

(1937) 05 CAL CK 0052
In the Calcutta High Court

Rameswar Lal Lath and Another

APPELLANT

Vs

Calcutta Wheat and Seed Association Ltd.

RESPONDENT

Date of Decision : 31-05-1937

Acts Referred:

Companies Act, 1956 — Section 21

Citation : AIR 1938 Cal 89

Hon'ble Judges : Remfry, J

Bench : Division Bench

Judgement

Remfry, J.—In this suit the plaintiffs seek an injunction

to restrain the defendant Association from preventing the plaintiffs from having access at all reasonable times to the proceedings books for the purpose of perusal and inspection and from preventing the plaintiffs from making extracts from these books,

and if necessary for a declaration to the same effect. All that is stated in the plaint is that the plaintiff demanded inspection of these books for 1935 and to be allowed to make copies of them, and that the Committee of the defendant Association agreed to give inspection, but refused to allow the plaintiffs to take copies. The plaintiffs are members of the defendant Association and under Article 34 of the Articles of Association, are entitled to inspect the records of the proceedings of the Committee "subject to such regulations as the Committee may from time to time deem expedient." The plaintiffs give reasons for their demand to be allowed to take copies of the proceedings in their letter of 5th March 1936, before they filed this suit. The first demand was made on 2nd November 1935 on which day a clerk dismissed by the Association started criminal proceedings for defamation against the Honorary Secretary of the Association. The Committee then refused inspection, giving no reasons, but obviously because they thought that the plaintiffs were trying to assist the dismissed clerk in the criminal proceedings, for, money which was in the charge of this clerk had disappeared and pages had been torn from the books of the

Association, and the alleged defamation was that the clerk was implicated. These" criminal proceedings were settled in December 1935 and the plaintiffs again made demands for inspection and that they should be allowed to take copies in February 1936. The Committee allowed inspection, but refused to allow the plaintiffs to make any copies. The plaintiffs threatened legal proceedings and the Committee on 26th April passed certain rules under Article 34, by which the right of inspection was much a matter for the discretion of the Committee and no copies were allowed.

2. On 30th April this suit was filed. The plaintiffs allege that they had no notice of the new rules, but it is clear that they were affixed to the notice board of the Association, on 20th April, and as the dispute was known to many members of the Association as appears from the letter of 23rd April 1936, it is highly improbable that the plaintiffs had not heard of the new rules before 30th April. In Court the plaintiffs alleged that their object was to find out who was responsible for the embezzlement or theft of the Rs. 3,000 which had disappeared, and that they suspected that a member of the Committee was the culprit and that the rest of the Committee desired to shield him, and they asserted that they had no interest in the dismissed clerk and had not assisted him. Counsel for the plaintiffs added a suggestion that the books might disappear. But in my opinion, suspicions, which the plaintiffs did not venture to suggest, are immaterial, and to argue that the Committee would record anything material on the point and then destroy the record in order to enable one member of the Committee to rob the other members is not convincing. The plaintiffs have had inspection and it is not suggested that any particular passage in the minutes in any way lends the slightest support to their alleged suspicions or how it would assist them to take copies of all or any part of the minutes, or if counsel's suspicions are relevant, that there is anything in the minutes which anyone would be likely to destroy. In my opinion, as is only too usual, there is nothing to justify the mutual recriminations of the parties, for both sides were but asserting their sup. posed rights in the supposed interests of the Association.

3. The first point is whether the rules made on 26th April are valid, for if they are, the plaintiffs have no right to take any copies, In my opinion it is immaterial whether the plaintiffs had actual notice of these rules before they filed their suit, for the method adopted for giving notice of these was reasonable and there are no rules on the point. The material part of Article 34 is

the record of their (the Committee's) proceedings shall be open to the inspection of the members, subject to such regulations as the Committee may from time to time deem expedient.

4. The rules passed on 26th April were:

If any member wants to inspect the minute book of the Committee, then his application should have to be placed before the Committee, The application must contain the following particulars: (1) The minutes of which date are to be

inspected. (2) For what purpose. (3) If any firm has more than one partner, then the application must contain the signatures of all the partners. (4) It must be agreed upon to deposit Be. 1 in the office for every page.

As soon as the application reaches the Secretary, it will be placed before the Committee. And the Committee will fix up how and when the minute book will be shown. No member will be allowed to copy or take notes of the minute book. If any member in the opinion of the committee intends doing harm to the Association or its office-bearers, in that case the committee shall be authorized to refuse inspection of the proceedings book.

5. It was argued that these rules, in so far as they left the matter of inspection to the discretion of the Committee and pre-vented a member from taking copies or notes, were ultra vires. The law is clear, and a power to regulate a right cannot be Used to abrogate it. The plaintiffs as members had under the Article a contractual right of inspection, and that could not be reduced by the power given to make rules, into a mere right to claim inspection subject to the Committee's approval. No matter how limited the grounds for refusing inspection might be, making the right of inspection a matter of the discretion of the Committee fundamentally altered the Article, for, a contractual right of inspection just as a statutory right of inspection can be exercised whatever the motive or interest of the member may be.

6. As regards the rule that members are not entitled to take copies of the minutes, for reasons which are given hereafter, in my opinion, although a contractual right of inspection does not of itself carry with it any right to take copies, the plaintiffs had certain rights on this point, and the Committee could not by rules made under this Article deprive the plaintiffs of such rights. Therefore in my opinion the rules on those two points are ultra vires and invalid. The plaintiffs have asked for a declaration of their right to inspect and to take copies. But having regard to the decision in *Bank of Bombay v. Suleman Somji* (1908) 32 Bom 466, I very much doubt if in a suit of this description, any declaration could be obtained, and in my opinion the decision clearly shows that a declaration, if at all possible, could only be obtained if a case for an injunction had been established. Therefore as the plaintiffs have had inspection, and could not obtain a mandatory injunction on this point, they cannot obtain a declaration in respect of their right to inspect.

7. As regards the claim for a declaration that they are entitled to take copies, that depends on whether they have established a right to any injunction on that point. As regards the claim of a right to take copies of the minutes, apparently there is no decision exactly in point, but there are two decisions in which the rights of members of corporations have been decided, and from those decisions the position of the plaintiffs appears to be clear. In *Bank of Bombay v. Suleman Somji* (1908) 35 I A 130 the Judicial Committee considered the position of a member of a corporation who had no statutory rights of inspection and no express contractual rights. His rights depended on the Common law. The

plaintiffs claimed a right to inspect and to take copies. Their Lordships approved of a passage from Taylor on Evidence, in which it is stated that:

The privilege of inspection is now confined to cases where a member of a corporation has in view some definite right or object of his own and to those documents which would tend to illustrate such right or object.

8. The judgment then cites the case in *Rex v. Merchant Taylors Co.* (1818) 2 B & Ad 115 with approval, as authority for the proposition that if none of the plaintiffs had any special interest different from that of his fellow members or any definite purpose or object in obtaining the inspection asked for other than to see if by possibility company's affairs may be better administered than they are at present, their suit failed. One of the grounds held to be insufficient in that case was

that they (the plaintiffs) had heard and believed that the revenues of the corporation were misapplied through malpractices of those who managed the corporation's affairs.

9. The plaintiff in the suit before the Judicial Committee failed because his interest was the same as that of his fellow members. Their Lordships did not express an opinion as to the extent of the right to take copies beyond quoting from Taylor on Evidence, but obviously at most a member could only take copies of the documents which he was entitled to inspect, and Lindley L. J. said, in the next cited case, "the extent of the right to take copies under the Common law depended on the interest of the applicant". In an earlier case, *Mutter v. Eastern and Midlands Railway Co.* (1888) 38 Ch D 92, it appears that the Court distinguished the matter before them from an application for a prerogative writ of mandamus, whereas the Judicial Committee held that similar principles applied. But that was a case in which the plaintiffs based their claim on a statute, whereas in that case before the Judicial Committee the claim was based on the Common law, by which an incident was implied in their contract, or strictly speaking, which was part of their contract. The plaintiffs placed great reliance on certain passages in the decision of Lindley L. J. One point is clear, the Court on appeal did not accept the view of Chitty J. that

When a man is inspecting he may make bona fide use of his inspection, and it follows from his right to inspect that he can make copies.

10. Lindley L.J. said:

The result of my own researches is negative rather than positive, I have not been able to find a case in which the Court has ever held that a person having a right to inspect a document has not also a right to take copy of it or of so much of it as he requires for a legitimate purpose. The right to take copy is treated as incidental to the right to inspect.

11. He then adds to qualify this "generally speaking". Then he adds that this may not always apply and that the right to inspect may extend to "more than he has

a right to take a copy of". He called this a principle apparently that the right to take copies was generally incidental to a right of inspection, but he did not act on it, for he finally based his decision on the construction of the statute:

Parliament having conferred the right to inspect, the Court ought not so construe the statute as to render the right conferred illusory and of no avail.

12. And he expressly gives the ground of his decision:

Upon the ground therefore that in this case the right to take copy cannot be denied without rendering the right to inspect practically useless, I am of opinion that the order appealed from was correct.

13. The plaintiff wanted to take copies of the register of debenture stock-holders and was entitled by statute to inspect the register. For the plaintiffs it was argued that a right of inspection carried with it a right to take copies. This was the view taken by North J. in *Boord v. African Consolidated Land & Trading Co.* (1898) 1 Oh 596, but his decision was overruled in *In re Balaghat Gold Mining Co.* (1901) 2 K B 665, when the Master of the Rolls said that he could not bring himself to agree with that proposition, and the Court held that the statute which gave the applicant a right of inspection gave him no right to take copies himself, because the statute gave him a right to have copies on payment, and there was no ground therefore for implying any other right. The case was cited with approval by Vaughan Williams L. J. in *Ormerod Grierson & Co. v. St. George's Ironworks Ltd.* (1905) 1 Ch 505. It is clear therefore that a contractual right of inspection does not of itself imply a right to take copies, any more than a statutory right would do. In the case of a statutory right of inspection, the Court will not imply a right to take copies unless the statutory right would otherwise be of no avail, or practically useless. The question is whether in this case the Court should imply such a term in this contract. There are only four cases in which a Court can add a term to a written contract, and they are where the words used are elliptical, or by custom or trade usage, or as a necessary incident of the Common law [see *Biddell Brothers v. Clemens Horst & Co.* (1911) 1 K B 934 or by necessary implication. Only the last two have any application to this case.

14. A Court will not imply a term unless it is driven to the conclusion that it must be implied: *Douglas v. Baynes* (1908) 78 L J P C 13, nor will it imply in wider term than is necessary: *Att.-Gen. v. City of Dublin Steam Packet Co.* (1909) 25 T L R 696, where the House of Lords considered the terms implied by the Court on appeal as unnecessarily wide. All the circumstances must be considered before any term is implied. In this case the plaintiffs were given by the Article a right to inspect the minutes, which was a right of considerable value in itself. They also had a Common law right of inspection and to take copies, for Common law rights are not affected by a contract or by a statute, unless they are mutually inconsistent : *O' Flaherty v. M'Dowell* (1857) 6 H L C 142, (1857) 6 H L C 1420. The question is whether the Court is driven to the conclusion that because the Articles give a wider right than the Common law as far as inspection is

concerned, it is necessary to imply a wider right of taking copies. As it is settled law that a right of inspection does not carry with it a right to take copies, there must be some other circumstance to make it necessary to imply such a term. Lord Selborne in *Att. Gen. v. G.E. Ry. Co.* (1880) 5 A C 473 said that it is contrary to sound principle to imply a condition not expressed in the clause, if the words as they stand would be sensible and operative.

15. In my opinion in this case, unless it can be held that the Common law right is inadequate, no addition to it can be implied. The Judicial Committee in the case of *The Bank of Bombay* pointed out that the Common law right had become more restricted in modern times, and it would therefore be difficult to regard it as an insufficient safeguard, especially as the Judicial Committee has held that the Common law is generally a safe guide for deciding what is according to justice, equity and good conscience. And if the Common law rights of the plaintiffs in the case of *The Bank of Bombay*¹ had not been sufficient to effectuate their contract, the Judicial Committee would have implied a more adequate right, had that been necessary or proper. The question whether the Common law right of the applicant would have been sufficient was not raised in any of the cases cited on the construction of various statutes, but in none of them would the Common law right have sufficed to make the statute of any practical use. And in any case I am bound to follow the decision of the House of Lords in (1909) 25 T L R 6969 and to consider whether the claim of the plaintiffs is wider than the circumstances demand. Had this been a case in which the Common law did not apply, it seems to me that before implying any other term in this contract, the Court would have been bound to consider whether the Common law right would not be sufficient. And in my opinion the cases cited show that the Court is bound by a stricter rule when a question of implying term in a contract arises than in the case of a statute.

16. In my opinion the plaintiffs' interests were sufficiently protected by the Common law and there is therefore no necessity for implying any greater rights in their contract. The words of the Article as they stand are sensible and operative, and there is nothing to show that the intention was to give a right to take copies of the minutes, or that the right given would be practically useless without the right claimed. And in this case, assuming that the Common law was known to the persons responsible for drafting the Articles, there seems to be nothing to indicate that their intention was to alter or add to it. In my opinion therefore the contract in this case-for, Section 21, Companies Act, merely converts the Articles into a contract between the company and its members-must be construed to mean that the plaintiffs though given a right to inspect the minutes could only take copies of them if that were permissible under their Common law rights, and it is not necessary to imply any term in this contract. Or in the alternative if the Common law does not apply, no term giving wider rights than the Common law is necessary to effectuate the contract between the parties.

17. As the plaintiffs have no stronger case than the applicants in (1818) 2 B & Ad

1152 or in the case of The Bank of Bombay¹ they are not entitled under their Common law rights to take copies of the minutes, for their interest is not different from that of their fellow members, nor have they any special object of their own. Further, as the plaintiffs have inspected the minutes, to support their claim for what is in effect a mandatory injunction, in my opinion they should have indicated the passages which they desired to copy. As it is, there is no suggestion that they found anything in the minutes which lent the slightest foundation for their alleged suspicions or a copy of which would further their interests or objects. As regards the claim for a declaration of a right to take copies, in my opinion it fails, as the right claimed by the plaintiffs did not exist and the limited right which exists was not claimed at any time : 35 I A 130 Bank of Bombay v. Suleman Somji (1908) 32 Bom 466. The suit is therefore dismissed with costs on scale No. 2, including reserved costs.