

(1959) 11 MAD CK 0046
In the Madras High Court
Case No : Appln. No. 1604 of 1959

P.R.M. Abdul Huq

APPELLANT

Vs

Katpadi Industries Ltd. and Another

RESPONDENT

Date of Decision : 11-11-1959

Acts Referred:

Companies Act, 1913 — Section 283, 284, 303, 32

Citation : AIR 1960 Mad 482 : (1960) 73 LW 106

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Judgement

(1) This is an application by one P. R. M. Abdul Huq, to remove his name as director of the Katpadi Industries Ltd.

(2) Notice of this application was given to the Registrar of Joint Stock Companies and his counter affidavit has been filed.

(3) The facts are: The Katpadi Industries Limited was registered as a public company on 22-2-1950. Its authorised capital is Rs. 2,00,000 divided into 20,000 share of Rs. 10/- each. The last list of members and summary filed by the company under S. 32 of the Indian Companies Act, 1913, and brought on record in the office of the Registrar of Companies was one made up to 30-1-1955. Therein this applicant is shown as a director of the company as on that date. On 2-10-1955, the applicant intimated that he was submitting his resignation from the board of directors. The company, however, on being asked by the Registrar in his letter dated 17-2-1956 to state when the applicant ceased to be a director, there was no reply from the company.

The Registrar addressed the company and its officers in his letter dated 13-6-1958 to file the annual return for the years 1956 and 1957 and the balance sheets as on 31-3-1955, 31-3-1956 and 31-3-1957. A copy of the said letter was also sent to this applicant and he replied to the Registrar that he had ceased to be a director from 5-11-1955. But the Registrar notified him that he stood

registered as a director in his records and that the company has not reported his cessation from directorate as required by S. 303 of the Companies Act, 1956.

The applicant instead of taking up the matter with the company merely replied in his letter to the Registrar on 28-8-1958, that it was the duty of the company to remove his name and that if the company had not done so, it was their funeral and that he was not in any way responsible. The Registrar has also subsequently asked the directors including this applicant for the filing of the annual returns and balance-sheet for 1958 also. Thereafter the counsel for the applicant wrote on 7-7-1959 to the Registrar that he had filed an application in this court and that it was returned as there was no provision in the Companies Act of 1956 relating to the resignation of a director. The Registrar reiterated that the applicant continued to be a director and his cessation had not been notified to him by the company.

(4) The law on this subject has now got to be examined. Sections 283 and 284 of the Indian Companies Act, 1956 deal with (a) vacation of office by Directors and (b) removal of Directors. Besides the contingencies contemplated by these sections, it will be open to a Director to resign & sever his connection with the company as a director. In regard to resignation, the case laws on the subject may be gathered from the following extracts from the standard treatise on the subject.

(5) Ghosh's Indian Company Law, 10th Edn. Part I, page 583:

"Subject to the articles of association a director is entitled to resign his office and cannot withdraw his resignation without the company's consent; *Glossop v. Glossop*, 1907 2 Ch 370. After the resignation has been accepted by the Board, a director ceases to be liable for any report made or dividend declared even though he be named as a director in the report. In *re National Bank of Wales*, 1899 2 Ch 629. Where the Articles provide that the office of a director should ipso facto be vacated if by notice in writing to the company he resigns his office, the oral resignation is sufficient. "I see no reason in law", observed Bennett, J., "why the contract of service between the company and its directors should not be terminated by the same means as that by which the contract of service between two individuals may be terminated, and I see no ground in law for saying that where a written contract has been made for service which requires a written notice on either side before it can be terminated it cannot be terminated by word of mouth by mutual consent between the parties." *Latchford Premier Cinema Ltd. v. Ennion*, 1931 2 Ch 409.

"Where the Articles of a bank declared that the office of a director shall ipso facto be vacated "if he resigns, or for any other reason becomes incapable of acting as a director" it was held that the Articles contemplated resignation or some incapacity, such as illness, long absence, imprisonment, insanity or any other incapacity. A director's indebtedness to the bank could be said to be incapacity within the Article and therefore was no ground for his removal. *F.P.S.*

Albuquerque Vs. The Catholic Bank, Ltd., Mangalore and Others, . Moreover loan to directors by a bank was a part of its business."

P. K. Thayil's Companies Directors 1938--Law Book Company--Allahabad, at page 338:

"Articles usually provide that a director may resign his office and it would seem even if they do not, a resignation would be effective unless the Articles contained some provisions preventing it, e. g., that a period of notice must be given. It was held in Latchford Premier Company v. Ennion, (1931) 47 ITR 595, that under an Article in these terms an oral resignation if accepted by the company in general meeting is binding. But a notice of resignation once served on the company cannot be revoked without the company's consent. Where there is no provision making acceptance of resignation necessary, a director vacates office on giving notice of his resignation. He cannot withdraw his resignation without the consent of the company. The position is the same even if the Articles require that the vacation of office is not to take effect unless the directors pass a resolution to the effect that the director has vacated his office. Resignation takes effect from the date of the resignation letter: V.K. Lakshmana Mudaliar and Another Vs. Emperor, ."

Gore-Browne's Handbook on Joint Stock Companies, 41st Edn. page 358:

"Articles usually permit a director to resign. Even in the absence of such a power, unless the Articles contain conditions, he may resign, and his resignation is complete where notice is given to the secretary, and cannot subsequently be withdrawn, and even though no acceptance has taken place. Notwithstanding that the Articles contemplate a written resignation, a verbal notice of resignation given and accepted at a general meeting of the company is binding."

Maitland's case, (1853) 4 D. M. & G. 769, Transport Ltd. v. Schonberg, 1905 21 TLR 305, 1907 2 Ch 370, 1931 2 Ch 409.

Buckley on the Companies Acts, 13th Edn. at page 882:

"A director can, subject to Articles, resign his office, and cannot withdraw his resignation without the company's consent. Notwithstanding an Article providing for resignation by notice in writing, a director can resign by word of mouth When a director's resignation is accepted by the board he is not liable for a report made and a dividend recommended after that time, though his resignation was not disclosed to the company, and he was actually named in the report as a director."

The net result of this analysis is that a director, who has submitted his resignation, will be deemed to have resigned from the date of his resignation, without prejudice, of course, to his liabilities and obligations which had occurred upto that date and which he cannot evade by severing his connection with the company.

(6) The more important question, however, which arises is whether this court has got the power to direct the company to remove the resigned director's name as a director as and from 15th November, 1955, the date of his resignation. On that matter there cannot be the slightest doubt that this court has no such power. The application purports to have been filed under S. 283 of the Companies Act and under R. 9 of the Companies Rules. Section 283 has no relevance. It relates to vacation of office by directors and has nothing to do with resignation. Rule 9 runs as follows:

"Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the court to give such directions or pass such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the court."

This is a replica of S. 151 of the C. P. Code excepting that for the word "rules" the word "Code" has to be substituted. The extent and limit of these inherent powers under S. 151, C.P.C. neatly set out in the AIR Commentaries of the Code of Civil Procedure, 6th (1957) Edn. Vol. II, at pages 1801 and 1804 and which will apply *mutatis mutandis* here also are summarised below.

(7) In administering justice as prescribed by a Code, there are two necessary shortcomings:

1. There will always be cases and circumstances which are not covered by the express provisions of the Code wherein justice has to be done. The reason is that the legislature can foresee only the most natural and ordinary events and no rules can regulate for all time to come so as to make express provision against all inconveniences which are infinite in number and so that their dispositions shall express all the cases that may probably happen.

(8) The prescribed rules of procedure may be abused or so used as to give a mere formality, the significance of substantive effect and thus obstruct instead of facilitating the administration of justice.

(9) It cannot be said that in the above circumstances courts have no power to do justice or redress a wrong merely because no express provision of the Code or reported decision of a court can be found to meet the requirements of a case. As observed by Mahmood, J. in *Narsingh Das v. Mangal Dubey*, ILR 5 All 163

"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibitions cannot be presumed."

Every court, whether a civil court or otherwise, must, therefore, in the absence of express provision in the Code for that purpose, be deemed to possess, as inherent in its very constitution, all such powers as are necessary to do the right and to undo a wrong in the course of the administration of justice.

(10) Section 151, C. P. Code does not confer any new powers on the courts but only saves their inherent powers. The inherent powers of the court being very wide and indefinable, the limits of such jurisdiction should be carefully guarded and its exercise in an arbitrary and capricious manner effectively prevented. These inherent powers cannot be extended to make a new law on the subject.

(11) Bearing these principles in mind, if we examine the facts of this case, the Indian Companies Act deliberately makes no provision for exercise of jurisdiction in regard to resignation of directors. This is on the well recognised principle that courts should not generally interfere in the internal affairs of the company unless where the act complained of is ultra vires of the company or a fraud on the minority or where there is absolute necessity to waive a rule in order that there may not be a denial of justice.

(12) Therefore, when this application is made to this company court invoking powers not provided for by the Companies Act or the rules made thereunder and which absence cannot be made good by judicial legislation it has got to be dismissed, leaving it open to the Registrar of the Companies to recognise the resignation of the applicant and give effect thereto in his further dealings with the company.

(13) This application is dismissed subject to the above observations.

(14) Application dismissed.