
(1994) 05 OHC CK 0023
In the Orissa High Court
Case No : A.H.O. No. 56 of 1993

N.K. Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-05-1994

Acts Referred:

Companies Act, 1956 — Section 391, 395, 397, 398, 402

Citation : AIR 1994 Ori 301 : (1999) 96 CompCas 49

Hon'ble Judges : R.K. Patra, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.B. Mukherjee, Bijan Ray and K. Patnaik, for the Appellant; A.G., A.S.C., G. Rath, R.K. Rath, B.K. Nayak, B.R. Sarangi, B.P. Das, B.Pr. Das and S. Das, for the Respondent

Final Decision : Dismissed

Judgement

Payasat, J.—This is a Letters Patent Appeal against the order of the learned company Judge by which the application filed by the appellant styled as one under sections 391 and 395 read with section 634 of the Companies Act, 1956 (in brief, the "Act") has been rejected, inter alia, on the ground that the same is not maintainable at the instance of the appellant, he being neither a share-holder nor a member of M/s. Cast Coast Breweries and Distilleries Ltd. (hereinafter referred to as the "company").

2. The facts and events leading to the filing of this appeal as portrayed by appellant are as follows :

Appellant is the promoter of company which was incorporated on 15-4-1969. There was participation in the equity shares by appellant and his associates to some extent. The other major share-holders are Industrial Development Corporation Limited (in short, "IDC") and the State Government, Private parties held equity shares to the tune of Rs. 5 lakhs, Appellant with his own effects approached different financial institutions for advancement of loans to the

company for carrying on its smooth business. He was appointed as Managing Director of the company with effect from 15-9-1974 for a period of five years. In an extraordinary general body meeting held on 25-11-1975 decision was taken to restructure the company at corporate level and question of removal of appellant from office of Managing Director was also discussed. Notice was issued for holding an extraordinary general body meeting of the company on 26-12-1975 to transact the business of restructuring the company by removing its Managing Director.

A group of share-holders led by one Mr. N. R. Murty (hereinafter referred to as "Murty") filed Company Act Case No. 5 of 1975 under Sections 397 and 398 of the Act on 15-12-1975 for a direction to the company to conclude the formal agreement and give necessary undertaking to Industrial Development Bank of India (in short, "IDBI"), to quash the resolutions purported to have been passed at the 40th and 41st meetings of Board of Directors in connection with removal of the Managing Director and withdrawal of his powers to restrain the company and its Directors from holding the proposed extraordinary General Body meeting fixed for the 26th December, 1975 and/or in the alternative to direct the company to buy the shares held by the appellant, his friends and associates at par with interest from the date of investment till payment and for several interim directions. On 24-12-1975 after hearing both sides, this Court permitted the company to hold extraordinary general body meeting as scheduled, but directed that any decision taken in such meeting was not to be implemented without its leave. Finally by judgment dated 7-1-1977, application filed was disposed of. Certain directions were given with many of which we are not concerned. However, the direction which is relevant for our purpose is that appellant was to continue to function as Managing Director. Appellant claims that though the company started production of Beer at Paradip in the year 1979, and earned a good reputation, IDC did not co-operate in management and refused to furnish required guarantee to financial institutions and bankers who demanded further guarantee due to escalation of the cost. Appellant suggested IDC to unload their shares in favour of nominees of appellant, but there was no response to the said offer. On 13-1-1983 appellant wrote a letter intimating Secretary of Industries Department, Government of India with a copy to IDC that on account of financial stringency, the factory would be facing closure, as the company had no resources to pay salary and wages to workers, and permission was sought for in that behalf. There was negotiation between appellant and Additional Secretary to State Government in Industries Department, and Chairman, IDC and it was resolved that appellant and his associates would transfer their shares in the company at face value of Rs. 7.5 lakhs in favour of IDC, and unsecured loan of Rs. 0.35 lakhs given by appellant shall also be repaid to him. Aforesaid arrangement was agreed to be implemented, subject to approval of State Government. After transfer of all his shares in favour of IDC and after receiving the full share values, appellant submitted his resignation on 22-3-1983 and requested for its immediate acceptance. Eventually the resignation was accepted.

Appellant's stand, however, is that there was an understanding between him and IDC that he would be given a suitable assignment and he would be paid benefits like the gratuity and other benefits allowed in his favour by the Central Government under sections 269/198 and 309 of the Act. Appellant was relieved of his post of Managing Director on 23-3-1983 after executing an agreement of rehabilitation and amalgamation wherein there was no stipulation for selling the industry. In the aforesaid premises, appellant filed an application purported to be one under Sections 391 and 395 of the Act on 29-7-1992 before the learned Company Judge praying for implementation of the direction of this Court dated 7-1-1977 passed in Company Act Case No. 5 of 1977 and for a direction to the respondents to implement the compromise/settlement arrived at between the parties and with further prayer for grant of injunction against sale of the company. The said application was registered as Company Act Case No. 10 of 1992.

3. IDC and the State appeared and questioned locus standi of the appellant. It was urged that appellant was neither a shareholder nor a creditor, nor did he enter into any compromise enforcement of which was sought for in the case. IDC in its counter-affidavit filed took a stand that judgment of learned Company Judge dated 7-1-1977 has been fully implemented and appellant has no locus standi to file the application. Since the question of maintainability of application was urged, the parties agreed that the said question should be decided at the threshold. Learned Company Judge by impugned order has rejected the application which is subject-matter of challenge in this appeal.

4. During hearing of this appeal, learned counsel for parties fairly conceded that in order to maintain an application u/s 391 read with Section 395 of the Act, application must be by the company or by any creditor or member of the company. Stand of IDC and State Government was that appellant having sold away all his shares held earlier, he is neither a share-holder nor a member of the company. It was also submitted that he was neither creditor of the company nor did he have any interest therein. There was admission by appellant in para 8.4 of the application before learned Company Judge that he had transferred shares and handed over the unit to IDC on payment of the shares at par value. After counter-affidavit was filed, appellant filed an affidavit alleging that he continues to be a share-holder in respect of the shares held by his mother (since dead). In support of this plea a document was filed as Annexure-7. His claim was that his mother Rukmani Mohapatra held 50 numbers of shares each of Rs. 10/- value in the company and on her death, the said shares devolved upon four persons, namely, Kabita. Mohapatra, S. K. Mohapatra, L. K. Mohapatra and B. K. Mohapatra, who relinquished all their rights in favour of the appellant. Learned Company Judge found that there was no mention as to when the mother of the appellant died and in what circumstances four others, besides the appellant succeeded to the shares held by his mother. It was observed that the petitioner does not ipso facto become a share-holder without going through formalities prescribed in the Act, without which the company shall not register a transfer of

share, and the application at the instance of the appellant was not maintainable. It was additionally urged by the opposite parties that prayers made in the application were not otherwise maintainable, as nothing had been disclosed in the application for invoking jurisdiction of the Court u/s 391 of the Act.

5. Learned Company Judge held that in the connected case (Company Act Case No. 14 of 1992), where Murty was the applicant) which was heard analogous with Company Act Case No. 10 of 1992 filed by the appellant it was held that a case for interference was not made out. Accordingly the case was not admitted and was dismissed.

6. Mr. S. B. Mukherjee, learned counsel for appellant urged that the view of learned Company Judge that appellant has no locus standi is erroneous. Even a legal heir of a deceased share-holder can maintain an application. Reliance is placed on a decision of apex Court in M/s. World Wide Agencies Pvt. Ltd. and another Vs. Mrs. Margarat T. Desor and others, for the purpose. An application for amendment has been filed to bring in some factual aspects, to implead Murty as a co-appellant, and to amend the prayer. Learned counsel for appellant fairly conceded that application styled one under Sections 391 and 395 of the Act was really not the proper application. He, however, submitted that substance and not form and nomenclature should have been considered. Application was also made u/s 634 of the Act, and the same was in order. Applicability of Section 634 to facts of the case was not considered by learned Company Judge. Prayer for amendment was resisted by respondents on the ground that by such application, the entire structure of the dispute would be changed, and a new case absolutely unconnected with original dispute would come into existence.

7. Before we go to other aspects, a look at the amendment application is necessary. It has been styled as one under Sections 397 398 402 read with Section 634 of the Act. In other words, the application which was originally styled as one under Sections 391/395 read with Section 634 of the Act is now intended to be read as one under Sections 397/398/402 read with Section 634 of the Act. An application under Sections 397 398 and 402 of the Act is not entertainable by High Court, and proper forum is Company Law Board, This position is accepted by learned counsel for appellant. But according to him, once an order is passed in a Company Act Case filed u/s 397/398 of the Act, Court does not become functus officio and can in an appropriate case grant relief. In such a case an affected party even after the amendment brought in by Companies (Amendment) Act, 1988 (in short, the "Amendment Act") can seek enforcement of his reliefs before the High Court. In Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others, , it was observed by apex Court that scheme of Sections 397 and 406 of the Act appears to constitute a code by itself for granting relief to oppressed minority share-holders and for granting appropriate relief, a power of widest amplitude, inter alia, lifting the ban on company purchasing shares under Court's direction is conferred on the Court. Sections 397 and 398 of the Act are intended to avoid winding up of the

company if possible, and keep it going, while at the same time relieving the minority share-holders from acts of oppression and mismanagement, or preventing its affairs being conducted in manner prejudicial to public interest and if that be the objective, court must have power to interfere with normal corporate management of the company. Order under Sections 397 and 398 of the Act are to give protection to share-holders, and whole purpose thereof would be defeated if for proper guidance and supervision, interim management is frustrated in its efforts to continue proper functioning of the company, and thus it is within the competence of the Court to give directions and instructions from time to time so as to resolve the problems and difficulties of the Board of Management; The group of sections in Chapter VI of the Act comprising of Sections 397 to 407 confers upon the Court wide and extensive powers to prevent oppression by one group of share-holders over the other, or mismanagement of affairs of the company in a manner prejudicial to public interest or to interests of the company.

8. To constitute a code by themselves and in granting relief Court has powers of the widest amplitude untrammelled by other provisions of the Act and conferred upon it wide powers even to regulate conduct of affairs of the company and to provide for such other matters as the Court thinks just and equitable in the facts and circumstances of the case. Provisions of Sections 634 and 635 of the Act are directory in nature and an order made by the Court under the Act could be executed either under the procedure provided by the Companies (Court) Rules, 1959 or under the ordinary procedure for execution laid down in the Code of Civil Procedure, 1908. The object and purpose of the provisions contained in the group of sections comprising of Chapter VI of the Act would be frustrated if the Court becomes functus officio and loses all powers merely by passing orders and thereby disposing of the proceedings before it. Oppression and mismanagement are not eradicated merely by passing orders, but by enforcing and implementing the same. The Court retains its powers and jurisdiction to make further orders and to give such directions as may be necessary from time to time, even after it had passed orders, formally disposing of the proceeding under Sections 397 and 398 of the Act to enforce and implement and to give effect to such orders. An order made u/s 402 of the Act is not a decree and the same is not in the nature of a decree passed in a suit in all respects. The provisions of Section 634 of the Act are clear and unambiguous which clearly provide that such order may be enforced in the same manner as a decree made by the Court in a suit pending therein,

9. It is emphasised by the learned counsel for the appellant that the approach of the learned Company Judge was erroneous because he should have looked into the substance of the petitioner's grievance instead of being too much obsessed with nomenclature and technicalities. On a bare perusal of the order passed by the learned Company Judge, it is clear that the parties had agreed to be heard on the question of maintainability. The learned counsel for the appellant as indicated supra fairly accepted that Sections 391 and 395 have no application to

the facts of the case, because Section 391 deals with a proposed compromise or arrangement, and Section 395 deals with the power and duty to acquire shares of share-holders dissenting from scheme or contract approved by majority.

10. In support of the application for amendment it is submitted that though the basic details were indicated in the application the amendments are necessary for the purpose of clarification. With reference to the findings in the impugned order that the appellant was not a share-holder, it is submitted that approach of the learned Company Judge is not in accordance with law because a legal representative of a share-holder can maintain an application and has locus standi to do so, as held by the apex Court in *M/s. World Wide Agencies Pvt. Ltd. and another Vs. Mrs. Margarat T. Desor and others*, . It is urged that though there was no specific statement as to how the appellant was a shareholder, when dispute was raised in that regard, an affidavit was filed indicating the details. The learned Company Judge took note of the assertions, but came to an erroneous conclusion. The learned counsel for the respondents vehemently opposed to the prayer for amendment stating that in the garb of amendment, appellant wants to substitute a differently new case.

11. So far as locus standi of the appellant is concerned, we find that for the first time in an affidavit filed on 22-10-1992 (counter affidavit to the application for vacation of stay) it was stated that the appellant still holds shares as successor of his deceased mother Rukmani Mohapatra. In the said counter affidavit filed to the application for vacation of stay, copy of a document dated 2-9-1992 purported to have been executed by Kavita Mohapatra, S. K. Mohapatra, L. K. Mohapatra and B. K. Mohapatra was annexed. This document forms the trump-card so far as the appellant is concerned on the question of locus standi. We find that existence of such a document was not indicated earlier; nor even in the original affidavit, or the rejoinder affidavit filed on 28-9-1992. Significantly in para 6.1 it was stated as follows :

"Further the petitioner still holds shares as successors of Suit. R. Mohapatra (deceased mother of the petitioner)."

Neither details of share-holding nor the existence of the purported document dated 2-9-1982 were indicated. The stand that he was a share-holder as a successor was an entirely new one. In the "original petition at para 8.4 the appellant has accepted that he had transferred all his shares. The transfer was made pursuant to his request for transfer in 1983. By that time, document dated 2-9-1982 relating to his claimed succession to the shares is supposed to have come into existence. When he intended to transfer all his shares, it is mysterious how he did not mention about the shares he supposedly acquired by succession. The document only refers to 50 Nos. of shares held by Smt. Rukmani Mohapatra and does not even indicate the numbers of shares. Interestingly the letter dated 2-9-1982 reads as follows :

"..... Our mother, late Smt. Rukmini Mohapatra held fifty numbers of shares (per

value of Rs. 10/- each) in East Coast Breweries and Distillaries Ltd. On her demise we succeeded to the said shares as her sole legal heirs.

We hereby relinquish all our rights in the said shares in favour of Sri N.K. Mohapatra.

I accept. 1. Sd. Kavita Mohapatra 2. Sd. S.K. Mohapatra Sd. N.K. MOhapatra 3. Sd. L.K. Mohapartra." (Underlining by us for emphasis)

There is nothing in the document to show that appellant was one of the legal heirs. On the contrary the underlined portion shows that the signatories succeeded to the said shares as the "sole legal heirs". Learned Company Judge was not justified in making reference to the document for taking note of the assertion in the affidavit, which was not even a part of the pleadings, either in the original application or in the rejoinder affidavit.

As observed by the apex Court in *Municipal Corporation of the City of Jabalpur v. State of Madhya Pradesh* AIR 1965 SC 837, parties are to be held strictly to their pleadings. A new plea cannot be permitted to be raised in rejoinder affidavit. A new point taken in the rejoinder affidavit is not to be entertained ordinarily unless petitioner with permission of Court amends the main application. Position is worse here. There was no amendment, and even the new point lacked details. An assertion divorced from the original pleadings was taken in the counter affidavit to the application for vacation of stay. Learned Company Judge should have ignored it. As held by apex Court in *M/s. World Wide Agencies Pvt. Ltd. and another Vs. Mrs. Margarat T. Desor and others*, , a successor can maintain an application. But it has to be established that such right was acquired, as claimed. Before apex Court abundant materials were placed to show that the claimants had come into the shoes of the original share-holder. In the case at hand, in the original petition itself appellant accepted that he had no shares in the company after transfer of the shares held by him (as stated in para 8.4 of the application). We also find that appellant submitted his resignation on 22-3-1983, and requested for its immediate acceptance. By that time, the relinquishment arrangement as put forth now is stated to have come into existence. No explanation has, however, been offered as to why no steps were taken by appellant, who was Managing Director to regularise the matter of getting shares recorded in terms of the relinquishment arrangement dated 2-9-1982. In *World Wide Agencies Case* (supra) the legal representatives were more than anxious to get their names put on the register of members in place of deceased member.

This aspect was noticed by apex Court in para 26 of the judgment. Therefore, no importance was attached to absence of their names in the register. In the case at hand, there is not even a scrap of paper to show any such attempt. As indicated above, even till his resignation appellant did not take any steps though he was Managing Director of the Company. Even the documents filed by the appellant before learned Company Judge on 12-1-1993 (certified copy granted by the Registrar of Companies, Orissa of the return filed by the Company made up to

September, 1990, list of persons holding shares as per Annexure-A to the document, and list of transfer of equity shares since May, 1983 up to 1989) show that there was no transfer recorded so far as shares held by Smt. Rukmani Mohapatra is concerned, even though some other transfer of shares were recorded. Those documents instead of furthering appellant's case go a great way to show that the document purportedly dated 2-9-1982 is not genuine. It is crystal clear that on the appellant's own showing no action was taken to get his name put in the register of members till 20-9-1990. No material has been placed to show that any action was taken even till filing of petition before learned Company Judge or thereafter.

12. The amendment as sought for would change the substratum of the dispute. It would not be a case of "old wine in new bottle", but of "new wine in old bottle". We are tempted to use these expressions as we are" dealing with a wine manufacturing concern. The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. I But exercise of such far-reaching discretionary power is governed by judicial considerations, and wider the discretion, greater ought to be the care and circumspection on the part of the Court. All amendments will be generally permissible when they are necessary for determination of real controversy in the suit. All the same, substitution of one cause of action or the nature of the claim for another in the original plaint or change of subject-matter of or controversy in the proceeding is not permissible. The amendment sought for in present case precisely intends to do so. We, therefore, reject the prayer for amendment,

13. Coming to the prayer for impleading Murthy as co-appellant (by making him co-petitioner in original application), we find that though Murty had filed a separate Company Act Case and had also filed A.H.O. No. 57 of 1993 before this Court, he withdrew the same. Murty has not filed any application in this appeal for being impleaded as a co-petitioner in the original application of co-appellant. It is stated that Murty had filed an application (Misc. Case No. 122 of 1992) for being impleaded as an intervener. He having abandoned his appeal, prayer for impleading Murty cannot be accepted. From records of connected company case No. 10 of 1992, we find that there is no order passed in regard to the application for impleading. Since the original petition filed by the appellant has been disposed of, nothing survives in that application. Be that as it may, in view of the fact that he had separately moved this Court in a Company Act case which was heard along with Company Act Case No. 10 of 1992, and a decision adverse to him was rendered, challenging which filed an appeal, but later on withdrew it, the conclusion recorded in that judgment (in Company Act Case No. 14 of 1992) have become final. Prayer for his impleading is, therefore, without any substance.

14. Coming to the prayer relating to action u/s 634 of the Act, learned Company Judge also dealt with this aspect in the other application filed by Murty, and since the points were same he did not report the same, in the application filed by

appellant.

15. After having held that the petition was not maintainable, the merits of the contentions "were not considered by learned Company Judge because of the elaborate discussion in Company Act Case No. 14 of 1992 filed by Murty, which was heard analogous and disposed of on the same date. The stand of State and IDC in the said case was that there was no oppression to the minority group, and in any event application u/s 391 was misconceived as there was no compromise which was to be enforced.

The stand of Murty in the application was that directions in judgment passed in Company Act Case No. 5 of 1975 amounted to a compromise or arrangement which was capable of being enforced u/s 391 of the Act. It was, however, submitted by State and IDC that relief in case of oppression or mismanagement can only be considered by the Company Law Board instead of by this Court by virtue of the Amendment Act. With reference to Section 391, learned Company Judge observed that said section uses the expression "compromise" and "arrangement". The expression "arrangement" in terms of Section 390 includes re-assessment of share-capital of the company by consolidation of shares of different classes or by division of shares into shares of different classes or, by both these methods. "Compromise" is an expression which implies existence of a dispute" which it seeks to settle. The term "arrangement" is of a very wide import and its meaning is not limited to something analogous to a compromise. In order to attract Section 391, it is necessary that a compromise or arrangement between a company and its creditors or any class of them or between the company or its members or any class of them should be proposed. An arrangement or scheme u/s 391 when proposed can be sanctioned by the Court where it is for benefit of the company. Learned Company Judge did not think it necessary to examine the question whether there was any allegation of oppression to the minority group and what would be effect thereof in view of the Amendment Act. Correctness of this conclusion is no more available to be examined by us in view of withdrawal of the appeal by Murty in AHO No. 57 of 1993. Learned Company Judge examined as to whether order passed in Company Act Case No. 5 of 1975 was to be treated as compromise or arrangement within the meaning of Section 391. It was held that directions in Company Act Case No. 5 of 1975 did not amount to a compromise or arrangement within the meaning of Section 391. It was noticed that in Company Act Case No. 5 of 1975, the conclusion was that it would not be appropriate to wind up the company, and there was no need for restructuring the company. It was also held that there was no justification for removal of Managing Director, with the observation that IDC must co-operate in management of the company. In the concluding para of the order, it was held that it was open to the company to unload its shares either in the open market or in favour of the Managing Director and his group, if at any point of time IDC was not interested in continuing the company. The fact that the Managing Director had tendered resignation and same was accepted by the Company, and the management was

thereafter in the hands of IDC is not in dispute. Learned Company Judge concluded that it was not a case where IDC intended to unload its share, and even if it be so option was given to the IDC to do so in the open market, or in favour of Managing Director and his group, IDC and the State held 99.96% of the total share capital and the decision to sell the company to an interested party was in terms of the earlier judgment, whereby IDC had been authorised to call for offers by way of advertisement. Learned Company Judge observed that if that decision was considered to be an act intended to oppress the minority group, affected party has liberty to move Company Law Board for appropriate relief. Considering the fact that the appellant and the group to which he belonged, only represent 0.449% of the share capital, and any meeting of the members would prove futile as appellant and his group shall be outvoted, it was further observed that the case did not come within the ambit of Section 391 of the Act. Conclusions of learned Company Judge which were assailed in AHO No. 57 of 1993 by Murty have become final because of withdrawal of said appeal.

16. Coming to applicability of Section 397 of the Act, it is relevant to note what Apex Court observed in Shanti Prasad Jain Vs. Kalinga Tubes Ltd., . As was observed in that case, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as a preliminary to the application of Section 397. It must further be shown that the conduct of majority shareholders was oppressive to minority as members and this requires that events have to be considered not in isolation, but as part of a consecutive story. There must be continuous acts on the part of majority shareholders, continuing up to the date of petition, showing that affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful, and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough, unless lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. Powers under this section confer discretion of a very very wide nature on the Court and should be exercised with care, otherwise any person disgruntled with the management of the company can put the whole business of the company into jeopardy by bringing proceedings under this section. The Court has to very carefully exercise power under Sections 397 and 398 and not so as to substitute management by Court for the existing management for every difference of opinion between the shareholders. It is necessary to show not merely that there has been some sort of oppression of any shareholders, but that the affairs of the company are being conducted in an oppressive manner. A mere general allegation that "the affairs of the company are conducted in a manner oppressive to any part of its members including one or more of the applicants is not enough. Nor is it enough that an isolated act or incident is oppressive. The words "are being conducted" suggest a course of oppressive conduct which must exist at the date of the petition. (See

Re : Fildes Bros. Ltd. (1970) 1 All ER 923 (Ch. D.). The application must give particulars as regards the oppressive manner. Delay in seeking relief u/s 397 and Section 398 will not by itself bar the remedy, but if the delay is evidence of acquiescence or condonation of a wrongful act. Court may not exercise its discretion in granting relief. In determining whether there is oppression or not. Court has to look at the substance of the matter. Oppression is any act exercised in a manner burdensome, harsh and wrongful. It is not lack of confidence between shareholders per se that brings Section 397 into play; but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involves, at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as shareholders. Oppression occurs when shareholders, having a dominant power in a company, either (1) exercise that power to procure that something is done or not done in the conduct of the company's affairs, or (2) procure by an express or implicit threat of an exercise of that power that something is not done in the conduct of the company's affairs; and when such conduct is unfair or, to use the expression adopted by Viscount Simonds in *Scottish Co-operative Wholesale Society Ltd. v. Mayer* (1958) 3 All ER 66 (HL) "burdensome, harsh and wrongful," to the other members of the company or some of them, and lacks that degree of probity which they are entitled to expect in the conduct of the company's affairs. Oppression must import that the oppressed are being constrained to submit to something which is unfair to them as the result of some overbearing act or attitude on the part of oppressor. (See *In re Jernyn Street Turkish Baths Ltd.* (1971) 3 All ER 184). Section 398 deals with the case of mismanagement. Bona fide decisions consistent with the company's memorandum and articles are not to be equated with mismanagement, even if they turn out to be wrong in the circumstances or they cause temporary losses.

17. Minority shareholders are protected (a) by the common law, (b) by the provisions of the Act. Even though rule of majority prevails, it cannot be so in certain cases. A proper balance of rights of majority and minority shareholders is essential for smooth functioning of the company. Attempt is to be made to maintain that balance by admitting, on principle, the rule of majority but limiting it, at the same time by number of well defined minority rights. The exceptions under the common law are, however, as exceptions to the rule in *Foss v. Horbottle* (1843) 2 Har 461. Majority cannot confirm (i) any act which is illegal or ultra vires the company; (ii) any act which is a fraud on the minority.

Reason for this exception is that if minority shareholders were denied right to bring an action on behalf of themselves and all others, their grievance would never reach the Court because the wrong-doers themselves being in control would not allow the company to sue. (See *Edwards v. Halliwell* (1950) 2 All ER 1064, per Jenkins, L.J.). Various rights are given to minority shareholders under the Act. Under the general law, doctrine that the majority of members must not commit a fraud on minority but must act bona fide for benefit of the company as

a whole. Thus, in *Cook v. Decks* (916) 1 AC 554, an individual shareholder was able, despite *Foss*'s case (*supra*), to bring an action to recover company's property from those who had taken it and who, by their voting power, prevented the company itself from suing. Again, an alteration of articles must not be in fraud of the minority. Chapter VI of the Act deals with prevention of oppression and mismanagement. Sections 397 and 398 deal with the procedure for getting relief in cases of oppression and mismanagement respectively.

18. The words "in a manner prejudicial to public interest" were introduced in Sections 397 398 and 408, by the Companies (Amendment) Act (53 of 1963), in order that the Court or the Central Government may have jurisdiction to interfere in cases where even though there may be no prejudice to any shareholders, the oppression or mismanagement complained of is prejudicial to the public interest. The expression "public interest" is an elusive abstraction meaning general social welfare or regard for social good and predicating interest of the general public in matters where regard for the social good is of the first moment. To be meaningful, it must relate to the good life of those with reference to whom it is used. Justice Felix Frankfurter of the United States Supreme Court has said that the idea of public interest is a vague, impalpable, but all controlling consideration. While no one can formulate the abstract principle called "public interest" and it cannot be considered in vacuo, it can fairly be understood and applied to policy decisions. It indicates a standard of goodness for judging private acts and conduct in the social context.

As observed by Mahajan, C.J. in *The State of Bihar Vs. Sir Kameshwar Singh*, the expression "public interest" is not capable of precise definition and has not a rigid meaning, and is elastic and takes its colours from the statute in which it occurs, the concept varying with the time and state of society and its needs. In the case of a company, the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested. It emphasises the idea of the company functioning for the public good or general welfare of the community at any rate not in a manner detrimental to the public good. Public interest or commercial interest of the company has received statutory recommendations. Further the creditors or individual shareholders of a company cannot be permitted to initiate proceedings for feeding private grudges of warring groups or for the purpose of fighting out their private grudges.

19. Restrictions in public interest are those which seek to protect public health, safety, morals and property. (See *Kalyani Stores Vs. The State of Orissa and Others*, ; and *State of Karnataka and Another Vs. Hansa Corporation*,). "Public interest" means something in which the public has a vital interest in either a pecuniary or personal sense. It can mean a purely inquisitive interest as well as a material interest. One feature of the public interest is that justice should always be done and should be seen to be done : per Morris, L.J. (*Ellis v. Home Office* 1953J 2 All ER 149. A matter of public or general interest does not mean that

which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a peculiar interest, or some interest by which their legal rights or liabilities are affected, (per Campbell, C.J. R. v. Eadfordshire (1855) 24 LJQB 81 (84)).

20. Judges in the aforesaid background, we find that no ease for our interference is made out. We are satisfied that the appellant has not been able to prove his locus standi. Though a legal representative of a deceased shareholder can maintain an application, in view of our conclusion that the appellant has failed to prove that aspect, in the absence of specific pleading and proof and the document itself being of doubtful origin, no case for interference is made out. He has also not been able to prove any oppression or mismanagement.

The appeal is dismissed, but without any order as to costs.

R.K. Patra, J.

21. I agree.