

(1996) 11 MAD CK 0045

In the Madras High Court

Case No : Appeal Against Order No. 1118 of 1996

Madras Race Club

APPELLANT

Vs

Dr. K.R. Lakshmanan

RESPONDENT

Date of Decision : 15-11-1996

Acts Referred:

Companies Act, 1956 — Section 167, 560

Citation : (1997) 88 CompCas 754 : (1997) 1 LW 521

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : Mohan Parasaran, for the Appellant; G. Vasudevan, for the Respondent

Judgement

Jagadeesan, J.—The Madras Race Club has filed the present appeal against the order of the Company Law Board, Southern Region

Bench, Madras, in C.P. No. 660/167/SRB/96, dated August 17, 1996. The respondent herein, a member of the club, has filed a petition u/s 167

of the Companies Act in C.P. No. 660 of 1996 to hold the annual general meeting for the years 1986 to 1996.

2. The case of the respondent is that as per the Tamil Nadu Horse Races (Abolition of Wagering or Betting) Act, 1974 (hereinafter referred to as

the Act"), horse racing was sought to be banned. The appellant herein challenged the validity of the said Act before this court. This court upheld

the validity of the said Act. Aggrieved by the same, the appellant herein preferred an appeal before the Supreme Court and obtained an order of

stay of the operation of the said Act. When the matter was pending before the Supreme Court, the Government of Tamil Nadu passed another

enactment, viz., the Madras Race Club (Acquisition and Transfer of Undertaking)

Act, 1986. By virtue of this Acquisition Act, the undertaking of the club, the right and interest of the club in relation to its undertaking stood transferred to and vesting in the Government. Some of the shareholders challenged the validity of the Acquisition Act also before the Supreme Court. Pending these cases, the Supreme Court constituted a committee of management to manage the affairs of the club. In view of the constitution of the committee of management, the activities of the club came to a standstill and the members have been sending the subscription every year.

3. In February, 1996, the Supreme court struck down the Acquisition Act and directed the committee of management to hand over the management to a newly constituted management committee under the memorandum and articles of association before March 31, 1996 (see [1996] 86 Comp Cas 66). Accordingly, in the extraordinary general meeting held on February 20, 1996, a new management committee was elected and the said committee is now functioning after taking over the affairs of the club. As the duly elected committee is in operation, the committee should be directed to hold the annual general meetings of the club which were not held from 1986, after the Acquisition Act was passed.

4. The appellant herein filed a counter that in view of the Acquisition Act, admittedly, the meetings were not held from 1986 onwards. From that period, it is further admitted that the committee of management appointed by the Supreme Court was in management of the affairs of the club.

Virtually no activity of the club was carried on and as such there is no question of any annual general meeting with retrospective effect to be held for the previous years.

5. The Company Law Board by its order dated August 17, 1996, allowed the company petition and directed the appellant to hold the annual general meeting for every year from 1986 to 1995. Aggrieved by the same, the present appeal has been filed.

6. Mr. Mohan Parasaran, learned counsel for the appellant, contended that the non-holding of the meeting is not due to any inaction on the part of the duly elected management committee subsequent to the order of the Supreme Court, striking down the Acquisition Act. By virtue of the order

of the Supreme Court, constituting the management committee, the said committee alone was in charge of the management of the affairs of the club. Since the committee was constituted by the Supreme Court, there was no necessity for the convening of the annual general meeting. Virtually the club has become defunct u/s 560 of the Companies Act, 1956. But, after the constitution of the newly elected management committee, the appellant had convened the annual general meeting on September 25, 1996, at which the accounts for the year ended March 31, 1996, had been approved. Now that the annual general meeting has been held, there is no question of convening the annual general meeting for the years 1986 to 1995 and on this ground the order of the Company Law Board is liable to be set aside.

7. It is not in dispute that the Tamil Nadu Government had passed an Act known as the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986, which was challenged before the Supreme Court. Pending decision in those cases, the Supreme Court had constituted a committee of management to manage the affairs of the club and till February 20, 1996, the said management committee constituted by the Supreme Court was in charge of the affairs of the club. During that period, no activities of the club had been carried on, except the conduct of the races. The company Law Board also in paragraph 6 of its order has made reference to the fact that the committee constituted by the Supreme Court consisting of some of the members of the club was in management. But, however, that management committee constituted under the articles of the club should have convened the annual general meeting every year which it failed to do so. It is unnecessary for the Board to go into the reasons for not holding the annual general meeting and on this ground directed the holding of the meeting from 1986 to 1995. The management committee constituted by the Supreme Court cannot be said to be the managing committee constituted under the articles of the club. It is only by virtue of the order of the court. Further, when the committee has been directed to take care of the affairs of the club and except the conduct of the races no other activity of the club was carried on by the appellant club, and when the appellant had become defunct by virtue of the order of the court, there is absolutely to necessity to call for the annual general meeting. When the appellant club was taken over by the said committee by

virtue of the Acquisition Act, the appellant is not entitled to carry on the regular affairs. Only in order to avoid such inconvenience, the Supreme

Court had constituted a committee to look after the affairs whereby the races alone were conducted. The committee has maintained regular

accounts for that period. When the appellant club itself is not in existence and no other activity had been carried on, there is no necessity for

convening the annual general meeting as contended by the respondent herein.

8. It is well-settled that under certain circumstances compliance with the provisions of statutes which prescribe how something is to be done will be

excused. This is, in accordance with the maxim of law, *lex non cogit ad impossibilia*. In Broom's Legal Maxims, it has been stated thus :

It is, then, a general rule which admits of ample practical illustration, that *impotentia excusat legem*; where the law creates a duty or charge, and the

party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him and though

impossibility of performance is in general no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when

the obligation is one implied by law, impossibility of performance is a good excuse.

9. In fact, the Supreme Court has also referred to the maxim in the judgment reported in *Vinod Krishna Kaul, Indian Police Service (Retired) Vs.*

Union of India and others, as follows :

The legal maxim *lex non cogit ad impossibilia* has to be borne in mind, i.e., the law does not compel a person to do the impossible.

10. As I have already pointed out, by virtue of the enactment of the Acquisition Act, the race club vested in the Government, as there was no stay

of operation of the provisions of the Act pending the cases before the Supreme Court, challenging the said Acquisition Act, Instead of granting

stay, the Supreme Court has constituted the committee of management. When the committee has been constituted by the apex court, no question

of convening the annual general meeting u/s 167 of the Companies Act arises. Hence the order of the Company Law Board directing the appellant

to convene the annual general meeting for the years 1986 to 1995 cannot be sustained.

11. As pointed out already, in those period between 1986 to 1996 when the

committee constituted by the Supreme Court was in management of the affairs of the club, no business was carried on by the club except the conduct of the races for which the accounts have been maintained. In fact in the annual general meeting held on September 25, 1996, the first agenda of the business was to receive, consider and adopt the profit and loss account for the year ended March 31, 1996, and the balance-sheet as on the date and also the reports of the committee of management and auditors thereon. In the said meeting, the accounts, as submitted by the committee of management in its report, had been passed unanimously.

12. Learned counsel for the respondent, Mr. Vasudevan, also fairly conceded that as a member of the club, the respondent is interested in the welfare of the appellant club and now that the annual general meeting had been convened, and the accounts had been passed, it is more than sufficient compliance with the direction issued by the Company Law Board and he does not want to pursue the matter.

13. For the reasons stated above, the appeal shall stand allowed, setting aside the order of the Company Law Board.