
(1987) 02 AP CK 0017
In the Andhra Pradesh High Court

N. Sataprasad Rao and Others

APPELLANT

Vs

V.L.N. Sastry and Others

RESPONDENT

Date of Decision : 11-02-1987

Acts Referred:

Companies Act, 1956 — Section 150, 155, 2(27), 397, 398

Citation : (1988) 64 CompCas 492

Hon'ble Judges : G. Ramanujulu Naidu, J

Bench : Single Bench

Advocate : S. Parvatha Rao, for the Appellant; Y. Surya Narayana and B. Narayana Reddy, for the Respondent

Judgement

G. Ramanujulu Naidu, J.—The above company application, i.e. Company Application No. 37 of 1985, is filed by the petitioner in C.P. No. 1 of 1985 for an injunction, among other reliefs, restraining respondents Nos. 1 to 4 from managing and interfering with the affairs and business of the sixth respondent - company in any manner, pending disposal of the company petition.

2. Respondents Nos. 1 to 4 filed a counter-affidavit on August 12, 1985 later, the first respondent filed an additional counter-affidavit on October, 30, 1986, objecting to the maintainability of the company petition itself at the instance of the petitioner, the objection being that the petitioners are not "members" as defined u/s 41 of the companies Act, 1956.

3. The authorised capital of the sixth Respondent-company (herein after referred to as "the company") is Rs.5 lacks comprising Rs.3Lacks, being the quite share capital divided into, 3,00 quite shares of Rs. 100 each, and Rs. 2 lakhs, being the preferential share capital divided into 2,000 cumulative redeemable preferential shares of Rs.100 each. All the 3,00 equity shares of the company have been issued and subscribed No preferential shares of the company have been so far issued.

4. It is asserted in paragraphs 6 of the company petition that the present

shareholders of the sixth respondent company are 12 in number, that the first petitioner holds 75 shares of the company with distinctive numbers 2551 to 2625 under share certificate No. 10 that the second petitioner has acquired 300 shares of the company with distinctive numbers 391 to 500 and 801 to 990 under share certificate No. 15, that the third petitioner holds 375 shares of the company with distinctive number 2,626 to 3,000 under share certificate No.11 and that all the three petitioner together hold 750 shares of the company.

5. In paragraph 13 of the company petition, it is amplified that the first and the third petitioner and four others were allotted shares on June 19, 1981, that the first respondent submitted a return of allotment dated July 4, 1981, in the prescribed form to the Registrar of Companies, that acquisition of 300 shares of the company by the second petitioner was approved by the board of directors of the company and that share certificate No. 15 dated August 17, 1981, was issued and signed by the first and the fifth respondent certifying that the second petitioner was the registered holders of the 300 shares. It is also asserted in paragraph 15 of the company petition that petitioner Nos. 1 and 2 and the second respondent were appointed as the directors of the company at an extraordinary meeting of the general body held on June 12, 1983, and that a return dated February 4, 1983, in the prescribed form was also filed by the first respondent before the Registrar of companies furnishing the particulars of the said appointment.

6. In the counter - affidavit filed on behalf of respondents Nos. 1 to 4 in the company petition, it is stated that it is unnecessary to canvass the version set out in paragraph 4 of the company petition. What is more in paragraph 10 of the counter-affidavit, the averments in paragraph 13 of the company petition are admitted to be correct. Also in paragraph 12 of the counter-affidavit, the appointment of petitioner Nos. 1 and 2 and the second respondent as directors of the company at an extraordinary meeting of the general body held on January 12, 1983, is admitted, though it is added that the second petitioner and the second respondent were removed from the board of directors later.

7. It may be thus noted that the holding of the petitioner in the company as claimed by them is not only denied but also admitted. It may be recalled that the company petition was filed under section 397 and 398 of the Companies Act, 1956 (hereinafter referred to as "the Act"). Inasmuch as the petitioner hold not less than 1/10th of the issued share capital, they are entitled to seek redress u/s 397 and 398 of the Act.

8. Sri Y. Suranarayana, however, submits that a petition for relief either u/s 397 or section of the Act is available only to members of the company and the petitioner not having been noted as member of the company in the register maintained for that purpose, the company petition is not maintainable.

9. It is, therefore, necessary to notice the relevant provision of the Act. Section 41 of the Act defines "member" of a company and it runs thus:

"41(1). The subscribers to the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members.

(2) Every other person who agrees in writings to become a member of a company and whose name is entered in its register of members, shall be a member of the company."

10. Section 2 (@7) of the Act also defines a member in relation to a company as not including a bearer of a share warrant of the company issued in pursuance of section 114. Section 113 deals with issue of share certificates after allotment. Rule 4(1) of the Rules called the Companies (Issue of Share Certificates) Rules, 1960, hereinafter referred to as "the Rules", lays down that when a company issues any capital, no certificates of any share of shares in the company shall be issued except in pursuance of a resolution passed by the board. Rule 6 requires the share certificate to be issued under the seal of the company, which shall be affixed in the presence of (i) two directors or persons acting on behalf of the directors under a duly registered power of attorney; and (ii) the secretary or some other person appointed by the board for that purpose. Rule 7 requires particulars of every share certificate issued in accordance with rule 4 (1) to be entered in the register of members maintained in the form set out in the appendix to the Rules. Section 114 and 115 of the Act deal with the issue and effect of share warrants to bearer. In particular, it is enacted therein that on the issue of share warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member. Section 150(1) of the Act enjoins an obligation on every company (registered to maintain a register of its members and enter therein the particulars more fully set out in clauses (a) to (d). Sub-section (2) of section 150 renders the company and every officer of the company who commits default punishable with fine.

11. It may be thus seen that the subscribers to the memorandum of a company become members of the company automatically and on its registration, they shall be entered as members in its register of members. Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members shall be a member of the company. Once a person's name is entered as a member of the company in its register of members, it is not open to question his membership. The converse does not necessarily flow. Even if the prescribed register of the company does not incorporate the names of all its shareholders as members of the company, the particulars so entered in the register are not conclusive. The shareholders of the company, in whose favour share certificates are issued, can exercise rights as members of the company notwithstanding the omission of their membership as found in the prescribed register. In fact, section 150(1) of the Act casts a duty

upon every company to maintain a register of its members and enter the relevant particulars more fully set out in clauses (a) to (b) thereof. Failure to comply with the mandatory duty enacted u/s 150(1) is made punishable under sub - section (2) of section 150.

12. As already stated, it is not denied that the first petitioner holds 75 shares while the third petitioner holds 375 shares in the company. It is also not denied that the second petitioner has acquired 300 shares of the company. The distinctive numbers of the shares of the three petitioners as also the share certificate numbers given too them are furnished in the company petition. The first respondent also submitted the required returns to the Registrar of Companies certifying the holding of the three petitioners. In fact, petitioners Nos. 1 and 2, as also the second respondent, were appointed as directors of the company at an extraordinary meeting of the general body of the the company held on January 12, 1983. It is therefore, futile to contend and that the petitioners have no right to maintain the company petition, they not having been shown as members of the company in the prescribed register. It is alleged in the company petition that the first respondent is guilty of not maintaining the various registers properly and not convening the annual meetings of the company.

13. There is also considerable force in the submission of Sri S. Pravatha Rao, learned counsel appearing for the petitions, that the petitioners' names were duly entered in the prescribed register, that the same was. however, suppressed and not produced before the Commissioner appointed by this court and that in its place another register with defective particulars is brought into existence, In any event, the first respondent cannot take advantage of his failure to maintain the prescribed register properly to non - suit the petitioners.

14. Sri Y. Suryanarayana, learned counsel appearing for the respondents, however, submits that it is open to the petitioners to move this court for rectification of the defective entire in the prescribed register u/s 155 of the Act. Section 155 of the Act is only an enabling provision and cannot be invoked in aid to defeat the rights of the petitioners to move this court for appropriate relief u/s 397 and 398 of the Act.

15. Lastly, it is urged by learned counsel for the respondents, that no resolution of the board of directors was passed for allotment of any shares too petitioner Nos. 1 and 3 and for purchase of the shares by the second petitioner, as required under rule 4 of the Rules. The submission does not deserve to be countenanced as in the counter - affidavit filed on behalf of the respondents in the main company petition, it is admitted that share certificates to petitioners Nos. 1 and 3 were validly issued.

16. The preliminary objection as to the maintainability of the company petition, is therefore, overruled.

17. Post the company application for further orders on February 20, 1987.