order passed by the Companies Tribunal on the 1st of June, 1967, which, according to the said respondents, prevented them from either re-electing some other person in that vacancy, or resolving not to fill up the said vacancy. It may, however, be mentioned at this stage that no other person had filed his nomination paper for being elected as director in place of the 3rd petitioner, and no question of appointing any other person in there vacancy caused by the retirement of the 3rd petitioner arose at all in the present case. Mr. Bhatt has contended that, since each one of the conditions laid down in sub-section (4)(b) of section 256 of the Companies Act has been satisfied in the present case, I must, irrespective of considerations of the impossibility alleged to have been created by the Tribunal's order of 1st June, 1967, hold that the "deeming privation" contained in section 256(4)(b) operated and resulted in the re-appointment of the 3rd petitioner for a further term.

16. In answer to that contention of Mr. Bhatt, Mr. Khambatta for the 1st respondent-company as well as Mr. Nariman for respondents Nos. 2 to 5 sought to point out the passages at page 535 of Palmer's Company Law (20th edition)

and article 92 at page 883 of Buckley's Companies Act (13th edition), which show that, consequent on the decision in Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236 relied upon by Mr. Bhatt, a change was effected in the English law on the point by which the effect of that decision was nullified by inserting a statutory provision of the nature of that contained in sub-section (4)(b)(i) of section 256 of our Act. Both Mr. Khambatta and Mr. Nariman have, therefore, urged that, not being bound by the decision in Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236, I should prefer to follow the decision in Robert Batcheller's case [1945] Ch. 169; [1945] 15 Comp. Cas. 113 and hold that, where a "deeming fiction" of the nature of that contained in sub-section (4)(b) of section 256 of our Act leads either to an impossibility as is alleged in the present case, or to an absurdity, the same should not be applied, since to do so would be repugnant both to the common sense as well to the very language of sub-section (4)(b) of section 256 of our Act.

17. I am afraid, I cannot accept the contention of Mr. Khambatta as well as Mr. Nariman that, because a change was made in the English law consequent on the decision in Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236. I should not regard Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236 as laying down the correct law. The change made in the English law on the point may be a matter of expediency, but the decision in Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236 actually turned on a constriction of the plain language of article 102 of the company in that case, which was similar to sub-section (4)(b) of section 256 of our Act, but in which the proviso contained in sub-clause (i) of that sub-section did not find place. It is that proviso that was added by the change in the English law effected in the form of the new clause 92 of Table A of the English Companies Act, 1948, which replaced article 38 of Table A of the earlier English Companies Act of the year 1929. Whilst, therefore, the English Legislature may have be considered the result of Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236 to be undesirable, the fact that a change was effected in the law on the point does not, under the circumstances, mean that the decision, as a matter of construction of the plain language of the article, was thought to be erroneous. I agree with the decision in Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236. In my opinion when the language is clear and unambiguous there is no scope for introducing considerations of absurdity or other like considerations for the purpose of negating the effect of the plain language of an article or a section.

18. Apart altogether from the view which I have taken in the preceding paragraph, namely, that impossibility of complying with the conditions laid down in section 256(4) is no reason for holding that the result contemplated by that sub-section should not follow from its plain language, in my opinion, there was, in fact, no impossibility created by the order passed by the Companies Tribunal on the 1st of June, 1967, in complying with those statutory conditions, as Mr. Khambatta and Mr. Nairman have contended. In my opinion, the order of the Tribunal did not prevent it from passing a resolution either at the meeting of the

2nd of June, 1967, itself or at the adjourned meeting of the 8th of June, 1967, expressly resolving not to fill the vacancy caused by the retirement of the 3rd petitioner by rotation. The Tribunal's order of the 1st of June, 1967, restrained the respondents only from "allowing the consideration of item No. 3 on the agenda", and that item in terms related only to the appointment of a director in place of the 3rd petitioner. Reading the Tribunal's order along with the terms of item No. 3 on the agenda, it is, therefore, clear that all that the respondents were restrained from doing by the said order was the appointment of a director in place of the 3rd petitioner. I do not think that they were prevented from passing a resolution expressly resolving not to fill the said vacancy. There was another line of argument advanced by Mr. Bhatt for the purpose of showing that the Tribunal's order of 1st June 1967, did not create any impossibility in complying with the conditions of section 256(4). Mr. Bhatt's contention was that, by its said order, the Tribunal expressly left it open to the company and the other respondents to allow item No. 3 on the agenda of the annual general meeting that was to be held on the following day, which related to the appointment of a director in place of the 3rd petitioner, to be "adjourned pending further orders of the Tribunal" in the said application. It was argued by Mr. Bhatt that it was, therefore, open to the 1st respondent-company, to have adjourned the said annual general meeting for a period sufficiently long to have the said application disposed of by the Companies Tribunal and, on general principles of law, such adjourned meeting would be a continuation of the original meeting *Spencer v. Kennedy* [1926] Ch. 125. Mr. Bhatt submitted that, if the 1st respondent-company, had chosen to adopt that course, which was open to it, and had adjourned the annual general meeting for a sufficiently long period, no question of its being unable to comply with the provisions of section 256(4) could have arisen at such adjourned meeting. It was argued by Mr. Bhatt that, by adjourning the meeting to the 8th of June, 1967, the company voluntarily placed itself in the position of which it now complains. Though, on general principles, an adjourned meeting would be a continuation of the original meeting, it is important to bear in mind that section 256(4) provides for only one statutory adjournment of the annual general meeting as far as the item of filling the vacancy of a retiring director is concerned. That was, no doubt, the provision under article 82 of the articles of the company in the case *Spencer v. Kennedy* [1926] Ch. 125 on which Mr. Bhatt has relied. I, however, do not feel called upon to decide the question as to whether an annual general meeting statutorily adjourned u/s 256(4)(a) can be further adjourned, without entailing the legal consequences laid down in section 256(4)(b). Having regard to the view which I have taken above, that the Tribunal's order of 1st June, 1967, did not create any impossibility as it did not prevent the company from expressly resolving not to fill the vacancy, it is unnecessary for me to pronounce upon the interesting argument of Mr. Bhatt which I am now considering, and which was in support of the same main contention, viz., that no impossibility in complying with the conditions of section 256(4) was created by the Tribunal's order of 1st June, 1967.

19. Both Mr. Khambatta and Mr. Nariman have, however, contended, in the alternative, that, even as a matter of construction of the language of section 256(3) and (4), "the deeming fiction" contained in the latter sub-section can apply only when the company has the choice of fulfilling its conditions or not. I must, therefore, proceed to examine this contention of Mr. Khambatta and Mr. Nariman. Sub-section (1) of section 256 provides in mandatory terms for the retirement of one-third of the directors by rotation at each annual general meeting. Sub-section (3) of the same section exacts that, at the annual general meeting at which a director retires pursuant to the provisions of sub-section (1) thereof, "the company may fill up the vacancy", either by reappointing the retiring director or appointing somebody else in his place. Clause (a) of sub-section (4) proceeds to lay down that, if the place of the retiring director "is not so filled up", and the meeting has not expressly resolved not to fill the vacancy, there is to be a statutory adjournment of the meeting for a week, as prescribed therein. Mr. Nariman has emphasised the word "so" in this sub-section as indicating that it comes into play only in cases in which it is open to the company to fill up the vacancy under sub-section (3) of that section. I am afraid, that is not the proper construction of sub-section (4)(a), and, in my opinion, the word "so" therein relates only to the manner in which the vacancy is filled up. Sub-section (3) provides for two ways of filling up the vacancy, one by the reappointment of the retiring director, and the other by appointing some other person in the vacancy of the retiring director, and the word "so" in sub-section (4)(a) is intended to convey that, when the vacancy is not filled upon one or the other of those two modes provided in sub-section (3), the consequences of a statutory adjournment provided for in sub-section (4)(a) must follow. The use of the word "so" in sub-section (4)(a) has, in my opinion, nothing to do with the question as to whether or not the company has the choice of filling up the vacancy. As far as sub-section (4)(b) is concerned, both Mr. Khambatta and Mr. Nariman have strongly contended that the same can come into play only when the company has the choice of fulfilling the conditions specified therein, namely, (1) of filling up the vacancy of the retiring director, (2) of resolving expressly not to fill up the vacancy, and (3) of resolving that the retiring director should not be re-appointed. Whatever might be the practical inconvenience or hardship that might result, I am afraid, a plain reading of sub-section (4)(b) of section 256 leaves no room for placing upon it the constriction for which Mr. Khambatta and Mr. Nariman have contended, and which, as a matter of "commonsense", has, no doubt, considerable force. It was on a similar ground that, whatever be the scope of the provision, it operates only "when the known circumstances of a particular case are such as sensibly and legitimately to admit of its application", and that a construction should not be placed which amounts to a "complete absurdity", that the decision in Robert Batcheller's case [1945] Ch. 169; [1945] Comp. Cas. 113 was founded, but the same was disapproved by the learned judges in Grundt's case [1948] Ch. 145; [1948] 18 Comp. Cas. 236, as already stated above. I am not concerned with the question as to whether the circumstances of the present case are such as sensibly and legitimately to admit of the application of sub-

section (4)(b) of section 256, but am concerned only with the plain language of that sub-section. There is nothing in sub-section (4)(b) of section 256 to lead me to the conclusion that the deeming provision contained therein is to apply only when the company has the choice of fulfilling its conditions or not. Nothing in the order of a Tribunal can prevent the operation of a statutory provision, once its conditions are fulfilled. It is on that principle that the 3rd petitioner must be held to have retired u/s 256(1), notwithstanding the fact that, by its order of 1st June, 1967, the Tribunal wanted to preserve the status quo. I must, therefore, reject the argument of Mr. Khambatta and Mr. Nariman on this point, and hold, first, that the meeting of the 2nd of June, 1967, stood statutorily adjourned to the 9th June, 1967 by virtue of the provisions of sub-section (4)(a) of section 256; secondly, that, at that adjourned meeting of the 9th of June, 1967, which, in fact, did not take place because the respondents chose to fix that meeting for the 8th of June, 1967, the 3rd petitioner retired by rotation by reason of the provisions of sub-section (1) of section 256, as construed by our High Court in the case of Krishnaprasad v. Colaba Land and Mills Co. Ltd. [1959] 29 Comp. Cas. 273; 61 Bom. L.R. 636 under which such compulsory retirement takes place even when an annual general meeting is, in fact, not held; and thirdly, that, since, at that meeting which should have stood statutorily adjourned to the 9th of June, 1967, the 3rd petitioner's place as a retiring director was not filled up, nor was it resolved that his vacancy was not to be filled up, nor was any resolution for his appointment put to the meeting and lost, the 3rd petitioner must be deemed to have been reappointed as a director for a further term at that adjourned meeting of the 9th of June, 1967.

20. That leaves for my consideration the argument urged by Mr. Nariman, which was really in the nature of preliminary objection, that no application u/s 397 and 398 lies in the present case, having regard to the fact that the substantive petition filed by the petitioners, under which the interim applications have been made, does not deal with mismanagement or with oppression of a member by a member as such, but only relates to the status of the 3rd petitioner as a director. In support of that contention, Mr. Nariman has relied upon the English decision in the case of *In re Lundie Brothers Lundie Brothers Ltd.* [1965] 2 All E.R. 692; [1965] 35 Comp. Cas. 827, but it is unnecessary for me to refer to that decision in view of the fact that Mr. Nariman's analysis of the petition itself, on which this argument is founded, is not correct. It may be mentioned that Mr. Bhatt has stated that there is no provision in English company law corresponding to section 398 of our Companies Act. First of all, Mr. Nariman's argument overlooks the fact that the substantive petition is filed not by the 3rd petitioner alone, the 3rd petitioner being both a director as well as shareholder of the 1st respondent-company, but also by petitioners Nos. 1 and 2 who are mere shareholders, and that is the position in regard to the present judge's summons also. The minority group of shareholders with a holding of about 31 per cent. to which the three petitioners and the 8th respondent belong, are represented on the board of directors of the 1st respondent-company by the 3rd petitioner and the 8th

respondent, who, as directors, are in a position to look after their interests and to act as a check on the alleged mismanagement by the majority group of shareholders. Moreover, as Mr. Bhatt has pointed out, the gravamen of the complaints contained in the petition is summarised in paragraph 7 of the affidavit in support of the present judge's summons, and it shows clearly that what is alleged is that respondents Nos. 2 to 7 are conducting the affairs of the 1st respondent-company in a manner prejudicial to its interests and also prejudicial to public interest, as also in a manner oppressive to the minority group of shareholders. It is not for me to consider at this stage whether or not those allegations are well-founded, but the same are sufficient for the petitioners to maintain a petition under sections 397 and 398 of the Companies Act. This contention of Mr. Nariman must, therefore, also stand rejected.

21. In the result, I make the summons absolute in terms of prayers (a), (b) and (e) thereof.

22. Counsel certified.

23. Summons made absolute.