
(1979) 04 CAL CK 0021
In the Calcutta High Court
Case No : Civil Rule No. 755 (W) /71

Mathura Prasad Saraf and Others

APPELLANT

Vs

Company Law Board and Others

RESPONDENT

Date of Decision : 05-04-1979

Acts Referred:

Companies Act, 1956 — Section 295, 309, 310, 329, 370
Constitution of India, 1950 — Article 226

Citation : (1979) 49 CompCas 371

Hon'ble Judges : Samarendra Chandra Deb, J

Bench : Single Bench

Advocate : A.K. Sen, S. Shroff and Taher Ali, for the Appellant; None, for the Respondent

Judgement

Samarendra Chandra Deb, J.—This rule under Article 226 of the Constitution is directed against the order dated 8th October, 1968, rejecting the application made by the petitioners u/s 372(4) of the Companies Act, 1956, and also against the proceedings started against them u/s 374 of the aforesaid Act.

2. The petitioners are directors of Belgachi Tea Co. Ltd. (hereinafter referred to as " the company ") incorporated under the Companies Act, 1956 (hereinafter referred to as "the Act"). The company had made investments in other companies as shareholders of those companies including a company known as - Nera Terai Association Ltd. (hereinafter referred to as "the subsidiary company "). The company had 7,120 ordinary shares of the subsidiary company, nominal value of the said shares being Rs. 71,200. The authorised capital of the subsidiary company was Rs. 8,00,000 out of which share capital was subscribed to the extent of Rs. 7,20,000 which was fully paid up. The subsidiary company has a tea garden known as Panihatta Tea Estate in Tarai, West Bengal. Majority of the shares, i.e., 33,939 ordinary shares of the subsidiary company, belonged to M/s. Macneill & Barry Ltd. and the said M/s. Macneill & Barry Ltd. enjoyed and exercised the management and controlling interest of the subsidiary company.

3. In January, 1966, M/s. Macneill & Barry Ltd. proposed to sell the aforesaid 33,939 ordinary shares at Rs. 40 per share. The board of directors of the company were of the opinion that inasmuch as Panihatta Tea Estate was adjacent to the tea estate of the company, it would be in the interest of the company to buy those shares. The said purchase would mean that the effective control of production, staff, labour and other affairs of both the gardens would be secured with comparative lesser costs than before. In the premises, by a resolution dated 5th January, 1968, the board of directors of the company unanimously authorised the petitioner No. 2 to purchase in the name of the company those 33,939 ordinary shares of Rs. 10 each fully paid up at the rate of Rs. 40 per share from M/s. Macneill & Barry Ltd.

4. Pursuant to the said authority, on 16th January, 1968, the aforesaid shares were purchased from Macneill & Barry Ltd, at Rs. 40 per share by paying a sum of Rs. 13,57,560. Due to shortage of time between the negotiation and completion of the purchase it was not possible for the company to obtain sanction in its annual general meeting or the approval of the Central Government. However, as advised by the auditor of the company, sanction was thereafter obtained in the annual general meeting of the company regarding the aforesaid purchase and an application was made for the approval of the Central Government regarding these investments.

5. By the impugned order dated October 8, 1968, the respondent No. 1 rejected the aforesaid application on the ground that it had no power to grant ex post facto approval u/s 372(4) of the Act read with the Notification No. G.S.R. 72 dated January 1, 1966, issued by the Government of India, Ministry of Finance, department of Company Affairs and Insurance. By the impugned order, the respondent No. 1 also directed the company to dispose of those investments.

6. Thereafter, for about two years, the respondents Nos. 1, 2 and 5 did not take any action against the petitioners and then suddenly in November, 1970, a complaint was lodged by the respondent No. 2 u/s 374 read with Section 372(4) of the Act against the petitioners. The respondent No. 3 took cognizance of the said complaint and transferred it to the respondent No. 4 for disposal and the same was marked as Case No. C/3988 of 1970. The respondent No. 4 after taking cognizance of the aforesaid matter issued summons against the petitioners as directors and/or officers of the company for the alleged violation of Section 372(4) read with Section 374 of the Act. The said summons were also served on the petitioners.

7. In these circumstances, the petitioners have obtained this rule.

8. The word "previous" has not been used in Section 372(4) of the Act, whereas this word or a similar word has been used in Sections 295, 309, 310, 329 and 370 of the Act. It must, therefore, be held that the legislature, has clearly indicated where previous approval of the company in its annual general meeting or the Central Government is necessary. Accordingly, it must also be held that

the previous approval of the company in its annual general meeting or of the Central Government is not necessary u/s 372(4) of the Act.

9. In the premises, the contrary direction given by the Ministry of Finance, Department of Company Affairs and Insurance, in the Notification No. G.S.R. 72, dated January 1, 1966, is violative of Section 372(4) of the Act and it has no legal effect as rightly argued by Mr. Sen ; it must also be held that the respondent No. 1 has misdirected itself in law in rejecting the aforesaid application of the petitioners by relying on the aforesaid notification and also by prejudging the issue.

10. It is only u/s 373 of the Companies Act, 1956, that a company can be directed to sell its investments. Section 373, however, does not apply to the instant case and, therefore, the respondent No. 1 had -no power to direct the company to sell those investments.

11. Since no previous approval of the company in its annual general meeting or of the Central Government is necessary u/s 372(4) of the Act, the petitioners have not made any default in complying with the provisions of Section 372(4) of the Act and, therefore, the aforesaid case No. C/3988 of 1970 u/s 374 of the Act does not lie against them.

12. In the premises, the rule is made absolute. The impugned order dated October 8, 1968, is quashed and set aside. All proceedings in case No. C/3988 of 1970 before the Chief Presidency Magistrate are also quashed and set aside.

13. There will be no order as to costs.