

(1979) 11 KL CK 0010
In the High Court Of Kerala
Case No : Company Petition No. 1 of 1979

R. Prakasam

APPELLANT

Vs

Sree Narayana Dharma Paripalana Yogam

RESPONDENT

Date of Decision : 23-11-1979

Acts Referred:

Companies Act, 1956 — Section 10, 107, 155, 163(2), 166

Citation : (1980) 50 CompCas 611

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Advocate : C.K.S. Panicker, P.G.P. Panicker, V. Bhaskara Menon and K.S. Radhakrishnan, for the Appellant; K. Sukumaran and K.K. Usha, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Menon, J.—The Sree Narayana Dharma Paripalana Yogam (SNDP) is a company formed for the purpose of "promoting and encouraging religious and secular education and industrious habits among the Ezhava community and the doing of all such other things as are incidental or conducive to the attainment of these objects". The management of the Yogam is vested in the board of directors. The president, vice president, general secretary and the devaswom secretaries are to be elected once in three years at the annual general body meeting in accordance with the subsidiary bye-laws framed under Article 45 of the articles of association. The general body shall consist of the members of the board of directors, presidents and secretaries of the various unions and delegates elected from among the permanent members. Notice for the 75th annual general meeting, to be convened on 30th December, 1978, was published on December 6, 1978. The agenda included the passing of the balance-sheet and the profit and loss account for 1977 and the election of the president, vice-president, general secretary, devaswom secretary and the directors. In this petition filed under Sections 10 and 166 of the Companies Act, 1956, the petitioner, a

permanent member of the yogam, seeks to challenge the validity of the meeting held on December 30, 1978, on the following broad grounds :

(i) The delegates who attended the meeting were not duly elected by the branches ; the head office accepted as valid, lists received from the branches beyond the time specified under Article 44. Discrimination was also practiced in the matter of entertaining such lists.

(ii) Against the provisions of Article 15, the nomination of a branch secretary to the director board was approved at the meeting ;

(iii) About 60 delegates admitted to the meeting belonged to the SNDP Sabha which was once functioning in the Cochin-Kanayannur Taluk ; those who elected them and they themselves were illegally treated as permanent members ;

(iv) No information had been given to the members, by proper publication u/s 257, of the candidature of different persons for the office of director ; and

(v) The uniform practice of preparing and publishing a " voters list" much in advance of the meeting was not followed.

2. The reliefs claimed are the following :

(i) To declare that the meeting held on December 30, 1978, is not a duly and validly convened annual general meeting of the SNDP Yogam, that the election of the president, vice-president, general secretary and devaswom secretary and directors purported to have been made in the said meeting is invalid and that they are not competent to administer and manage the affairs of the SNDP Yogam ;

(ii) To issue a direction to convene the annual general meeting of the Yogam in accordance with the provisions contained in the memorandum and articles of association and to conduct the election to the office of the president, vice-president, general secretary and devaswom secretary and the directors in accordance with the provisions therefore ;

(iii) To restrain the respondents 2 to 7 from functioning as office bearers of the yogam, and

(iv) To pass such other order that may be made in the premises as shall be just.

3. In application No. 30/79, the petitioner sought permission to file the petition "on behalf of all the members" ; this was not opposed, and the application was allowed.

4. Respondents 1 to 3 contend that the petition is not maintainable and that Sections 10 and 166 do not confer jurisdiction on the company court to interfere in matters relating to the annual general body meeting of a company and election of its directors. It is suggested that the remedy of the petitioner, if any, is to institute a regular civil suit before the appropriate civil court. No corporate rights are involved, and the petitioner has no right referable to Sections 10 and

166. Counsel on either side agreed that the question of maintainability be decided as a preliminary one, and, accordingly, arguments were heard.

5. The petitioner's contention is that Section 10 of the Companies Act, read with Section 2(11), confers exclusive jurisdiction on the company court " with respect to any matter relating to a company", and "any matter" includes all matters including annual general meeting and election of directors, unless jurisdiction over them are expressly taken away by some other provisions of the Act and vested in other authorities. On behalf of the respondents, on the other hand, it is contended that Sections 2(11) and 10 cannot be attracted at all unless power is conferred on the court to deal with the matter, by some other provisions of the Act.

6. From the days of *Foss v. Harbottle* [1843] 2 Hare 461 courts have been showing a distinct disinclination to interfere in the internal management of a company at the instance of a minority of members dissatisfied with the conduct of its affairs by the majority. Different reasons are advanced for this, but they mainly rest on the need to preserve the right of the majority to decide how the company's affairs should be conducted. Management functions are best left to those in management with the support of the majority, and the court's views are not to be imposed on them. The rule has, however, been stretched further and in some cases at least courts have refused to remedy wrongs done to the company, unless the grievance is backed by a majority. The principle is that the company, with a separate legal personality of its own, can alone complain of legal injuries to it ; and any action by a dissatisfied minority cannot be treated as an action brought by the company. In this view, the question is one of locus standi. But the two principles of majority rule and locus standi do not always cover the same ground, and there are separate exceptions to both. An action by some of the members, notionally at least in the interest of all, to enforce the rules of conduct governing the company's affairs is an exception to the first; and an action against a third person who has wronged the company where the plaintiffs are supposed to be the champions of the company's interest, is an exception to the second. But in both the cases, the plaintiffs sue in a representative capacity to enforce what are called "corporate rights", and not their personal rights. When reliefs, are claimed against third parties, the action is to enforce a claim belonging to the company and not to the plaintiff or plaintiffs ; the right to sue is derived from the company, and in that sense, such actions are called "derivative actions". In these types of cases, judgments are given in favour of the company and not in favour of the plaintiffs.

7. As already noticed, there are recognised exceptions to the rule in *Foss v. Harbottle* [1843] 2 Hare 461. Even a majority resolution of the company not to sue may be of no avail against an action by members to restrain the commission of an ultra vires act, or an action to compel the directors to compensate the company for loss sustained by such acts. Similarly, it is open for members to sue for restraining a threatened breach of the provisions of the memorandum or

articles. A member can also seek a declaration against a resolution altering the memorandum or articles, though passed in proper form, on the ground that it is not in good faith for the benefit of the members as a whole. Again where a resolution is passed by a general meeting, when it should have been passed as a special or extraordinary resolution, its validity can likewise be challenged by the members. A representative action to restrain the company from doing an act contrary to the provisions of the Companies Act, or the general law, or from giving effect to an invalid decision of the general meeting, is also permissible. At the root of the above exceptions lies either a question of vires or contract, and the remedy is mostly to prevent a threatened act, and not to get undone something improperly done.

8. Apart from corporate rights which are but rights to get remedied wrongs done to a company, a member has also personal rights to sue for wrongs done to himself in his capacity as a member. These individual rights stem partly from contract, express or implied, and partly from, the general law. A contract is implied between a company and a member who joins it. And this gives him the right to have his name properly entered in the register of members with all correct particulars, to vote at meetings of members, to receive dividends and to have his capital returned to him in whole or in part, in the event of winding up ; and he can, therefore, sue for enforcing these rights. Under the general law, he has an individual right to restrain the company from doing ultra vires acts, to have a reasonable opportunity of attending and speaking at meetings, to move amendments at such meetings, to transfer his shares and not to have his financial obligations to the company increased without his consent. The Companies Act also gives him some personal rights such as rights to inspect documents, to get a share certificate issued and to appoint proxy at meetings. The Act, however, confers on him no general right to have all the provisions of the memorandum or articles duly observed, or to initiate action for violation of all the obligations the statute imposes on the company.

9. But the "action" referred to above, whether for vindicating corporate rights or personal, whether representative or individual, cannot be confused with initiation of proceedings before the company court in all such matters. The course of case law seems to be that except in cases where the Companies Act confers jurisdiction on the company court or some other authority, either expressly or by necessary implication, all other disputes pertaining to a company are to be resolved through the forum of the civil courts, when such disputes are capable of being resolved by them. Questions sometimes arise whether the provisions of the Act conferring power on the company court (or any other authority) to adjudicate certain matters oust the jurisdiction of the civil courts in respect of those matters ; and they have to be separately dealt with, with specific reference to the statutory provisions involved, as and when occasions arise. But it is quite a different thing to contend, as the petitioner does here, that every dispute pertaining to a matter touched by the Companies Act is to be adjudicated by the company court. Stated generally, the Companies Act only supplements the

minority shareholders" power to protect their interests by bringing personal, representative or derivative actions ; the interests or the rights themselves are often not its creation. Minority shareholders are given a special remedy against oppression u/s 397 and Section 398 provides for relief against mismanagement. The forum in these two instances is the company court; but it is significant that u/s 408, the Central Govt. is also given power to grant relief of a limited nature, on the application of a specified group of shareholders, in cases of oppression and mismanagement. The Act also permits minority shareholders to enforce certain claims of the company, free from the restrictions of *Foss v. Harbottle* [1843] 2 Hare 461, in the event of winding up ; and Section 542 (fraudulent trading) and Section 543 (misfeasance) are instances where contributories can approach the company court for relief. Section 107 is another instance where dissentient shareholders can complain against variation of a class of shares. And there are also provisions, like those in Section 235, where members can apply to the Central Govt. for appointment of inspectors to investigate the affairs of a company. Personal rights are also recognised by provisions like those in Section 155 and Section 163(2). Under the former, any member "may apply to the court" for rectification of the register of members, and under Sub-section (6) of Section 163 the court is empowered to enforce the rights recognised by Sub-section (2). But what about other rights in respect of which remedy by way of resort to the company court is not provided for ?

10. Section 10 of the Act only attempts to enumerate or specify "the court having jurisdiction under this Act" where such jurisdiction is conferred on a court by the other provisions of the Act. Powers are conferred by the Act not only on courts, but also on other authorities like the Central Govt., the Company Law Board, and the Registrar ; and where a power is vested in a court, that court has to be specified. Beyond so specifying the court competent to deal with a matter arising under the Act, Section 10 does not purport to invest the company court with jurisdiction over every matter arising under the Act. It may be that, in view of the elaborate provisions contained in the 1956 Act in regard to the management and the conduct of a company's affairs including even important internal matters of administration, the scope for interference by civil court has become more limited, but the power has not at all been taken away. Every suit for redress of individual wrongs cannot be considered as merely concerned with matters of internal management, so as to attract the rule in *Foss v. Harbottle* [1843] 2 Hare 461. This court had occasion to consider in *Joseph v. Jos* [1964] 34 CompCas 931, whether a suit would lie to declare the election of certain directors at a company meeting as null and void ; and Mathew J. (as he then was), held that it would. *Foss v. Harbottle* [1843] 2 Hare 461 was referred to, as also the distinction between corporate rights and individual rights of members, and it was observed that where a wrong is done to an individual member, he could insist by recourse to a civil suit, on "the strict observance of the legal rules, statutory provisions and provisions in the memorandum and articles which cannot be waived by a bare majority of shareholders ".

11. Section 166 imposes a duty on the company to hold annual general meetings in accordance with the prescriptions therein. There should be a special notice for such a meeting. The interval between two annual general meetings shall not exceed fifteen months. The meeting should be called during business hours, at the registered office, or at some other place within the city, town or village. It shall not be held on a public holiday. And if default is committed in holding a meeting "in accordance with Section 166", the Central Govt. is empowered u/s 167 to call such a meeting or direct such calling. Section 168 provides for punishment where the requirements of Section 166 or a direction u/s 167 are not complied with. The power of Central Govt. u/s 167 is to be exercised on the application of "any member", and that apparently shows that every member has a right to insist that the annual general body meeting should be held in accordance with Section 166. If the meeting is held on a holiday, or at a place far away from the registered office or without due special notice, the Central Govt. can possibly interfere. But what is to be particularly noticed is that the member can complain to the Central Govt. alone, and not to the company court. The company and its officers can be fined u/s 168 for breach of Section 166 or of a direction u/s 167 ; but where a meeting is called with due notice, in proper time and at the proper place, and the proceedings are still held in violation of the articles or of other legal provisions, such violations are not matters even the Central Govt. could rectify. Section 186 empowers the Company Law Board, on the application of a director or member or even suo motu, to order a meeting (other than an annual general meeting) of the company to be called, if certain conditions exist. The statutory scheme is thus to bring into the picture the Central Govt. in the case of annual general meetings and the Company Law Board in the case of others ; and even these two come in under limited circumstances and for exercising limited powers. The court defined in Section 10 does not come into the picture at all.

12. Considerable reliance was placed on behalf of the petitioner on British India Corporation Ltd. and Others Vs. Robert Menzies, to contend that where a law requires something to be done, there must exist a court that can order it to be done, that where there is a right there should be a remedy, and that, in the absence of other provisions, Section 166 read with Section 10 should be construed as conferring an "inherent power" on the court to entertain a complaint of this type and grant relief. The provisions of Section 166 have already been seen, and it has also been noticed that for non-compliance with the requirements, the forum for complaint is the Central Govt. Where Parliament has addressed itself to the question of prescribing the minimum requirements for an annual general meeting and has also specified the Central Govt. as the authority competent to interfere when such requirements are not satisfied, it is idle to contend that the company court should still be able to exercise power over the same matter, or matters ancillary or residuary, on the principle that a court should be found wherever an injury exists. The broad propositions laid down in British India Corporation's case [1936] 6 Comp Cas 250 (All) did not find favour

with the Madras High Court in *Sree Krishna Jute Mills v. Krishna Rao* [1947] 17 Comp Cas 63 AIR 1947 Mad 322, and I have not been referred to a single case where the company court has actually interfered in such matters.

13. In *The Star Tile Works Ltd., Kallai and Others Vs. N. Govindan and Others*, , a Division Bench of this court referred with approval to *Sree Krishna Jute Mitts*" case [1947] 17 CompCas 63 : AIR 1947 Mad 322, and held that the company court has no exclusive jurisdiction in all company matters. The decision arose from a suit for a declaration that the proceedings of the annual general body meeting of the Star Tile Works was void, illegal and ultra vires. One of the questions agitated in second appeal was whether the civil court had jurisdiction to entertain such a suit, and the contention was that the company court alone could deal with such a matter in view of Section 2(11) and Section 10. This contention was overruled and it was observed (p. 264, para. 49) :

" ...what is asked for in the plaint is that certain proceedings evidenced by certain resolutions purported to have been passed at the meeting of 22-7-1957 have not been validly passed and are not binding on the company or the shareholders. That such a relief can be obtained in the civil court and that by shareholders like the plaintiffs have been held in a number of decided cases."

14. This decision seems to be on all fours with the facts of the present case, and I am bound by it.

15. Counsel pointed out that the above view did not find favour with the Madhya Pradesh High Court in *Nava Samaj Ltd. and Others Vs. Civil Judge, Class 1 and Others*, , where Dixit C.J., after extracting Sections 2(11) and 10, observed (p. 290, para. 7, col. 1) :

"The plain effect of the above provisions is that the power and jurisdiction to deal with such matters as are covered by the Act itself has been given to the courts specified in Section 10(1) with respect to any matter relating to a company, other than an offence against the Act The courts nominated under the Act have exclusive jurisdiction to take cognisance of the matters covered by the Companies Act. This follows from the well-settled principle that where a particular court is specified or a special tribunal is created, by or under authority of an Act of Legislature, for the purpose of determining questions as to rights which are the creation of the Act, then the jurisdiction of that court or tribunal is, unless otherwise provided, exclusive."

16. But the other learned judge on the Division Bench was not prepared to go to that extent, and said (p. 293, para. 16) :

"As I read the definition of "the court" in Clause (a) of Section 2(11) of the Act (the one in Clause (b) not being material for this case), it merely enacts that, for determining the court competent to deal with any matter relating to a company (other than an offence against the Act), one must refer to Section 10 of the Act for ascertaining which court has jurisdiction under that Act with respect to that

matter relating to that company. The reason for this is obvious from the provisions of Section 10. Where the jurisdiction in regard to the particular matter under consideration has been conferred on District Courts under Sub-section (2) of Section 10, the District Court within whose territorial jurisdiction the registered office of the company is situate will be the court having jurisdiction to deal with that matter. Again, as provided by Sub-section (3) of Section 10, the jurisdiction to wind up a company will be in that High Court or District Court, as the case may be, within whose territorial jurisdiction its registered office remained located for the longest period during the six months immediately preceding the presentation of the winding-up petition. In my opinion, Section 10 of the Act merely specifies the courts, which have jurisdiction to adjudicate upon the various matters required by the provisions of the Act to be dealt with by "the court".

17. Section 2(11), in so far as it is relevant, reads :

"(11) the court" means,--

(a) with respect to any matter relating to a company (other than any offence against this Act), the court having jurisdiction under this Act with respect to that matter relating to that company, as provided in Section 10."

18. It appears to me that what the above definition clause does is to indicate that wherever other provisions of the Act contain the term "the court" with respect to any matter relating to a company, that has to be understood as the court having jurisdiction u/s 10 with respect to that matter. And Section 10, dealing with "jurisdiction of courts" lays down that the High Court of the territory where the registered office of the company is situate is to have jurisdiction over all matters except to the extent such jurisdiction has been conferred by notification on District Courts. Take, for example, Section 107. This section provides that dissentient shareholders "may apply to the court" to have the variation cancelled. The shareholders concerned will have to find out which court they should resort to. It may be the High Court of one State or of another, depending upon where the head office of the company is situated. It may be the District Court of one place or another, again depending upon the notifications issued u/s 19(2). The purpose of Section 2(11) read with Section 10 is only to enable the shareholders to decide as to which court they should approach for remedy, in respect of that particular matter. It is difficult to construe the definition clause as one conferring jurisdiction, exclusive or otherwise ; and even Section 10 refers only to "the court having jurisdiction under this Act", i.e., where such jurisdiction is conferred by the Act, as under Sections 107 155, 163(2) 237 397 425, etc. In other words, the conferment of jurisdiction on "the court" is not u/s 10, but by other provisions of the Act like those enumerated above. If, on the other hand, Sections 2(11) and 10 are construed as not only nominating the courts, but also conferring exclusive jurisdiction on them, the specific provisions in the other sections conferring jurisdiction on the court to deal with the matters covered by them will become redundant. It may be that

where the Act specifies the company court as the forum for complaint in respect of a particular matter, the jurisdiction of the civil court would stand ousted to that extent. This depends, as already noticed, on the language of the particular provisions (like Sections 107 155 397 and others) and not on Sections 2(11) and 10. For instance, there are decisions to the effect that the concurrent jurisdiction of the civil courts to rectify share registers is not affected by Section 155 which confers power on the company court over the same matter.

19. Dealing with an identical contention based on Section 2(11), Section 10, the High Court of Punjab and Haryana held in *Panipat Woollen and General Mills Co. Ltd. v. Kaushik* [1969] 39 Comp Cas 249

"These provisions and the notification only point out that the matters relating to a company and mentioned in the Act will either be tried by the High Court or in certain cases by the district courts. These provisions, however, do not show that the jurisdiction of the civil courts had been expressly barred."

20. The same view was expressed by another learned judge of the same court in *Niranjan Singh v. EGPW Association* [1977] 47 Comp Cas 285 and in *Ravinder Kumar Jain v. Punjab Registered (Iron and Steel) Stockholders Association Ltd.* [1978] 48 Comp Cas 401, the same court again held that a petition under Sections 166 and 171 would not lie before the company court for a declaration that the meeting of a company was illegal and void.

21. The grievance of the petitioner, as can be gathered from the grounds noticed earlier, is that the annual general body meeting held on December 30, 1978, was not strictly in accordance with the provisions of the articles of association and certain provisions of the Act itself. This pertains to the realm of individual rights of alleged wrongs done to individual members, and not to the realm of corporate rights, notwithstanding the representative character acquired by reason of the order in Application No. 30/79. As held in *Joseph's case* [1964] 34 Comp Cas 931 (Ker), he could possibly insist on strict observance of the relevant provisions by recourse to a civil suit. In any event, the company court is not invested with jurisdiction, much less exclusive jurisdiction, to grant relief in a matter like this.

22. The request for return of the petition under Order 7, Rule 10, CPC, read with Rule 6 of the Companies (Court) Rules, 1959, also seems to be inadmissible in view of the fact that there is no "plaint " to be dealt with under Rule 10 or Rule 10A.

23. The company petition is accordingly dismissed, leaving the parties to bear their own costs.