

(1967) 08 MAD CK 0028

In the Madras High Court

Case No : O.P. No. 272 of 1952, (Appln. No. 1694 of 1956)

N.K.R.K. Amirtharaj

APPELLANT

Vs

M.P.S.N. Ramiah Nadar and Others

RESPONDENT

Date of Decision : 18-08-1967

Acts Referred:

Companies Act, 1913 — Section 166, 235

Companies Act, 1955 — Section 406, 542, 543

Citation : AIR 1968 Mad 374 : (1968) 81 LW 160

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.—At the outset it is not very clear as to the circumstances under which this application is again posted before this

Court. The main original petition and even so the application in question had each a chequered career of its own and it would be necessary to set

out briefly the attendant facts relating to the above proceedings in order to have a fair conspectus of the material events.

2. O. P. 79 of 1951 was a petition filed u/s 166 of the Indian Companies Act 1913 (hereinafter referred to as the old Act), by certain members of

the company known as "the Nadar Press Ltd. Sivakasi" for winding up the same on the ground, among others, that the directors in management

were prejudicially conducting the affairs of the company and they were bent upon enriching themselves by making secret profits, much to the

detriment of the shareholders.

Whilst this petition was pending O.P. 272 of 1952 was filed by one of the members of the company u/s 153-C of the old Act, inter alia, for

appointing an administrator to carry on the business of the company and for

termination of the services of the directors who were by then functioning. The above petitions and another application in the same proceedings, with which we are not concerned, came up for final hearing before Ramaswami Goundar J., who by his order dated 27th July 1953, appointed Administrators for the company till 30th April 1955, and directed that the Board of Management should go out of office forthwith. He also dismissed O. P. 79 of 1951 which was the original petition for winding up. In the decretal order drafted Clause 9 provides- That there be no further orders in O.P. 272 of 1952 and the same be and is hereby closed.

As the Administrators appointed could not complete the administration within the time granted, Appln. No. 463 of 1957 was taken for their discharge, Subramaniam J., by his order dated 27th February 1958, considered that the Administrators should continue till all the books of account and records were made available for use and scrutiny in Appln. No. 1694 of 1956 which was by then filed and was pending. The learned Judge also observed that as soon as such accounts and records were made available, the Administrators will be discharged and the shareholders will be discharged and the shareholders will be allowed to elect a fresh Board of directors. The net result is that the life of the administrators was extended for some more time. Mr. V. Thyagarajan, appearing for respondents 3 and 4 in this application, gave an undertaking, on their behalf, before Subramaniam J., that no plea will be taken that the application under S. 543 has ceased to be maintainable by reason of the discharge of the administrators and the election of a new board of directors, but the plea that the application cannot be entertained by reason of O. P. 272 of 1952 having ceased to be pending will still be pressed.

3. It is in the above background that this application (Appn. No. 1694 of 1956) was taken up for hearing by Ramaswami J. It is not clear as to the form in which the non-maintainability of the application was pressed before the learned Judge. But it appears that the jurisdiction of this Court to pass orders under the new Companies Act (1 of 1956) was raised and it was answered by the Court against those who propounded the theory. In order to properly appreciate the contentions of the respondents before me, it is necessary to set out the import, significance and purport of the

order of Ramaswami J.

4. The application is one initiated on Judge's summons and made under S. 235 of the old Act read with Sections 406, 542 and 543 of the Indian

Companies Act 1955 (hereinafter referred to as the new Act). The applicant wanted to surcharge one or the other of the respondents for their acts

of omission and commission during the time they held office. In fact, the applicant's case is that the respondents are liable to recoup to the

company a sum of about two lakhs and more by way of damages and compensation in respect of such above acts complained against them.

Though it was vehemently argued before the learned Judge that the new Act and its provisions cannot be pressed into service for a probe into

matters prior to its passing, the learned Judge discountenanced the same. He referred to the provisions in the new Act, and amongst other sections,

he made express reference to Sections 235, 237 and 245. He was of the view that the materials placed before him were abundant and extensive

for making out a case for ordering investigation into the affairs of the company by the machinery provided under the new Act.

5. Though no specific mode of procedure is prescribed as to the method to be adopted by Courts in enquiries against delinquent directors,

whether it be u/s 397 or 398 or u/s 543, yet this Court had often taken up burden of enquiry into such matters itself, by directing the Master of this

Court to enquire into it and after giving full opportunity to all the concerned parties. In fact, in accordance with the practice of this Court, the

Master used to examine witnesses, admit documents on proof and send up all the records to Court for further hearing.

Curiously enough, the course adopted by Ramaswami J. was a departure from the normal. In this case, the learned Judge, apparently in exercise of

his inherent jurisdiction under R. 9 of the Company Court Rules, 1959, made an order u/s 237 of the new Act and directed the Central

Government to appoint an Inspector "to investigate into the affairs of this company and report thereon for further action to be taken u/s 242 of the

(new) Act if it appears to the Central Government that action should be taken thereunder". The underlining (here into " ") is mine. I am not able to

strictly conceive the necessity for the observation of the learned Judge as indicated in the underlined portion as above. Once the Central

Government is directed by Court to appoint an Inspector, the law takes its own course and not only Sec. 242 of the new Act, but also ancillary

and allied sections do come into play. One such section is Section 244.

6. Though a reservation was made when Appn. No. 463 of 1957 was argued that the plea regarding the maintainability of this application u/s 543

in view of the final orders passed in O. P. 272 of 1952, to the effect that the petition was closed and ceased to be pending, yet it appears from the

record that this was not seriously pressed or even argued. In fact, the parties to this application fully addressed other arguments at length before the

learned Judge (Ramaswami J.) I am constrained, however, in passing, to mention that Section 543 of the new Act or Sec. 235 of the old Act

relates to the power of Court, in the course of winding up of a company, to assess damages against delinquent directors. The sine qua non,

therefore, for the maintainability of the said application appears to me to be that there should be a petition in Court for the winding up of a

company and the application u/s 543 has to be taken in the course of such winding up. This is absent in this case. O. P. 79 of 1951 for winding up

was dismissed and O. P. 272 of 1952 was closed.

It is, however, not necessary for me to pursue this line of thought in view of the action taken by Ramaswami J., in the application and which was

duly implemented in the sense that the Inspector appointed as a result of the said order has completely and fully discharged his duties and has

submitted his full report thereon after giving adequate opportunities to all the parties concerned.

7. Mr. Swmainathan appearing for the applicant took me through the report of the Inspector in detail and on the basis of the same submits that one

or the other of the respondents is liable to make good to the company the loss which it has sustained by reason of the delinquency, misfeasance

and malfeasance of such person in management during the relevant period. Mr. Rajappa, appearing for the first respondent, took me through the

scheme of the Act relating to the investigation of the affairs of a company and submitted that the applicant has no present right to seek any further

remedy in the hands of this Court and his request for a further probe into the matters and for a practical confirmation of the report of the inspector

so as to result in a decree against one or the other of the respondents is not a

relief which he could secure from this Court at this stage.

Mr. M.A. Rajagopalan, appearing for respondents 3 and 4, while supporting the first respondent adds that even if any such claim can be enquired

into at this stage by this Court, it is barred by limitation. Both the counsel appearing for the respondents have requested this Court to take up these

preliminary objections as above before going into the merits of the case. They crave leave to address arguments on the facts, if ultimately this Court

is of the view that their preliminary objections are unsustainable and have no legs to stand.

8. The scheme of the new Act, in so far as it concerns in investigation of a company, begins with Sec. 235 of the new Act. Sec. 235, which is

equivalent to Sec. 138 of the old Act preserves the power of the Central Government to appoint an inspector, to investigate into the affairs of a

company on an application made in that behalf by such percentage of members prescribed in Clauses (a) and (b) of the said section. Such an

investigation can also be undertaken on a report by the Registrar of Companies. Sec. 236 prescribes the procedure under which an application by

members u/s 235 can be filed. Section 237 is yet again another provision in the new Act enabling the Central Government (1) to appoint an

Inspector to investigate the affairs of a company and to report thereon to it, if the company by special resolution declares that the affairs of the

company ought to be investigated and (2) if the Court by order declares that the affairs of the company ought to be investigated. Section 237(b)

enables the Central Government to undertake such investigation suo motu.

Section 239 deals with powers of inspectors appointed under Sec. 235 or 237 to investigate the affairs of the company. Sec. 240 concerns itself

with the production of documents and evidence before the inspector. Section 240-A enables the inspector to seize certain documents in the course

of such inspection. Sec. 241 enables in the inspector to submit interim and final reports to the Central Government. Inter alia this section provides,

under S. 241(2)(d) that where the inspectors are appointed u/s 237 in pursuance of an order of the Court, they shall furnish a copy of the report to

the Court.

Section 242 enables the Central Government, after the receipt of the report from the inspector and after obtaining such legal advice as it thinks fit

to prosecute the person concerned in respect of any proved delinquency on their part. Section 243 enables the Central Government to present a petition to the Court for the winding up of the company on the ground that it is just and equitable that it should be wound up. This section also enables the Central Government to take proceedings u/s 397 or 398 of the new Act. Section 244 enables again the Central Government to take proceedings for recovery of damages or property of the company if from the report it appears to them that proceedings ought in the public interest, be brought by the company in that behalf.

Section 245 relates to expenses of investigation and Section 246 provides that the report of the Inspector shall be admissible in any legal proceedings as the opinion of the Inspector. Sections 247 to 250, which also branch out from the investigation conducted by an inspector appointed as above, need not be considered in detail in this application as they are not quite relevant.

9. I have already stated that Ramaswami J. directed the appointment of an inspector by the Central Government after having declared that the affairs of the company ought to be investigated in the manner prescribed by the new Act. A litigant who has come up to Court with a definite request and a prayer, cannot be heard to contend that such a relief asked for originally by him is still available to him even though the course of that relief asked for by him was snapped and he was directed to have recourse to other independent reliefs available to him in law and which are equally adequate and efficacious.

Whilst disposing of this application Ramaswami J., formulated the issue with which he was confronted in the said application in the following terms:--

In order to have adequate material before making up my mind whether the affairs of the company requires an investigation by the Central

Government Agency, I called upon the petitioner to furnish particulars under Order 6 Rule 4. A statement has been filed which is annexed hereunto

and which would give a vivid idea of what has been going on. The short point for determination before me is whether I should order u/s 237 of the

Companies Act, 1956, an investigation of the Companies Act, 1956, an investigation of the company's affairs by an inspector of the Central

Government. The materials already on record are abundant and extensive making out an overwhelming prima facie case for ordering investigation

into the affairs of the company by the machinery provided under the Indian Companies Act of 1956. The net result is that I make an order u/s 237

of the Companies Act 1956, that the Central Government shall appoint one or more competent persons as Inspectors to investigate into the affairs

of this company.

In the light of the above observations, it is abundantly clear that this Court, when it decided that application on an earlier occasion, definitely acted

under its inherent powers and u/s 237 of the new Act. Once there has been, therefore, a diversion of the course of the relief asked for by the

applicant, and that diverted course was availed of by both the applicant and respondents and the order of this Court fully implemented, it cannot be

said that the applicant can again retrace his steps back and ask this Court to begin from where it left and take up the report of the inspector, probe

into the same and find whether any case of misfeasance or malfeasance has been made out against the respondents, and, if so, to give such reliefs

as the applicant is entitled to. The applicant having elected at that time to adopt the course suggested by this Court and all the parties to this

application having fully endorsed and acted in accordance with the letter and spirit of the said order, the applicant cannot now demand a full trial

and a fuller enquiry into this application which is practically closed in the eye of law in so far as this Court is concerned and re-enquire the same on

the basis of the inspector's report.

The applicant asked for a relief u/s 543. I have already expressed my view that it is doubtful whether the applicant could secure such a relief at all

in the absence of the pendency of a petition for the winding up of the company. But, even if it could be assumed that such an application is

entertainable, he was given a relief which was not asked for by him and to which diverted course he had absolutely no objection and it does not lie,

therefore, in the mouth of the applicant, after receipt of the inspector's report, to ask this Court to rehear the application, when nothing more need

be done in the same.

10. The above conclusion of mine can also be reached by applying the provisions of the new Act. When the Court by order declared that the

affairs of the company ought to be investigated by an inspector and directed the Central Government to appoint an inspector to go into such

details, then there is an exhaustion of the jurisdiction of this Court in so far as this application is concerned, and it is for the Central Government to

take up the matter in their hands after receipt of the report of the inspector and do such things as are necessary and expedient in public interest.

Section 242 is a provision which enables the Central Government to prosecute such delinquent officers or persons in management. Section 243

enables them to file an application for winding up or apply u/s 397 or 398 of the new Act. Section 244 is yet again another remedy available to the

Central Government for recovering damage or property of the company by reason of such fraud, misfeasance or other misconduct in connection

with the management of the affairs of the company.

It should be, however, remembered that once an inspector is appointed and the inspector, after enquiry, submits a report, it is for the Central

Government to act, and it is no longer open to a person who prompted the Court to issue an order u/s 237(a)(ii), to call upon such Court, after the

investigation report of the inspector, to consider the said report once again and give him such reliefs which, according to him, he is entitled to. This

is not provided under the Act and the reliefs now asked for by the applicant cannot be granted to him for the reason that he has to avail himself of

the statutory remedies specifically prescribed in that behalf and referred to by me already.

11. I am unable to concede to the request of Mr. Swaminathan that the jurisdiction of this Court has not yet been exhausted and if has the right to

reconsider the application on receipt of the report. Once the report is submitted under due process of law, the course of law comes into operation

and the applicant cannot stem such progress by retracing his steps to the portals of this Court and ask for a re-investigation and a re-hearing of his

application which factually and in the eye of law has already been closed.

There being full force in the contention of the learned counsel for the first respondent that this Court can no longer exercise any jurisdiction in the

matter of disposal of this application, as everything that can be done has been done by the learned Judge in his earlier order, I hold that the

applicant has no locus standi to ask this Court to re-investigate and re-hear this

application on the basis of the inspector's report. Whatever remedies are available to him in law, the applicant can seek. But he cannot ask this Court to give him the reliefs as set out in the Judge's summons.

This application is therefore dismissed. But there will be no order as to costs.

TVN/D.V.C.

12. Petition dismissed.