
(1999) 10 KAR CK 0018
In the Karnataka High Court
Case No : Company Petition No. 26 of 1990

M/s. Ferrom Electronics Private Limited, Bangalore	APPELLANT
Vs	
M/s. Vijaya Leasing Limited, Bangalore	RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Companies Act, 1956 — Section 111, 155, 292, 82
Securities Contracts (Regulation) Act, 1956 — Section 22 (3)

Citation : (2000) ILR (Kar) 235 : (2000) 1 KarLJ 400

Hon'ble Judges : R. Gururajan, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri Adithya Sondhil, for Sri Udaya Holla, for the Appellant; Sri Ranga, for M/s. Sundaraswamy Ramdas and Anand, for the Respondent

Judgement

1. Does the transferee of shares of a Public Limited Company registered under the Companies Act, 1956 (for short, "the Act") have the right to get the shares registered in his own name? And on what grounds the Public Limited Company can refuse to register the shares? Are the twin questions which fall for consideration in this petition.
2. Petitioner is a Private Limited Company incorporated under the Act having its registered office at Bangalore. The petition has been u/s 155 of the Act for issuance of a direction to the respondent, a Public Limited Company for the rectification of the register of the members of the respondent-company to include the name of the petitioner-company as its shareholder in respect of the shares purchased by it. Objects of the petitioner-company incorporated in the Memorandum of Association of the company entitling the petitioner-company to invest or purchase the shares of other companies is produced as An-nexure-A.
3. Respondent-company has been incorporated under the Companies Act with its office at Bangalore.
4. It is submitted by the petitioner-company that in its meeting of Board of

Directors held on 20th July, 1988 (Annexure-B) decided to carry on the business of investment in shares and securities of other companies as provided in the Memorandum of Association of the petitioner-company. During the year 1988 Mrs. Sarvani K. Alva on behalf of herself and her children who were the owners of 52,000 fully paid equity shares of Rs. 10/- each in the respondent-company approached the petitioner-company with an offer to sell the shares in favour of the petitioner. The said Smt. Sarvani K. Alva initially quoted a price of Rs. 14/- per share and offered to sell the same in favour of the petitioner-company. Consequent upon this offer the Board of Directors of the petitioner-company met on 10th July, 1989 and resolved to purchase the aforementioned shares from Mrs. Sarvani K. Alva and her family members at a price not exceeding Rs. 12/- per share. Copy of the extract of the minutes of the Board of Directors of the petitioner-company dated 10-7-1989 has been produced as Annexure-C. Pursuant to the said Board meeting resolution, petitioner-company negotiated for purchase of aforementioned shares held by her and her family members at a price of Rs. 12/-. The transferors executed the share transfer deed for transfer of 51,195 shares and handed over to the petitioner-company along with other documents to enable the petitioner-company to get shares transferred in its name. Petitioner's case is that the petitioner sent the share transfer deeds and the share certificates to the respondent company on 7-8-1989 under the cover of their letter at Annexure-D along with other documents referred to therein with a request to transfer the shares. The said letter was acknowledged by the respondent-company by its letter dated 9-8-1989 at Annexure-E. Subsequent thereto, the Board of Directors of petitioner-company also passed another resolution at Annexure-F reconfirming the action taken by the Directors of the petitioner-company to purchase the shares of the respondent-company.

5. Respondent-company wrote a letter dated 9-9-1989 (Annexure-G) pointing out certain discrepancies in the papers sent by the petitioner regarding the transfer of 51,195 equity shares of the respondent-company as aforementioned. In this letter respondent-company raised the following objections:

"(a) that the certified copy regarding the transfer of the Registered Office of the petitioner-company from one State to another State has not been notarised:

(b) that the name of the transferors, viz., Smt. Supriya Shetty and Smt. Sharmila Shetty mentioned in the General Power of Attorney submitted do not tally with the names appearing in the Register of Members of the Company.

(c) that the certified true copy of the resolution passed by the Board of Directors of the petitioner-company held on 10-7-1989 does not specifically empower the Directors therein to acquire shares of any other company.

(d) that the spelling of Smt. Sarvani Kunhanna Alva as appear in the transfer deed differs from the spelling as it appears in the share certificates;

(e) that the transfer deed for transfer of 1,200 shares under Folio No. 349, the occupation of the transferee has not been mentioned.

(f) that the name of Miss Soumya Alva has been wrongly spelled as Soumya Alva, and that the spelling in the transfer deeds and the share certificates differ.

(g) that the transfer deed pertaining to three folio numbers specified in the letter, the overwritten has not been duly initialled by the parties".

It was also stated in the said letter that the respondent-company was unable to proceed further with the transfer in view of the aforementioned objections raised by them. Shares pertaining to 18 transfer deeds which were defective were returned along with the letter. 7 transfer deed and the share certificates which were in order were retained by the respondent-company. Subsequent to the receipt of transfer deeds, the petitioner rectified all the material defects pointed out by the respondent as per the aforementioned letter and returned the 18 transfer deeds after duly rectifying the defects under cover of their letter dated 18th October, 1989 (Annexure-H).

6. In response thereto respondent-company wrote a letter dated 24th October, 1989 (Annexure-J) to the petitioner-company stating that they are unable to process the papers as the resolutions dated 10-7-1989 and 21-8-1989 do not fully comply with the provisions of the Act. Petitioner-company vide Annexure-J1 on 4-11-1989 sought clarification from the respondent-company as to what it meant by saying that the resolutions did not comply with the provisions of the Act. In reply respondent-company wrote a letter dated 8-11-1989 (Annexure-J) informing the petitioner-company that the resolutions of the Board of Directors of the petitioner-company, as per the copies submitted, do not satisfy or comply with the entire mandatory provision of Section 292 of the Act.

7. Claiming that there was no contravention of the provisions of the Act by the petitioner-company and that the resolution passed by the Board of Directors of the petitioner-company were in accordance with law, petitioner wrote another letter dated 22nd November, 1989 (annexure) specifically stating that it has complied with all the requirements of the Company Act and requested the respondent company to process the transfer papers and transfer the shares in the name of the petitioner-company. In reply thereto the respondent sent notices dated 18-12-1989 numbering nine (L1 to L9) rejecting the request of the petitioner for transfer of shares on the ground that the copies of Board resolutions dated 10-7-1989 and 21-8-1989 did not fully comply with the mandatory provisions of Section 292 of the Act and returned all the share transfer deeds and share certificates and two other documents sent by the petitioner-company.

8. Petitioner-company asserting that the respondent-company had refused to transfer the shares which had been validly purchased by the petitioner-company for a total consideration of Rs. 6,15,540/-, filed the present petition u/s 155 of the Act seeking an appropriate direction for rectification of the register of members of the respondent-company and to include the name of the petitioner-company as a shareholder of the respondent-company. According to the

petitioner, the respondent being a public limited company whose shares are quoted in the stock exchange both at Bangalore as well as at Bombay, could not refuse to transfer the shares in its name. It is claimed that the petitioner-company had complied with the provisions of Section 292 of the Act. Objections regarding non-compliance of Section 292 had not been taken by the respondent in its first letter dated 9-9-1989 at Annexure-G. Subsequent stand taken by the respondent-company that the petitioner had not complied with the provisions of Section 292 was therefore an afterthought and therefore untenable. According to the petitioners, Section 292 of the Act does not at all relate to the transfer of shares and there is no bar u/s 292 of the Companies Act to transfer the shares in question. That Section 292 is for the internal management of the company and respondent could not refuse to transfer shares in the name of the petitioner-company on the ground that the petitioner-company had not complied with the provisions of Section 292 of the Act. That the respondent-company could refuse to register the share certificates only on one or more of the grounds set out in sub-section (3) of Section 22A of the Securities Contracts (Regulation) Act 1956, (for short, the Securities Regulation Act"). Such being not the case, respondent company was bound in law to transfer the share certificate in the name of the petitioner-company along with the dividends accrued thereon. The respondent-company had refused to pay the dividend in spite of the letter at Annexure-M written by the transferor asking the respondent-company to pay the dividend to the petitioner-company. Petitioner-company demanded from the respondent-company to pay the dividend pertaining to these shares which was mandatory. Prayer has been made for the grant of petition as prayed for and for grant of such other further reliefs as may be justified which would include a direction to the respondent-company to pay the dividend of the shares purchased by the company from the date the application was filed by the company for transfer of the shares in its name.

9. Respondent in its reply statement has taken the preliminary objection that the main business of the petitioner-company is to set up the business of Electronic Industry. As the petitioner had failed to carry out the main business, the incidental and ancillary objects would not come into operation at all and the act of acquiring shares for the purpose of investment is an act which is ultra vires the Memorandum of Association of the petitioner-company. That the petitioner-company has no power to carry on with the business of acquiring shares at all. That the conduct of the petitioner-company disentitles it to discretionary relief from this Court as it has not acted fairly, reasonably and bona fide.

10. It is submitted by the respondent that the petitioner-company is under the control of one Sri M. Ashok Kumar Shetty. He is the son of late M. Sundaram Shetty who is the Chairman of Vijaya Group of Companies. Both the Associate Companies, namely Vijaya Commercial Credit Limited and Vijaya Leasing Limited, are carrying on business under the Chairmanship of Sri B.T.R. Punja, son-in-law of Sri M. Sundaram Shetty and brother-in-law of Sri M. Ashok Kumar Shetty. For long time, Sri Ashok Kumar Shetty was attempting to destabilize the

management of the respondent-company and to acquire control to disrupt its smooth working. He had set up several persons to file suits against the respondent-company but his attempts did not succeed. Sometime during 1982, one T.K. Alva a professionally qualified Chartered Accountant and Company Secretary was inducted as a Director of the respondent-company. He was in complete charge of the affairs of the respondent-company for over seven years till his demise on 7-6-1989 in USA. That during the last years of his tenure, late T.K. Alva mismanaged the affairs of the company and amassed large personal wealth by diverting funds from the respondent-company and its associated company through a company called Vijaya Management Service Private Limited, which was owned and controlled by his mother-in-law, Smt. Bellipadi Kalyani, who held 75% of the issued and paid up capital of the said company. By various devices T.K. Alva aggrandised unto himself and cornered shares of both the respondent-company and its associated company. The shares were standing in the joint names of T.K. Alva along with either his wife or one of his children. Some shares were held by his wife and children. Just before the death of T.K. Alva, the acts of misconduct came to light and negotiations were held to reach a settlement. Unfortunately, no settlement was reached and T.K. Alva passed away. Respondent-company and its associated company filed company petitions 83 of 1989 and 84 of 1989 seeking winding up of Vijaya Management Services Private Limited. Associate of the respondent-company has also filed suit against respondent-company for the recovery of money which Sri T.K. Alva had clandestinely drawn from the company. After the demise of T.K. Alva and in order to take advantage of the situation arising and to prevent the company from realising its dues from heirs of T.K. Alva, Sri Ashok Kumar Shetty purchased the shares from the family of Sri T.K. Alva. This has been done to create instability in the affairs of the company and the conduct of the petitioner-company therefore disentitles it to the equitable relief sought in the petition and the petition is liable to be rejected on this short ground.

11. On merits the respondent-company has admitted the exchange of correspondence regarding transfer of shares referred to in the petition between the petitioner and the respondent-company. It has reiterated its position taken by it in its correspondence. It is stated that the petitioner-company failed to comply with the provisions of Section 292 of the Act and other related issues and therefore was not entitled to the transfer of shares in its files. It has also been stated that the petition is premature inasmuch as the question of rectification of register of shares would arise only after the Board of Directors of the respondents-company considers the share transfer subsequent to the petitioner-company providing that such investments are not ultra vires of the memorandum and all other mandatory provisions of law.

12. On 13th of July, 1999 respondent filed a memorandum, saying that the respondent-company is agreeable to transfer the shares in the name of the petitioner-company and confer the benefit relating thereto with effect from the date of transfer; that the dividend declared by the respondent-company with

regard to the shares which are subject-matter of this petition have been appropriated from time to time by the respondent company against the amount due to the company from its earlier Managing Director, Sri T.K. Alva in whose name the shares stood. Counsel appearing for the petitioner-company stated that it is ready and willing for the transfer of share, but the arrangement suggested by the respondent that it is prepared to transfer the shares and confer the benefits relating thereto with effect from the date of transfer and that the respondent-company be allowed to appropriate the amount due towards the dividend against the amounts due to the respondent-company from its earlier Managing Director, T.K. Alva, is not acceptable.

13. Evidence was recorded. Petitioner produced Ashok Kumar Shetty P.W. 1 and the respondent produced A.S. Krishna Moorthy, Managing Director of the respondent company as R.W. 1. In their statements they have taken the same stand which has been taken by them in their respective pleadings. Cross-examination is also on the same lines.

14. Shares of the company registered under the Companies Act whose share are quoted at the stock exchange are freely transferable. A shareholder has a light to transfer his shares. Correspondingly, in the absence of any impediment in this behalf the transferee of shares in order to enable him to exercise the rights of a shareholder as against the company and third parties, is entitled to have the shares transferred in his name. In case a company refuses to transfer the shares it is entitled to have rectification of the register by registering therein as a registered shareholder of the shares transferred to him. The company whose shares have been purchased cannot refuse to register the shares arbitrarily or for any collateral purpose. It can be refused only for a bona fide reason in the interest of the company and the general interest of the shareholders. It is seen from the correspondence between the petitioner-company and the respondent-company that the respondent company has very evasively resisted admitting and effecting the necessary changes in the register of members on the ground that the application for registration of the transfer was in violation of the Act. Despite specific query on the aspect of the violation of the provisions of the Act, except to state that there was violation of Section 292 of the Act, no material particulars have been given regarding the violation. Supreme Court of India in Luxmi Tea Company Limited Vs. Pradip Kumar Sarkar, , considered the question regarding the rectification of shares register of a company u/s 155 of the Companies Act. It was held that transferee has a right to have the rectification carried out and the respondent-company could defeat the right if the rectification of the register only on specified bona fide grounds. It was observed:

"Having heard learned Counsels for the parties we are of the opinion that unless there is any impediment in the transfer of a share of a public limited company, such as the appellant, a shareholder has the right to transfer his share. Correspondingly, in the absence of any impediment in this behalf the transferee of a share, in order to enable him to exercise the rights of a shareholder as

against the company and third parties, which is not possible until the transfer is registered in the company's register, is entitled to have a rectification of the share register of the company by inserting his name therein as a registered shareholder of the share transferred to him. To have such rectification carried out is the right of the transferee and can be defeated by the company or its Directors only in pursuance of some power vested in them in this behalf. Such power has to be specified and provided for. It may even be residuary but in that case too it should be provided for and traceable either in the Act or the Articles of Association. Even if the power of refusal is so specified and provided for the registration of a transferred share cannot be refused arbitrarily or for any collateral purpose, and can be refused only for a bona fide reason in the interest of the company and the general interest of the shareholders. If neither a specific nor residuary power of refusal has been so provided, such power cannot be exercised on the basis of the so-called undeclared inherent power to refuse registration on the ground that the company or its Directors take the view that in the interest of the company and the general interest of the shareholders, registration of the transfer of shares should be refused. Indeed making a provision in the Act or the Articles of Association etc. conferring power of refusal would become futile if existence of an inherent power such as claimed by the company in the instant case is assumed, for the simple reason that the amplitude of the so-called undeclared inherent power would itself take care of every refusal to register the transfer of share. Assumption of such a power would result in leaving the matter of transfer of share and its registration at the mercy and sweet will of the company or its Directors, as the case may be. In the absence of any valid and compelling reason it is difficult to comprehend such a proposition".

Similarly, in *Shailesh Prabhudas Mehta and Others Vs. Calico Dying and Printing Mills Ltd.*, , again Supreme Court held that the transferee has a right to have the rectification of the register of shares of the company. The company can refuse to register the shares only on specified grounds in exercise of its bona fide reason and not arbitrary or for collateral purposes. Case set up by the respondent that it has refused to register the shares as the petitioner-company did not comply with the provisions of Section 292 of the Act is wholly untenable and clearly an afterthought. Respondent in its objections regarding the transfer of shares as per letter dated 9-9-1989 at Annexure-G had specifically set out the various objections they had regarding the transfer of shares. In the said objections, the respondent-company did not at all set up that the provisions of Section 292 of the Companies Act, had not been complied with. Moreover, Section 292 of the Companies Act does not at all relate to transfer of shares. u/s 292, the powers which can be exercised by the Board of Directors by passing a resolution have been specified to be:

"(a) the power to make calls on shareholders in respect of money unpaid on their shares;

- (b) the power to issue debentures;
- (c) the power to borrow moneys otherwise than on debentures;
- (d) the power to invest the funds of the company; and
- (e) the power to make loans;"

Section 292 of the Act being a matter of internal management of the company the respondent-company should have proceeded with the assumption that the petitioner-company had complied with the provisions of Section 292 in the absence of any specific evidence to the contrary. Refusal of the respondent-company to register the transfer on this ground was unjustified. In spite of repeated queries raised by the petitioner-company asking the respondent-company to identify the aspect of Section 292 which the petitioner-company failed to comply with, the respondent-company could not specifically say as to which clause of Section 292 had not been complied with by the petitioner-company. Refusal to register the shares by the respondent-company under the circumstances cannot be held to be justified at all.

15. Under the provisions of Section 22A of the Securities Contracts (Regulation) Act 1956, the Board of Directors of the Company, the shares of which are listed on the stock exchange, as in the case of the respondent-company, can refuse to transfer such share only on one or more of the grounds set out in sub-section (3) of the said section which reads:

"Notwithstanding anything contained in its articles or in Section 82 or Section 111 of the Companies Act, 1956 (1 of 1956), but subject to the other provisions of this section, a company may refuse to register the transfer of any of its securities in the name of the transferee on any one or more of the following grounds and on no other ground, namely:

- (a) that the instrument of transfer is not proper or has not been duly stamped and executed or that the certificate relating to the security has not been delivered to the company or that any other requirement under the law relating to registration of such transfer has not been complied with:
- (b) that the transfer of the security is in contravention of any law:
- (c) that the transfer of the security is likely to result in such change in the composition of the Board of Directors as would be prejudicial to the interests of the company or to the public interest:
- (d) that the transfer of the security is prohibited by any order or any Court, Tribunal, or other authority under any law, for the time being in force".

16. It is the case of the petitioner-company that there is no violation of any of the conditions stipulated in sub-section (3) of Section 22A of the Securities Regulation Act. It is not the case of the respondent-company nor it has been pointed out during the course of arguments that the petitioner-company is guilty

of violating any of the conditions stipulated in sub-section (3) of Section 22A of the said Act. Consequently, the respondent-company is not entitled to refuse the transfer of shares in question in favour of the petitioner herein. Defects, if any, pointed out by the respondent-company in its letter at Annexure-G regarding the 18 transfer deeds stood rectified by the subsequent resolution passed by its Board of Directors. The Board can ratify its actions by a subsequent resolution and the rectification would relate back to the date of the original Act. Reference may be made to the observations of the Supreme Court in *Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI)*, wherein their Lordships held:

"The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the company in doing so, because he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953".

17. Petitioner made repeated request and the respondent-company kept on refusing to register the shares on one ground or another. It kept on changing its position from time to time. It goes to show that the conduct of the respondent-company in refusing to register the shares in the name of the petitioner-company was unfair and unjustified. The same was not bona fide. Petitioner company may not have been able to carry on the business of setting up an electronic industry and may have decided to diversify in the business of investment of shares. Simply because the petitioner-company was unable to carry out the business of setting up the electronic industry and decided to diversify in the business of investment in shares would not mean that the act of acquiring shares by the petitioner-company for the purpose of investment was ultra vires the Act as contended by the respondent-company by way of preliminary objections. The second preliminary objection raised by the respondent-company that the conduct of the petitioner-company disentitles it to the discretionary relief for the reasons stated in the statement of objections is also untenable. Respondent-company has failed to show by any cogent reason is evident in spite of the opportunity given to it to do so.

18. For the reasons stated above, we hold that the respondent-company acted illegally and was not justified in refusing to register the shares in the name of the petitioner-company. Petitioner company would be entitled to get the shares transferred in its name from the date of the purchase of the shares. Petitioner-company has, apart from claiming the rectification of the register of members to include the name of the petitioner-company in the shareholders of the respondent-company has also prayed for grant of such other and further relief as was just. In justness of the cause we feel that the petitioner-company is entitled to the dividend which may have accrued on the shares in question from year to

year. It would be incidental and consequential to the transfer of the shares in favour of the petitioner-company. Offer made by the respondent-company that it is prepared to transfer the shares in the name of the company in future and that it is entitled to adjust the dividends due on the shares towards any sum payable by Sri T.K. Alva to the respondent-company, cannot be accepted. Respondent-company failed to pay the dividend pertaining to the shares in question even though a letter (Annexure-M) was written by the transferor of the shares to the respondent-company to pay the dividend to the petitioner- company. Despite this the respondent-company has not paid the dividend either to the petitioner or to the transferor. Claim of the respondent- company that it is entitled to appropriate the amount payable as dividend towards any of the amounts due to the company from its earlier Managing Director, Sri T.K. Alva is illegal and without any authority of law.

19. A Division Bench of the Punjab and Haryana High Court in *Ambala Electric Supply Company Limited v Walaiti Lal Kohli and Others*, under the similar circumstances in addition to the direction issued for rectifying the register of members had ordered the payment of dividend from the date of the shares were ordered to be transferred being consequential to the transfer of shares, it was held:

"As regards objection No. 4, we have gone through the petitions filed u/s 155 of the Act and we find that in paragraph 21 of the petitions, a claim is clearly made for the dividend to be paid on the shares in dispute in all the three cases. Thus, it is factually incorrect to say that no claim was made in the petitions for the dividend by the respondent, Walaiti Lal. Regarding the question that this Court has no power u/s 155 of the Companies Act to grant dividend, it is to be seen that the same is also without any force. When a finding is being recorded that Shri Walaiti Lal is entitled to get his shares transferred from the date on which he purchased the shares, it is incidental and consequential that the question of payment of dividend from that date onwards has to be decided by the Court. Section 155 of the Act even provides for the payment of damages in a suitable case. We fail to understand how this Court has no jurisdiction to grant the dividend when it is found that Shri Walaiti Lal was entitled to get the shares transferred and get his name registered from the date of purchase of shares. This contention is without any merit and the same is liable to be rejected".

20. For the reasons stated above, we accept this petition and direct the respondent-company to rectify its register of members and include the name of the petitioner-company as transferee of the shares to the extent of the share purchased by the petitioner-company. Respondent-company is also directed to pay the dividend which might have accrued on the shares in question from year to year from the date of purchase of the shares with interest at 12% per annum from the day the amount became due till its repayment. As the respondent-company has refused to enter the name of the petitioner in the register of companies without sufficient cause thereby causing loss to the petitioner-

company, the petition is allowed with costs which are determined at Rs. 10,000/-. Notice of the rectification be filed by the respondent-company with the Registrar of Companies within 30 days from today as required u/s 156 of the Act.