
(1923) 06 BOM CK 0004
In the Bombay High Court
Case No : O.C.J. Suit No. 1859 of 1923

Parshuram Dattaram Shamdasani

APPELLANT

Vs

The Tata Industrial Bank Ltd.

RESPONDENT

Date of Decision : 20-06-1923

Acts Referred:

Companies Act, 1956 — Section 79

Citation : (1923) 25 BOMLR 1083

Hon'ble Judges : Pratt, J

Bench : Single Bench

Judgement

Pratt, J.—The first and the second plaintiffs who are shareholders in the Tata Industrial Bank, a company registered under the Indian Companies Act VII of 1913, file this suit against the company by their directors for a declaration that the proceedings of a general meeting held on May 1, 1923, were improperly conducted and that certain appointments made at that meeting of directors and auditors are invalid. The plaint also prays for an injunction restraining the company from having its accounts audited by the auditors appointed at the meeting and also for a mandatory injunction to take de novo proceedings which I suppose means to compel the company to hold a fresh meeting.

2. A rule was granted restraining the company pending the hearing of the suit from having its accounts audited by the appointed auditors, When the rule came on for hearing last Thursday plaintiff No. 1 wished to adjourn the rule to the hearing of the suit, and the defendant company on the other hand contended that the suit was not maintainable. The suit was therefore set down for trial of the preliminary issue as to whether it was maintainable, and the hearing of the rule was adjourned to the hearing of this preliminary issue.

3. The allegations in the plaint are briefly as follow:

On April 14, 1923, a notice was given u/s 79 of the Indian Companies Act of a general meeting to be held on May 1. In conformity with Article 68 of the Articles

of Association the notice specified the business to be transacted at that meeting. That business was, as set out in paragraph 7 of the plaint, namely:

1. To receive the directors' report and to adopt the audited accounts for the year ended March 31, 1925.
2. To elect two Directors in place of the two retiring directors," and
3. To elect three other directors in place of three retiring directors who had been appointed under Article 99 of the Articles of Association," and
4. To appoint auditors for the current year.

4. On April 21, 1923, the plaintiff Nos. 1 and another gave notice under Article 112 of the Articles of Association that they intended to propose two gentlemen for election to the office of directors of the Bank. They also requested that information of this notice should be sent to each and every shareholder. On April 30, 1923, the plaintiffs put in a list of fifty questions referring to the management of the Bank and giving notice that they meant to ask these questions at the meeting.

5. The general meeting was held on May 1, and one of the directors was elected to the chair. After the formal business of the meeting had been transacted the first plaintiff put the questions of which he gave notice in the interrogatory filed on April 20. The Chairman was unable to answer these questions without notice and the first plaintiff then moved for an adjournment. But the Chairman refused to put the motion for an adjournment.

6. The plaintiff then moved that the directors' report of the account should be examined by the appointed committee of shareholders. This motion was put to vote and lost, The plaintiff complains that he was not allowed to speak on this motion.

7. When the motion was lost the plaintiff demanded a poll. This poll was taken and the motion was lost, The plaintiff's grievance on this point is that two scrutinizers of the votes taken at this poll were not authorised to act and the plaintiff's objection to the validity of the votes given was not heard.

8. After the motion was lost in the poll the business of the meeting was proceeded with, the accounts were passed, and new directors and auditors appointed. The plaintiffs complain that at this stage the meeting had ceased to function as a meeting and that the Chairman did not propose the two gentlemen whose names had been sent in by notice under Article 112 as candidates for the office of directorship.

9. This concludes the list of the plaintiff's grievances and except as to his right to speak which I shall deal with presently they amount to nothing but irregularities in the procedure at the meeting held on May 1.

10. Irregularities are not a matter for the Court but for a majority of the

company to deal with. The Courts will interfere only if the rights of the shareholders are infringed; or if a case of fraud, or ultra vires action is made out. Otherwise the Court does not interfere to correct an irregularity or to do that which the majority of the company have the power to do. This rule is well established in *Foss v. Harbottle* (1843) 2 Har 461 and *Macdougall v. Gardiner* (1875) 1 Ch. D. 13 and indeed officious interference by the Court in such matters would paralyse the working of all joint stock companies.

11. However, to take the plaintiff's grievance seriatim, there was in the first place no occasion for the Secretary of the company to give notice of the candidature of the plaintiff's nominees. The notice was sent by the plaintiffs under Article 112 of the Articles of Association and such notice is under that article a condition precedent to the candidate named being eligible for election. But the election of the candidates so proposed can be proceeded with at the meeting without special notice to the share-holders. Notice had been given under Article 68 that the business has to be transacted at the meeting of the company for the election of directors in succession to the five who had vacated their seats. Now the total number of directors sanctioned for the company is fifteen and there were at that time ten directors out of fifteen who were actually holding the office. The notice issued by the company stated that the business to be transacted at the meeting was by election of five new directors to take the places of five of these ten who were retiring. When the Secretary received the plaintiff's notice of April 21, proposing two gentlemen as candidates he would naturally interpret the notice to mean that these two gentlemen were candidates for election in the places of the five retiring directors and there is no doubt that that was the reason why no special notice of these candidature was given to the share-holders. But the plaintiff says that what he meant was that notice of April 21 was to propose these two gentlemen as candidates not in the places of any five of the directors who were retiring but in the places of the five posts of the directors which had never been filled up. That does not appear clear from the plaintiff's notice. Even if that had been the intention there seems no necessity to give any particular information to the directors because Article 109 of the Articles of Association clearly distinguishes two classes of vacancies. Article 109 is as follows:

The company at any general meeting at which any directors retire in manner aforesaid shall fill up the vacated office by electing a like number of persons to be directors; and without notice in that behalf may fill up any other vacancies; provided etc.

13. It is clear, therefore, that this article makes a distinction between vacancies which occur by reason of the retirement of the directors actually holding office and other vacancies. Other vacancies could occur in no other way than as in this case, that is, the vacancies of the five directorships which had never been filled up. Therefore it was competent to the plaintiff at the meeting to propose the election of his two nominees, and Article 109 makes it clear that he might have

done so without special notice being given on that behalf.

14. Then as to the second grievance, if the Chairman was unable to answer the questions put by the plaintiff, it was for the majority of the share-holders present to consider whether the accounts should be passed and the directors' report confirmed in the absence of the information which those questions were designed to elicit. The majority could have secured this object by an adjournment. It is true that the plaintiff did ask for an adjournment and then the Chairman refused to put the motion for the adjournment to the meeting. Now it is clear under the Articles of Association that the Chairman has a discretion whether to adjourn or not. Article 77 says:

The Chairman, with the consent of the meeting, may adjourn any meeting from time to time and from place to place in Bombay, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

15. The Chairman, therefore, has a discretion to adjourn and he can exercise that discretion only with the consent of the meeting. Even if the meeting desired an adjournment the article does not make it compulsory on the chairman to adjourn. An article similar to Article 77 was so construed in the case of *Salisbury Gold Mining Co. v. Hathorn* (1897) A.C. 268. But if the Chairman had no intention of adjourning the meeting it would be futile for him to put the motion for an adjournment and then refuse to act upon it. But it is evident that a majority of the company did not desire to adjourn because the same matter was put to the vote in the guise of a motion made by the plaintiff for the appointment of a committee of share-holders with power to examine the accounts and to elicit answers to all the questions framed in the plaintiff's interrogatory. If this motion had been passed the desired adjournment would have been secured. But when that motion was put to the vote it was lost on a show of hands. The plaintiff's complaint on this point is that he was not allowed to speak on this motion. But the plaintiff paragraph 13 says: "Thereupon the plaintiff No. 1 moved his amendment." Then paragraph 14 sets out: "After the aforesaid amendment was duly seconded and handed over to the chairman, the plaintiff No. 1 wanted to speak on his said amendment but the chairman deliberately ruled him out of order." It is thus clear from the plaintiff that the plaintiff had an opportunity of speaking and he did speak to his motion at the time when he moved it. A shareholder is not entitled to speak as much as he pleases but has a right to be heard in reasonable terms for a reasonable time. That is decided in *Wall v. London and Northern Assets Corporation* (1898) 2 Ch. 469. On this point Lindley M.R., commenting on the dictum of Lord Eldon, said:

But Lord Eldon does not mean that a minority who are bent on obstructing business and resolved on talking for ever should not be put down. He means that the majority are not to be tyrannical. After hearing what is to be said, they might say, "We have heard enough. We are not bound to listen till every body is tired of talking and has sat down."

16. So here the Chairman heard the plaintiff when he moved the amendment and it is obvious from the admission in the plaint that the plaintiff moved his amendment that he plaintiff had a fair hearing. After the amendment was lost on the show of hands, the plaintiff No. 1 demanded a poll and it was taken, and the motion was again negatived. But as to the poll the plaintiff objects that the poll was illegal because the scrutiny of the poll should have been taken by the Chairman himself. The plaint, paragraph 20, Clause 10, says :- "That the chairman of the meeting failed in his duty to act as a scrutineer at the taking of the poll." No doubt under Articles 93 and 94 the Chairman takes the poll and his decision as to the validity of every vote given is conclusive. But it does not follow that the Chairman cannot employ an agent for scrutinising the poll or that he cannot employ a clerk to count the number of votes so taken, I construe Articles 93 and 94 which direct the Chairman to take the poll as giving the Chairman authority to delegate the ministerial function of scrutinising the votes and totalling them to others besides himself. Therefore the fact that the poll was not scrutinised by the two gentlemen seated at the Chairman's table and under Chairman's directions does not make the poll invalid.

17. The plaintiff's next grievance is that neither the business of the meeting was transacted the meeting had ceased to function as an ordinary meeting. But this is mere verbiage. The plaintiff admits that the Chairman was at the meeting, share-holders were at the meeting and he even admits that some share-holders voted when he says in his plaint that several share-holders abstained from voting.

18. His last grievance is that the Chairman failed in his duty to propose election of the plaintiff's nominees to the office of directors, I am not aware that this is the function of the chairman, If the plaintiff had proposed a list of certain nominees for the office of directorship, it was quite open to him to propose that election at that meeting and the plaint does not say that he did so or that he was prevented from doing so.

19. On the whole the averments made in the plaint do not import any such illegality as to justify the interference of the Court or to constitute a cause of action for a suit. I, therefore, decide the first issue in the negative, and dismiss the plaintiff's suit.

20. The rule falls with the suit but as to this I would observe that it is curious that the plaintiff No. 1 has not asked for an injunction restraining the directors appointed at the meeting from officiating. He has taken out a trumped-up rule merely to prevent the auditing of accounts by auditors nominated at the meeting. It is impossible to imagine that this rule can be a bonafide one or there can be any good ground for these auditors for not acting. This rule seems to me to be damning revelation as to the real character of the suit.

21. I accordingly dismiss the suit with costs and discharge the rule with costs.