
(1981) 10 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 104 of 1975

Naranjan Singh

APPELLANT

Vs

Edward Ganj Public Welfare Association and Others

RESPONDENT

Date of Decision : 29-10-1981

Acts Referred:

Companies Act, 1956 — Section 397, 398

Citation : (1983) 54 CompCas 330

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Advocate : J.S. Narang, for the Appellant; R.C. Dogra and S.K. Galothra, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Nath Mittal, J.—This petition has been filed under Sections 397 and 398 of the Companies Act, 1956 (hereinafter called "the Act") by 468 persons for various reliefs mentioned therein. It was contested by respondents Nos. 1 to 9 and 11, inter alia, on the ground that the petition has not been filed by the requisite number of members and consequently, it was liable to be dismissed. On the above objection, issue No. 2 was framed which reads as follows :

" Whether the petition has been signed by the requisite number of petitioners as objected to in objection No. 3 of the preliminary objections in the written statement? "

2. The said issue was ordered to be treated as a preliminary one. The question that arises for determination is as to whether the petition is signed by the requisite number of members. Sub-section (1) of Section 399 of the Act deals with the right to apply under Sections 397 and 398 which reads as follows:

" 399. (1) The following members of a company shall have the right to apply u/s 397 or 398 :--.....

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members. "

3. It is evident from a reading of the sub-section that a petition u/s 397 or Section 398 can be filed by not less than 1/5th of the total number of members of the company. In the present case, the total number of members admittedly was 1,545. Therefore, the petition could have been filed by 309 members. The petition is purported to have been filed by 468 members. The respondents have filed affidavits of 227 petitioners, wherein they have stated that Shri Niranjana Singh, son of Manna Singh, mentioned at serial No. 1 and Dewan Chand, son of Bahadur Chand, mentioned at serial No. 3, came to them and requested them that they should sign a blank paper because they had to file a suit against the Municipal Committee for stopping it from demolishing the new encroachments made by some of the members. They subsequently came to know that instead of filing a suit against the Municipal Committee, they filed the petition in this court. In addition, the names of 56 petitioners appear twice and the names of two persons appear thrice in the petition. The respondents have filed an affidavit of Shri Nand Lal, Municipal Commissioner, that the petitioner, Dial Chand, at serial No. 194 had died 2 1/2 years prior to that date. The affidavit was attested on 14th January, 1976. The petition bears the date 22nd of September, 1975. Thus, according to the affidavit, he had died prior to the filing of the petition. Therefore, according to the respondents, the names of 287 persons should be excluded from the petitioners.

4. The petitioners have filed affidavits of 62 persons out of 227, who had given affidavits to the respondents, to the effect that the petition had been filed with their consent. If the names of 62 persons are subtracted from 287, the balance that remains is 225 persons. Therefore, the petition will be considered on behalf of 243 persons (that is, 468 minus 225), which is less than the requisite number.

5. Faced with the situation, the learned counsel for the petitioners has urged that the petition was filed by the requisite number of members and in case some of them subsequently changed their mind, it cannot be dismissed for the reason that the existing number of petitioners goes below 1/5th of the total number of members. In support of his contention, he places reliance on *Rajahmundry Electric Supply Corporation Ltd. v. A. Nageswara Rao* [1956] 26 Comp Cas 91 and *In Re: Bengal Luxmi Cotton Mills Ltd.*, On the other hand, it has been argued by the learned counsel for the respondents that the consent of 165 persons was obtained by the petitioners by misrepresentation and, if it is so, it cannot be deemed to be consent for filing the petition.

6. I have heard the learned counsel at considerable length and given due thought to their arguments. I, however, agree with the contention of the learned counsel for the respondents. It is evident from the affidavits of the various petitioners that a representation was made to them by Niranjana Singh and another petitioner that their signatures were required on a blank paper for instituting a civil suit. These papers have been attached with the power of attorney filed in

the case. The petition does not bear their signatures. No affidavits were obtained by Niranjana Singh, petitioner, from them. There is no reason to disbelieve the affidavits of the said persons.

7. It is well-settled that if the signatures of some of the petitioners were obtained by misrepresentation, it cannot be said that they were consenting parties to the petition at the time of its institution. The facts of *Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others*, and *In re Bengal Luxmi Cotton Mills Ltd.*'s case [1965] 35 Comp Cas 187 (Cal) are different. In those cases, the consent was given by the petitioners voluntarily but they wanted to retract from it subsequently. Thus, the observations in these cases are not helpful to the petitioners.

8. After taking into consideration the circumstances of the case, I am of the opinion that the petition has not been presented by the requisite number of members and is, therefore, liable to be dismissed. Consequently, I dismiss the same with costs. Counsel's fee Rs. 300.