
(1989) 12 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : C.P. No. 72 of 1985

Prem Nath Gangneja

APPELLANT

Vs

Edwardganj Public Welfare Association and Another

RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Companies Act, 1956 — Section 397, 398, 399(1)

Citation : (1990) 69 CompCas 787 : (1989) 179 ITR 196

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : V.A. Talwar, for the Appellant; R.C. Dogra and Shiela Dogra, for the Respondent

Final Decision : Dismissed

Judgement

G. R. MAJithia, J.—The petitioner has moved this petition under Sections 397, 398 read with Section 166 of the Companies Act, 1956 (for short "the Act"); for declaring certain acts of the respondents as illegal and to constitute a new managing committee in the election meeting.

2. Respondent No. 1 is a public limited company by guarantee under the Act and was registered in the year 1942. The primary object of the company was to acquire, construct, maintain buildings and shops for public use and benefit. The petitioner was duly elected as a member of the managing committee which assumed office on January 3, 1978. The company held annual general meetings till the year 1981 as provided in the memorandum and articles of association of the company. Every year members of the managing committee were appointed. After August 4, 1985, no meeting or annual general meeting was held for electing members of the managing committee. Respondent No. 2 is in control of the affairs of the company. He donated the following sums to the institutions :

Rs.

"(a) D. A. V. College

2,40,000

(b) Lady hospital

2,97,000

(c) Primary school

1,60,000

(d) Guest house

5,20,000

(e) Contractors

7,92,920

(f) Cremation ground

48,302

(g) D. A. V. Public School

60,000"

3. The petitioner claims that these amounts were, in fact, misappropriated by respondent No. 2. The property of the company was also sold at a nominal value and the sale proceeds were misappropriated. Shops have been rented out on nominal rate of rent. These acts of respondent No. 2 are detrimental to the interest of respondent No. 1.

4. The respondents filed a written statement controverting the material allegations made in the petition. They stated that annual general meetings are regularly held and the affairs of the company are being properly managed. The donations made to the various institutions were approved by the managing committee and were reflected in the balance-sheets which were passed by the members in the annual general meeting. A preliminary objection was also taken that a single or ex-member of the managing committee cannot maintain the petition. It can only be filed by 1/5th members of the company limited by guarantee. It was also stated that the petitioner had participated in the management of the association as a member of the managing committee and that he cannot assail the transactions which were concluded prior to his holding office as such member. The petitioner filed a replication but could not controvert the material averments made in the written statement.

5. From the pleadings of the parties, the following issues were framed :

1. Whether the petition is maintainable by the petitioner ?

2. Whether the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner oppressive to members of the company or prejudicial to the interest of the company itself ?

3. Relief.

6. Issue No. 1 ought to have been treated as a preliminary issue. However, since the parties have led evidence under issue No. 2, I am disposing of both the issues.

Issue No. 1.--Sub-section (1) of Section 399 of the Act deals with the right of the members of a company to apply under Sections 397 or 398 of the Act and it reads thus :

"(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares."

7. It is evident from a reading of the sub-section that a petition under Sections 397 and 398 of the Act can be filed by not less than 1/5th of the total number of members of the company where the company is not having a share capital. It is not disputed that the company has no share capital. Evidence has not been led with regard to the total number of members of the company. However, this matter is no more *res integra*. This court had occasion to deal with this matter in *Naranjan Singh v. Edward Ganj Public Welfare Association* [1983] 54 Comp Cas 330 (P & H). The matter related to the respondent society and in the reported judgment, it was held that the total number of members of the respondent-company was 1,545. The petition could only be filed by 309 members. The petitioner cannot maintain the petition.

8. Although the petition can be disposed of solely on the ground that it has not been filed by 1/5th of the total number of members of the company, and it can be dismissed on this ground alone, however, evidence has been led under issue No. 2 and I am dealing with issue No. 2 also.

Issue No. 2. -- In support of this issue, the petitioner examined PW-1, Surinder Pal, and himself appearing as PW-2. PW-1 practically reiterated the allegations made in the petition but, in the cross-examination, he had to admit that all the facts stated by him in examination-in-chief were told to him by the petitioner. The witness also admitted that, in the annual general meeting, the accounts of the company are passed and the members of the managing committee were elected. He also admitted that the buildings of D. A. V. College and School, at Malout were constructed by the company and that the company is competent to earmark funds for education. The petitioner, who appeared as PW-2, reiterated the allegations made in the petition, but in cross-examination he was forced to admit that when he was a member of the managing committee of the respondent, elections to the same were held regularly. Even during that period, respondent No. 2 was the president. During the period when he was a member of the managing committee, all the expenditure was duly accounted for and approved in the annual general meeting and the accounts were audited by a

chartered accountant. He admitted in cross-examination that the amounts mentioned in para No. 7 of the petition have been expended in pursuance of the objects of the company. He also admitted that prior to 1981, notices were regularly published in the newspapers for holding elections to the managing committee. However, he denied that, in the subsequent year, the same procedure was followed. The respondents examined Rajnish Kumar, secretary of the association as RW-1. He produced on record the memorandum and articles of association and deposed that the records were maintained according to the provisions of the Act. Elections of the members of the committee were held every year. The last election was held on August 25, 1986, and the witness appeared in the court on January 29, 1987. The accounts of the company were being audited by Soni, chartered accountant, and approved in the annual general meeting of the company. He admitted that donations were given to schools and hospitals but it was subject to the variations made in the memorandum and articles of association.

9. The petitioners failed to substantiate the allegations made in the petition. On the contrary, the evidence of RW-1 in unequivocal terms proved that the affairs of the company are properly managed, the account books are duly audited by the chartered accountant and all the expenditure was approved in the annual general meeting and in the annual general meeting, members of the managing committee were elected every year. This petition appears to have been filed for some ulterior purpose. It is lacking in good faith and is not maintainable at the instance of the petitioner.

10. For the reasons aforesaid, the petition is dismissed with costs. Counsel fee assessed at Rs. 1,000.