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In the Madras High Court

M.K. Srinivasan and Others — APPELLANT

Vs

Watrap S. Subramania Aiyar and Others — RESPONDENT

Date of Decision : 29-01-1931

Acts Referred:
Companies Act, 1956 — Section 20

Citation : AIR 1932 Mad 100 : 136 Ind. Cas. 193 : (1931) 34 LW 746 : (1931) 61 MLJ 724

Hon'ble Judges : Curgenven, J;Cornish, J

Bench : Full Bench

Judgement

Curgenven, J.—The suit out of which this appeal arises relates to a Company known as the United India Life Assurance Co., Ltd. and the

circumstances which gave rise to the dispute are briefly these. The Directorate of the Company is composed of two Policyholders'' Directors

elected by the policyholders and of a certain number of Shareholders'' Directors. The ordinary general meeting for the election of Shareholders''

Directors was fixed for the 13th October, 1930. The Articles of Association had contained a provision that the number of Shareholders'' Directors

should be six, and that two should retire in rotation, their places being filled by election at the meeting. But this number had been by amendment of

the articles reduced to five, and it was provided, as a special case, that at the General Meeting of 1930 the six Directors should vacate office and

that not more than five should be elected in place of them. At the meeting the 3rd defendant, who was at the time the Chairman of Directors, took

the chair, and, it being decided to fill all five vacancies, a vote was taken by show of hands, and five persons were declared elected. A poll was

then demanded, and the Chairman directed that it should be held at the

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Company''s Office on Monday, the 20th October, between the hours of 4

and 6 p.m. and appointed the Company''s Manager, Mr. Church, Returning Officer, for the purpose of taking it. In thus allowing a week to elapse

before the poll was taken, the Chairman incurred the disapproval of the 1st plaintiff, one of the shareholders, who addressed to him on the 15th a

letter protesting against his action, and pointing out that, since all the Shareholders'' Directors had retired on the 13th, the shareholders must during

the interval remain wholly unrepresented, and the operations of the Company come to standstill, because the two Policyholders'' Directors were

be-low the minimum number authorised to transact business. This letter was certainly most provocative in tone, and perhaps explains, though it

may not julstify, what happened next. On the 16th the two Policyholders'' Directors appointed two other persons--the Chairman himself and the

4th defendant--thus bringing the number of Directors up to four, the minimum number required by Article 88 to act in the name of the Company. It

will be for consideration whether this action was within their powers. It evoked from the 1st plaintiff another letter, written the day before the date

fixed for the poll, condemning this procedure and expressing the apprehension that advantage was intended to be taken of it to hold a poll only in

respect of the three remaining vacancies. What happened--whether by accident or design we are not now concerned to inquire--more than

justified his misgivings. On the 20th, at the appointed time, a number of shareholders assembled at the. Office of the Company, but neither did the

Returning Officer appear nor were any other arrangements made for holding the poll. They waited there and eventually dispersed. The explanation

given is that Mr. Church was unable to attend through sudden illness, and that a message which he sent to the Chair-man in the course of the

afternoon was not delivered as the Chairman had shortly before left Madras on a visit to a sick relative. No further attempt was made to take a

poll, and indeed, whether rightly or wrongly, the four persons at that time claiming to be Directors, defendants 1 to 4, two days later took the line

best calculated to demonstrate their refusal to adopt the course by ""co-opting"" three more Directors, defendants 5 to 7, thereby bringing their

number up to the maximum. The four plaintiffs, as shareholders, filed their suit on the 24th October, praying inter alia that these appointments might

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be declared illegal and invalid, and that the Court should direct ,a poll to be taken to elect five Shareholders'' Directors to the existing vacancies.

2. The learned Judge who tried the suit, Waller, J., has dismissed it upon a preliminary issue. He finds indeed that the co-optation, in two stages, of

the five Shareholders'' Directors was ultra vires, but that, assuming it to have been so, the Company, and not individual shareholders, should have

been the plaintiffs. Further, he considers that the Articles of Association provided the shareholders with an alternative remedy, and that at least until

that had proved infructuous the Court should not intervene. All the plaintiffs appeal against this decision, which is supported in varying ways by the

several defendants, whose points of view may be gathered from the contents of their written statements. The 1st and 2nd defendants, the two

Policyholders'' Directors, endeavour to justify their action in co-opting the 3rd and 4th defendants, and then, with these defendants, co-opting the

defendants 5 to 7. The Chairman (3rd defendant) contends that even if this procedure was not legal, those of the new Directors who were

previously in office--all except the 4th defendant--may be deemed to have continued by virtue of the terms of Article 68 (g). The 4th defendant,

the sole new-comer to the office has--perhaps to give scope to this alternative--since resigned. The 5th and 6th defendants denounce the act of

co-opting them as unlawful, but claim to be still in office under Article 68 (g).

3. It has become clear to me that the crucial questions of law upon the answer to which a correct decision depends in this case, are firstly, what

determines the duration of an ordinary general meeting for the election of Directors, and, secondly, what is the nature of the process known as

taking a poll. The rules governing these matters are not, I think, in any respect peculiar to this Company. Article 37 gives the Directors power to fix

the annual ordinary general meeting, and Article 42 provides for the election of Directors at it. Such election is to be, in the first instance, by show

of hands. If at least three members demand a poll, the Chairman shall grant it. Article 49 empowers the Chairman to take it, and runs as follows:

If a poll is demanded as aforesaid it shall be taken in such manner and at such time and place as the Chairman of the meeting directs, and either at

once or after an interval or adjournment, or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the

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poll was demanded. The demand for a poll may be withdrawn.

4. Put shortly, the view pressed upon by Mr. T. R. Venkatarama Sastri on behalf of the respondents is that the process of holding the poll is a

detached portion of the general meeting, or is at any rate a ""meeting"" within the meaning of the Articles of Association, and that when that ""meeting

comes to an end, whether or not the poll has been taken, the general meeting also terminates, and there exists no power to revive it, either on the

part of the Chairman or of the Directors; and if for some reason the poll has not been taken, and no Directors elected, there exists no further

power to do these things. It will be at once evident--indeed no better illustration is needed than the present case--how completely subversive these

doctrines would be of the rights of election possessed by the shareholders. Fortunately, they appear to be based upon fundamentally erroneous

conceptions. The original meeting in law-continues until the Chairman has carried out the direction given to him by the shareholders to take a poll.

It is a notional meeting, not dependent for its existence and continuity upon the shareholders being actually in session and business being transacted.

The actual process of holding the poll is not a ""meeting"" at all. It differs in several of its features from any meeting of shareholders. For example, the

articles provide that every such meeting shall be held at the office of the Company, whereas Article 49, reproduced above, empowers the

Chairman to take the poll at such place as he may direct. The person appointed to conduct the poll, unlike the Chairman of a meeting, need not be,

and indeed in the present instance was not, a shareholder of the Company. His functions in no way resemble those of a Chairman of a meeting, and

are, as has been pointed out in Harben v. Phillips (1882) 23 Ch.D. 14, purely ministerial. The operation of taking a ballot, too, has little

resemblance to such a meeting, each shareholder may come at any time between the hours fixed, record his vote, and go away. It is only the result

of the poll which forms part of the meeting at which the poll was demanded by being deemed to be a resolution passed at it. ""The taking of a poll,

said Brett, L.J., in The Queen v. Wimbledon Local Board (1882) 8 Q.B.D. 459, ""is a mere enlargement of the meeting at which it was

demanded"". In the same case, Cotton, L.J., observes:

A poll is not a new meeting, but it is a mode of ascertaining the sense of the

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meeting which is continued for that purpose. . . The meeting of

ratepayers did not come to an end, for the poll which was demanded has never been held.

5. In Shaw v. Tati Concessions, Limited (1913) 1 Ch. 292 Swinfen Eady, J., after remarking that the taking of a poll is not a meeting, continues:

The true legal position is this. There is no adjourned meeting, but the original meeting continues for the purpose of taking the poll until the poll is

closed.

6. For the principle that the poll is not complete, and therefore the general meeting endures, until the shareholders have had an opportunity of

voting, I may refer to The Queen v. The Vestrymen, etc., of St. Pancras (1839) 113 E.R. 317. The position was defined with clearness by Russel,

J., in Spiller v. Mayo Development Co. Ltd. (1926) W.N. 78 : 61 L.J. 301 in settling a question of the validity of certain proxies, ""it was well

settled,"" he said, ""that the taking of a poll was not a meeting of the Company in the strict sense, but was in law a mere continuation of the meeting

at which the poll was directed to be taken"". No authority has been cited to us for the position which the respondents assume, which requires that

the taking of the poll is in law a meeting convened by the Chairman, from which the inference sought to be drawn is that if the Chairman makes the

default in holding the meeting, the shareholders'' only remedy is to take the poll themselves, unless they resolve to adjourn the meeting to some

other day. I doubt whether in face of the wide powers delegated in this respect to the Chairman, the shareholders would be legally competent to

do this. But it is unnecessary to decide that point, especially in the present case, where it appears to have been almost physically impossible for

them to adopt this course. Ballot papers had indeed been printed, but they were locked up in the Manager''s safe, and the key was not accessible.

The assembled shareholders had no official record of the names of the eleven candidates standing for election. It would probably appear, had the

case been fully heard, that there were other obstacles. They took the only course apparent to them, and dispersed without recording their votes.

Even on the theory that a gathering of shareholders recording their votes is a meeting, it is difficult to contend that any meeting took place here.

When and by virtue of what act did it begin, and when terminate? Having

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brought matters to this impasse by the breakdown of the arrangements

which it was his duty to render effectual, the Chairman would now ask the Court to dismiss the claim of these persons on the ground that, as

matters fell out, their only course was to assume his functions and proceed with the election, failing which they must suffer disenfranchisement until

the time should arrive for another annual general meeting. The alternative view, more commendable alike to the terms of the articles and to

common sense, is that, the Chairman having been enjoined by the shareholders to hold a poll and having under Article 49 ample power to carry

out their wishes, should have persisted in his attempts to do so until they were successful. I have heard no argument which, upon the true theory

underlying these proceedings, encourages me to hold that, when the first attempt broke down, he was functus officio.

7. Let us now see by what machinery it is proposed to carry on the business of the Company in the meanwhile. It is sought to justify the action of

the two Policyholders'' Directors in the first place, and of themselves and their two co-opted Directors in the second, in filling up the places upon

the directorate, by recourse to the provisions of Article 68 (h), which enables Directors to appoint any duly qualified member as Director either to

fill a casual vacancy or as an addition to the Board. Alternatively the powers conferred by Articles 86 and 88 are invoked, though a perusal of

those articles will show that they do not enlarge the powers derivable from Article 68 (h). The contesting defendants in their written statements

justified the action taken upon one or other of these grounds, but before us such a position has been virtually abandoned and is obviously

untenable. A casual vacancy means in general any vacancy occurring by death, resignation or bankruptcy and not by effluxion of time (Palmer''s

Company Precedents, 13th Ed., Part 1, p. 720, York Tramways Company v. Willows (1882) 8 Q.B.D. 685 at 694 and Munster v. Cammell

Company (1882) 21 Ch.D. 183). Article 69 defines the different modes in which such a vacancy arises. The occasion for appointing a Director ""as

an addition to the Board"" will only arise when the shareholders have abstained from filling one or more of the sanctioned posts of Director. The rule

has no application to present circumstances. The article upon which reliance is now placed is No. 68 (g), which runs thus:

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If at any ordinary general meeting at which an election of Directors ought to take place, the place of any retiring Director is not filled up, such

Director shall, if willing to continue in office, be deemed to have been re-elected at such meeting, unless it shall be determined at such meeting to

leave the vacancy or vacancies unfilled.

8. I leave on one side the argument, special to the circumstances of this case, that since six Directors retired and only five posts were sanctioned

for the future, no one retiring Director could be said to have a ""place"" into which he could be deemed to be re-elected. The claim may, I think, be

disallowed upon more general grounds. Nor is it necessary to point out that, to declare these so-called co-optations valid by virtue of this

provision, a perversion of it to a use that can never have been in contemplation would have to be countenanced. It is a necessary condition of its

application that the ordinary general meeting should have come to an end without an election of Directors; indeed, it was with the object in view of

rendering its application possible that the arguments to which I have already referred were with some strenuousness advanced. So long as the

meeting exists, it appears that under the articles, as they now stand, the Directors'' posts remain vacant. It was to save any inconvenience arising

from this that a provision existed in the articles before amendment that the outgoing Directors should continue until their successors were elected

(see old Article 64), but whether by inadvertence or intention this has not been reproduced. If, as I hold, the General Meeting has never been

closed, this provision for automatic re-election admittedly can have no application, and the five Directors'' places may still be filled up by election.

9. The remainder of the arguments addressed to us represent an attempt to prevent the Court from interfering. It would seem that in a case where

the shareholders have, through no fault of their own, been deprived of their fundamental privilege of choosing their own management, and where

that management has passed into the hands of persons with no legal title to enjoy it, if ever there were a case for the Court''s interposition it must

be this. Since, however, the learned Trial Judge has taken a different view, and since the question has been elaborately argued before us, it is

advisable that we justify the course we propose to take by reference to authority. The questions raised are, firstly, can an individual shareholder

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sue for the reliefs asked for by the plaintiffs, and, if so, secondly, ought the Court to interfere, having regard to such other remedies as may be

available? It is worth while to repeat here the nature of reliefs asked for. The plaintiffs sue for a declaration that they and the other shareholders are

entitled to elect five Shareholders'' Directors, and for a direction that a proper election by poll be ordered; as a necessary preliminary they ask also

that it may be declared that the appointment of persons to fill the vacancies by co-optation its illegal and invalid. In substance, therefore, the suit is

one to establish and enforce the right of a shareholder to exercise his vote. Now in examining the authorities, it will be found that the cases may be

grouped according as the injury complained of is an injury to the shareholder, by infringing his individual rights, or only an injury to the Company in

which the shareholder holds an interest. Cases falling within the former category may again be divided into those which relate to an injury to one or

some only of the shareholders, and those which have arisen from a breach of duty towards all the shareholders; for it does not necessarily follow

that, where all the shareholders (except those of them who contrive the injury) are affected, an individual shareholder is precluded from suing. The

test depends upon the nature of the wrong alleged. An instance of a case where some only of the shareholders were denied their legal rights is

Fender v. Lushington (1877) 6 Ch.D. 70 which arose from a poll at which the Chairman ruled out certain votes which should have been included.

Jessel, M.R., in deciding that the action could be maintained by the single shareholder who brought it, observed:

He is a member of the Company, and whether he votes with the majority or the minority he is entitled to have his vote recorded--an individual right

in respect of which he has a right to sue.

10. Other cases which fall within the same elates are Pulbrook v. Richmond Consolidated Mining Company (1878) 9 Ch.D. 610 and Henderson

v. Bank of Australasia (1890) 45 Ch.D. 330. The class which concerns us here, however, relates to acts in derogation of the rights of all the

shareholders, and is represented by a number of instances of suits brought by individual shareholders. In Mosely v. Koffy-fontein Mines, Ltd.

(1911) 1 Ch.D. 73 the plaintiff sued the Company and the Directors on behalf of himself and the other shareholders to restrain the unauthorised

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issue of capital. It was a matter affecting the shareholders as a body, but the plaintiff was allowed to sue because, as Fletcher Moulton, L.J., put it,

it must be the right of a shareholder by reason of his being a shareholder to bring an action to stop such a proceeding"". It is to be observed that in

such a case the Company itself, by resolution of its members, could also have sited to restrain the Directors from such an act. Another case

involving a breach of duty by the Directors towards the whole body of shareholders is Alexander v. Automatic Telephone Company (1900) 2 Ch.

56. Lindley, M.R., decided that it was not a matter of mere internal management--a description which it has been sought to apply to the conduct of

the defendants in the present case--and that a suit by some of the shareholders was unobjectionable in form. Baillie v. Oriental Telephone and

Electric Co., Ltd. (1915) 1 Ch. 503 related to failure on the part of the Directors to make a frank disclosure to the shareholders of the

circumstances in which they claimed extra remuneration. It was argued that the plaintiff, a shareholder, was not entitled to sue to impeach the

validity of a special resolution, but the Court of Appeal disallowed the objection on the ground expressed by Swinfen Eady, J., that even a majority

of the shareholders could not legalise an invalid act and prevent action being taken to set it aside. This case bear''s upon the further question we

have to decide--the remedy, if any, open to the plaintiffs at the hands of the Company. In Hoole v. Great Western Railway Co. (1867) 3 Ch. App.

262 the power of the Railway Company to issue additional shares was in dispute. The question of the proper parties to the action was raised, and

Sir John Rolt, L.J., saw no reason why any single shareholder should not be at liberty to file a bill to restrain the Company from exceeding its

powers.

If one individual having an interest complains of an act of the whole Company, or the executive of the whole Company, as being illegal, there is, as

a general rule, no necessity for any other shareholders being present.

11. The other line of cases, in which it has been held that the Company, not the shareholder, is the party to complain, opens with Foss v. Harbottle

(1843) 67 E.R. 189 decided by the Court of Chancery in 1843. This was a suit brought by two shareholders against the Directors and some

others alleging that the Directors, as Directors, had bought for an excessive price

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certain lands from themselves as private individuals, and, to find

money for the purchase, had mortgaged the Company''s property in a manner unauthorised by the Act of Incorporation. Objection was taken that

an individual shareholder could not sue, and the learned Vice-Chancellor, while conceding that in certain circumstances a suit might properly be so

framed, agreed that this was not such a case. The injury alleged was an injury to the Corporation as a whole, inflicted upon it, as a cestui que trust,

by its trustees, and it was for the Corporation to deal with it. The purchase was not void but only voidable, and if the Corporation should choose

to ratify it no individual shareholder could resist such action.

The very fact that the governing body of proprietors assembled at the special general meeting may so bind even a reluctant minority is decisive to

show that the frame of this suit cannot be sustained whilst that body retains its functions.

12. It might be that the mortgages were void, as ultra vires, but that would not in the circumstances dispose of the question, because since the

money received was expended in the manner stated, if the Corporation approved the Directors'' action in making the purchases it could not

complain of the manner in which they raised the money. The principles on which this case was decided were thus that there was no infringement of

the individual rights of a shareholder, only a possible injury to the Company as a corporate body; and secondly, since it would lie with the

Company to ratify it must also lie with it to challenge, whether by suit or otherwise. The same principles were applied by Lord Cottenham, L.C., in

Mozley v. Alston (1847) 41 E.R. 833 where two (shareholders complained of the omission of the twelve Directors to ballot out four of their

number, in order that four others might be elected in their stead. This case does certainly in some respects resemble the case now before us; but it

is perhaps permissible to surmise that since 1847, when Mosley v. Alston (1847) 41 E.R. 833 was decided, some modification of the attitude then

taken up by the Court of Chancery has taken place, in the same way as Lord Cottenham himself recognises that a relaxation was apparent in his

own day ""to meet the exigencies of modern times"".

13. The observations of Swinfen Rady, L.J., upon this case in Baillic v. Oriental Telephone and Electric Company, Ltd. (1915) 1 Ch. 503 suggest

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that the stringency of the rule laid down in these two earlier cases has been relaxed in more modern times. The remaining case of this class cited to

us, MacDougall v. Gardiner (1875) 1 Ch.D. 13 dealt with what was at the most an irregularity and not an illegality, James, L.J., expressly

excluding illegal, oppressive or fraudulent acts from the scope of the principles on which he acted. Even therefore adopting the position assumed by

these earlier Chancery cases in all its rigour, I do not find reasons in them to non-suit the plaintiffs here.

14. Nor do I think that the contesting respondents are on any better ground in contending that the plaintiffs should have availed themselves of

facilities for rectifying the position afforded by the Articles of the Company. The learned Trial Judge considered that it was open to the

shareholders by special resolution to remove the so-called directors from office, a course dependant upon securing a three-fourths majority. The

reasonableness of referring the plaintiffs to such a procedure has not been pressed upon us in appeal, and indeed it hardly seems right to tell a

shareholder who complains of acts committed in defiance of the Articles of Association that the enforcement of his legal rights is dependent upon

securing such a majority. Mr. T.R. Venkatarama Sastri prefers to adopt the position that a mere majority of shareholders would be able to validate

the acts performed ultra vires by the Chairman and his party, but here again I think that he bases his arguments upon a failacy. It is no doubt true

that if the Directors of a Company act ultra vires, and if what they have done would be within the power of the Company, acting within its

Memorandum and Articles of Association, to do, the Company can ratify the action taken. It cannot so ratify it by a simple majority if by a general

resolution it could not sanction such a course. The effect of the cases cited to us has been thus summed up by Lindley (6th Ed., Vol. I, p. 769):

...if directors or shareholders have done or are about to do that which is a fraud upon the minority, or is wrong, even if sanctioned by a majority,

then an action by some of the members on behalf of themselves and others, or by a member suing alone, may be sustained, for otherwise the

dissentients would be without redress.

15. It is surely enough to point out that even a majority cannot act in breach of rules which they have agreed shall regulate their actions. ""The

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articles,"" observed Swinfen Eady, J., in Boschoek Proprietary Company, Limited v. Fuke (1906) 1 Ch. 148, ""until altered, bound the shareholders

in general meeting as much as the board,"" the case being one of an attempted confirmation of a Director not possessing the necessary

qualifications. The Indian Companies Act gives statutory force to this principle by providing in Section 21 that the memorandum and articles shall

bind the Company or the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant

on the part of each to observe all their provisions. Accordingly to say that the course taken in the present case could have been ratified by the vote

of the majority is equivalent to saying that the articles permit the election of Directors to be made otherwise than at the Ordinary General Meeting,

as Article 68 (f) provides, and otherwise than by submission of the names of all eligible candidates to the choice of the voters. It is evident that a

resolution proposing that certain five persons be appointed Directors is not only unauthorised by the articles but would be a departure not only in

form but in effect from the accepted procedure.

16. I have come to the conclusion therefore that the only course compatible with enforcing the rights to which the plaintiffs are entitled under the

Articles of Association is to declare that the so-called co-optation of defendants 3 to 7 to the vacant posts of directors is illegal, and that the

shareholders are entitled to elect five of their number to those vacancies. The 3rd defendant, as Chairman, will be directed to proceed with the

operation of election, and to take a poll after due notice to all shareholders and within ten days of the date of this judgment. Defendants 1 to 3 and

7 will pay the plaintiffs'' costs here and below, and each defendant will pay his own costs. In view of the importance of the case we fix the

advocate''s fee for the appeal ,at Rs. 1,000. The actual cost of printing will also be included in the costs.

Cornish, J.

17. I agree that the co-option of defendants 3 and 4 on the 16th October and of defendants 5, 6 and 7 on the 2nd October as directors cannot be

justified under Article 68 (h) or 86 of the Articles of Association and was ultra vires. Defendant 4 filed a written statement claiming to be of the

directorate by reason of his co-option by defendants 1 and 2, but we are told

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that he has since withdrawn from that body.

18. Defendants 5 and 6 by their written statements have repudiated their supposed co-option. They claim that as retiring Directors they continue in

office till their successors are actually elected, or that by virtue of the provision of Article 68 (g), they are to be deemed to have been re-elected.

These two defendants together with defendants 3, 7 and 8 are five of the six Shareholders'' Directors who under the Articles of Association were

due to retire at the Ordinary General Meeting on the 13th October. Defendants 3 and 7 also rely on Article 68 (g). Defendant 8 has not put in a

written statement. The learned Counsel for defendants 5 and 6 has not pressed the first part of his clients'' contention, and I think it is untenable."" A

director,"" said Sargant, J, in In re Consolidated Nickel Mines, Ltd. (1914) 1 Ch. 883 ""does not ordinarily step into an office which is perpetual

unless terminated by some act, but into an office the holding of which is limited by the terms of the Articles."" By Article 63 the six Shareholders''

Directors vacated office at the Annual General Meeting on the 13th October. Having vacated their office, at that meeting, there could be no

question of their still continuing in the office when a poll was pending to fill up the vacancies caused by their retirement. The provisions of Article 68

(g) then have to be considered. This says:

If at any ordinary general meeting at which an election of Directors ought to take place the place of any retiring Director is not filled up, such

Director shall, if willing to continue in office, be deemed to have been re-elected at such meeting, unless it shall be determined at such meeting to

leave the vacancy or vacancies unfilled.

19. It has been suggested that Article 68(g) can have no application because there were six directors due to retire, but under the amended Articles

only five vacancies to be filled. But admittedly one of these gentlemen had written to the Chairman on the 13th October stating that for reasons of

health he was not standing for election, and I do not see how a person who has withdrawn his candidature for election could be regarded as

capable of being deemed to have been re-elected under the provisions of Article 68 (g). There would, therefore, be no objection on that ground to

the live retiring Directors, who were seeking re-election, having the benefit of this Article.

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20. The question is, whether, in view of what happened on the 20th October, there has been such a failure to elect Directors as will entitle

defendants 3, 5, 6, 7 and 8 to claim to have been re-elected in pursuance of Article 68 (g). In other words, has the meeting at which the election of

Directors ought to have taken place terminated without the vacancies being filled up? Now it is beyond dispute that when the shareholders arrived

at the Company''s premises for the poll, which had been fixed by 3rd defendant, the Chairman, to be held there between the hours of 4 and 6

p.m., it was not until 5-20 p.m. that they learned that the Returning Officer appointed to take the poll was unable to attend. No arrangements had

been made for any other person to conduct the poll. The Assistant Manager who was on the premises reported that he had no instructions in the

matter; and it is admitted by the Returning Officer that the proxies and voting papers for the poll were locked in a safe of which he had the key,

and were not available because the 3rd defendant, to whom he sent the keys when he reported his inability to attend, was absent from Madras and

did not get his message until 6-45 p.m. that evening. It has been contended that, in spite of all this, the assembled shareholders had the remedy in

their own hands; that under Article 44 they might have chosen one of their number to be Chairman in the absence, of the 3rd defendant and have

proceeded with the business of the poll, using such pieces of paper for the purpose of voting papers as might have been available; or that under

Article 46 they might have resolved to adjourn the meeting to some other date for the taking of the poll. Articles 44 and 46 in terms apply to

Ordinary General Meetings. In my opinion, an assembly of shareholders for the purpose of recording their votes at a poll had no power to fix some

other date than that already fixed for the holding of the poll. The position, when a poll has been demanded and directed to be taken at a future

date, is that the meeting subsists in contemplation of law until the poll has been taken; or, as Lord Justice Brett expressed it, ""the taking of the poll

is a mere enlargement of the meeting at which it was demanded"": The Queen v. Wimbledon Local Board (1882) 8 Q.B.D. 459; see also Shaw v.

Tati Concessions, Ltd. (1913) 1 Ch. 292 and Spiller v. Mayo (1926) W.N. 78 : 61 L.J. 301. In the last mentioned case Russel, J., said:

It was well settled that the taking of the poll was not a meeting of the Company in the strict sense but was in law a continuation of the meeting at

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which the poll was directed to be taken.

21. Article 49 regards the taking of the poll in the same sense; for it says, ""the result of the poll shall be deemed to be the resolution of the meeting

at which the poll was demanded"". The conclusion upon these authorities is, the legal conception of the meeting being that it continues for the

purpose of taking the poll, that the meeting continues for that purpose only and for no other purpose or business.

22. The last question, therefore, resolves itself into this--has the breakdown of the arrangements for the poll on the 20th October put an end to the

taking of a poll? I do not think so. In my opinion the words in Article 68 (g) ""if at any ordinary general meeting at which an election of Directors

ought to take place,"" imply that it must be possible for the poll to be taken at the appointed time and place, There must atleast be a reasonable

opportunity to the voters and to the candidates of having the poll taken: see Reg v. The Rector of Lambeth (1838) 8 Ad. & E. 357 : 112 E.R.

873. In the present case it is to be observed that there were eleven candidates for the five vacancies. And if unforeseen circumstances have arisen

to prevent the poll being taken, then I think that, not only has there been no termination of the election but that it became the duty of the Chairman,

the 3rd defendant (and he had the power under the articles) to appoint some other time for the taking of the poll. The rule is, that if a poll is

demanded it must be taken, and this is so even though the Chairman refuses to grant the poll: The Queen v. Wimbledon Local Board (1882) 8

Q.B.D. 459 Article 49 is equally emphatic. It says: ""If a poll is demanded as aforesaid (i.e., at the General Meeting) it shall be taken""; and it goes

on to provide that it is to be taken ""in such manner and at such time and place as the Chairman of the meeting directs and either at once, or after an

interval or adjournment, or otherwise"". The language of the article leaves no doubt in my mind that it was open to the 3rd defendant as Chairman,

and indeed obligatory upon him, when he learned that the poll could not be held on the 20th, to appoint another date for it.

23. Finally it has been objected that the matter being one of internal management of the Company''s affairs the Court has no jurisdiction to

interfere, and that the plaintiff''s suit is unsustainable. It was upon this objection that the learned Trial Judge dismissed the suit. A number of

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authorities have been cited to us. I do not think it necessary to refer to them in detail because the law upon the subject has been compendiously

stated by Lawrence, L.J., in Cotter v. National Union of Seanien (1929) 2 Ch. 58 at 107 as follows:

If an act is intra vires the Corporation, and therefore one which could be sanctioned by the majority of the corporators properly assembled in

general meeting, the Court will not entertain any proceedings to restrain the doing of the act resolved upon unless such proceedings are brought by

the majority of the corporators and in the name of the Corporation itself.

24. It has been contended that, assuming defendants 3, 5, 6, 7 and 8 have usurped the office of shareholders'' directors, this was a matter capable

of confirmation by the Company in general meeting--though no meeting of the Company has in fact sanctioned it. In other words, the argument is

that the Company, which means, of course, a majority of the general body of shareholders, could by a resolution override the articles which require

directors to be elected, and resolve that these five gentlemen, who have contrived to step back into office without an election should remain there. I

do not think that this would be intra vires a general meeting of the shareholders, for the articles until altered (and this, according to Section 20,

Indian Companies Act, can only be done by special resolution), bind the shareholders in general meeting as much as the Board: see Boschock

Proprietary Co., Ltd. v. Fuke (1906) 1 Ch. 148. It seems to me that the principle of that case governs this case where five gentlemen have been

installed as directors in contravention of the articles. Such a mode of constituting Directors would be equally ultra vires the Board and the

Company to sanction. This being the case, and there being no adequate remedy open to the plaintiffs under the articles, I think it falls within the rule

that the Court has jurisdiction to entertain a suit by shareholders against the Company in respect of an infringement of their individual rights as

shareholders when the interest''s of justice so require: Baillie v. Oriental Telephone and Electric Co., Ltd. (1915) 1 Ch. 503 at 518 For these

reasons I agree that there should be a declaration that defendants 3, 5, 6, 7 and 8 are not Directors of the Company, and with the order directing

the 3rd defendant as Chairman to take the poll.

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