**(2003) 12 MAD CK 0029**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Appeal No. 3379 of 2003

P. Natarajan APPELLANT

Vs

Central Government and Others RESPONDENT

**Date of Decision :** 31-12-2003

**Acts Referred:**
Companies Act, 1956 — Section 166, 167, 260

**Citation :** (2003) 12 MAD CK 0029

**Hon'ble Judges :** S.R. Singharavelu, J;R. Javasimha Babu, J

**Bench :** Division Bench

**Advocate :** R. Thiagarajan, assisted by A.R.L. Sundaresan, for the Appellant; M.T. Arunan, ACGSC for Respondent 1, Mr. A.L. Somayaji, for Mr. R. Sankarasubramanian for Respondents 2 and 3, Mr. V.T. Gopalan, A.S.G. assisted by Mr. K. Renganatha Reddy, for M/s. King and Patridge for Respondent 4, Mr. P.S. Raman for Respondents 5 and 12, Mr. Aravind Pandiyan for Respondent 13 and Mr. Murari for Respondent 17, for the Respondent

**Final Decision :** Dismissed

## Judgement

R. Jayasimha Babu, J.—In this appeal one of the Additional Directors of the Tamil Nadu Mercantile Bank Limited has challenged the ex

parte directions given by the Company Law Board that the Board of Directors of the Company be superseded with the further direction that a

committee comprising of the three nominee directors of the Reserve Bank of India, one of whom is the Chairman, and the two other Directors

nominated by the Central Government, function as the Board till the application that was filed by the Central Government before it, for superseding

the Board is finally decided. Certain other directions also have been given in that order with regard to the holding of the Annual General Meeting

which has been deferred by the Company Law Board in order that the share certificates may be despatched to the persons entitled thereto, as the

number of such transfers is large, and the Investors Forum which had organised and effected purchase of about thirty for percent of the issued

shares and which had been allowed to assist the Board in this regard has not yet been able to complete it''s work.

2. A group led by a non resident Indian had purchased about sixty seven per cent of the paid up capital some time prior to the year 1996.

However, the shares were not transferred in favour of the purchaser, the Reserve Bank of India whose consent for transfer was required under the

Banking Regulation Act having declined to grant approval for the transfer, on the ground that the purchaser was an industrial house.

3. Subsequently, that group is said to have transferred about thirty four per cent of the paid up capital to the members of the Investors Forum,

which is said to represent over 25,000 investors belonging to the Nadar community, which community it is said by counsel, regards this bank as

their own and meant for them. The balance thirty three per cent, we are informed, has been transferred by the NRI purchaser to four investment

companies belonging to a group known as Sterling Group. As each of the companies has purchased more than five percent of the paid up capital,

transfer in their favour has not yet been effected as the RBI is yet to give it''s approval for the transfer.

4. The Board of Directors comprises of 15 Directors. Three including the Chairman are nominees of the RBI. Two have been nominated by the

Central Government pursuant to direction given earlier by the Company Law Board. The other ten Directors are persons who had not been

elected by the General Body, but had been co-opted to the Board. Such co-option in case of many of these Directors was by persons who had

themselves been co-opted. This Banking company has not held it''s Annual General Meetings for over seven years. These Additional Directors

assert a right to remain on the Board despite their admitted failure to convene and hold the Annual General Meetings.

5. Having regard to the unsatisfactory state of affairs of this Bank, the Central Government approached the Company Law Board initially with a

petition u/s 408, which was subsequently amended into one under Sections 397 and 398, seeking suitable directions with regard to the management of the affairs of this Bank. One of the prayers is that the Central Government be given power to nominate the majority of the

Directors on the Board of the Bank.

6. After the Central Government had amended the petition, further developments, wholly unanticipated, took place which, having been brought to

the notice of the Company Law Board, it was prompted to make the ex parte order superseding the Board of Directors.

7. On 25th November 2003, at a Board Meeting the Additional Directors passed a resolution removing, the resolution having been later modified

as one seeking the removal of the Chairman who had been nominated by the Reserve Bank of India. The Reserve Bank of India did not agree to

such removal being effected. Thereafter a suit was filed to restrain the Chairman from functioning as Chairman. An interim order was also secured

which had to be challenged before this Court and this Court suspended that interim order. The Chairman who was nominated by the Reserve Bank

of India now is functioning as the Chairman of the Board.

8. The Chairman in his affidavit filed in this Court has narrated the high handed conduct of these Additional Directors, who having been thwarted in

their cozy arrangements of utilising the Bank''s funds for their business by obtaining liberal foreign currency loans at low rates of interest, had after

passing the resolution for the removal of the Chairman deprived him of all the facilities that he was entitled to have as Chairman, and had prevented

him from discharging his duties as Chairman. He is a formal General Manager of another scheduled Bank.

9. This conduct on the part of the Additional Directors in trying to unrest control of the Board for themselves and the manner in which they went

about doing it by ousting the Chairman who had been appointed by the Reserve Bank of India in the public interest provoked the Central

Government to apply to the Company Law Board, inter alia, seeking the supercession of the Board. The Company Law Board which took up the

application for hearing immediately after it was filed was of the view that the developments brought to it''s notice warranted an ex parte

supercession pending consideration of the application that had been filed by the Central Government.

10. The legality of that direction has been challenged before us by one of the

 

Additional Directors, the other Additional Directors supporting him

through their counsel.

11. Additional Directors are appointed u/s 260 of the Companies Act, which, inter alia, provides that Additional Directors shall hold office only

''upto the date of the next Annual General Meeting'' of the Company. Section 166 of the Companies Act which deals with the Annual General

Meeting provides that every company shall in each year hold in addition to any other meetings, a general meeting as its Annual General Meeting. It

also provides that not more than fifteen months shall elapse between the date of one general meeting of a company and that of the next.

12. In this case, admittedly the last Annual General Meeting was held some time in the year 1996 and no Annual General Meeting has been held

thereafter. It is the stand of some of the Additional Directors before us that they have a right to remain in office as Directors, until such time as a

Annual General Meeting is, in fact, held. This claim is not one which can be accepted. Section 260 was not meant to enable persons to become

directors of a company without having to obtain the support of the general body and thereafter, remain on the Board for years together by not

holding the Annual General Meeting.

13. The provision for an Additional Director is one which is meant to enable the companies to have the benefit of the services of a person, who

otherwise is suitable for serving on the Board, and whose presence in the Board is desirable in the interests of the company till upto the time the

next Annual General Meeting is held. That pro vision is not meant to enable the company to keep on its Board a person as Additional Director for

an indefinite period of time by not holding the Annual General Meeting. Section 260 of the Act, therefore, must necessarily be read with Section

166 of the Act which stipulates that the Annual General Meeting be held every year and not more than fifteen months shall elapse between the date

of one Annual General Meeting and the next.

14. A Division Bench of this Court comprising of Rajamannar, C.J., and Venkatarama Aiyar, J., as he then was in the case of A. Ananthalakshmi

Ammal and Another Vs. The Indian Trades and Investments Ltd. and Another, with Venkatarama Aiyar, speaking for the Bench, after a review of

the English cases, held that directors of a company who are due to retire at an

 

Annual General Meeting vacate their office on the last date on which

the Annual General Meeting should have been held though the meeting in fact was not held.

15. The Bombay High Court in the case of Krishnaprasad Jwaladutt Pilani Vs. Colaba Land and Mills Co. Ltd., a case which was argued by a

galaxy of Company lawyers, considered the question as to whether the the elected Directors can continue after the expiry of the statutory period

laid down for calling of the Annual General Meeting, and held that ""we find little difficulty in reaching the conclusion that a Director vacates his

office at the latest on the last day on which an Annual General Meeting could have been called as required by Section 166"".

16. The Court also considered in that case the tenure of Additional Directors and held that all directors - whether elected or co-opted vacate

office on the last date on which the Annual General Meeting should have been called u/s 166. The Court rejected the contention that despite the

breach on the part of the directors of their statutory duty to call for AGM, they would still continue to be Directors till the AGM is in fact held.

17. In reaching the conclusion it did, the Bombay High Court followed the decision of a Division Bench of this Court in the case of A.

Ananthalakshmi Ammal and Another Vs. The Indian Trades and Investments Ltd. and Another,

18. All the Additional Directors, therefore are persons who have no right to remain on the Board as Directors as their term came to an end long

ago on the date on which the Annual General Meeting for different years should have been held. Their failure to hold the meeting cannot be taken

advantage of by them to hang on to the position of Directors indefinitely.

19. It was submitted by counsel that u/s 167 the Central Government has power to call for an Annual General Meeting and that an attempt by a

shareholder was in fact made to have such a meeting called but without success. We have not been shown the orders of the Central Government

or the record in relation to that alleged attempt.

20. The fact that the Central Government has the power to convene a meeting is however evident from a perusal of section 167. The Additional

Directors who were on the Board had obviously made no attempt whatsoever to invoke Section 167 if they were of the view that there were impediments to their being able to call a meeting and that it was necessary to apply to the Central Government for having such a meeting called and

held. The Additional Directors cannot take advantage of their own acts of omission in this regard.

21. All these ten Additional Directors had vacated their office of Directors long ago and cannot assert any right to remain on the Board. The ''de

facto'' doctrine will save the decisions taken, when they acted as Directors despite their having in law vacated their office. That, however, does not

clothe these persons with any right to remain in office ''de jure''.

22. We, therefore, do not find any illegality in the directions issued by the Company Law Board superseding the Board which comprised of

Additional Directors and in it''s place empowering the nominee directors whose tenure was not dependent upon and was not for any specified

period to function as Directors, the Chairman also being a nominee of the Reserve Bank of India.

23. This arrangement however can only for a limited period till the Annual General Meeting is held. The Annual General Meeting which has not

been held for several years must now be held with utmost expedition. The Company Law Board has already directed that the process of

distribution of share certificates to the members of the investors Forum be completed before the 25th January 2004. that the Members Register

close as on that date, and that notice of the AGM be sent to those whose names appear in the Register of Members on that date.

24. We must however take note of the Reserve Bank of India''s failure to act with a sense of urgency with regard to application said to have been

sent to it some time in October 2003 with regard to the transfer of shares to four investment companies belonging to the Sterling group. The

transfer of shares in their favour has already been, we are told, approved by the Board of Directors of this company, subject to the Reserve Bank

of India giving it''s approval.

25. Learned Additional Solicitor General who appeared for the Reserve Bank of India assured us that the Reserve Bank will definitely take a

decision and communicate the same to the company within a period of two weeks from today.

26. We direct the Reserve Bank of India to complete the process within two

 

weeks from today so that thereafter, in the event of the transfer being

approved, notice of the AGM can be sent to the purchasers after bringing their names on record in the Register of Members, and in the event of

permission being refused, notice of the meeting can be sent to persons in whose names those shares presently stand in the Register of Members.

27. The Company Law Board shall fix the date for holding the Annual General Meeting after giving sufficient time for the despatch of notice and

that meeting shall as far as possible be held before the end of February 2004 and in any event not later than 15th March 2004.

28. The Committee now constituted by the Company Law Board under the impugned order shall only take decisions with regard to day today

matters and the normal functioning of the bank and shall not embark upon any new major project or take any major decision affecting the future of

the bank, as the directors to be elected by the general body should have the opportunity to deal with those matters after the Annual General

Meeting is held.

29. We make it clear that the Company Law Board may proceed with the hearing of the application filed by the Central Government after the

counter affidavits of the respondents to that application are filed before it and make appropriate orders thereon. This appeal is dismissed.